

1                                   **REPATRIATION TAX AMENDMENTS**

2                                   2018 SECOND SPECIAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: Steve Eliason**

5                                   Senate Sponsor: Howard A. Stephenson

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7   **LONG TITLE**

8   **General Description:**

9       This bill modifies provisions relating to corporate income tax on deferred foreign  
10 income.

11 **Highlighted Provisions:**

12       This bill:

- 13           ▶ adds deferred foreign income to the definition of unadjusted income for corporate
- 14 income tax purposes;
- 15           ▶ modifies the payment schedule for a corporate taxpayer to pay the income tax on
- 16 deferred foreign income; and
- 17           ▶ makes technical changes.

18 **Money Appropriated in this Bill:**

19       None

20 **Other Special Clauses:**

21       This bill provides a special effective date.

22       This bill provides retrospective operation.

23 **Utah Code Sections Affected:**

24 AMENDS:

25       **59-7-101**, as last amended by Laws of Utah 2011, Chapter 69

26       **59-7-118**, as enacted by Laws of Utah 2018, Chapter 405



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

29 Section 1. Section **59-7-101** is amended to read:

30 **59-7-101. Definitions.**

31 As used in this chapter:

32 (1) "Adjusted income" means unadjusted income as modified by Sections [59-7-105](#)  
33 and [59-7-106](#).

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

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

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

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

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

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

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

50 (5) "Business income" [~~is as~~] means the same as that term is defined in Section  
51 [59-7-302](#).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

89 (iii) a foreign real estate investment trust.

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

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

93 (10) "Corporation" includes:

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

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

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

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

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

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

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

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

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

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

113 (i) (A) an association, corporation, or other organization of ~~[:(†)]~~ farmers~~[:]~~ or ~~[(††)]~~  
114 fruit growers; or

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

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

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

120 (II) return to the members of the cooperative or other producers the proceeds of sales

121 less necessary marketing expenses on the basis of the quantity of the products of a member or  
122 producer or the value of the products of a member or producer; or

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

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

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

130 (A) the terms~~[-(F)]~~ "member"~~[;]~~ and ~~[(H)]~~ "producer"; and

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

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

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

137 (16) (a) "Foreign operating company" means a corporation ~~[if]~~ that:

138 (i) ~~[the corporation]~~ is incorporated in the United States;

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

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

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

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

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

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

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

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

151 (I) real estate assets, as defined in Section 856(c)(5)(B), Internal Revenue Code;

- 152 (II) cash or cash equivalents; or
- 153 (III) one or more securities issued or guaranteed by the United States;
- 154 (B) the business entity is:
  - 155 (I) not subject to income taxation:
    - 156 (Aa) on amounts distributed to the business entity's beneficial owners; and
    - 157 (Bb) in the jurisdiction in which the business entity is organized; or
  - 158 (II) exempt from income taxation on an entity level in the jurisdiction in which the
  - 159 business entity is organized;
  - 160 (C) the business entity distributes at least 85% of the business entity's taxable income,
  - 161 as computed in the jurisdiction in which the business entity is organized, to the holders of the
  - 162 business entity's:
    - 163 (I) shares or beneficial interests; and
    - 164 (II) on an annual basis;
  - 165 (D) (I) not more than 10% of the following is held directly, indirectly, or constructively
  - 166 by a single person:
    - 167 (Aa) the voting power of the business entity; or
    - 168 (Bb) the value of the shares or beneficial interests of the business entity; or
  - 169 (II) the shares of the business entity are regularly traded on an established securities
  - 170 market; and
  - 171 (E) the business entity is organized in a country that has a tax treaty with the United
  - 172 States; or
    - 173 (ii) a listed Australian property trust.
  - 174 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
  - 175 commission may make rules defining:
    - 176 (i) "cash or cash equivalents";
    - 177 (ii) "established securities market"; or
    - 178 (iii) "listed Australian property trust."
  - 179 (18) "Income" includes losses.
  - 180 (19) "Internal Revenue Code" means Title 26 of the United States Code as effective
  - 181 during the year in which Utah taxable income is determined.
  - 182 (20) "Nonbusiness income" [~~is as~~] means the same as that term is defined in Section

183 59-7-302.

184 (21) "Real estate investment trust" [~~is as~~] means the same as that term is defined in  
185 Section 856, Internal Revenue Code.

186 (22) "Related expenses" means:

187 (a) expenses directly attributable to nonbusiness income; and

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

193 [~~(24)~~] (23) "S corporation" means an S corporation as defined in Section 1361, Internal  
194 Revenue Code.

195 [~~(23)~~] (24) "Safe harbor lease" means a lease that qualified as a safe harbor lease under  
196 Section 168, Internal Revenue Code.

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

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

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

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

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

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

211 (b) For the last taxable year of a taxpayer beginning on or before December 31, 2017,  
212 "unadjusted income" includes deferred foreign income described in Section 965(a), Internal  
213 Revenue Code.

214 (30) (a) "Unitary group" means a group of corporations that:  
215 (i) are related through common ownership; and  
216 (ii) by a preponderance of the evidence as determined by a court of competent  
217 jurisdiction or the commission, are economically interdependent with one another as  
218 demonstrated by the following factors:  
219 (A) centralized management;  
220 (B) functional integration; and  
221 (C) economies of scale.  
222 (b) "Unitary group" includes a captive real estate investment trust.  
223 (c) "Unitary group" does not include an S corporation.  
224 (31) "United States" includes the 50 states and the District of Columbia.  
225 (32) "Utah net loss" means the current year Utah taxable income before Utah net loss  
226 deduction, if determined to be less than zero.  
227 (33) "Utah net loss deduction" means the amount of Utah net losses from other taxable  
228 years that may be carried back or carried forward to the current taxable year in accordance with  
229 Section [59-7-110](#).  
230 (34) (a) "Utah taxable income" means Utah taxable income before net loss deduction  
231 less Utah net loss deduction.  
232 (b) "Utah taxable income" includes income from tangible or intangible property located  
233 or having situs in this state, regardless of whether carried on in intrastate, interstate, or foreign  
234 commerce.  
235 (35) "Utah taxable income before net loss deduction" means apportioned income plus  
236 nonbusiness income allocable to Utah net of related expenses.  
237 (36) (a) "Water's edge combined report" means a report combining the income and  
238 activities of:  
239 (i) all members of a unitary group that are:  
240 (A) corporations organized or incorporated in the United States, including those  
241 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section  
242 936, Internal Revenue Code, in accordance with Subsection (36)(b); and  
243 (B) corporations organized or incorporated outside of the United States meeting the  
244 threshold level of business activity; and



245 (ii) an affiliated group electing to file a water's edge combined report under Subsection  
246 59-7-402(2).

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

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

253 Section 2. Section 59-7-118 is amended to read:

254 **59-7-118. Section 965, Internal Revenue Code -- Installment payments.**

255 (1) Subject to the other provisions of this section, a corporation may pay in  
256 installments the tax owed under this chapter on deferred foreign income described in Section  
257 965, Internal Revenue Code.

258 (2) Subsection (1) applies:

259 (a) to a corporation that:

260 (i) is authorized to make an election under Section 965(h), Internal Revenue Code; and

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

263 (b) for a tax year in which a corporation makes an election under Section 965(h),  
264 Internal Revenue Code, for purposes of the corporation's federal income tax.

265 (3) ~~[The]~~ (a) Except as provided in Subsection (3)(b), the same provisions that apply  
266 to an election made under Section 965(h), Internal Revenue Code, for federal purposes apply to  
267 an installment payment made under this section.

268 (b) A corporation shall make:

269 (i) the first installment under this section on or before the due date, including any  
270 extension, of the 2017 tax return filed under this chapter; and

271 (ii) a subsequent installment on or before the due date, including any extension, of the  
272 tax return filed under this chapter in each of the following seven years.

273 Section 3. **Effective date.**

274 If approved by two-thirds of all the members elected to each house, this bill takes effect  
275 upon approval by the governor, or the day following the constitutional time limit of Utah

276 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,  
277 the date of veto override.

278           Section 4. **Retrospective operation.**

279           This bill has retrospective operation for the last taxable year of a taxpayer beginning on  
280 or before December 31, 2017.