

1 **BUSINESS INCOME TAX MODIFICATIONS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Wayne A. Harper**

5 House Sponsor: Daniel McCay

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the business income apportionment provisions.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ defines terms;

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

15 ▶ requires that, for a taxable year beginning on or after January 1, ~~§~~→ [2020] 2019 ←~~§~~ , a
15a taxpayer

16 that apportioned business income using the single sales factor method in the
17 previous taxable year continue to use the single sales factor method of
18 apportionment in subsequent taxable years; and

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

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 ~~§~~→ [—This bill provides a special effective date.]

25a This bill provides retrospective operation. ←~~§~~

26 **Utah Code Sections Affected:**

27 AMENDS:



28 **59-7-302**, as last amended by Laws of Utah 2017, Chapters 181 and 268

29 **59-7-311**, as last amended by Laws of Utah 2016, Chapters 311 and 323

30 **59-7-312**, as last amended by Laws of Utah 2008, Chapter 283

31 **59-7-315**, as last amended by Laws of Utah 2008, Chapter 283



33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section **59-7-302** is amended to read:

35 **59-7-302. Definitions -- Determination of taxpayer status.**

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

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

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

40 (c) "Airline revenue ton miles" means, for an airline, the total revenue ton miles during
41 the airline's tax period.

42 (d) "Business income" means income arising from transactions and activity in the
43 regular course of the taxpayer's trade or business and includes income from tangible and
44 intangible property if the acquisition, management, and disposition of the property constitutes
45 integral parts of the taxpayer's regular trade or business operations.

46 (e) "Commercial domicile" means the principal place from which the trade or business
47 of the taxpayer is directed or managed.

48 (f) "Compensation" means wages, salaries, commissions, and any other form of
49 remuneration paid to employees for personal services.

50 (g) (i) "Excluded NAICS code" means a NAICS code of the 2017 North American
51 Industry Classification System of the federal Executive Office of the President, Office of
52 Management and Budget, within:

53 (A) NAICS Sector 21, Mining;

54 (B) NAICS Industry Group 2212, Natural Gas Distribution;

55 (C) except as provided in Subsection (1)(g)(ii), NAICS Sector 31-33, Manufacturing;

56 (D) NAICS Sector 48-49, Transportation and Warehousing;

57 (E) except as provided in Subsection (1)(g)(ii), NAICS Sector 51, Information; or

58 (F) NAICS Sector 52, Finance and Insurance.

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

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

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

65 ~~Ŝ→~~ ~~[(D)]~~ **(E)** ~~←Ŝ~~ 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).

90 (l) (i) "Qualifying status change" means that a taxpayer with business income:

91 (A) acquires another entity;

92 (B) is acquired by another entity; or

93 (C) merges with another entity.

94 (ii) "Qualifying status change" does not include any change in the structure, ownership,
95 or management of an entity with business income other than a change described in Subsection
96 (1)(l)(i).

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

98 ~~[(k)]~~ (n) "Sales" means all gross receipts of the taxpayer not allocated under Sections
99 59-7-306 through 59-7-310.

100 ~~[(l) Subject to Subsection (2), "sales factor weighted taxpayer" means:]~~

101 ~~[(i) for a taxpayer that is not a unitary group, regardless of the number of economic~~
102 ~~activities the taxpayer performs, a taxpayer having greater than 50% of the taxpayer's total sales~~
103 ~~everywhere generated by economic activities performed by the taxpayer if the economic~~
104 ~~activities are classified in a NAICS code of the 2002 or 2007 North American Industry~~
105 ~~Classification System of the federal Executive Office of the President, Office of Management~~
106 ~~and Budget, except for:]~~

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

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

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

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

112 ~~[(E) a NAICS code within NAICS Sector 51, Information, other than NAICS Subsector~~
113 ~~519, Other Information Services; or]~~

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

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

120 (o) "Single sales factor taxpayer" means a taxpayer that:

121 (i) performs economic activities that are classified only in included NAICS codes; or
 122 (ii) does not meet the definition of optional apportionment taxpayer.

123 ~~[(m)]~~ (p) "State" means any state of the United States, the District of Columbia, the
 124 Commonwealth of Puerto Rico, any territory or possession of the United States, and any
 125 foreign country or political subdivision thereof.

126 ~~[(n)]~~ (q) "Transportation revenue" means revenue an airline earns from:

127 (i) transporting a passenger or cargo; or
 128 (ii) from miscellaneous sales of merchandise as part of providing transportation
 129 services.

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

132 (i) during the airline's tax period; and
 133 (ii) from flight stages that originate or terminate in this state.

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

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

137 ~~[(ii) A taxpayer shall make the determination required by Subsection (2)(a)(i) before~~
 138 ~~the due date for filing the taxpayer's return under this chapter for the taxable year, including~~
 139 ~~extensions.]~~

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

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

143 ~~[(B) made during the taxable year for which a taxpayer makes the determination~~
 144 ~~required by Subsection (2)(a)(i):]~~

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

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

151 ~~[(ii) A taxpayer making the determination described in Subsection (2)(b)(i) shall make~~

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, ~~Ŝ~~→ [2019] 2018 ←~~Ŝ~~ , but
 159a beginning on or
 160 before December 31, ~~Ŝ~~→ [2019] 2018 ←~~Ŝ~~ , 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, ~~Ŝ~~→ [2020] 2019 ←~~Ŝ~~ , 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

183 to be a unitary group for that taxable year.

184 ~~[(4)]~~ (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
 185 Act, the commission may define the term "economic activity" consistent with the use of the
 186 term "activity" in the 2007 North American Industry Classification System of the federal
 187 Executive Office of the President, Office of Management and Budget.

188 Section 2. Section **59-7-311** is amended to read:

189 **59-7-311. Method of apportionment of business income.**

190 (1) For a taxable year, all business income shall be apportioned to this state by
 191 multiplying the business income by a fraction calculated as provided in this section.

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

196 (a) a fraction where:

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

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

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

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

201 (ii) the denominator of the fraction is three; or

202 (b) a fraction where:

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

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

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

206 (C) the sales factor as calculated under Section 59-7-317 multiplied by two; and

207 (ii) the denominator of the fraction is four.

208 (3) Subject to the other provisions of this part, a ~~[sales factor weighted]~~ single sales
 209 factor taxpayer shall calculate the fraction for apportioning business income to this state using
 210 a fraction where:

211 (a) the numerator of the fraction is the sales factor as calculated under Section
 212 59-7-317; and

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

214 ~~[(4) Subject to the other provisions of this part, an optional sales factor weighted~~
 215 ~~taxpayer shall calculate the fraction for apportioning business income to this state using a~~
 216 ~~method described in Subsection (2)(a), (2)(b), or (3).]~~

217 [(5)] (4) (a) The taxpayer shall determine the method for calculating the fraction for
 218 apportioning business income to this state under this section on or before the due date for filing
 219 the taxpayer's return under this chapter for the taxable year, including extensions.

220 (b) The method described in Subsection [(5)] (4)(a) is in effect for the taxable year.

221 [(6)] (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
 222 Act, the commission may make rules providing procedures for a taxpayer to make the election
 223 [required by Subsections (2) and (4)] allowed by Subsection (2).

224 Section 3. Section **59-7-312** is amended to read:

225 **59-7-312. Property factor for apportionment of business income -- Mobile flight**
 226 **equipment of an airline.**

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

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

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

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

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

239 (b) a fraction[;]:

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

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

242 (3) (a) For purposes of Subsection 59-7-302(2)(c)(i)(A) and subject to Subsection
 243 (3)(b), the property factor is a fraction:

244 (i) the numerator of which is the value of the property in this state that is attributable to

245 economic activities that are classified in an excluded NAICS code; and

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

247 (b) A taxpayer shall exclude property from the calculation of the property factor
248 fraction in Subsection (3)(a) if the property may be attributed to economic activities in both
249 included NAICS codes and excluded NAICS codes.

250 Section 4. Section **59-7-315** is amended to read:

251 **59-7-315. Payroll factor for apportionment of business income -- Compensation**
252 **of flight personnel by an airline.**

253 (1) Except as provided in [~~Subsection (2)~~] Subsections (2) and (3), the payroll factor is
254 a fraction[;]:

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

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

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

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

265 (b) a fraction[;]:

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

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

268 (3) (a) For purposes of Subsection [59-7-302\(2\)\(c\)\(i\)\(B\)](#) and subject to Subsection
269 (3)(b), the payroll factor is a fraction:

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

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

273 (b) A taxpayer engaged in activities in an excluded NAICS code shall exclude an
274 individual's payroll from the calculation of the payroll factor fraction in Subsection (3)(a) if the
275 individual's payroll may be attributed:

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