

**Representative Travis M. Seegmiller** proposes the following substitute bill:

**REPATRIATION TAX AMENDMENTS**

2018 SECOND SPECIAL SESSION

STATE OF UTAH

**Chief Sponsor: Steve Eliason**

Senate Sponsor: Howard A. Stephenson

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**LONG TITLE**

**General Description:**

This bill modifies provisions relating to payment of income tax on deferred foreign income.

**Highlighted Provisions:**

This bill:

- ▶ adds deferred foreign income to the definition of unadjusted income for corporate income tax purposes;
- ▶ exempts an additional portion of deferred foreign income from state income tax;
- ▶ modifies a corporate payment schedule for deferred foreign income;
- ▶ creates a nonrefundable tax credit for certain taxpayers for a portion of state income tax liability on deferred foreign income; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

This bill provides retrospective operation.

**Utah Code Sections Affected:**



26 AMENDS:

27 **59-7-101**, as last amended by Laws of Utah 2011, Chapter 69

28 **59-7-118**, as enacted by Laws of Utah 2018, Chapter 405

29 ENACTS:

30 **59-7-624**, Utah Code Annotated 1953

31 **59-10-1041**, Utah Code Annotated 1953



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

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

35 **59-7-101. Definitions.**

36 As used in this chapter:

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

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

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

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

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

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

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

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

55 (5) "Business income" ~~[is as]~~ means the same as that term is defined in Section  
56 **59-7-302**.

- 57 (6) (a) "Captive real estate investment trust" means a real estate investment trust if:  
58 (i) the shares or beneficial interests of the real estate investment trust are not regularly  
59 traded on an established securities market; and  
60 (ii) more than 50% of the voting power or value of the shares or beneficial interests of  
61 the real estate investment trust are directly, indirectly, or constructively:  
62 (A) owned by a controlling entity of the real estate investment trust; or  
63 (B) controlled by a controlling entity of the real estate investment trust.  
64 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
65 commission may make rules defining "established securities market."  
66 (7) (a) "Common ownership" means the direct or indirect control or ownership of more  
67 than 50% of the outstanding voting stock of:  
68 (i) a parent-subsidary controlled group as defined in Section 1563, Internal Revenue  
69 Code, except that 50% shall be substituted for 80%;  
70 (ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue  
71 Code; or  
72 (iii) three or more corporations each of which is a member of a group of corporations  
73 described in Subsection (2)(a)(i) or (ii), and one of which is:  
74 (A) a common parent corporation included in a group of corporations described in  
75 Subsection (2)(a)(i); and  
76 (B) included in a group of corporations described in Subsection (2)(a)(ii).  
77 (b) Ownership of outstanding voting stock shall be determined by Section 1563,  
78 Internal Revenue Code.  
79 (8) (a) "Controlling entity of a captive real estate investment trust" means an entity  
80 that:  
81 (i) is treated as an association taxable as a corporation under the Internal Revenue  
82 Code;  
83 (ii) is not exempt from federal income taxation under Section 501(a), Internal Revenue  
84 Code; and  
85 (iii) directly, indirectly, or constructively holds more than 50% of:  
86 (A) the voting power of a captive real estate investment trust; or  
87 (B) the value of the shares or beneficial interests of a captive real estate investment

88 trust.

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

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

91 (ii) a qualified real estate investment subsidiary described in Section 856(i), Internal

92 Revenue Code, except for a qualified real estate investment trust subsidiary of a captive real

93 estate investment trust; or

94 (iii) a foreign real estate investment trust.

95 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

96 commission may make rules defining "established securities market."

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

98 (10) "Corporation" includes:

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

100 Code; and

101 (b) other organizations that are taxed as corporations for federal income tax purposes

102 under the Internal Revenue Code.

103 (11) "Dividend" means any distribution, including money or other type of property,

104 made by a corporation to its shareholders out of its earnings or profits accumulated after

105 December 31, 1930.

106 (12) (a) "Doing business" includes any transaction in the course of its business by a

107 domestic corporation, or by a foreign corporation qualified to do or doing intrastate business in

108 this state.

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

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

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

112 (iii) the participation in joint ventures, working and operating agreements, the

113 performance of which takes place in this state.

114 (13) "Domestic corporation" means a corporation that is incorporated or organized

115 under the laws of this state.

116 (14) (a) "Farmers' cooperative" means an association, corporation, or other

117 organization that is:

118 (i) (A) an association, corporation, or other organization of ~~(F)~~ farmers~~;~~ or ~~(H)~~ fruit

119 growers; or

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

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

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

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

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

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

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

135 (A) the terms~~[(H)]~~ "member"~~;~~ and ~~[(H)]~~ "producer"; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

157 (II) cash or cash equivalents; or

158 (III) one or more securities issued or guaranteed by the United States;

159 (B) the business entity is:

160 (I) not subject to income taxation:

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

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

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

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

168 (I) shares or beneficial interests; and

169 (II) on an annual basis;

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

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

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

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

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

178 (ii) a listed Australian property trust.

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

- 181 (i) "cash or cash equivalents";
- 182 (ii) "established securities market"; or
- 183 (iii) "listed Australian property trust."
- 184 (18) "Income" includes losses.
- 185 (19) "Internal Revenue Code" means Title 26 of the United States Code as effective
- 186 during the year in which Utah taxable income is determined.
- 187 (20) "Nonbusiness income" [~~is as~~] means the same as that term is defined in Section
- 188 59-7-302.
- 189 (21) "Real estate investment trust" [~~is as~~] means the same as that term is defined in
- 190 Section 856, Internal Revenue Code.
- 191 (22) "Related expenses" means:
- 192 (a) expenses directly attributable to nonbusiness income; and
- 193 (b) the portion of interest or other expense indirectly attributable to both nonbusiness
- 194 and business income [~~which~~] that bears the same ratio to the aggregate amount of such interest
- 195 or other expense, determined without regard to this Subsection (22), as the average amount of
- 196 the asset producing the nonbusiness income bears to the average amount of all assets of the
- 197 taxpayer within the taxable year.
- 198 [~~(24)~~] (23) "S corporation" means an S corporation as defined in Section 1361, Internal
- 199 Revenue Code.
- 200 [~~(23)~~] (24) "Safe harbor lease" means a lease that qualified as a safe harbor lease under
- 201 Section 168, Internal Revenue Code.
- 202 (25) "State of the United States" includes any of the 50 states or the District of
- 203 Columbia.
- 204 (26) (a) "Taxable year" means the calendar year or the fiscal year ending during such
- 205 calendar year upon the basis of which the adjusted income is computed.
- 206 (b) In the case of a return made for a fractional part of a year under this chapter or
- 207 under rules prescribed by the commission, "taxable year" includes the period for which such
- 208 return is made.
- 209 (27) "Taxpayer" means any corporation subject to the tax imposed by this chapter.
- 210 (28) "Threshold level of business activity" means business activity in the United States
- 211 equal to or greater than 20% of the corporation's total business activity as determined under

212 Section 59-7-401.

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

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

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

220 (i) are related through common ownership; and

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

224 (A) centralized management;

225 (B) functional integration; and

226 (C) economies of scale.

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

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

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

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

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

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

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

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

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



243 activities of:

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

245 (A) corporations organized or incorporated in the United States, including those  
246 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section  
247 936, Internal Revenue Code, in accordance with Subsection (36)(b); and

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

250 (ii) an affiliated group electing to file a water's edge combined report under Subsection  
251 [59-7-402\(2\)](#).

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

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

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

259 **59-7-118. Section 965, Internal Revenue Code -- Installment payments.**

260 (1) As used in this section:

261 (a) "Deferred foreign income" means income described in Section 965(a), Internal  
262 Revenue Code.

263 (b) "Originally calculated" means the calculation of state tax liability under this  
264 chapter:

265 (i) after making:

266 (A) the subtractions described in Subsection [59-7-106\(1\)\(k\)](#); and

267 (B) the adjustments allowed under Subsection [59-7-106\(3\)](#); and

268 (ii) without making the adjustments described in Subsection (4).

269 ~~[(1)]~~ (2) Subject to the other provisions of this section, a corporation may pay in eight  
270 installments the tax owed under this chapter on deferred foreign income ~~[described in Section~~  
271 ~~965, Internal Revenue Code].~~

272 ~~[(2)]~~ (3) Subsection ~~[(1)]~~ (2) applies:

273 (a) to a corporation that:

274 (i) is authorized to make an election under Section 965(h), Internal Revenue Code; and  
275 (ii) apportions deferred foreign income [~~described in Section 965, Internal Revenue~~  
276 ~~Code,~~] to this state; and

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

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

281 (4) (a) For the taxable year beginning on or after January 1, 2019, but beginning on or  
282 before December 31, 2019, a corporation that owed a tax under this chapter on deferred foreign  
283 income shall recalculate the corporation's state tax liability for the last taxable year that began  
284 on or before December 31, 2017, by:

285 (i) subtracting 80% of the amount of deferred foreign income that is included in  
286 unadjusted income from the amount of deferred foreign income that is included in unadjusted  
287 income;

288 (ii) calculating the portion of the amount calculated in Subsection (4)(a)(i) that is  
289 apportioned to the state using the apportionment fraction:

290 (A) without the adjustments allowed under Subsection [59-7-106\(3\)](#); and

291 (B) for the taxable year in which the tax on deferred foreign income was due; and

292 (iii) multiplying the amount calculated in Subsection (4)(a)(ii) by 5%.

293 (b) For purposes of this Subsection (4), deferred foreign income described in Section  
294 965(a), Internal Revenue Code:

295 (i) is not a dividend considered to be received or received under Subsection  
296 [59-7-106\(1\)\(k\)](#); and

297 (ii) does not include any deductions allowed under Section 965(c), Internal Revenue  
298 Code.

299 (5) (a) A corporation that elected to pay the tax owed on deferred foreign income under  
300 this chapter in installments shall pay the tax as follows:

301 (i) for the first two installments, 8% of the tax liability as originally calculated;

302 (ii) for the third installment, 8% of the tax liability remaining after:

303 (A) making the calculation described in Subsection (4); and

304 (B) subtracting from the liability calculated in accordance with Subsection (4), the

305 amount of tax paid in any previous installments;  
306 (iii) for the fourth and fifth installments, 8% of the tax liability after;  
307 (A) making the calculation described in Subsection (4); and  
308 (B) subtracting from the liability calculated in accordance with Subsection (4), the  
309 amount of tax paid in the first two installments;  
310 (iv) for the sixth installment, 15% of the tax liability remaining after:  
311 (A) making the calculation described in Subsection (4); and  
312 (B) subtracting from the liability calculated in accordance with Subsection (4), the  
313 amount of tax paid in the first two installments;  
314 (iv) for the seventh installment, 20% of the tax liability remaining after:  
315 (A) making the calculation described in Subsection (4); and  
316 (B) subtracting from the liability calculated in accordance with Subsection (4), the  
317 amount of tax paid in the first two installments; and  
318 (v) for the final installment, the balance of the tax liability remaining after:  
319 (A) making the calculation described in Subsection (4); and  
320 (B) subtracting from the liability calculated in accordance with Subsection (4), the  
321 amount of tax paid in any previous installments.  
322 (b) A corporation may claim the tax credit described in Section [59-7-624](#) if the  
323 corporation paid the entire tax owed on deferred foreign income:  
324 (i) as originally calculated; and  
325 (ii) on or before the due date, including extensions, of the income tax return for the  
326 taxable year beginning on or before December 31, 2018.  
327 Section 3. Section **59-7-624** is enacted to read:  
328 **59-7-624. Nonrefundable tax credit for deferred foreign income.**  
329 (1) As used in this section:  
330 (a) "Deferred foreign income" means income described in Section 965(a), Internal  
331 Revenue Code.  
332 (b) "Originally calculated" means the calculation of state tax liability under this chapter  
333 on deferred foreign income:  
334 (i) after making the subtractions described in Subsections [59-7-106\(1\)\(k\)](#) and (3); and  
335 (ii) without making the adjustments described in Subsection [59-7-118\(4\)](#).

- 336 (c) "Qualifying corporation" means a corporation that:  
337 (i) paid income tax:  
338 (A) to the state;  
339 (B) on deferred foreign income; and  
340 (C) for a taxable year that began on or before December 31, 2017; and  
341 (ii) has paid the entire tax owed on deferred foreign income:  
342 (A) as originally calculated; and  
343 (B) on or before the due date, including extensions, for the income tax return for the  
344 taxable year beginning on or before December 31, 2018.
- 345 (2) For the taxable year beginning on or after January 1, 2019, but beginning on or  
346 before December 31, 2019, a qualifying corporation may claim a nonrefundable tax credit  
347 equal to the amount calculated by subtracting the amount calculated in Subsection  
348 59-7-118(4)(a)(iii) from the amount of the tax liability as originally calculated.
- 349 (3) A taxpayer:  
350 (a) may carry forward the amount of the tax credit described in this section that  
351 exceeds the qualifying taxpayer's liability under this chapter to a future taxable year; and  
352 (b) may not carry back the amount of the tax credit described in this section that  
353 exceeds the qualifying taxpayer's liability under this chapter.
- 354 Section 4. Section **59-10-1041** is enacted to read:  
355 **59-10-1041. Nonrefundable tax credit for deferred foreign income.**
- 356 (1) As used in this section:  
357 (a) "Deferred foreign income" means income described in Section 965(a), Internal  
358 Revenue Code.
- 359 (b) "Qualifying claimant, estate, or trust" means a claimant, estate, or trust that paid  
360 income tax:  
361 (i) to the state;  
362 (ii) on deferred foreign income; and  
363 (iii) for a taxable year that began on or before December 31, 2017.
- 364 (c) "Qualifying deferred foreign income" means the amount calculated by multiplying:  
365 (i) deferred foreign income; and  
366 (ii) the difference between:

367 (A) 80%; and  
368 (B) the percentage deduction allowed under Section 965(c), Internal Revenue Code.

369 (2) For the taxable year beginning on or after January 1, 2019, but beginning on or  
370 before December 31, 2019, a qualifying claimant, estate, or trust may claim a nonrefundable  
371 tax credit equal the amount calculated by multiplying:

372 (a) the qualifying deferred foreign income; and

373 (b) 5%.

374 (3) A claimant, estate, or trust:

375 (a) may carry forward the amount of the tax credit described in this section that  
376 exceeds the qualifying claimant's, estate's, or trust's liability under this chapter to a future  
377 taxable year; and

378 (b) may not carry back the amount of the tax credit described in this section that  
379 exceeds the qualifying claimant's, estate's, or trust's liability under this chapter.

380 **Section 5. Effective date.**

381 If approved by two-thirds of all the members elected to each house, this bill takes effect  
382 upon approval by the governor, or the day following the constitutional time limit of Utah  
383 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,  
384 the date of veto override.

385 **Section 6. Retrospective operation.**

386 (1) Except as provided in Subsection (2), this bill has retrospective operation for the  
387 last taxable year of a taxpayer beginning on or before December 31, 2017.

388 (2) The amendments to Section [59-7-118](#) have retrospective operation for a taxable  
389 year beginning on or after January 1, 2017.

390 (3) The amendments to the following sections have retrospective operation for a  
391 taxable year beginning on or after January 1, 2019:

392 (a) Section [59-7-624](#); and

393 (b) Section [59-10-1041](#).