CORPORATE INCOME NET LOSS AMENDMENTS

2020 SIXTH SPECIAL SESSION

STATE OF UTAH

Chief Sponsor: Robert M. Spendlove

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends corporate franchise and income tax provisions related to Utah net loss.

Highlighted Provisions:

This bill:

- removes the 80% limitation on a Utah net loss carry forward for the 2018 through 2020 income tax years.

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:

AMENDS:

59-7-110, as last amended by Laws of Utah 2018, Second Special Session, Chapter 3

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

Section 1. Section **59-7-110** is amended to read:

59-7-110. Utah net loss -- Carryforward -- Deduction.

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

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

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

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

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

(4) (a) Subject to Subsection (4)(b), the amount of Utah net loss that a taxpayer may carry to the year identified in Subsection (3) is the lesser of:

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

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

(b) (i) [~~The~~] For a taxable year beginning on or after January 1, 2021, the amount of Utah net loss that a taxpayer may carry forward to a taxable year may not exceed 80% of Utah taxable income computed without regard to the deduction allowable under this section.

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

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

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

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

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

(a) subject to Subsection (7):

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

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

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

(C) an amount determined by:

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

(II) if the unitary group elects or is required to calculate the fraction for apportioning business income to this state using the method described in Subsection 59-7-311(4) in taxable year 2019 or taxable year 2020, multiplying the amount calculated under Subsection (6)(a)(i)(C)(I) by, for the taxable year 2019, four, or, for the taxable year 2020, eight; or

(ii) if the unitary group is required or elects to calculate the fraction for apportioning business income to this state using the method described in Subsection 59-7-311(2), calculating an amount determined by dividing the total sales of the acquired corporation in this state during the taxable year by the total sales of the unitary group everywhere during the taxable year;

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

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

(d) calculating the sum of:

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

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

(A) nonbusiness income allocable to this state; or

(B) nonbusiness loss allocable to this state.

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

Section 2. **Effective date.**

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

Section 3. **Retrospective operation.**

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