

## SB0244S01 compared with SB0244

~~text~~ shows text that was in SB0244 but was deleted in SB0244S01.

Inserted text shows text that was not in SB0244 but was inserted into SB0244S01.

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Representative Steve Eliason proposes the following substitute bill:

### TAX REFORM PROVISIONS

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Howard A. Stephenson**

House Sponsor: ~~\_\_\_\_\_~~ Steve Eliason

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#### LONG TITLE

##### General Description:

This bill amends provisions related to federal tax reform.

##### Highlighted Provisions:

This bill:

- ▶ prohibits an individual from receiving the homeowner's or renter's credit if the individual is a dependent with respect to whom another individual claims certain tax credits;
- ▶ prohibits a taxpayer from carrying a Utah net loss back to an earlier taxable year;
- ▶ limits the amount of Utah net loss that a taxpayer may carry forward;
- ▶ provides that a corporation may pay taxes on deferred foreign income in installments under certain circumstances;
- ▶ addresses when an individual is considered to have domicile in this state for

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purposes of income tax; and

- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

~~{ None }~~ This bill provides retrospective operation.

This bill provides a coordination clause.

### Utah Code Sections Affected:

AMENDS:

**59-2-1208**, as last amended by Laws of Utah 2016, Chapter 375

**59-2-1209**, as last amended by Laws of Utah 2016, Chapter 375

**59-7-101**, as last amended by Laws of Utah 2011, Chapter 69

**59-7-110**, as last amended by Laws of Utah 2016, Chapters 311 and 323

**59-7-522**, as last amended by Laws of Utah 2015, First Special Session, Chapter 3

**59-10-136**, as enacted by Laws of Utah 2011, Chapter 410

ENACTS:

**59-7-118**, Utah Code Annotated 1953

### Utah Code Sections Affected by Coordination Clause:

**59-7-110**, as last amended by Laws of Utah 2016, Chapters 311 and 323

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

Section 1. Section **59-2-1208** is amended to read:

**59-2-1208. Amount of homeowner's credit -- Cost-of-living adjustment --**

### **Limitation -- General Fund as source of credit.**

(1) (a) Subject to Subsection (2), for a calendar year beginning on or after January 1, 2007, a claimant may claim a homeowner's credit that does not exceed the following amounts:

If household income is	Homeowner's credit
\$0 -- \$9,159	\$798
\$9,160 -- \$12,214	\$696
\$12,215 -- \$15,266	\$597

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\$15,267 -- \$18,319	\$447
\$18,320 -- \$21,374	\$348
\$21,375 -- \$24,246	\$199
\$24,247 -- \$26,941	\$98

(b) (i) For a calendar year beginning on or after January 1, 2008, the commission shall increase or decrease the household income eligibility amounts and the credits under Subsection (1)(a) by a percentage equal to the percentage difference between the consumer price index for the preceding calendar year and the consumer price index for calendar year 2006.

(ii) For purposes of Subsection (1)(b)(i), the commission shall calculate the consumer price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

~~[(2) An individual who is claimed as a personal exemption on another individual's individual income tax return during any portion of a calendar year for which the individual seeks to claim a homeowner's credit under this section may not receive the homeowner's credit.]~~

(2) An individual may not receive the homeowner's credit under this section if:

(a) the individual is claimed as a personal exemption on another individual's federal income tax return during any portion of a calendar year for which the individual seeks to claim the homeowner's credit under this section; or

(b) the individual is a dependent with respect to whom another individual claims a tax credit under ~~Subsection~~ [Section](#) 24(h)(4), Internal Revenue Code, during any portion of a calendar year for which the individual seeks to claim the homeowner's credit under this section.

(3) A payment for a homeowner's credit allowed by this section, and provided for in Section 59-2-1204, shall be paid from the General Fund.

Section 2. Section **59-2-1209** is amended to read:

**59-2-1209. Amount of renter's credit -- Cost-of-living adjustment -- Renter's credit may be claimed only for rent that does not constitute a rental assistance payment -- Limitation -- General Fund as source of credit -- Maximum credit.**

(1) (a) Subject to Subsections (2) and (3), for a calendar year beginning on or after January 1, 2007, a claimant may claim a renter's credit for the previous calendar year that does not exceed the following amounts:

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If household income is	Percentage of rent allowed as a credit
\$0 -- \$9,159	9.5%
\$9,160 -- \$12,214	8.5%
\$12,215 -- \$15,266	7.0%
\$15,267 -- \$18,319	5.5%
\$18,320 -- \$21,374	4.0%
\$21,375 -- \$24,246	3.0%
\$24,247 -- \$26,941	2.5%

(b) (i) For a calendar year beginning on or after January 1, 2008, the commission shall increase or decrease the household income eligibility amounts under Subsection (1)(a) by a percentage equal to the percentage difference between the consumer price index for the preceding calendar year and the consumer price index for calendar year 2006.

(ii) For purposes of Subsection (1)(b)(i), the commission shall calculate the consumer price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

(2) A claimant may claim a renter's credit under this part only for rent that does not constitute a rental assistance payment.

~~[(3) An individual who is claimed as a personal exemption on another individual's individual income tax return during any portion of a calendar year for which the individual seeks to claim a renter's credit under this section may not receive a renter's credit.]~~

(3) An individual may not receive the renter's credit under this section if the individual is:

(a) claimed as a personal exemption on another individual's federal income tax return during any portion of a calendar year for which the individual seeks to claim the renter's credit under this section; or

(b) a dependent with respect to whom another individual claims a tax credit under ~~{Subsection}~~Section 24(h)(4), Internal Revenue Code, during any portion of a calendar year for which the individual seeks to claim the renter's credit under this section.

(4) A payment for a renter's credit allowed by this section, and provided for in Section 59-2-1204, shall be paid from the General Fund.

(5) For calendar years beginning on or after January 1, 2007, a credit under this section

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may not exceed the maximum amount allowed as a homeowner's credit for each income bracket under Subsection 59-2-1208(1)(a).

### Section 3. Section 59-7-101 is amended to read:

#### **59-7-101. Definitions.**

As used in this chapter:

(1) "Adjusted income" means unadjusted income as modified by Sections 59-7-105 and 59-7-106.

(2) (a) "Affiliated group" means one or more chains of corporations that are connected through stock ownership with a common parent corporation that meet the following requirements:

(i) at least 80% of the stock of each of the corporations in the group, excluding the common parent corporation, is owned by one or more of the other corporations in the group; and

(ii) the common parent directly owns at least 80% of the stock of at least one of the corporations in the group.

(b) "Affiliated group" does not include corporations that are qualified to do business but are not otherwise doing business in this state.

(c) For purposes of this Subsection (2), "stock" does not include nonvoting stock which is limited and preferred as to dividends.

(3) "Apportionable income" means adjusted income less nonbusiness income net of related expenses, to the extent included in adjusted income.

(4) "Apportioned income" means apportionable income multiplied by the apportionment fraction as determined in Section 59-7-311.

(5) "Business income" is as defined in Section 59-7-302.

(6) (a) "Captive real estate investment trust" means a real estate investment trust if:

(i) the shares or beneficial interests of the real estate investment trust are not regularly traded on an established securities market; and

(ii) more than 50% of the voting power or value of the shares or beneficial interests of the real estate investment trust are directly, indirectly, or constructively:

(A) owned by a controlling entity of the real estate investment trust; or

(B) controlled by a controlling entity of the real estate investment trust.

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(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining "established securities market."

(7) (a) "Common ownership" means the direct or indirect control or ownership of more than 50% of the outstanding voting stock of:

(i) a parent-subsiary controlled group as defined in Section 1563, Internal Revenue Code, except that 50% shall be substituted for 80%;

(ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue Code; or

(iii) three or more corporations each of which is a member of a group of corporations described in Subsection (2)(a)(i) or (ii), and one of which is:

(A) a common parent corporation included in a group of corporations described in Subsection (2)(a)(i); and

(B) included in a group of corporations described in Subsection (2)(a)(ii).

(b) Ownership of outstanding voting stock shall be determined by Section 1563, Internal Revenue Code.

(8) (a) "Controlling entity of a captive real estate investment trust" means an entity that:

(i) is treated as an association taxable as a corporation under the Internal Revenue Code;

(ii) is not exempt from federal income taxation under Section 501(a), Internal Revenue Code; and

(iii) directly, indirectly, or constructively holds more than 50% of:

(A) the voting power of a captive real estate investment trust; or

(B) the value of the shares or beneficial interests of a captive real estate investment trust.

(b) "Controlling entity of a captive real estate investment trust" does not include:

(i) a real estate investment trust, except for a captive real estate investment trust;

(ii) a qualified real estate investment subsidiary described in Section 856(i), Internal Revenue Code, except for a qualified real estate investment trust subsidiary of a captive real estate investment trust; or

(iii) a foreign real estate investment trust.

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(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining "established securities market."

(9) "Corporate return" or "return" includes a combined report.

(10) "Corporation" includes:

(a) entities defined as corporations under Sections 7701(a) and 7704, Internal Revenue Code; and

(b) other organizations that are taxed as corporations for federal income tax purposes under the Internal Revenue Code.

(11) "Dividend" means any distribution, including money or other type of property, made by a corporation to its shareholders out of its earnings or profits accumulated after December 31, 1930.

(12) (a) "Doing business" includes any transaction in the course of its business by a domestic corporation, or by a foreign corporation qualified to do or doing intrastate business in this state.

(b) Except as provided in Subsection 59-7-102(3), "doing business" includes:

(i) the right to do business through incorporation or qualification;

(ii) the owning, renting, or leasing of real or personal property within this state; and

(iii) the participation in joint ventures, working and operating agreements, the performance of which takes place in this state.

(13) "Domestic corporation" means a corporation that is incorporated or organized under the laws of this state.

(14) (a) "Farmers' cooperative" means an association, corporation, or other organization that is:

(i) (A) an association, corporation, or other organization of:

(I) farmers; or

(II) fruit growers; or

(B) an association, corporation, or other organization that is similar to an association, corporation, or organization described in Subsection (14)(a)(i)(A); and

(ii) organized and operated on a cooperative basis to:

(A) (I) market the products of members of the cooperative or the products of other producers; and

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(II) return to the members of the cooperative or other producers the proceeds of sales less necessary marketing expenses on the basis of the quantity of the products of a member or producer or the value of the products of a member or producer; or

(B) (I) purchase supplies and equipment for the use of members of the cooperative or other persons; and

(II) turn over the supplies and equipment described in Subsection (14)(a)(ii)(B)(I) at actual costs plus necessary expenses to the members of the cooperative or other persons.

(b) (i) Subject to Subsection (14)(b)(ii), for purposes of this Subsection (14), the commission by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define:

(A) the terms:

(I) "member"; and

(II) "producer"; and

(B) what constitutes an association, corporation, or other organization that is similar to an association, corporation, or organization described in Subsection (14)(a)(i)(A).

(ii) The rules made under this Subsection (14)(b) shall be consistent with the filing requirements under federal law for a farmers' cooperative.

(15) "Foreign corporation" means a corporation that is not incorporated or organized under the laws of this state.

(16) (a) "Foreign operating company" means a corporation if:

(i) the corporation is incorporated in the United States;

(ii) at least 80% of the corporation's business activity, as determined under Section 59-7-401, is conducted outside the United States; and

(iii) as calculated in accordance with Part 3, Allocation and Apportionment of Income - Utah UDITPA Provisions, the corporation has:

(A) at least \$1,000,000 of payroll located outside the United States; and

(B) at least \$2,000,000 of property located outside the United States.

(b) "Foreign operating company" does not include a corporation that qualifies for the Puerto Rico and possession tax credit as provided in Section 936, Internal Revenue Code.

(17) (a) "Foreign real estate investment trust" means:

(i) a business entity organized outside the laws of the United States if:



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(A) at least 75% of the business entity's total asset value at the close of the business entity's taxable year is represented by:

- (I) real estate assets, as defined in Section 856(c)(5)(B), Internal Revenue Code;
- (II) cash or cash equivalents; or
- (III) one or more securities issued or guaranteed by the United States;

(B) the business entity is:

(I) not subject to income taxation:

(Aa) on amounts distributed to the business entity's beneficial owners; and

(Bb) in the jurisdiction in which the business entity is organized; or

(II) exempt from income taxation on an entity level in the jurisdiction in which the business entity is organized;

(C) the business entity distributes at least 85% of the business entity's taxable income, as computed in the jurisdiction in which the business entity is organized, to the holders of the business entity's:

(I) shares or beneficial interests; and

(II) on an annual basis;

(D) (I) not more than 10% of the following is held directly, indirectly, or constructively by a single person:

(Aa) the voting power of the business entity; or

(Bb) the value of the shares or beneficial interests of the business entity; or

(II) the shares of the business entity are regularly traded on an established securities market; and

(E) the business entity is organized in a country that has a tax treaty with the United States; or

(ii) a listed Australian property trust.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining:

(i) "cash or cash equivalents";

(ii) "established securities market"; or

(iii) "listed Australian property trust."

(18) "Income" includes losses.

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(19) "Internal Revenue Code" means Title 26 of the United States Code as effective during the year in which Utah taxable income is determined.

(20) "Nonbusiness income" is as defined in Section 59-7-302.

(21) "Real estate investment trust" is as defined in Section 856, Internal Revenue Code.

(22) "Related expenses" means:

(a) expenses directly attributable to nonbusiness income; and

(b) the portion of interest or other expense indirectly attributable to both nonbusiness and business income which bears the same ratio to the aggregate amount of such interest or other expense, determined without regard to this Subsection (22), as the average amount of the asset producing the nonbusiness income bears to the average amount of all assets of the taxpayer within the taxable year.

(23) "Safe harbor lease" means a lease that qualified as a safe harbor lease under Section 168, Internal Revenue Code.

(24) "S corporation" means an S corporation as defined in Section 1361, Internal Revenue Code.

(25) "State of the United States" includes any of the 50 states or the District of Columbia.

(26) (a) "Taxable year" means the calendar year or the fiscal year ending during such calendar year upon the basis of which the adjusted income is computed.

(b) In the case of a return made for a fractional part of a year under this chapter or under rules prescribed by the commission, "taxable year" includes the period for which such return is made.

(27) "Taxpayer" means any corporation subject to the tax imposed by this chapter.

(28) "Threshold level of business activity" means business activity in the United States equal to or greater than 20% of the corporation's total business activity as determined under Section 59-7-401.

(29) "Unadjusted income" means federal taxable income as determined on a separate return basis before intercompany eliminations as determined by the Internal Revenue Code, before the net operating loss deduction and special deductions for dividends received.

(30) (a) "Unitary group" means a group of corporations that:

(i) are related through common ownership; and

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(ii) by a preponderance of the evidence as determined by a court of competent jurisdiction or the commission, are economically interdependent with one another as demonstrated by the following factors:

(A) centralized management;

(B) functional integration; and

(C) economies of scale.

(b) "Unitary group" includes a captive real estate investment trust.

(c) "Unitary group" does not include an S corporation.

(31) "United States" includes the 50 states and the District of Columbia.

(32) "Utah net loss" means the current year Utah taxable income before Utah net loss deduction, if determined to be less than zero.

(33) "Utah net loss deduction" means the amount of Utah net losses from other taxable years that ~~may be carried back or carried~~ a taxpayer may carry forward to the current taxable year in accordance with Section 59-7-110.

(34) (a) "Utah taxable income" means Utah taxable income before net loss deduction less Utah net loss deduction.

(b) "Utah taxable income" includes income from tangible or intangible property located or having situs in this state, regardless of whether carried on in intrastate, interstate, or foreign commerce.

(35) "Utah taxable income before net loss deduction" means apportioned income plus nonbusiness income allocable to Utah net of related expenses.

(36) (a) "Water's edge combined report" means a report combining the income and activities of:

(i) all members of a unitary group that are:

(A) corporations organized or incorporated in the United States, including those corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section 936, Internal Revenue Code, in accordance with Subsection (36)(b); and

(B) corporations organized or incorporated outside of the United States meeting the threshold level of business activity; and

(ii) an affiliated group electing to file a water's edge combined report under Subsection 59-7-402(2).

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(b) There is a rebuttable presumption that a corporation which qualifies for the Puerto Rico and possession tax credit provided in Section 936, Internal Revenue Code, is part of a unitary group.

(37) "Worldwide combined report" means the combination of the income and activities of all members of a unitary group irrespective of the country in which the corporations are incorporated or conduct business activity.

### Section 4. Section 59-7-110 is amended to read:

#### **59-7-110. Utah net losses -- Carryforwards ~~{and carrybacks}~~-- Deduction.**

(1) ~~[The amount of Utah net loss that shall be carried back or]~~ A taxpayer shall determine the amount of Utah net loss that the taxpayer may carry forward to offset income of another taxable year ~~[is determined]~~ as provided in this section.

~~[(2)(a) Subject to the other provisions of this section, a Utah net loss from a taxable year beginning before January 1, 1994, shall be carried back three taxable years preceding the taxable year of the loss and any remaining loss shall be carried forward five taxable years following the taxable year of the loss.]~~

~~[(b)(i)]~~ (2) Subject to the other provisions of this section, a ~~[Utah net loss from a taxable year beginning on or after January 1, 1994, may be carried back three taxable years preceding the taxable year of the loss and carried forward]~~ taxpayer:

(a) may carry forward a Utah net loss from a taxable year for 15 taxable years following the taxable year of the loss~~[:]; and~~

~~[(ii) If an election is made to forego the federal net operating loss carryback, a Utah net loss is not eligible to be carried back unless an election is made for state purposes. {~~

~~— (3) A}]~~

(b) may not carry back a Utah net loss from a taxable year.

(3) A taxpayer that carries forward a Utah net loss shall carry forward the Utah net loss ~~[shall be carried]~~ to the earliest eligible year for which the Utah taxable income before net loss deduction, minus Utah net losses from previous years that ~~[were applied or required to be applied]~~ a taxpayer applied or was required to apply to offset income, is not less than zero.

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

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

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

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

~~[(ii) A Utah net loss in excess of \$1,000,000 may be carried forward.]~~

~~[(iii)]~~

(b) (i) The amount of Utah net loss that a taxpayer may carry forward to a taxable year may not exceed 80% of Utah taxable income computed without regard to the deduction allowable under this section.

~~[(iii)]~~ (ii) A remaining Utah net loss shall be available to be carried to one or more taxable years in accordance with this section.

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

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

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

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

(a) subject to Subsection (7):

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

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

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or rented and used during the taxable year;

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

(C) an amount determined by:

(I) dividing the total sales of the acquired corporation in this state during the taxable year by the total sales of the unitary group everywhere during the taxable year; and

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

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

(b) dividing the amount calculated under Subsection (6)(a) by the same denominator of the fraction the unitary group uses to apportion business income to this state:

(i) for that taxable year; and

(ii) in accordance with Section 59-7-311;

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

(d) calculating the sum of:

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

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

(A) nonbusiness income allocable to this state; or

(B) nonbusiness loss allocable to this state.

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

Section ~~33~~5. Section **59-7-118** is enacted to read:

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### **59-7-118. Section 965, Internal Revenue Code -- Installment payments.**

(1) Subject to the other provisions of this section, a corporation may pay in installments the tax owed under this chapter on deferred foreign income described in Section 965, Internal Revenue Code.

(2) Subsection (1) applies:

(a) to a corporation that:

(i) is authorized to make an election under ~~{Subsection}~~Section 965(h), Internal Revenue Code; and

(ii) apportions deferred foreign income described in Section 965, Internal Revenue Code, to this state; and

(b) for a tax year in which a corporation makes an election under ~~{Subsection}~~Section 965(h), Internal Revenue Code, for purposes of the corporation's federal income tax ~~{:};~~

(3) The same provisions that apply to an election made under ~~{Subsection}~~Section 965(h), Internal Revenue Code, for federal purposes apply to an installment payment made under this section.

**Section 6. Section 59-7-522 is amended to read:**

### **59-7-522. Overpayments.**

(1) As used in this section, "overpayment" means the same as that term is defined in Section 59-1-1409.

(2) (a) Subject to Subsection (2)(b), a claim for credit or refund of an overpayment that is attributable to a Utah net loss ~~[carry back or]~~ carry forward shall be filed within three years from the due date of the return for the taxable year of the Utah net loss.

(b) The three-year period described in Subsection (2)(a) shall be extended by any extension of time provided in statute for filing the return described in Subsection (2)(a).

(3) The commission shall make a credit against or refund of any overpayment of a tax under this chapter for a taxable year if, in accordance with Section 59-7-519:

(a) (i) a corporation agrees with the commissioner of internal revenue for an extension, or a renewal of an extension, of the period for proposing and assessing a deficiency in federal income tax for that taxable year; or

(ii) there is a change in or correction of federal taxable income for that taxable year;  
and

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(b) the corporation files a claim for the credit or refund before the expiration of the time period within which the commission may assess a deficiency.

(4) The commission shall make a credit or refund within a 30-day period after the day on which a court's decision to require the commission to credit or refund the amount of an overpayment to a taxpayer is final.

Section ~~{4}~~7. Section **59-10-136** is amended to read:

### **59-10-136. Domicile -- Temporary absence from state.**

(1) (a) An individual is considered to have domicile in this state if:

(i) except as provided in Subsection (1)(b), a dependent with respect to whom the individual or the individual's spouse claims a personal exemption or a tax credit under Section 24, Internal Revenue Code, on the individual's or individual's spouse's federal individual income tax return is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; or

(ii) the individual or the individual's spouse is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state.

(b) The determination of whether an individual is considered to have domicile in this state may not be determined in accordance with Subsection (1)(a)(i) if the individual:

(i) is the noncustodial parent of a dependent:

(A) with respect to whom the individual claims a personal exemption or a tax credit under Section 24, Internal Revenue Code, on the individual's federal individual income tax return; and

(B) who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; and

(ii) is divorced from the custodial parent of the dependent described in Subsection (1)(b)(i).

(2) There is a rebuttable presumption that an individual is considered to have domicile in this state if:

(a) the individual or the individual's spouse claims a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence;



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(b) the individual or the individual's spouse is registered to vote in this state in accordance with Title 20A, Chapter 2, Voter Registration; or

(c) the individual or the individual's spouse asserts residency in this state for purposes of filing an individual income tax return under this chapter, including asserting that the individual or the individual's spouse is a part-year resident of this state for the portion of the taxable year for which the individual or the individual's spouse is a resident of this state.

(3) (a) Subject to Subsection (3)(b), if the requirements of Subsection (1) or (2) are not met for an individual to be considered to have domicile in this state, the individual is considered to have domicile in this state if:

(i) the individual or the individual's spouse has a permanent home in this state to which the individual or the individual's spouse intends to return after being absent; and

(ii) the individual or the individual's spouse has voluntarily fixed the individual's or the individual's spouse's habitation in this state, not for a special or temporary purpose, but with the intent of making a permanent home.

(b) The determination of whether an individual is considered to have domicile in this state under Subsection (3)(a) shall be based on the preponderance of the evidence, taking into consideration the totality of the following facts and circumstances:

(i) whether the individual or the individual's spouse has a driver license in this state;

(ii) whether a dependent with respect to whom the individual or the individual's spouse claims a personal exemption or a tax credit under Section 24, Internal Revenue Code, on the individual's or individual's spouse's federal individual income tax return is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state;

(iii) the nature and quality of the living accommodations that the individual or the individual's spouse has in this state as compared to another state;

(iv) the presence in this state of a spouse or dependent with respect to whom the individual or the individual's spouse claims a personal exemption or a tax credit under Section 24, Internal Revenue Code, on the individual's or individual's spouse's federal individual income tax return;

(v) the physical location in which earned income as defined in Section 32(c)(2), Internal Revenue Code, is earned by the individual or the individual's spouse;

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(vi) the state of registration of a vehicle as defined in Section 59-12-102 owned or leased by the individual or the individual's spouse;

(vii) whether the individual or the individual's spouse is a member of a church, a club, or another similar organization in this state;

(viii) whether the individual or the individual's spouse lists an address in this state on mail, a telephone listing, a listing in an official government publication, other correspondence, or another similar item;

(ix) whether the individual or the individual's spouse lists an address in this state on a state or federal tax return;

(x) whether the individual or the individual's spouse asserts residency in this state on a document, other than an individual income tax return filed under this chapter, filed with or provided to a court or other governmental entity;

(xi) the failure of an individual or the individual's spouse to obtain a permit or license normally required of a resident of the state for which the individual or the individual's spouse asserts to have domicile; or

(xii) whether the individual is an individual described in Subsection (1)(b).

(4) (a) Notwithstanding Subsections (1) through (3) and subject to the other provisions of this Subsection (4), an individual is not considered to have domicile in this state if the individual meets the following qualifications:

(i) except as provided in Subsection (4)(a)(ii)(A), the individual and the individual's spouse are absent from the state for at least 761 consecutive days; and

(ii) during the time period described in Subsection (4)(a)(i), neither the individual nor the individual's spouse:

(A) return to this state for more than 30 days in a calendar year;

(B) claim a personal exemption or a tax credit under Section 24, Internal Revenue Code, on the individual's or individual's spouse's federal individual income tax return with respect to a dependent who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state, unless the individual is an individual described in Subsection (1)(b);

(C) are resident students in accordance with Section 53B-8-102 who are enrolled in an institution of higher education described in Section 53B-2-101 in this state;

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(D) claim a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence; or

(E) assert that this state is the individual's or the individual's spouse's tax home for federal individual income tax purposes.

(b) Notwithstanding Subsection (4)(a), an individual that meets the qualifications of Subsection (4)(a) to not be considered to have domicile in this state may elect to be considered to have domicile in this state by filing an individual income tax return in this state as a resident individual.

(c) For purposes of Subsection (4)(a), an absence from the state:

(i) begins on the later of the date:

(A) the individual leaves this state; or

(B) the individual's spouse leaves this state; and

(ii) ends on the date the individual or the individual's spouse returns to this state if the individual or the individual's spouse remains in this state for more than 30 days in a calendar year.

(d) An individual shall file an individual income tax return or amended individual income tax return under this chapter and pay any applicable interest imposed under Section 59-1-402 if:

(i) the individual did not file an individual income tax return or amended individual income tax return under this chapter based on the individual's belief that the individual has met the qualifications of Subsection (4)(a) to not be considered to have domicile in this state; and

(ii) the individual or the individual's spouse fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state.

(e) (i) Except as provided in Subsection (4)(e)(ii), an individual that files an individual income tax return or amended individual income tax return under Subsection (4)(d) shall pay any applicable penalty imposed under Section 59-1-401.

(ii) The commission shall waive the penalties under Subsections 59-1-401(2), (3), and (5) if an individual who is required by Subsection (4)(d) to file an individual income tax return or amended individual income tax return under this chapter:

(A) files the individual income tax return or amended individual income tax return within 105 days after the individual fails to meet a qualification of Subsection (4)(a) to not be

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considered to have domicile in this state; and

(B) within the 105-day period described in Subsection (4)(e)(ii)(A), pays in full the tax due on the return, any interest imposed under Section 59-1-402, and any applicable penalty imposed under Section 59-1-401, except for a penalty under Subsection 59-1-401(2), (3), or (5).

(5) (a) If an individual is considered to have domicile in this state in accordance with this section, the individual's spouse is considered to have domicile in this state.

(b) For purposes of this section, an individual is not considered to have a spouse if:

(i) the individual is legally separated or divorced from the spouse; or

(ii) the individual and the individual's spouse claim married filing separately filing status for purposes of filing a federal individual income tax return for the taxable year.

(c) Except as provided in Subsection (5)(b)(ii), for purposes of this section, an individual's filing status on a federal individual income tax return or a return filed under this chapter may not be considered in determining whether an individual has a spouse.

(6) For purposes of this section, whether or not an individual or the individual's spouse claims a property tax residential exemption under Chapter 2, Property Tax Act, for the residential property that is the primary residence of a tenant of the individual or the individual's spouse may not be considered in determining domicile in this state.

‡

### **Legislative Review Note**

‡ **Section 8. Retrospective operation.**

**(1) Except as provided in Subsection (2), this bill has retrospective operation to January 1, 2018.**

**(2) The amendments to Sections 59-7-101, 59-7-110, and 59-10-136 and the enactment of Section 59-7-118 have retrospective operation for a taxable year beginning on or after January 1, 2018.**

**Section 9. Coordinating S.B. 244 with H.B. 293 -- Substantive and technical amendments.**

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If this S.B. 244 and H.B. 293, Tax Rebalancing Revisions, both pass and become law, it is the intent of the Legislature that the amendments to Subsections 59-7-110(1) through (4) in S.B. 244 supersede the amendments to Subsections 59-7-110(1) through (4) in H.B. 293, when the Office of Legislative Research and General Counsel prepares the Utah Code database for publication.