

## HB0268S01 compared with HB0268

~~{deleted text}~~ shows text that was in HB0268 but was deleted in HB0268S01.

Inserted text shows text that was not in HB0268 but was inserted into HB0268S01.

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Representative Steve Waldrip proposes the following substitute bill:

### TAX AND FEE ~~{CLEAN-UP PROVISIONS}~~ REVISIONS

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Steve Waldrip**

Senate Sponsor: ~~{\_\_\_\_\_}~~ Ronald Winterton

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#### LONG TITLE

##### General Description:

This bill modifies certain tax and fee provisions ~~{by repealing certain expired provisions}~~.

##### Highlighted Provisions:

This bill:

- ▶ provides and repeals definitions;
- ▶ repeals provisions relating to hazardous and treated hazardous waste disposal fees that applied through June 30, 2014;
- ▶ repeals provisions for determining the taxable value of beryllium sold or otherwise disposed of by the producer of the beryllium through December 31, 2004;
- ▶ enacts an addition to unadjusted income of a corporate taxpayer for any deduction on a return for a royalty or other expense paid to a captive insurance company for

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### the use of an intangible asset in certain circumstances:

- ▶ repeals provisions relating to a tax on radioactive waste received at a radioactive waste facility that applied through June 30, 2003;
- ▶ repeals the Hazardous Waste Facility and Nonhazardous Solid Waste Facility Tax Act that applied through December 31, 2003; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

~~{ None }~~ This bill provides a special effective date.

This bill provides retrospective operation.

### Utah Code Sections Affected:

#### AMENDS:

19-6-118, as last amended by Laws of Utah 2013, Chapter 201

59-5-203, as last amended by Laws of Utah 2008, Chapter 382

59-7-101, as last amended by Laws of Utah 2018, Second Special Session, Chapters 2 and 3

59-7-105, as last amended by Laws of Utah 2017, Chapter 389

59-7-402, as last amended by Laws of Utah 2009, Chapter 312

59-24-104, as enacted by Laws of Utah 2001, Chapter 314

#### REPEALS:

59-24-103, as last amended by Laws of Utah 2003, Chapter 295

59-25-101, as enacted by Laws of Utah 2003, Chapter 295

59-25-102, as enacted by Laws of Utah 2003, Chapter 295

59-25-103, as last amended by Laws of Utah 2004, Chapter 311

59-25-104, as enacted by Laws of Utah 2003, Chapter 295

59-25-105, as enacted by Laws of Utah 2003, Chapter 295

59-25-106, as enacted by Laws of Utah 2003, Chapter 295

59-25-108, as last amended by Laws of Utah 2008, Chapter 382

59-25-109, as enacted by Laws of Utah 2003, Chapter 295

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

Section 1. Section **19-6-118** is amended to read:

### **19-6-118. Hazardous waste and treated hazardous waste disposal fees.**

~~[(1) As used in this section:]~~

~~[(a) "Demilitarization waste" means:]~~

~~[(i) a nerve, military, or chemical agent, including:]~~

~~[(A) CX;]~~

~~[(B) GA;]~~

~~[(C) GB;]~~

~~[(D) GD;]~~

~~[(E) H;]~~

~~[(F) HD;]~~

~~[(G) HL;]~~

~~[(H) HN-1;]~~

~~[(I) HN-2;]~~

~~[(J) HN-3;]~~

~~[(K) HT;]~~

~~[(L) L; or]~~

~~[(M) VX; or]~~

~~[(ii) waste or residue from demilitarization, treatment, testing, or disposal of an agent described in Subsection (1)(a)(i):]~~

~~[(b) "Remediation project" means:]~~

~~[(i) a superfund cleanup project;]~~

~~[(ii) a Resource Conservation and Recovery Act closure or corrective action site; or]~~

~~[(iii) a voluntary cleanup of:]~~

~~[(A) hazardous debris; or]~~

~~[(B) hazardous waste subject to regulation solely because of removal or remedial action taken in response to environmental contamination:]~~

~~[(c) "Remediation waste" means waste from a remediation project:]~~

~~[(2)]~~ (1) (a) An owner or operator of any commercial hazardous waste or mixed waste disposal or treatment facility that primarily receives hazardous or mixed wastes generated by

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off-site sources not owned, controlled, or operated by the facility or site owner or operator, and that is subject to the requirements of Section 19-6-108, shall pay the fee under Subsection ~~[(3)]~~ (2).

(b) The owner or operator of each cement kiln, aggregate kiln, boiler, blender, or industrial furnace that receives for burning hazardous waste generated by off-site sources not owned, controlled, or operated by the owner or operator shall pay the fee under Subsection ~~[(3)]~~ (2).

~~[(3)(a)(i) Through June 30, 2014, the owner or operator of each facility under Subsection (2) shall pay a fee of \$28 per ton on all hazardous waste and mixed waste received at the facility for disposal, treatment, or both.]~~

~~[(ii) The fee required under Subsection (3)(a)(i) shall be calculated by multiplying the total tonnage of waste, computed to the first decimal place, received during the calendar month by \$28.]~~

~~[(b)(i) Through June 30, 2014, hazardous waste received at a land disposal facility is subject to a fee of \$14 per ton instead of the fee described in Subsection (3)(a) if the waste is treated so that it:]~~

~~[(A) meets the state treatment standards required for land disposal at the facility; or]~~

~~[(B) is no longer a hazardous waste at the time of disposal at that facility.]~~

~~[(ii) Through June 30, 2014, demilitarization waste received at a land disposal facility is subject to the fee described in Subsection (3)(b)(i), if:]~~

~~[(A) the demilitarization waste contains an additional constituent that is not demilitarization waste and is required by rule to be treated before land disposal; and]~~

~~[(B) the additional constituent meets every applicable state treatment standard required for land disposal of that constituent at the facility.]~~

~~[(iii) A fee required under Subsection (3)(b)(i) shall be calculated by multiplying the tonnage of waste, computed to the first decimal place, received during the calendar month by \$14.]~~

~~[(c) Through June 30, 2014, when hazardous waste or mixed waste is received at a facility for treatment or disposal and the fee required under Subsection (3) is paid for that treatment or disposal, any subsequent treatment or disposal of the waste is not subject to additional fees under Subsection (3).]~~

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~~[(d)(i)]~~ (2)(a) In accordance with Section 63J-1-504, ~~[on or before July 1, 2014,]~~ the department shall establish a fee schedule for the treatment and land disposal of hazardous waste and mixed waste.

~~[(ii)]~~ (b) To create the fee schedule described in Subsection ~~[(3)(d)(i)]~~ (2)(a), the department shall, before establishing the fee schedule, complete a review of program costs and indirect costs of regulating hazardous waste and mixed waste in the state.

~~[(iii)]~~ (c) The fee schedule described in Subsection ~~[(3)(d)(i)]~~ (2)(a) shall:

~~[(A)]~~ (i) implement a flat fee not calculated according to the amount of waste treated or disposed;

~~[(B)]~~ (ii) provide for reasonable and timely oversight by the department; and

~~[(C)]~~ (iii) adequately meet the needs of industry and the department, including enabling the department to employ qualified personnel to appropriately oversee industry regulation.

~~[(iv)]~~ (d) A facility that treats or disposes of hazardous waste or mixed waste is authorized to collect the fee established under Subsection ~~[(3)(d)(i)]~~ (2)(a) from the generator of the waste.

~~[(4)(a)]~~ Through June 30, 2014, remediation waste received at a hazardous waste land disposal or treatment facility from a remediation project is subject to a fee in the following amounts:]

<del>[Amount of Remediation Waste Received</del> <del>— from a Remediation Project]</del>	<del>[Fee Amount]</del>
<del>[More than 0, but less than 1,000 tons]</del>	<del>[\$28 per ton]</del>
<del>[Equal to or greater than 1,000 tons, but less than 12,500 tons]</del>	<del>[\$10 per ton for all waste]</del>
<del>[Equal to or greater than 12,500 tons, but less than 25,000 tons]</del>	<del>[\$5 per ton for all waste]</del>
<del>[Equal to or greater than 25,000 tons]</del>	<del>[\$2.50 per ton for all waste]</del>

~~[(b)]~~ Through June 30, 2014, emission control dust/sludge from the primary production of steel in electric furnaces (K061, as defined in 40 C.F.R. Sec. 261.32) received at a hazardous waste land disposal or treatment facility is subject to a fee of \$5 per ton in lieu of the fee

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~~established in Subsection (3).]~~

~~[(c) Through June 30, 2014, demilitarization waste received at a hazardous waste treatment, storage, or disposal facility is subject to a fee of \$5 per ton in addition to the fee established in Subsection (3).]~~

~~[(d) (i) Through June 30, 2014, the department may in accordance with this Subsection (4)(d) assess a person required to pay a fee under this section a special assessment if the department determines that the aggregate of the following fees is insufficient to cover the department's costs of administering its hazardous waste program:]~~

~~[(A) a fee imposed under this section; and]~~

~~[(B) a fee imposed under Section 19-6-118.5.]~~

~~[(ii) In determining the amount of a special assessment under this Subsection (4)(d), the department shall calculate the amount of the insufficiency and assess each person subject to the special assessment a proportion of the insufficiency equal to the proportion of fees paid by that person.]~~

~~[(iii) The department shall deposit a special assessment collected under this Subsection (4)(d) into the Environmental Quality Restricted Account created in Section 19-1-108.]~~

~~[(e) Through June 30, 2014, the department shall annually review the fee established in Subsection (4)(a) and make recommendations to the Legislature's Natural Resources, Agriculture, and Environment Interim Committee concerning the amount of the fee.]~~

~~[(5) (a) Through June 30, 2014, the department shall allocate at least 10% of the fees received from a facility under this section to the county where the facility is located, not including a special assessment.]~~

~~[(b) (3) (a) [Beginning on July 1, 2014, the] The department shall allocate and pay to a county at least 10% of the fee established under Subsection [(3)(d)(i)] (2)(a) that the department receives from a facility in that county.~~

~~[(c) (b) The county may use fees allocated under this Subsection [(5) (3) to carry out its hazardous waste monitoring and response programs.~~

~~[(6) (4) The department shall deposit the state portion of a fee received under this section into the Environmental Quality Restricted Account created in Section 19-1-108.~~

~~[(7) (a) (i) Except as provided in Subsection (7)(a)(ii), the owner or operator shall pay a fee, accrued under this section before June 30, 2014, to the department on or before the 15th~~

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~~day of the month following the month in which the fee accrued.]~~

~~[(ii) If a fee accrues on remediation waste under this section before June 30, 2014, the fee shall be paid in accordance with a schedule determined by the department:]~~

~~[(A) made in consultation with the person paying the fee; and]~~

~~[(B) considering any contractual schedule for payment between the person paying the fee and another person with whom the person paying the fee has contracted.]~~

~~[(b) With the monthly fee described in Subsection (7)(a)(i), the owner or operator shall submit a completed form, as prescribed by the department, specifying information required by the department to verify the amount of waste received and the fee amount for which the owner or operator is liable.]~~

~~[(c) (5) [Beginning on July 1, 2014, an] An owner or operator shall submit payment of the fee established in Subsection [(3)(d)(i)] (2)(a) to the department:~~

~~[(i) (a) in accordance with a schedule provided by the department; and~~

~~[(ii) (b) using forms provided by the department.~~

~~[(8) (6) (a) The department shall oversee and monitor hazardous waste treatment, disposal, and incineration facilities, including federal government facilities located within the state.~~

~~(b) The department may determine facility oversight priorities.~~

~~[(9) (7) (a) The department, in preparing its budget for the governor and the Legislature, shall separately indicate the amount necessary to administer the hazardous waste program established by this part.~~

~~(b) The Legislature shall appropriate the costs of administering this program.~~

~~[(10) (8) The Office of Legislative Fiscal Analyst shall monitor a fee collected under this part.~~

~~[(11) (9) Mixed waste subject to a fee under this section is not subject to a fee under Section 19-3-106.~~

Section 2. Section **59-5-203** is amended to read:

### **59-5-203. Determining taxable value.**

(1) Except as provided in Subsection (3), the basis for computing the gross proceeds, prior to those deductions or adjustments specified in this chapter, in determining the taxable value of the metals or metalliferous minerals sold or otherwise disposed of, in the order of

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priority, is as follows:

(a) If the metals or metalliferous mineral products are actually sold, the value of those metals or metalliferous mineral products shall be the gross amount the producer receives from that sale, provided that the metals or metalliferous mineral products are sold under a bona fide contract of sale between unaffiliated parties. In the case of a sale of uranium concentrates, gross proceeds shall be the gross amount the producer receives from the sale of processed uranium concentrate or "yellowcake," provided that the uranium concentrate is sold under a bona fide contract of sale between unaffiliated parties.

(b) If the metals or metalliferous mineral products are not actually sold but are shipped, transported, or delivered out of state, the gross proceeds shall be the multiple of the recoverable units of finished metals, or of the finished metals contained in the metalliferous minerals shipped, and the average daily price per unit of contained metals as quoted by an established authority for market prices of metals for the period during which the tax imposed by this chapter is due. The established authority or authorities shall be designated by the commission by rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) In the case of metals or metalliferous minerals not sold, but otherwise disposed of, for which there is no established authority for market prices of metals for the period during which the tax imposed by this chapter is due, gross proceeds is determined by allocating to the state the same proportion of the producer's total sales of metals or metalliferous minerals sold or otherwise disposed of as the producer's total Utah costs bear to the total costs associated with sale or disposal of the metal or metalliferous mineral.

(d) In the event of a sale of metals or metalliferous minerals between affiliated companies which is not a bona fide sale because the value received is not proportionate to the fair market value of the metals or metalliferous minerals or in the event that Subsection (1)(a), (b), or (c) are not applicable, the commission shall determine the value of such metals or metalliferous minerals in an equitable manner by reference to an objective standard as specified in a rule adopted in accordance with the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) For all metals except beryllium, the taxable value of the metalliferous mineral sold or otherwise disposed of is 30% of the gross proceeds received for the metals sold or otherwise



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disposed of by the producer of the metal.

~~[(3)(a) Beginning on January 1, 1990, through December 31, 2004, for beryllium sold or otherwise disposed of, the taxable value is 20% of the gross proceeds received for the beryllium sold or otherwise disposed of by the producer.]~~

~~[(b)(i)]~~ (3) Notwithstanding Subsection (1) or (4) ~~[and subject to Subsection (3)(b)(ii), beginning on January 1, 2005]~~, the taxable value of beryllium sold or otherwise disposed of by the producer of the beryllium is equal to 125% of the direct mining costs incurred in mining the beryllium.

~~[(ii) For an action or proceeding filed on or after January 1, 2005, if the taxable value of beryllium is calculated under Subsection (3)(a) for purposes of imposing a tax on beryllium under this part, the taxable value of beryllium calculated under Subsection (3)(a) may not exceed the taxable value of beryllium calculated under Subsection (3)(b)(i).]~~

(4) Except as provided in Subsection (3), if the metalliferous mineral sold or otherwise disposed of is sold or shipped out of state in the form of ore, then the taxable value is 80% of the gross proceeds.

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

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

As used in this chapter:

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

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

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

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

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

(c) For purposes of this Subsection (2), "stock" does not include nonvoting stock which

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is limited and preferred as to dividends.

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

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

(5) "Business income" means the same as that term is defined in Section 59-7-302.

(6) "Captive insurance company" means the same as that term is defined in Section 31A-1-301.

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

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

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

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

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

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

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

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

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

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

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

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

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

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~~[(8)]~~[(9)] (a) "Controlling entity of a captive real estate investment trust" means an entity that:

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

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

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

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

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

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

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

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

(iii) a foreign real estate investment trust.

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

~~[(9)]~~[(10)] "Corporate return" or "return" includes a combined report.

~~[(10)]~~[(11)] "Corporation" includes:

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

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

~~[(11)]~~[(12)] "Dividend" means any distribution, including money or other type of property, made by a corporation to its shareholders out of its earnings or profits accumulated after December 31, 1930.

~~[(12)]~~[(13)] (a) "Doing business" includes any transaction in the course of its business by a domestic corporation, or by a foreign corporation qualified to do or doing intrastate business in this state.

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

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- (i) the right to do business through incorporation or qualification;
- (ii) the owning, renting, or leasing of real or personal property within this state; and
- (iii) the participation in joint ventures, working and operating agreements, the performance of which takes place in this state.

~~[(13)]~~ [(14)] "Domestic corporation" means a corporation that is incorporated or organized under the laws of this state.

~~[(14)]~~ [(15)] (a) "Farmers' cooperative" means an association, corporation, or other organization that is:

(i) (A) an association, corporation, or other organization of farmers or fruit growers; or  
(B) an association, corporation, or other organization that is similar to an association, corporation, or organization described in Subsection ~~[(14)]~~ [(15)](a)(i)(A); and

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

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

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

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

(II) turn over the supplies and equipment described in Subsection ~~[(14)]~~ [(15)](a)(ii)(B)(I) at actual costs plus necessary expenses to the members of the cooperative or other persons.

(b) (i) Subject to Subsection ~~[(14)]~~ [(15)](b)(ii), for purposes of this Subsection ~~[(14)]~~ [(15)], the commission by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define:

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

(B) what constitutes an association, corporation, or other organization that is similar to an association, corporation, or organization described in Subsection ~~[(14)]~~ [(15)](a)(i)(A).

(ii) The rules made under this Subsection ~~[(14)]~~ [(15)](b) shall be consistent with the filing requirements under federal law for a farmers' cooperative.

~~[(15)]~~ [(16)] "Foreign corporation" means a corporation that is not incorporated or

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organized under the laws of this state.

~~[(16)]~~ [(17)] (a) "Foreign operating company" means a corporation that:

(i) is incorporated in the United States;

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

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

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

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

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

~~[(17)]~~ [(18)] (a) "Foreign real estate investment trust" means:

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

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

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

(II) cash or cash equivalents; or

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

(B) the business entity is:

(I) not subject to income taxation:

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

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

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

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

(I) shares or beneficial interests; and

(II) on an annual basis;

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

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

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

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

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

(ii) a listed Australian property trust.

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

(i) "cash or cash equivalents";

(ii) "established securities market"; or

(iii) "listed Australian property trust."

~~[(18)]~~ [(19)] "Income" includes losses.

~~[(19)]~~ [(20)] "Internal Revenue Code" means Title 26 of the United States Code as effective during the year in which Utah taxable income is determined.

~~[(20)]~~ [(21)] "Nonbusiness income" means the same as that term is defined in Section 59-7-302.

~~[(21)]~~ [(22)] "Real estate investment trust" means the same as that term is defined in Section 856, Internal Revenue Code.

~~[(22)]~~ [(23)] "Related expenses" means:

(a) expenses directly attributable to nonbusiness income; and

(b) the portion of interest or other expense indirectly attributable to both nonbusiness and business income that bears the same ratio to the aggregate amount of such interest or other expense, determined without regard to this Subsection ~~[(22)]~~ [(23)], as the average amount of the asset producing the nonbusiness income bears to the average amount of all assets of the taxpayer within the taxable year.

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

~~[(24)]~~ [(25)] "Safe harbor lease" means a lease that qualified as a safe harbor lease under Section 168, Internal Revenue Code.

~~[(25)]~~ [(26)] "State of the United States" includes any of the 50 states or the District of

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Columbia.

~~[(26)]~~ [(27)] (a) "Taxable year" means the calendar year or the fiscal year ending during such calendar year upon the basis of which the adjusted income is computed.

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

~~[(27)]~~ [(28)] "Taxpayer" means any corporation subject to the tax imposed by this chapter.

~~[(28)]~~ [(29)] "Threshold level of business activity" means business activity in the United States equal to or greater than 20% of the corporation's total business activity as determined under Section 59-7-401.

~~[(29)]~~ [(30)] (a) "Unadjusted income" means federal taxable income as determined on a separate return basis before intercompany eliminations as determined by the Internal Revenue Code, before the net operating loss deduction and special deductions for dividends received.

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

~~[(30)]~~ [(31)] (a) "Unitary group" means a group of corporations that:

(i) are related through common ownership; and

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

(A) centralized management;

(B) functional integration; and

(C) economies of scale.

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

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

~~[(31)]~~ [(32)] "United States" includes the 50 states and the District of Columbia.

~~[(32)]~~ [(33)] "Utah net loss" means the current year Utah taxable income before Utah net loss deduction, if determined to be less than zero.

~~[(33)]~~ [(34)] "Utah net loss deduction" means the amount of Utah net losses from other

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taxable years that a taxpayer may carry forward to the current taxable year in accordance with Section 59-7-110.

~~[(34)]~~ [(35)] (a) "Utah taxable income" means Utah taxable income before net loss deduction less Utah net loss deduction.

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

~~[(35)]~~ [(36)] "Utah taxable income before net loss deduction" means apportioned income plus nonbusiness income allocable to Utah net of related expenses.

~~[(36)]~~ [(37)] (a) "Water's edge combined report" means a report combining the income and activities of:

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

(A) corporations organized or incorporated in the United States, including those corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section 936, Internal Revenue Code, in accordance with Subsection ~~[(36)]~~ [(37)](b); and

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

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

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

~~[(37)]~~ [(38)] "Worldwide combined report" means the combination of the income and activities of all members of a unitary group irrespective of the country in which the corporations are incorporated or conduct business activity.

### Section 4. Section 59-7-105 is amended to read:

#### **59-7-105. Additions to unadjusted income.**

In computing adjusted income the following amounts shall be added to unadjusted income:

(1) interest from bonds, notes, and other evidences of indebtedness issued by any state of the United States, including any agency and instrumentality of a state of the United States;



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(2) the amount of any deduction taken on a corporation's federal return for taxes paid by a corporation:

(a) to Utah for taxes imposed by this chapter; and

(b) to another state of the United States, a foreign country, a United States possession, or the Commonwealth of Puerto Rico for taxes imposed for the privilege of doing business, or exercising its corporate franchise, including income, franchise, corporate stock and business and occupation taxes;

(3) the safe harbor lease adjustment required under Subsections 59-7-111(1)(a) and (2)(a);

(4) capital losses that have been deducted on a Utah corporate return in previous years;

(5) any deduction on the federal return that has been previously deducted on the Utah return;

(6) charitable contributions, to the extent deducted on the federal return when determining federal taxable income;

(7) the amount of gain or loss determined under Section 59-7-114 relating to a target corporation under Section 338, Internal Revenue Code, unless such gain or loss has already been included in the unadjusted income of the target corporation;

(8) the amount of gain or loss determined under Section 59-7-115 relating to corporations treated for federal purposes as having disposed of its assets under Section 336(e), Internal Revenue Code, unless such gain or loss has already been included in the unadjusted income of the target corporation;

(9) adjustments to gains, losses, depreciation expense, amortization expense, and similar items due to a difference between basis for federal purposes and basis as computed under Section 59-7-107;

(10) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan, from the account of a corporation that is an account owner as defined in Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount withdrawn from the account of the corporation that is the account owner:

(a) is not expended for:

(i) higher education costs as defined in Section 53B-8a-102.5; or

(ii) a payment or distribution that qualifies as an exception to the additional tax for

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distributions not used for educational expenses provided in Sections 529(c) and 530(d), Internal Revenue Code; and

(b) is subtracted by the corporation:

(i) that is the account owner; and

(ii) in accordance with Subsection 59-7-106 (1)(r); ~~and~~

(11) the amount of the deduction for dividends paid, as defined in Section 561, Internal Revenue Code, that is allowed under Section 857(b)(2)(B), Internal Revenue Code, in computing the taxable income of a captive real estate investment trust, if that captive real estate investment trust is subject to federal income taxation~~f~~

~~f~~[-]; and

(12) any deduction on a return filed under this chapter for a royalty or other expense paid to a captive insurance company for the use of an intangible asset where the intangible asset is owned by the captive insurance company and used, in exchange for a royalty or other fee, by an entity related by common ownership to the captive insurance company.

Section 5. Section 59-7-402 is amended to read:

**59-7-402. Water's edge combined report.**

(1) Except as provided in Section 59-7-403, if any corporation listed in Subsection 59-7-101~~(36)~~(37)(a) is doing business in Utah, the unitary group shall file a water's edge combined report.

(2) (a) A group of corporations that are not otherwise a unitary group may elect to file a water's edge combined report if each member of the group is:

(i) doing business in Utah;

(ii) part of the same affiliated group; and

(iii) qualified, under Section 1501, Internal Revenue Code, to file a federal consolidated return.

(b) Each corporation within the affiliated group that is doing business in Utah must consent to filing a combined report. If an affiliated group elects to file a combined report, each corporation within the affiliated group that is doing business in Utah must file a combined report.

(c) Corporations that elect to file a water's edge combined report under this section may not thereafter elect to file a separate return without the consent of the commission.

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Section ~~{3}~~6. Section 59-24-104 is amended to read:

### **59-24-104. Payment of tax.**

(1) The tax imposed by Section [~~59-24-103~~] 59-24-103.5 shall be paid by the owner or operator of a radioactive waste facility that receives radioactive waste for disposal or reprocessing.

(2) The payment shall be accompanied by the form prescribed by the commission.

(3) The payment shall be paid quarterly on or before the last day of the month next succeeding each calendar quarterly period.

### **Section ~~{4}~~7. Repealer.**

This bill repeals:

Section 59-24-103, **Tax imposed on radioactive waste.**

Section 59-25-101, **Title.**

Section 59-25-102, **Definitions.**

Section 59-25-103, **Hazardous waste facility and nonhazardous solid waste facility tax.**

Section 59-25-104, **Payment of tax.**

Section 59-25-105, **Deposit of tax revenue.**

Section 59-25-106, **Records.**

Section 59-25-108, **Rulemaking authority.**

Section 59-25-109, **Penalties and interest.**

### **Section 8. Effective date -- Retrospective operation.**

(1) Except as provided in Subsection (2), this bill has retrospective operation for a taxable year beginning on or after January 1, 2019.

(2) The actions affecting the following sections take effect on May 14, 2019:

(a) Section 19-6-118;

(b) Section 59-5-203;

(c) Section 59-24-103;

(d) Section 59-24-104;

(e) Section 59-25-101;

(f) Section 59-25-102;

(g) Section 59-25-103;

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(h) Section 59-25-104;

(i) Section 59-25-105;

(j) Section 59-25-106;

(k) Section 59-25-108; and

(l) Section 59-25-109.