

1 **INCOME TAX CODE AMENDMENTS**

2 2018 SECOND SPECIAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Steve Eliason**

5 Senate Sponsor: Howard A. Stephenson

6

LONG TITLE

7 **General Description:**

8 This bill amends corporate franchise and income tax provisions related to a Utah net
9 loss.
10

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ prohibits a taxpayer from carrying a Utah net loss back to an earlier taxable year;
- 14 ▶ limits the amount of Utah net loss that a taxpayer may carry forward;
- 15 ▶ removes the 15-year time limit for a taxpayer to carry forward a Utah net loss; and
- 16 ▶ makes technical changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 This bill provides a special effective date.

21 This bill provides retrospective operation.

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **59-7-101**, as last amended by Laws of Utah 2011, Chapter 69

25 **59-7-110 (Effective 01/01/19)**, as last amended by Laws of Utah 2018, Chapter 456

26 **59-7-110 (Superseded 01/01/19)**, as last amended by Laws of Utah 2016, Chapters 311
27 and 323



28 [59-7-522](#), as last amended by Laws of Utah 2015, First Special Session, Chapter 3



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

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

32 **59-7-101. Definitions.**

33 As used in this chapter:

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

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

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

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

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

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

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

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

52 (5) "Business income" [~~is as~~] means the same as that term is defined in Section
53 [59-7-302](#).

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

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

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

- 59 (A) owned by a controlling entity of the real estate investment trust; or
- 60 (B) controlled by a controlling entity of the real estate investment trust.
- 61 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 62 commission may make rules defining "established securities market."
- 63 (7) (a) "Common ownership" means the direct or indirect control or ownership of more
- 64 than 50% of the outstanding voting stock of:
 - 65 (i) a parent-subsidary controlled group as defined in Section 1563, Internal Revenue
 - 66 Code, except that 50% shall be substituted for 80%;
 - 67 (ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue
 - 68 Code; or
 - 69 (iii) three or more corporations each of which is a member of a group of corporations
 - 70 described in Subsection (2)(a)(i) or (ii), and one of which is:
 - 71 (A) a common parent corporation included in a group of corporations described in
 - 72 Subsection (2)(a)(i); and
 - 73 (B) included in a group of corporations described in Subsection (2)(a)(ii).
- 74 (b) Ownership of outstanding voting stock shall be determined by Section 1563,
- 75 Internal Revenue Code.
- 76 (8) (a) "Controlling entity of a captive real estate investment trust" means an entity
- 77 that:
 - 78 (i) is treated as an association taxable as a corporation under the Internal Revenue
 - 79 Code;
 - 80 (ii) is not exempt from federal income taxation under Section 501(a), Internal Revenue
 - 81 Code; and
 - 82 (iii) directly, indirectly, or constructively holds more than 50% of:
 - 83 (A) the voting power of a captive real estate investment trust; or
 - 84 (B) the value of the shares or beneficial interests of a captive real estate investment
 - 85 trust.
- 86 (b) "Controlling entity of a captive real estate investment trust" does not include:
 - 87 (i) a real estate investment trust, except for a captive real estate investment trust;
 - 88 (ii) a qualified real estate investment subsidiary described in Section 856(i), Internal
 - 89 Revenue Code, except for a qualified real estate investment trust subsidiary of a captive real

90 estate investment trust; or

91 (iii) a foreign real estate investment trust.

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

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

95 (10) "Corporation" includes:

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

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

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

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

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

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

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

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

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

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

115 (i) (A) an association, corporation, or other organization of~~[-(H)]~~ farmers~~[-(H)]~~ or ~~[(H)]~~
116 fruit growers; or

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

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

120 (A) (I) market the products of members of the cooperative or the products of other

121 producers; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

151 (A) at least 75% of the business entity's total asset value at the close of the business

152 entity's taxable year is represented by:

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

154 (II) cash or cash equivalents; or

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

156 (B) the business entity is:

157 (I) not subject to income taxation:

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

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

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

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

165 (I) shares or beneficial interests; and

166 (II) on an annual basis;

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

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

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

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

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

175 (ii) a listed Australian property trust.

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

178 (i) "cash or cash equivalents";

179 (ii) "established securities market"; or

180 (iii) "listed Australian property trust."

181 (18) "Income" includes losses.

182 (19) "Internal Revenue Code" means Title 26 of the United States Code as effective

183 during the year in which Utah taxable income is determined.

184 (20) "Nonbusiness income" [~~is as~~] means the same as that term is defined in Section
185 59-7-302.

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

188 (22) "Related expenses" means:

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

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

195 [~~(24)~~] (23) "S corporation" means an S corporation as defined in Section 1361, Internal
196 Revenue Code.

197 [~~(23)~~] (24) "Safe harbor lease" means a lease that qualified as a safe harbor lease under
198 Section 168, Internal Revenue Code.

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

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

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

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

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

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

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

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

245 59-7-402(2).

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

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

252 Section 2. Section 59-7-110 (Superseded 01/01/19) is amended to read:

253 **59-7-110 (Superseded 01/01/19). Utah net loss -- Carryforward and carryback --**
254 **Deduction.**

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

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

262 ~~[(b)(i) Subject to the other provisions of this section, a Utah net loss from a taxable~~
263 ~~year beginning on or after January 1, 1994, may be carried back three taxable years preceding~~
264 ~~the taxable year of the loss and carried forward 15 taxable years following the taxable year of~~
265 ~~the loss.]~~

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

268 (2) Subject to the other provisions of this section, a taxpayer:

269 (a) may carry forward a Utah net loss from a taxable year to a future taxable year; and

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

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

275 (4) (a) ~~[Except as provided in]~~ Subject to Subsection (4)(b), the amount of Utah net

276 loss that ~~[shall be carried]~~ a taxpayer may carry to the year identified in Subsection (3) is the
277 lesser of:

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

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

284 ~~[(b)(i) The amount of Utah net loss carried back from a taxable year may not exceed~~
285 ~~\$1,000,000 in Utah taxable income for each return filed under this chapter in a taxable year.]~~

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

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

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

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

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

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

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

303 (a) subject to Subsection (7):

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

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

307 year by the average value of all of the unitary group's real and tangible personal property owned
308 or rented and used during the taxable year;

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

312 (C) an amount determined by:

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

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

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

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

324 (i) for that taxable year; and

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

326 (c) multiplying the amount calculated under Subsection (6)(b) by the business income
327 of the unitary group for the taxable year that is subject to apportionment under Section
328 59-7-311; and

329 (d) calculating the sum of:

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

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

332 (A) nonbusiness income allocable to this state; or

333 (B) nonbusiness loss allocable to this state.

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

338 Section 3. Section 59-7-110 (Effective 01/01/19) is amended to read:

339 **59-7-110 (Effective 01/01/19). Utah net loss -- Carryforward and carryback --**
340 **Deduction.**

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

343 (2) [~~(a)~~] Subject to the other provisions of this section, a taxpayer [~~may~~]:

344 [~~(i) carry back a Utah net loss from a taxable year for three taxable years preceding the~~
345 ~~taxable year of the loss; and]~~

346 [(ii)] (a) may carry forward a Utah net loss from a taxable year [~~for 15 taxable years~~
347 ~~following the taxable year of the loss;]~~ to a future taxable year; and

348 [~~(b) If a taxpayer elects to forego the federal net operating loss carryback, the taxpayer~~
349 ~~may not carry back a Utah net loss unless the taxpayer makes an election for state purposes.]~~

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

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

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

357 (i) the remaining Utah net loss after deduction of any amounts of the Utah net loss that
358 a taxpayer carried to previous years; or

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

362 [(b) (i) ~~The amount of Utah net loss that a taxpayer carries back from a taxable year~~
363 ~~may not exceed \$1,000,000 in Utah taxable income for each return filed under this chapter in a~~
364 ~~taxable year;]~~

365 [(ii) ~~A taxpayer may carry forward a Utah net loss in excess of \$1,000,000;]~~

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

369 [(iii)] (ii) A taxpayer may carry a remaining Utah net loss to one or more taxable years
370 in accordance with this section.

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

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

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

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

382 (a) subject to Subsection (7):

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

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

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

391 (C) an amount determined by:

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

394 (II) if the unitary group elects or is required to calculate the fraction for apportioning
395 business income to this state using the method described in Subsection 59-7-311(4) in taxable
396 year 2019 or taxable year 2020, multiplying the amount calculated under Subsection

397 (6)(a)(i)(C)(I) by, for the taxable year 2019, four, or, for the taxable year 2020, eight; or

398 (ii) if the unitary group is required or elects to calculate the fraction for apportioning
399 business income to this state using the method described in Subsection 59-7-311(2), calculating

400 an amount determined by dividing the total sales of the acquired corporation in this state during
401 the taxable year by the total sales of the unitary group everywhere during the taxable year;

402 (b) dividing the amount calculated under Subsection (6)(a) by the same denominator of
403 the fraction the unitary group uses to apportion business income to this state for that taxable
404 year in accordance with Section 59-7-311;

405 (c) multiplying the amount calculated under Subsection (6)(b) by the business income
406 of the unitary group for the taxable year that is subject to apportionment under Section
407 59-7-311; and

408 (d) calculating the sum of:

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

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

411 (A) nonbusiness income allocable to this state; or

412 (B) nonbusiness loss allocable to this state.

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

417 Section 4. Section 59-7-522 is amended to read:

418 **59-7-522. Overpayments.**

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

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

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

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

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

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

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

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

438 **Section 5. Effective date.**

439 (1) Except as provided in Subsection (2), if approved by two-thirds of all the members
440 elected to each house, this bill takes effect upon approval by the governor, or the day following
441 the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's
442 signature, or in the case of a veto, the date of veto override.

443 (2) The amendments to Section [59-7-110](#) (Effective 01/01/19) take effect on January 1,
444 2019.

445 **Section 6. Retrospective operation.**

446 This bill has retrospective operation for a taxable year beginning on or after January 1,
447 2018.