

1 **REPATRIATION TRANSITION TAX AMENDMENTS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Steve Eliason**

5 Senate Sponsor: Lincoln Fillmore

7 **LONG TITLE**

8 **Committee Note:**

9 The Revenue and Taxation Interim Committee recommended this bill.

10 **General Description:**

11 This bill modifies corporate income tax provisions relating to deferred foreign income.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ modifies the definition of unadjusted income as the definition relates to deferred
15 foreign income; and

16 ▶ modifies the payment schedule for a corporate taxpayer to pay the income tax on
17 deferred foreign income.

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 2018, Second Special Session, Chapters 2
26 and 3

27 **59-7-118**, as last amended by Laws of Utah 2018, Second Special Session, Chapter 2



28

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

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

31 **59-7-101. Definitions.**

32 As used in this chapter:

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

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

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

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

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

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

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

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

51 (5) "Business income" means the same as that term is defined in Section [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-subsidiary 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 fruit growers; or

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

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

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

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

121 producer or the value of the products of a member or producer; or

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

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

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

129 (A) the terms "member" and "producer"; and

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

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

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

136 (16) (a) "Foreign operating company" means a corporation that:

137 (i) is incorporated in the United States;

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

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

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

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

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

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

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

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

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

151 (II) cash or cash equivalents; or

152 (III) one or more securities issued or guaranteed by the United States;
153 (B) the business entity is:
154 (I) not subject to income taxation:
155 (Aa) on amounts distributed to the business entity's beneficial owners; and
156 (Bb) in the jurisdiction in which the business entity is organized; or
157 (II) exempt from income taxation on an entity level in the jurisdiction in which the
158 business entity is organized;
159 (C) the business entity distributes at least 85% of the business entity's taxable income,
160 as computed in the jurisdiction in which the business entity is organized, to the holders of the
161 business entity's:
162 (I) shares or beneficial interests; and
163 (II) on an annual basis;
164 (D) (I) not more than 10% of the following is held directly, indirectly, or constructively
165 by a single person:
166 (Aa) the voting power of the business entity; or
167 (Bb) the value of the shares or beneficial interests of the business entity; or
168 (II) the shares of the business entity are regularly traded on an established securities
169 market; and
170 (E) the business entity is organized in a country that has a tax treaty with the United
171 States; or
172 (ii) a listed Australian property trust.
173 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
174 commission may make rules defining:
175 (i) "cash or cash equivalents";
176 (ii) "established securities market"; or
177 (iii) "listed Australian property trust."
178 (18) "Income" includes losses.
179 (19) "Internal Revenue Code" means Title 26 of the United States Code as effective
180 during the year in which Utah taxable income is determined.
181 (20) "Nonbusiness income" means the same as that term is defined in Section
182 [59-7-302](#).

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

185 (22) "Related expenses" means:

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

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

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

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

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

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

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

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

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

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

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

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 a taxpayer may carry forward to the current taxable year in accordance with Section
- 228 [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 59-7-118 is amended to read:

253 **59-7-118. Section 965, Internal Revenue Code -- Installment payments.**

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

257 (2) Subsection (1) applies:

258 (a) to a corporation that:

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

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

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

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

267 (b) A corporation shall make:

268 (i) the first installment under this section on or before the due date, including any
269 extension, of the [2017] tax return filed under this chapter for the first taxable year in which the
270 corporation reports deferred foreign income described in Section 965, Internal Revenue Code;
271 and

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

274 Section 3. **Effective date.**

275 If approved by two-thirds of all the members elected to each house, this bill takes effect

276 upon approval by the governor, or the day following the constitutional time limit of Utah
277 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
278 the date of veto override.

279 Section 4. **Retrospective operation.**

280 (1) Except as provided in Subsection (2), this bill has retrospective operation for:

281 (a) the last taxable year of a taxpayer beginning on or before December 31, 2017; and

282 (b) a taxable year beginning on or after January 1, 2018.

283 (2) The amendments to Section [59-7-118](#) have retrospective operation for a taxable

284 year beginning on or after January 1, 2017.