

BUSINESS INCOME TAX MODIFICATIONS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Daniel McCay

LONG TITLE

General Description:

This bill modifies the business income apportionment provisions.

Highlighted Provisions:

This bill:

▶ defines terms;

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

▶ requires that, for a taxable year beginning on or after January 1, ~~2020~~ 2019, a taxpayer

that apportioned business income using the single sales factor method in the

previous taxable year continue to use the single sales factor method of

apportionment in subsequent taxable years; and

▶ provides the circumstances where a taxpayer that previously apportioned business income using the single sales factor method may change the method of apportionment.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~2019~~ [—This bill provides a special effective date.]

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:



S.B. 72

59 (ii) "Excluded NAICS code" does not include a NAICS code of the 2017 North
 60 American Classification System of the federal Executive Office of the President, Office of
 61 Management and Budget, within:

62 (A) NAICS Subsector 3254, Pharmaceutical and Medicine Manufacturing;

62a **→** (B) NAICS Subsector 3333, Commercial and Service Industry Machinery
 62b Manufacturing; **←**

63 **→** ~~(B)~~ (C) **←** NAICS Subsector 334, Computer and Electronic Product Manufacturing;

64 **→** ~~(C)~~ (D) **←** NAICS Code 336111, Automobile Manufacturing; or

65 **→** ~~(D)~~ (E) **←** NAICS Subsector 519, Other Information Services.

66 (h) "Included NAICS code" means a NAICS code of the 2017 North American
 67 Industry Classification System of the federal Executive Office of the President, Office of
 68 Management and Budget, that is not an excluded NAICS code.

69 ~~(g)~~ (i) (i) Except as provided in Subsection (1)~~(g)~~(i)(ii), "mobile flight equipment"
 70 means the same as that term is defined in Section 59-2-102.

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

72 (A) a spare engine; or

73 (B) tangible personal property described in Subsection 59-2-102(27) owned by an air
 74 charter service or an air contract service.

75 ~~(h)~~ (j) "Nonbusiness income" means all income other than business income.

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

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

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

89 (k) "Optional apportionment taxpayer" means a taxpayer described in Subsection (2).

152 ~~the determination before the due date for filing the taxpayer's return under this chapter for the~~
 153 ~~taxable year, including extensions.]~~

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

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

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

159 (2) (a) For the taxable year beginning on or after January 1, ~~§~~→ [2019] 2018 ←~~§~~ , but
 159a beginning on or
 160 before December 31, ~~§~~→ [2019] 2018 ←~~§~~ , a taxpayer is an optional apportionment taxpayer if the
 160a average
 161 calculated in accordance with Subsection (2)(c) is greater than .50.

162 (b) For a taxable year beginning on or after January 1, ~~§~~→ [2020] 2019 ←~~§~~ , a taxpayer is
 162a an optional
 163 apportionment taxpayer if:

164 (i) (A) the taxpayer apportioned income in accordance with Subsection [59-7-311\(2\)](#)
 165 during the previous taxable year; or

166 (B) the taxpayer apportioned income in accordance with Subsection [59-7-311\(3\)](#)
 167 during the previous taxable year but has a qualifying status change for the current taxable year;
 168 and

169 (ii) the average calculated in accordance with Subsection (2)(c) is greater than .50.

170 (c) To calculate the average described in Subsection (2)(a) or (b)(ii), a taxpayer shall:

171 (i) calculate the following two fractions:

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

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

174 (ii) add together the fractions described in Subsection (2)(c)(i); and

175 (iii) divide the sum calculated in Subsection (2)(c)(ii):

176 (A) except as provided in Subsection (2)(c)(iii)(B), by two; or

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

179 (d) A taxpayer shall determine if the taxpayer is an optional apportionment taxpayer
 180 before the due date, including extensions, for filing the taxpayer's return under this chapter for
 181 the taxable year.

182 [(e)] (3) A taxpayer that files a return as a unitary group for a taxable year is considered

276 (i) to economic activities in both included NAICS codes and excluded NAICS codes;

277 or

278 (ii) to providing management, information technology, finance, accounting, legal, or

279 human resource services.

280 Section 5. ~~§→ [Effective date:]~~ Retrospective operation. ←§

281 ~~§→ [This bill takes effect for a taxable year beginning on or after January 1, 2019.]~~ This bill

281a has retrospective operation for a taxable year beginning on or after January 1, 2018. ←§

Legislative Review Note
Office of Legislative Research and General Counsel