

**BUSINESS INCOME TAX MODIFICATIONS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

House Sponsor: Daniel McCay

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**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, 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:**

This bill provides retrospective operation.

**Utah Code Sections Affected:**

AMENDS:

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

**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

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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 Industry Classification System of the federal Executive Office of the President,  
 61 Office of Management and Budget, within:

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

63 (B) NAICS Subsector 3333, Commercial and Service Industry Machinery  
 64 Manufacturing;

65 (C) NAICS Subsector 334, Computer and Electronic Product Manufacturing;

66 (D) NAICS Code 336111, Automobile Manufacturing; or

67 (E) NAICS Subsector 519, Other Information Services.

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

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

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

74 (A) a spare engine; or

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

77 ~~[(h)]~~ (j) "Nonbusiness income" means all income other than business income.

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

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

85 ~~[(ii) for a taxpayer that is a unitary group, a taxpayer having greater than 50% of the~~

86 ~~taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if~~  
 87 ~~the economic activities are classified in a NAICS code within NAICS Subsector 334,~~  
 88 ~~Computer and Electronic Product Manufacturing, of the 2002 or 2007 North American~~  
 89 ~~Industry Classification System of the federal Executive Office of the President, Office of~~  
 90 ~~Management and Budget.]~~

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

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

93 (A) acquires another entity;

94 (B) is acquired by another entity; or

95 (C) merges with another entity.

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

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

100 ~~[(k)] (n) "Sales" means all gross receipts of the taxpayer not allocated under Sections~~  
 101 ~~59-7-306 through 59-7-310.~~

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

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

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

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

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

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

114 ~~[(E) a NAICS code within NAICS Sector 51, Information, other than NAICS Subsector~~  
115 ~~519, Other Information Services; or]~~

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

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

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

123 (i) performs economic activities that are classified only in included NAICS codes; or

124 (ii) does not meet the definition of optional apportionment taxpayer.

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

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

129 (i) transporting a passenger or cargo; or

130 (ii) from miscellaneous sales of merchandise as part of providing transportation  
131 services.

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

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

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

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

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

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

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

144 ~~[(A) as determined in accordance with this part, and]~~

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

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

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

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

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

158 ~~[(A) as determined in accordance with this part, and]~~

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

161 (2) (a) For the taxable year beginning on or after January 1, 2018, but beginning on or  
162 before December 31, 2018, a taxpayer is an optional apportionment taxpayer if the average  
163 calculated in accordance with Subsection (2)(c) is greater than .50.

164 (b) For a taxable year beginning on or after January 1, 2019, a taxpayer is an optional  
165 apportionment taxpayer if:

166 (i) (A) the taxpayer apportioned income in accordance with Subsection 59-7-311(2)  
167 during the previous taxable year; or

168 (B) the taxpayer apportioned income in accordance with Subsection 59-7-311(3)  
169 during the previous taxable year but has a qualifying status change for the current taxable year;

170 and

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

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

173 (i) calculate the following two fractions:

174 (A) the property factor fraction as described in Subsection 59-7-312(3); and

175 (B) the payroll factor fraction as described in Subsection 59-7-315(3);

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

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

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

179 (B) if either the property factor fraction or the payroll factor fraction has a denominator

180 of zero or is excluded in accordance with Subsection 59-7-312(3)(b) or 59-7-315(3)(b), by one.

181 (d) A taxpayer shall determine if the taxpayer is an optional apportionment taxpayer

182 before the due date, including extensions, for filing the taxpayer's return under this chapter for

183 the taxable year.

184 ~~[(e)]~~ (3) A taxpayer that files a return as a unitary group for a taxable year is considered  
185 to be a unitary group for that taxable year.

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

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

191 **59-7-311. Method of apportionment of business income.**

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

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

- 198 (a) a fraction where:
- 199 (i) the numerator of the fraction is the sum of:
- 200 (A) the property factor as calculated under Section 59-7-312;
- 201 (B) the payroll factor as calculated under Section 59-7-315; and
- 202 (C) the sales factor as calculated under Section 59-7-317; and
- 203 (ii) the denominator of the fraction is three; or
- 204 (b) a fraction where:
- 205 (i) the numerator of the fraction is the sum of:
- 206 (A) the property factor as calculated under Section 59-7-312;
- 207 (B) the payroll factor as calculated under Section 59-7-315; and
- 208 (C) the sales factor as calculated under Section 59-7-317 multiplied by two; and
- 209 (ii) the denominator of the fraction is four.
- 210 (3) Subject to the other provisions of this part, a [~~sales factor weighted~~] single sales
- 211 factor taxpayer shall calculate the fraction for apportioning business income to this state using
- 212 a fraction where:
- 213 (a) the numerator of the fraction is the sales factor as calculated under Section
- 214 59-7-317; and
- 215 (b) the denominator of the fraction is one.
- 216 [~~(4) Subject to the other provisions of this part, an optional sales factor weighted~~
- 217 ~~taxpayer shall calculate the fraction for apportioning business income to this state using a~~
- 218 ~~method described in Subsection (2)(a), (2)(b), or (3).]~~
- 219 [(5)] (4) (a) The taxpayer shall determine the method for calculating the fraction for
- 220 apportioning business income to this state under this section on or before the due date for filing
- 221 the taxpayer's return under this chapter for the taxable year, including extensions.
- 222 (b) The method described in Subsection [(5)] (4)(a) is in effect for the taxable year.
- 223 [(6)] (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
- 224 Act, the commission may make rules providing procedures for a taxpayer to make the election
- 225 [~~required by Subsections (2) and (4)] allowed by Subsection (2).~~



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

227 **59-7-312. Property factor for apportionment of business income -- Mobile flight**  
228 **equipment of an airline.**

229 (1) Except as provided in [~~Subsection (2)~~] Subsections (2) and (3), the property factor  
230 is a fraction<sup>[5]</sup>:

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

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

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

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

241 (b) a fraction<sup>[5]</sup>:

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

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

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

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

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

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

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

253 **59-7-315. Payroll factor for apportionment of business income -- Compensation**

254 **of flight personnel by an airline.**

255 (1) Except as provided in [~~Subsection (2)~~] Subsections (2) and (3), the payroll factor is  
256 a fraction<sup>[;]</sup>:

257 (a) the numerator of which is the total amount paid in this state during the tax period by  
258 the taxpayer for compensation<sup>[;]</sup>; and

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

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

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

267 (b) a fraction<sup>[;]</sup>:

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

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

270 (3) (a) For purposes of Subsection 59-7-302(2)(c)(i)(B) and subject to Subsection  
271 (3)(b), the payroll factor is a fraction:

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

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

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

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

279 or

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

282           Section 5. **Retrospective operation.**

283           This bill has retrospective operation for a taxable year beginning on or after January 1,

284   2018.