

1 **APPORTIONMENT OF BUSINESS INCOME AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Daniel McCay**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the business income apportionment provisions.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ addresses the apportionment of business income for income tax purposes by:

13 • phasing in a requirement that certain taxpayers use only the sales factor to
14 calculate the fraction for apportioning business income to the state;

15 • allowing an optional apportionment taxpayer to choose between a single sales
16 factor and an equally weighted method to calculate the fraction for apportioning
17 business income to the state; and

18 • requiring an optional apportionment taxpayer that chooses to apportion business
19 income using the single sales factor method to continue using the single sales
20 factor method of apportionment in subsequent taxable years;

21 ▶ provides a method for a taxpayer to determine if the taxpayer is an optional
22 apportionment taxpayer; and

23 ▶ makes technical and conforming changes.

24 **Money Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 This bill provides a special effective date.



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **59-7-110**, as last amended by Laws of Utah 2016, Chapters 311 and 32331 **59-7-302**, as last amended by Laws of Utah 2017, Chapters 181 and 26832 **59-7-311**, as last amended by Laws of Utah 2016, Chapters 311 and 32333 **59-7-312**, as last amended by Laws of Utah 2008, Chapter 28334 **59-7-315**, as last amended by Laws of Utah 2008, Chapter 28335

36 *Be it enacted by the Legislature of the state of Utah:*37 Section 1. Section **59-7-110** is amended to read:38 **59-7-110. Utah net loss -- Carryforward and carryback -- Deduction.**39 (1) ~~[The amount of Utah net loss that shall be carried]~~ A taxpayer shall determine the
40 amount of Utah net loss that the taxpayer may carry back or forward to offset income of
41 another taxable year [is determined] as provided in this section.42 ~~[(2) (a) Subject to the other provisions of this section, a Utah net loss from a taxable~~
43 ~~year beginning before January 1, 1994, shall be carried back three taxable years preceding the~~
44 ~~taxable year of the loss and any remaining loss shall be carried forward five taxable years~~
45 ~~following the taxable year of the loss.]~~46 ~~[(b) (i) (2) (a) Subject to the other provisions of this section, a taxpayer may:~~47 ~~(i) carry back a Utah net loss from a taxable year [beginning on or after January 1,~~
48 ~~1994, may be carried back] for three taxable years preceding the taxable year of the loss; and~~
49 ~~[carried]~~50 ~~(ii) carry forward a Utah net loss from a taxable year for 15 taxable years following the~~
51 ~~taxable year of the loss.~~52 ~~[(ii) (b) If [an election is made to] a taxpayer elects to forego the federal net operating~~
53 ~~loss carryback, the taxpayer may not carry back a Utah net loss [is not eligible to be carried~~
54 ~~back] unless the taxpayer makes an election [is made] for state purposes.~~55 (3) A taxpayer that carries forward a Utah net loss shall carry forward the Utah net loss
56 ~~[shall be carried]~~ to the earliest eligible year for which the Utah taxable income before net loss
57 deduction, minus Utah net losses from previous years that ~~[were applied or required to be~~
58 ~~applied]~~ a taxpayer applied or was required to apply to offset income, is not less than zero.

59 (4) (a) Except as provided in Subsection (4)(b), the amount of Utah net loss that ~~shall~~
60 ~~be carried~~ a taxpayer may carry to the year identified in Subsection (3) is the lesser of:

61 (i) the remaining Utah net loss after deduction of any amounts of the Utah net loss that
62 ~~were~~ a taxpayer carried to previous years; or

63 (ii) the remaining Utah taxable income before net loss deduction of the year identified
64 in Subsection (3) after deduction of Utah net losses from previous years that ~~were carried or~~
65 ~~required to be carried~~ a taxpayer carried or was required to carry to the year identified in
66 Subsection (3).

67 (b) (i) The amount of Utah net loss ~~carried~~ that a taxpayer carries back from a taxable
68 year may not exceed \$1,000,000 in Utah taxable income for each return filed under this chapter
69 in a taxable year.

70 (ii) A taxpayer may carry forward a Utah net loss in excess of \$1,000,000 ~~may be~~
71 ~~carried forward~~].

72 (iii) A taxpayer may carry a remaining Utah net loss ~~shall be available to be carried~~ to
73 one or more taxable years in accordance with this section.

74 (5) (a) (i) Subject to Subsection (5)(a)(ii), a corporation acquiring the assets or stock of
75 another corporation may not deduct any net loss incurred by the acquired corporation prior to
76 the date of acquisition.

77 (ii) Subsection (5)(a)(i) does not apply if the only change in the corporation is that of
78 the state of incorporation.

79 (b) An acquired corporation may deduct the acquired corporation's net losses incurred
80 before the date of acquisition against the acquired corporation's separate income as calculated
81 under Subsections (6) and (7) if the acquired corporation has continued to carry on a trade or
82 business substantially the same as that conducted before the acquisition.

83 (6) For purposes of Subsection (5)(b), the amount of net loss an acquired corporation
84 that is acquired by a unitary group may deduct is calculated by:

85 (a) subject to Subsection (7):

86 (i) except as provided in Subsection (6)(a)(ii), calculating the sum of:

87 (A) an amount determined by dividing the average value of the acquired corporation's
88 real and tangible personal property owned or rented and used in this state during the taxable
89 year by the average value of all of the unitary group's real and tangible personal property owned

90 or rented and used during the taxable year;

91 (B) an amount determined by dividing the total amount paid in this state during the
92 taxable year by the acquired corporation for compensation by the total compensation paid
93 everywhere by the unitary group during the taxable year; and

94 (C) an amount determined by~~[-(F)]~~ dividing the total sales of the acquired corporation
95 in this state during the taxable year by the total sales of the unitary group everywhere during the
96 taxable year; ~~[and]~~ or

97 ~~[(H) if the unitary group elects to calculate the fraction for apportioning business
98 income to this state using the method described in Subsection 59-7-311(2)(b), multiplying the
99 amount calculated under Subsection (6)(a)(i)(C)(F) by two; or]~~

100 (ii) if the unitary group is required or elects to calculate the fraction for apportioning
101 business income to this state using the method described in Subsection 59-7-311 ~~[(3)]~~(2),
102 calculating an amount determined by dividing the total sales of the acquired corporation in this
103 state during the taxable year by the total sales of the unitary group everywhere during the
104 taxable year;

105 (b) dividing the amount calculated under Subsection (6)(a) by the same denominator of
106 the fraction the unitary group uses to apportion business income to this state~~[-(i)]~~ for that
107 taxable year~~[-and (ii)]~~ in accordance with Section 59-7-311;

108 (c) multiplying the amount calculated under Subsection (6)(b) by the business income
109 of the unitary group for the taxable year that is subject to apportionment under Section
110 59-7-311; and

111 (d) calculating the sum of:

112 (i) the amount calculated under Subsection (6)(c); and

113 (ii) the following amounts allocable to the acquired corporation for the taxable year:

114 (A) nonbusiness income allocable to this state; or

115 (B) nonbusiness loss allocable to this state.

116 (7) The amounts calculated under Subsection (6)(a) shall be derived in the same
117 manner as those amounts are derived for purposes of apportioning the unitary group's business
118 income before deducting the net loss, including a modification made in accordance with
119 Section 59-7-320.

120 Section 2. Section 59-7-302 is amended to read:

121 **59-7-302. Definitions -- Determination of taxpayer status.**

122 (1) As used in this part, unless the context otherwise requires:

123 (a) "Aircraft type" means a particular model of aircraft as designated by the
124 manufacturer of the aircraft.

125 (b) "Airline" means the same as that term is defined in Section 59-2-102.

126 (c) "Airline revenue ton miles" means, for an airline, the total revenue ton miles during
127 the airline's tax period.128 (d) "Business income" means income arising from transactions and activity in the
129 regular course of the taxpayer's trade or business and includes income from tangible and
130 intangible property if the acquisition, management, and disposition of the property constitutes
131 integral parts of the taxpayer's regular trade or business operations.132 (e) "Commercial domicile" means the principal place from which the trade or business
133 of the taxpayer is directed or managed.134 (f) "Compensation" means wages, salaries, commissions, and any other form of
135 remuneration paid to employees for personal services.136 (g) "Excluded NAICS code" means a NAICS code of the 2017 North American
137 Industry Classification System of the federal Executive Office of the President, Office of
138 Management and Budget, within:139 (i) NAICS Code 211120, Crude Petroleum Extraction;140 (ii) NAICS Industry Group 2121, Coal Mining;141 (iii) NAICS Industry Group 2212, Natural Gas Distribution;142 (iv) NAICS Subsector 311, Food Manufacturing;143 (v) NAICS Industry Group 3121, Beverage Manufacturing;144 (vi) NAICS Code 327310, Cement Manufacturing;145 (vii) NAICS Subsector 482, Rail Transportation; or146 (viii) NAICS Code 522110, Commercial Banking.147 ~~(g)~~ (h) (i) Except as provided in Subsection (1)~~(g)~~(h)(ii), "mobile flight equipment"
148 means the same as that term is defined in Section 59-2-102.

149 (ii) "Mobile flight equipment" does not include:

150 (A) a spare engine; or

151 (B) tangible personal property described in Subsection 59-2-102(27) owned by an air

152 charter service or an air contract service.

153 ~~[(h)]~~ (i) "Nonbusiness income" means all income other than business income.

154 ~~[(i) Subject to Subsection (2), "optional sales factor weighted taxpayer" means:]~~

155 ~~[(i) for a taxpayer that is not a unitary group, regardless of the number of economic~~
 156 ~~activities the taxpayer performs, a taxpayer having greater than 50% of the taxpayer's total sales~~
 157 ~~everywhere generated by economic activities performed by the taxpayer if the economic~~
 158 ~~activities are classified in a NAICS code within NAICS Subsector 334, Computer and~~
 159 ~~Electronic Product Manufacturing, of the 2002 or 2007 North American Industry Classification~~
 160 ~~System of the federal Executive Office of the President, Office of Management and Budget; or]~~

161 ~~[(ii) for a taxpayer that is a unitary group, a taxpayer having greater than 50% of the~~
 162 ~~taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if~~
 163 ~~the economic activities are classified in a NAICS code within NAICS Subsector 334,~~
 164 ~~Computer and Electronic Product Manufacturing, of the 2002 or 2007 North American~~
 165 ~~Industry Classification System of the federal Executive Office of the President, Office of~~
 166 ~~Management and Budget.]~~

167 (j) "Optional apportionment taxpayer" means a taxpayer described in Subsection (3).

168 (k) "Phased-in sales factor weighted taxpayer" means a taxpayer that:

169 (i) is not a sales factor weighted taxpayer;

170 (ii) does not meet the definition of an optional apportionment taxpayer; or

171 (iii) for a taxable year beginning on or after January 1, 2020:

172 (A) meets the definition of an optional apportionment taxpayer; and

173 (B) apportioned business income using the method described in Subsection

174 59-7-311(4) during the previous taxable year.

175 ~~[(j)]~~ (l) "Revenue ton miles" is determined in accordance with 14 C.F.R. Part 241.

176 ~~[(k)]~~ (m) "Sales" means all gross receipts of the taxpayer not allocated under Sections
 177 59-7-306 through 59-7-310.

178 ~~[(h)]~~ (n) ~~[Subject to Subsection (2), "sales]~~ "Sales factor weighted taxpayer" means ~~[:]~~ a
 179 taxpayer described in Subsection (2).

180 ~~[(i) for a taxpayer that is not a unitary group, regardless of the number of economic~~
 181 ~~activities the taxpayer performs, a taxpayer having greater than 50% of the taxpayer's total sales~~
 182 ~~everywhere generated by economic activities performed by the taxpayer if the economic~~

183 ~~activities are classified in a NAICS code of the 2002 or 2007 North American Industry~~
 184 ~~Classification System of the federal Executive Office of the President, Office of Management~~
 185 ~~and Budget, except for:]~~

186 ~~[(A) a NAICS code within NAICS Sector 21, Mining;]~~

187 ~~[(B) a NAICS code within NAICS Industry Group 2212, Natural Gas Distribution;]~~

188 ~~[(C) a NAICS code within NAICS Sector 31-33, Manufacturing, other than NAICS~~
 189 ~~Code 336111, Automobile Manufacturing;]~~

190 ~~[(D) a NAICS code within NAICS Sector 48-49, Transportation and Warehousing;]~~

191 ~~[(E) a NAICS code within NAICS Sector 51, Information, other than NAICS Subsector~~
 192 ~~519, Other Information Services; or]~~

193 ~~[(F) a NAICS code within NAICS Sector 52, Finance and Insurance; or]~~

194 ~~[(ii) for a taxpayer that is a unitary group, a taxpayer having greater than 50% of the~~
 195 ~~taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if~~
 196 ~~the economic activities are classified in a NAICS code of the 2002 or 2007 North American~~
 197 ~~Industry Classification System of the federal Executive Office of the President, Office of~~
 198 ~~Management and Budget, except for a NAICS code under Subsections (1)(1)(i)(A) through (F).]~~

199 ~~[(m)]~~ (o) "State" means any state of the United States, the District of Columbia, the
 200 Commonwealth of Puerto Rico, any territory or possession of the United States, and any
 201 foreign country or political subdivision thereof.

202 ~~[(n)]~~ (p) "Transportation revenue" means revenue an airline earns from:

203 (i) transporting a passenger or cargo; or

204 (ii) from miscellaneous sales of merchandise as part of providing transportation
 205 services.

206 ~~[(o)]~~ (q) "Utah revenue ton miles" means, for an airline, the total revenue ton miles
 207 within the borders of this state:

208 (i) during the airline's tax period; and

209 (ii) from flight stages that originate or terminate in this state.

210 ~~[(2) The following apply to Subsections (1)(i) and (1):]~~

211 ~~[(a) (i) Subject to the other provisions of this Subsection (2), for each taxable year, a~~
 212 ~~taxpayer shall determine whether the taxpayer is a sales factor weighted taxpayer.]~~

213 (2) (a) A taxpayer is a sales factor weighted taxpayer if, regardless of the number of

214 economic activities the taxpayer performs, the taxpayer generates greater than 50% of the
 215 taxpayer's total sales everywhere from economic activities that are classified in a NAICS code
 216 of the 2002 or 2007 North American Industry Classification System of the federal Executive
 217 Office of the President, Office of Management and Budget, other than:

218 (i) a NAICS code within NAICS Sector 21, Mining;
 219 (ii) a NAICS code within NAICS Industry Group 2212, Natural Gas Distribution;
 220 (iii) a NAICS code within NAICS Sector 31-33, Manufacturing, except NAICS Code
 221 336111, Automobile Manufacturing;

222 (iv) a NAICS code within NAICS Sector 48-49, Transportation and Warehousing;
 223 (v) a NAICS code within NAICS Sector 51, Information, except NAICS Subsector
 224 519, Other Information Services; or

225 (vi) a NAICS code within NAICS Sector 52, Finance and Insurance.

226 ~~[(ii)]~~ (b) A taxpayer shall ~~[make the determination required by Subsection (2)(a)(i)]~~
 227 determine if the taxpayer is a sales factor weighted taxpayer each year before the due date for
 228 filing the taxpayer's return under this chapter for the taxable year, including extensions.

229 ~~[(iii)]~~ (c) For purposes of making the determination required by Subsection (2)(a)~~[(i)]~~,
 230 total sales everywhere include only the total sales everywhere:

231 ~~[(A)]~~ (i) as determined in accordance with this part; and

232 ~~[(B)]~~ (ii) made during the taxable year for which a taxpayer makes the determination
 233 required by Subsection (2)(a)~~[(i)]~~.

234 (3) (a) A taxpayer is an optional apportionment taxpayer if the average calculated in
 235 accordance with Subsection (3)(b) is greater than .50.

236 (b) To calculate the average described in Subsection (3)(a), a taxpayer shall:

237 (i) calculate the following two fractions:

238 (A) the property factor fraction as described in Subsection [59-7-312\(3\)](#); and

239 (B) the payroll factor fraction as described in Subsection [59-7-315\(3\)](#);

240 (ii) add together the fractions described in Subsection (3)(b)(i); and

241 (iii) divide the sum calculated in Subsection (3)(b)(ii):

242 (A) except as provided in Subsection (3)(b)(iii)(B), by two; or

243 (B) if either the property factor fraction or the payroll factor fraction has a denominator
 244 of zero or is excluded in accordance with Subsection [59-7-312\(3\)\(b\)](#) or [59-7-315\(3\)\(b\)](#), by one.

245 (c) A taxpayer shall determine if the taxpayer is an optional apportionment taxpayer
 246 before the due date for filing the taxpayer's return under this chapter for the taxable year,
 247 including extensions.

248 [~~(b) (i) (A) Subject to other provisions of this Subsection (2), for each taxable year, a~~
 249 ~~taxpayer that is not a sales factor weighted taxpayer may determine whether the taxpayer is an~~
 250 ~~optional sales factor weighted taxpayer.]~~

251 [~~(B) A taxpayer that is not a sales factor weighted taxpayer shall determine that the~~
 252 ~~taxpayer is an optional sales factor weighted taxpayer before the taxpayer may use the~~
 253 ~~apportionment options described in Subsection 59-7-311(4).]~~

254 [~~(ii) A taxpayer making the determination described in Subsection (2)(b)(i) shall make~~
 255 ~~the determination before the due date for filing the taxpayer's return under this chapter for the~~
 256 ~~taxable year, including extensions.]~~

257 [~~(iii) For purposes of making the determination described in Subsection (2)(b)(i), total~~
 258 ~~sales everywhere include only the total sales everywhere.]~~

259 [~~(A) as determined in accordance with this part; and]~~

260 [~~(B) made during the taxable year for which a taxpayer makes a determination~~
 261 ~~described in Subsection (2)(b)(i).]~~

262 [~~(c)] (4) A taxpayer that files a return as a unitary group for a taxable year is considered~~
 263 ~~to be a unitary group for that taxable year.~~

264 [~~(d)] (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking~~
 265 ~~Act, the commission may define the term "economic activity" consistent with the use of the~~
 266 ~~term "activity" in the 2007 North American Industry Classification System of the federal~~
 267 ~~Executive Office of the President, Office of Management and Budget.~~

268 Section 3. Section **59-7-311** is amended to read:

269 **59-7-311. Method of apportionment of business income.**

270 (1) For a taxable year, a taxpayer shall apportion all business income [~~shall be~~
 271 ~~apportioned]~~ to this state by multiplying the business income by a fraction calculated as
 272 provided in this section.

273 [~~(2) Subject to the other provisions of this part, a taxpayer, except for a sales factor~~
 274 ~~weighted taxpayer and an optional sales factor weighted taxpayer, shall calculate the fraction~~
 275 ~~for apportioning business income to this state using one of the following fractions:]~~

276 ~~[(a) a fraction where:]~~

277 ~~[(i) the numerator of the fraction is the sum of:]~~

278 ~~[(A) the property factor as calculated under Section 59-7-312;]~~

279 ~~[(B) the payroll factor as calculated under Section 59-7-315; and]~~

280 ~~[(C) the sales factor as calculated under Section 59-7-317; and]~~

281 ~~[(ii) the denominator of the fraction is three; or]~~

282 ~~[(b) a fraction where:]~~

283 ~~[(i) the numerator of the fraction is the sum of:]~~

284 ~~[(A) the property factor as calculated under Section 59-7-312;]~~

285 ~~[(B) the payroll factor as calculated under Section 59-7-315; and]~~

286 ~~[(C) the sales factor as calculated under Section 59-7-317 multiplied by two; and]~~

287 ~~[(ii) the denominator of the fraction is four.]~~

288 ~~[(3)]~~ (2) Subject to the other provisions of this part, a sales factor weighted taxpayer

289 shall calculate the fraction for apportioning business income to this state using a fraction

290 where:

291 (a) the numerator of the fraction is the sales factor as calculated under Section

292 59-7-317; and

293 (b) the denominator of the fraction is one.

294 ~~[(4)]~~ (3) Subject to the other provisions of this part, an optional ~~[sales factor weighted]~~

295 apportionment taxpayer that is not a phased-in sales factor weighted taxpayer shall calculate

296 the fraction for apportioning business income to this state using ~~[a method described in~~

297 Subsection (2)(a), (2)(b), or (3).] one of the following fractions:

298 (a) the fraction described in Subsection (4); or

299 (b) the fraction where:

300 (i) the numerator of the fraction is the sum of:

301 (A) the property factor as calculated under Section 59-7-312;

302 (B) the payroll factor as calculated under Section 59-7-315; and

303 (C) the sales factor as calculated under Section 59-7-317; and

304 (ii) the denominator of the fraction is three.

305 (4) (a) Subject to other provisions of this part, a phased-in sales factor weighted

306 taxpayer shall calculate the fraction for apportioning business income to this state as provided

307 in Subsections (4)(b) through (d).

308 (b) For the taxable year that begins on or after January 1, 2019, but begins on or before
309 December 31, 2019:

310 (i) the numerator of the fraction is the sum of:

311 (A) the property factor as calculated under Section [59-7-312](#);

312 (B) the payroll factor as calculated under Section [59-7-315](#); and

313 (C) the sales factor as calculated under Subsection (4)(e)(i); and

314 (ii) the denominator of the fraction is six.

315 (c) For the taxable year that begins on or after January 1, 2020, but begins on or before
316 December 31, 2020:

317 (i) the numerator of the fraction is the sum of:

318 (A) the property factor as calculated under Section [59-7-312](#);

319 (B) the payroll factor as calculated under Section [59-7-315](#); and

320 (C) the sales factor as calculated under Subsection (4)(e)(ii); and

321 (ii) the denominator of the fraction is 10.

322 (d) For a taxable year that begins on or after January 1, 2021, a phased-in sales factor
323 weighted taxpayer shall calculate the fraction as described in Subsection (2).

324 (e) (i) For the taxable year that begins on or after January 1, 2019, but begins on or
325 before December 31, 2019, the sales factor shall be:

326 (A) calculated as described in Section [59-7-317](#); and

327 (B) multiplied by four.

328 (ii) For the taxable year that begins on or after January 1, 2020, but begins on or before
329 December 31, 2020, the sales factor shall be:

330 (A) calculated as described in Section [59-7-317](#); and

331 (B) multiplied by eight.

332 (5) (a) The taxpayer shall determine the method for calculating the fraction for
333 apportioning business income to this state under this section on or before the due date for filing
334 the taxpayer's return under this chapter for the taxable year, including extensions.

335 (b) The method described in Subsection (5)(a) is in effect for the taxable year.

336 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
337 commission may make rules providing procedures for a taxpayer to make the election required

338 by [~~Subsections (2) and (4)~~] Subsection (3).

339 Section 4. Section **59-7-312** is amended to read:

340 **59-7-312. Property factor for apportionment of business income -- Mobile flight**
341 **equipment of an airline.**

342 (1) Except as provided in [~~Subsection (2)~~] Subsections (2) and (3), the property factor
343 is a fraction[;]:

344 (a) the numerator of which is the average value of the taxpayer's real and tangible
345 personal property owned or rented and used in this state during the tax period; and

346 (b) the denominator of which is the average value of all the taxpayer's real and tangible
347 personal property owned or rented and used during the tax period.

348 (2) The average value of an airline's real and tangible personal property owned or
349 rented and used in this state attributable to mobile flight equipment for purposes of the
350 numerator of the fraction described in Subsection (1) shall be calculated for each aircraft type
351 by [~~determining the product of~~] multiplying:

352 (a) the total average value of the airline's mobile flight equipment of the aircraft type
353 owned or rented and used during the tax period; and

354 (b) a fraction[;]:

355 (i) the numerator of which is the Utah revenue ton miles for the aircraft type; and

356 (ii) the denominator of which is the airline revenue ton miles for the aircraft type.

357 (3) (a) For purposes of Subsection 59-7-302(3)(b)(i)(A) and subject to Subsection

358 (3)(b), the property factor is a fraction:

359 (i) the numerator of which is the value of the property in this state that is attributable to
360 economic activities that are classified in an excluded NAICS code; and

361 (ii) the denominator of which is the value of all property in this state.

362 (b) A taxpayer shall exclude property from the calculation of the property factor
363 fraction described in Subsection (3)(a) if the property may be attributed to economic activities
364 in both excluded NAICS codes and NAICS codes that are not excluded NAICS codes.

365 Section 5. Section **59-7-315** is amended to read:

366 **59-7-315. Payroll factor for apportionment of business income -- Compensation**
367 **of flight personnel by an airline.**

368 (1) Except as provided in [~~Subsection (2)~~] Subsections (2) and (3), the payroll factor is

369 a fraction^[7]:

370 (a) the numerator of which is the total amount paid in this state during the tax period by
371 the taxpayer for compensation^[7]; and

372 (b) the denominator of which is the total compensation paid everywhere during the tax
373 period.

374 (2) The total amount paid in this state during the tax period by an airline for
375 compensation attributable to the compensation of flight personnel for purposes of the
376 numerator of the fraction described in Subsection (1) shall be calculated for each aircraft type
377 by ~~[determining the product of]~~ multiplying:

378 (a) the total amount paid during the tax period by the airline to flight personnel for
379 compensation for the aircraft type; and

380 (b) a fraction^[7]:

381 (i) the numerator of which is the Utah revenue ton miles for the aircraft type; and

382 (ii) the denominator of which is the airline revenue ton miles for the aircraft type.

383 (3) (a) For purposes of Subsection [59-7-302\(3\)\(b\)\(i\)\(B\)](#) and subject to Subsection
384 (3)(b), the payroll factor is a fraction:

385 (i) the numerator of which is the amount of the payroll in this state that is attributable
386 to economic activities that are classified in an excluded NAICS code; and

387 (ii) the denominator of which is the total amount of the payroll in this state.

388 (b) A taxpayer engaged in economic activities that are classified in an excluded NAICS
389 code shall exclude an individual's payroll from the calculation of the payroll factor fraction
390 described in Subsection (3)(a) if the individual's payroll may be attributed:

391 (i) to economic activities in both excluded NAICS codes and NAICS codes that are not
392 excluded NAICS codes; or

393 (ii) to providing management, information technology, finance, accounting, legal, or
394 human resource services.

395 Section 6. **Effective date.**

396 This bill takes effect on January 1, 2019.