

Senator Wayne A. Harper proposes the following substitute bill:

CORPORATE TAX UNADJUSTED INCOME AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Douglas V. Sagers

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill modifies defined terms related to corporate income taxes.

Highlighted Provisions:

This bill:

- ▶ provides that a corporate taxpayer's unadjusted income is determined before any deductions related to:
 - foreign-derived intangible income and global intangible low-taxed income; and
 - deferred foreign income; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

59-7-101, as last amended by Laws of Utah 2020, Sixth Special Session, Chapter 15

59-7-106, as last amended by Laws of Utah 2020, Sixth Special Session, Chapter 15

59-7-402, as last amended by Laws of Utah 2020, Sixth Special Session, Chapter 15



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

Section 1. 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 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](#).
- (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:

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 (8) (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-subsidary 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 (9) (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 (10) "Corporate return" or "return" includes a combined report.

93 (11) "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 (12) "COVID-19" means:

99 (a) the severe acute respiratory syndrome coronavirus 2; or

100 (b) the disease caused by severe acute respiratory syndrome coronavirus 2.

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

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

106 (b) Except as provided in Subsection (14)(c) or Subsection 59-7-102(3), "doing
107 business" includes:

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

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

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

112 (iv) selling or performing a service in this state; and

113 (v) earning income from the use of intangible property in this state.

114 (c) "Doing business" does not include the business activity of a corporation if the
115 corporation's only business activity within the state is the solicitation of orders for sales of
116 tangible personal property that are protected under 15 U.S.C. Secs. 381 through 384.

117 (15) "Domestic corporation" means a corporation that is incorporated or organized
118 under the laws of this state.

119 (16) "Exercising a corporate franchise" does not include the business activity of a
120 corporation if the corporation's only business activity within the state is the solicitation of
121 orders for sales of tangible personal property that are protected under 15 U.S.C. Secs. 381
122 through 384.

123 (17) (a) "Farmers' cooperative" means an association, corporation, or other
124 organization that is:

125 (i) (A) an association, corporation, or other organization of farmers or fruit growers; or

126 (B) an association, corporation, or other organization that is similar to an association,
127 corporation, or organization described in Subsection (17)(a)(i)(A); and

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

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

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

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

136 (II) turn over the supplies and equipment described in Subsection (17)(a)(ii)(B)(I) at
137 actual costs plus necessary expenses to the members of the cooperative or other persons.

138 (b) (i) Subject to Subsection (17)(b)(ii), for purposes of this Subsection (17), the
139 commission by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative
140 Rulemaking Act, shall define:

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

142 (B) what constitutes an association, corporation, or other organization that is similar to
143 an association, corporation, or organization described in Subsection (17)(a)(i)(A).

144 (ii) The rules made under this Subsection (17)(b) shall be consistent with the filing
145 requirements under federal law for a farmers' cooperative.

146 (18) "Foreign corporation" means a corporation that is not incorporated or organized
147 under the laws of this state.

148 (19) (a) "Foreign operating company" means a corporation that:

149 (i) is incorporated in the United States;

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

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

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

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

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

158 (20) (a) "Foreign real estate investment trust" means:

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

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

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

163 (II) cash or cash equivalents; or

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

165 (B) the business entity is:

166 (I) not subject to income taxation:

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

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

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

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

174 (I) shares or beneficial interests; and

175 (II) on an annual basis;

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

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

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

180 (II) the shares of the business entity are regularly traded on an established securities

181 market; and
182 (E) the business entity is organized in a country that has a tax treaty with the United
183 States; or
184 (ii) a listed Australian property trust.
185 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
186 commission may make rules defining:
187 (i) "cash or cash equivalents";
188 (ii) "established securities market"; or
189 (iii) "listed Australian property trust."
190 (21) "Income" includes losses.
191 (22) "Internal Revenue Code" means Title 26 of the United States Code as effective
192 during the year in which Utah taxable income is determined.
193 (23) "Nonbusiness income" means the same as that term is defined in Section
194 [59-7-302](#).
195 (24) "Real estate investment trust" means the same as that term is defined in Section
196 856, Internal Revenue Code.
197 (25) "Related expenses" means:
198 (a) expenses directly attributable to nonbusiness income; and
199 (b) the portion of interest or other expense indirectly attributable to both nonbusiness
200 and business income that bears the same ratio to the aggregate amount of such interest or other
201 expense, determined without regard to this Subsection (25), as the average amount of the asset
202 producing the nonbusiness income bears to the average amount of all assets of the taxpayer
203 within the taxable year.
204 (26) "S corporation" means an S corporation as defined in Section 1361, Internal
205 Revenue Code.
206 (27) "Safe harbor lease" means a lease that qualified as a safe harbor lease under
207 Section 168, Internal Revenue Code.
208 (28) "Special deduction" includes a deduction under:
209 (a) Section 250, Internal Revenue Code; or
210 (b) Section 965(c), Internal Revenue Code.
211 [~~(28)~~] (29) "State of the United States" includes any of the 50 states or the District of

212 Columbia.

213 ~~[(29)]~~ (30) (a) "Taxable year" means the calendar year or the fiscal year ending during
214 such calendar year upon the basis of which the adjusted income is computed.

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

218 ~~[(30)]~~ (31) "Taxpayer" means any corporation subject to the tax imposed by this
219 chapter.

220 ~~[(31)]~~ (32) "Threshold level of business activity" means business activity in the United
221 States equal to or greater than 20% of the corporation's total business activity as determined
222 under Section 59-7-401.

223 ~~[(32)]~~ (33) (a) "Unadjusted income" means federal taxable income as determined on a
224 separate return basis before intercompany eliminations as determined by the Internal Revenue
225 Code, before the net operating loss deduction and special deductions ~~[for dividends received]~~.

226 (b) "Unadjusted income" includes deferred foreign income described in Section 965(a),
227 Internal Revenue Code.

228 (c) "Unadjusted income" does not include income received from:

229 (i) a loan forgiven in accordance with 15 U.S.C. Sec. 636(a)(36), to the extent that a
230 deduction for the expenditures paid with the loan is disallowed; or

231 (ii) a similar paycheck protection loan that is:

232 (A) authorized by the federal government;

233 (B) provided in response to COVID-19;

234 (C) forgiven if the borrower meets the expenditure requirements; and

235 (D) exempt from federal income tax, to the extent that a deduction for the expenditures
236 paid with the loan is disallowed.

237 ~~[(33)]~~ (34) (a) "Unitary group" means a group of corporations that:

238 (i) are related through common ownership; and

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

242 (A) centralized management;

243 (B) functional integration; and

244 (C) economies of scale.

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

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

247 [~~34~~] (35) "United States" includes the 50 states and the District of Columbia.

248 [~~35~~] (36) "Utah net loss" means the current year Utah taxable income before Utah net
249 loss deduction, if determined to be less than zero.

250 [~~36~~] (37) "Utah net loss deduction" means the amount of Utah net losses from other
251 taxable years that a taxpayer may carry forward to the current taxable year in accordance with
252 Section 59-7-110.

253 [~~37~~] (38) (a) "Utah taxable income" means Utah taxable income before net loss
254 deduction less Utah net loss deduction.

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

258 [~~38~~] (39) "Utah taxable income before net loss deduction" means apportioned income
259 plus nonbusiness income allocable to Utah net of related expenses.

260 [~~39~~] (40) (a) "Water's edge combined report" means a report combining the income
261 and activities of:

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

263 (A) corporations organized or incorporated in the United States, including those
264 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section
265 936, Internal Revenue Code, in accordance with Subsection [~~39~~] (40)(b); and

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

268 (ii) an affiliated group electing to file a water's edge combined report under Subsection
269 59-7-402(2).

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

273 [~~40~~] (41) "Worldwide combined report" means the combination of the income and

274 activities of all members of a unitary group irrespective of the country in which the
275 corporations are incorporated or conduct business activity.

276 Section 2. Section **59-7-106** is amended to read:

277 **59-7-106. Subtractions from unadjusted income.**

278 (1) In computing adjusted income, the following amounts shall be subtracted from
279 unadjusted income:

280 (a) the foreign dividend gross-up included in gross income for federal income tax
281 purposes under Section 78, Internal Revenue Code;

282 (b) subject to Subsection (2), the net capital loss, as defined for federal purposes, if the
283 taxpayer elects to deduct the net capital loss on the return filed under this chapter for the
284 taxable year for which the net capital loss is incurred;

285 (c) the decrease in salary expense deduction for federal income tax purposes due to
286 claiming the federal work opportunity credit under Section 51, Internal Revenue Code;

287 (d) the decrease in qualified research and basic research expense deduction for federal
288 income tax purposes due to claiming the federal credit for increasing research activities under
289 Section 41, Internal Revenue Code;

290 (e) the decrease in qualified clinical testing expense deduction for federal income tax
291 purposes due to claiming the federal credit for clinical testing expenses for certain drugs for
292 rare diseases or conditions under Section 45C, Internal Revenue Code;

293 (f) any decrease in any expense deduction for federal income tax purposes due to
294 claiming any other federal credit;

295 (g) the safe harbor lease adjustment required under Subsections [59-7-111\(1\)\(b\)](#) and
296 [\(2\)\(b\)](#);

297 (h) any income on the federal corporation income tax return that has been previously
298 taxed by Utah;

299 (i) an amount included in federal taxable income that is due to a refund of a tax,
300 including a franchise tax, an income tax, a corporate stock and business tax, or an occupation
301 tax:

302 (i) if that tax is imposed for the privilege of:

303 (A) doing business; or

304 (B) exercising a corporate franchise;

- 305 (ii) if that tax is paid by the corporation to:
- 306 (A) Utah;
- 307 (B) another state of the United States;
- 308 (C) a foreign country;
- 309 (D) a United States possession; or
- 310 (E) the Commonwealth of Puerto Rico; and
- 311 (iii) to the extent that tax was added to unadjusted income under Section 59-7-105;
- 312 (j) a charitable contribution, to the extent the charitable contribution is allowed as a
- 313 subtraction under Section 59-7-109;
- 314 (k) subject to Subsection (3), 50% of a dividend considered to be received or received
- 315 from a subsidiary that:
- 316 (i) is a member of the unitary group;
- 317 (ii) is organized or incorporated outside of the United States; and
- 318 (iii) is not included in a combined report under Section 59-7-402 or 59-7-403;
- 319 (l) subject to Subsection (4) and Section 59-7-401, 50% of the adjusted income of a
- 320 foreign operating company;
- 321 (m) the amount of gain or loss that is included in unadjusted income but not recognized
- 322 for federal purposes on stock sold or exchanged by a member of a selling consolidated group as
- 323 defined in Section 338, Internal Revenue Code, if an election has been made in accordance
- 324 with Section 338(h)(10), Internal Revenue Code;
- 325 (n) the amount of gain or loss that is included in unadjusted income but not recognized
- 326 for federal purposes on stock sold, exchanged, or distributed by a corporation in accordance
- 327 with Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal
- 328 Revenue Code, has been made for federal purposes;
- 329 (o) subject to Subsection (5), an adjustment to the following due to a difference
- 330 between basis for federal purposes and basis as computed under Section 59-7-107:
- 331 (i) an amortization expense;
- 332 (ii) a depreciation expense;
- 333 (iii) a gain;
- 334 (iv) a loss; or
- 335 (v) an item similar to Subsections (1)(o)(i) through (iv);

336 (p) an interest expense that is not deducted on a federal corporation income tax return
337 under Section 265(b) or 291(e), Internal Revenue Code;

338 (q) 100% of dividends received from a subsidiary that is an insurance company if that
339 subsidiary that is an insurance company is:

340 (i) exempt from this chapter under Subsection 59-7-102(1)(c); and

341 (ii) under common ownership;

342 (r) subject to Subsection 59-7-105(10), for a corporation that is an account owner as
343 defined in Section 53B-8a-102, the amount of a qualified investment as defined in Section
344 53B-8a-102.5:

345 (i) that the corporation or a person other than the corporation makes into an account
346 owned by the corporation during the taxable year;

347 (ii) to the extent that neither the corporation nor the person other than the corporation
348 described in Subsection (1)(r)(i) deducts the qualified investment on a federal income tax
349 return; and

350 (iii) to the extent the qualified investment does not exceed the maximum amount of the
351 qualified investment that may be subtracted from unadjusted income for a taxable year in
352 accordance with Subsection 53B-8a-106(1);

353 (s) for a corporation that makes a donation, as that term is defined in Section
354 53B-8a-201, to the Student Prosperity Savings Program created in Section 53B-8a-202, the
355 amount of the donation to the extent that the corporation did not deduct the donation on a
356 federal income tax return;

357 (t) for purposes of income included in a combined report under Part 4, Combined
358 Reporting, the entire amount of the dividends a member of a unitary group receives or is
359 considered to receive from a captive real estate investment trust;

360 (u) the increase in income for federal income tax purposes due to claiming a:

361 (i) qualified tax credit bond credit under Section 54A, Internal Revenue Code; or

362 (ii) qualified zone academy bond under Section 1397E, Internal Revenue Code;

363 (v) for a taxable year beginning on or after January 1, 2019, but beginning on or before
364 December 31, 2019, only:

365 (i) the amount of any FDIC premium paid or incurred by the taxpayer that is
366 disallowed as a deduction for federal income tax purposes under Section 162(r), Internal

367 Revenue Code, on the taxpayer's 2018 federal income tax return; plus
368 (ii) the amount of any FDIC premium paid or incurred by the taxpayer that is
369 disallowed as a deduction for federal income tax purposes under Section 162(r), Internal
370 Revenue Code, for the taxable year;
371 (w) for a taxable year beginning on or after January 1, 2020, the amount of any FDIC
372 premium paid or incurred by the taxpayer that is disallowed as a deduction for federal income
373 tax purposes under Section 162(r), Internal Revenue Code, for the taxable year; and
374 (x) for a taxable year beginning on or after January 1, 2020, but beginning on or before
375 December 31, 2020, the amount of:
376 (i) a paycheck protection loan similar to a loan forgiven in accordance with 15 U.S.C.
377 Sec. 636(a)(36) that is:
378 (A) authorized by the federal government;
379 (B) provided in response to COVID-19;
380 (C) forgiven if the borrower meets the expenditure requirements; and
381 (D) subject to federal income tax, to the extent that a deduction for the expenditures
382 paid with the loan is disallowed; and
383 (ii) any grant funds or forgiven loans that:
384 (A) the taxpayer receives from the state, a county within the state, or a municipality
385 within the state in response to COVID-19;
386 (B) are funded using federal revenue received by the state, the county, or the
387 municipality to respond to COVID-19; and
388 (C) are included in unadjusted income.
389 (2) For purposes of Subsection (1)(b):
390 (a) the subtraction shall be made by claiming the subtraction on a return filed:
391 (i) under this chapter for the taxable year for which the net capital loss is incurred; and
392 (ii) by the due date of the return, including extensions; and
393 (b) a net capital loss for a taxable year shall be:
394 (i) subtracted for the taxable year for which the net capital loss is incurred; or
395 (ii) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue
396 Code.
397 (3) (a) For purposes of calculating the subtraction provided for in Subsection (1)(k), a

398 taxpayer shall first subtract from a dividend considered to be received or received an expense
399 directly attributable to that dividend.

400 (b) For purposes of Subsection (3)(a), the amount of an interest expense that is
401 considered to be directly attributable to a dividend is calculated by multiplying the interest
402 expense by a fraction:

403 (i) the numerator of which is the taxpayer's average investment in the dividend paying
404 subsidiaries; and

405 (ii) the denominator of which is the taxpayer's average total investment in assets.

406 (c) (i) For purposes of calculating the subtraction allowed by Subsection (1)(k), in
407 determining income apportionable to this state, a portion of the factors of a foreign subsidiary
408 that has dividends that are partially subtracted under Subsection (1)(k) shall be included in the
409 combined report factors as provided in this Subsection (3)(c).

410 (ii) For purposes of Subsection (3)(c)(i), the portion of the factors of a foreign
411 subsidiary that has dividends that are partially subtracted under Subsection (1)(k) that shall be
412 included in the combined report factors is calculated by multiplying each factor of the foreign
413 subsidiary by a fraction:

414 (A) not to exceed 100%; and

415 (B) (I) the numerator of which is the amount of the dividend paid by the foreign
416 subsidiary that is included in adjusted income; and

417 (II) the denominator of which is the current year earnings and profits of the foreign
418 subsidiary as determined under the Internal Revenue Code.

419 (d) A dividend described in Subsection (1)(k) includes amounts included in federal
420 taxable income under Section 965(a), Internal Revenue Code and amounts included in federal
421 taxable income under Section 951A, Internal Revenue Code.

422 (4) (a) For purposes of Subsection (1)(l), a taxpayer may not make a subtraction under
423 Subsection (1)(l):

424 (i) if the taxpayer elects to file a worldwide combined report as provided in Section
425 59-7-403; or

426 (ii) for the following:

427 (A) income generated from intangible property; or

428 (B) a capital gain, dividend, interest, rent, royalty, or other similar item that is

429 generated from an asset held for investment and not from a regular business trading activity.

430 (b) In calculating the subtraction provided for in Subsection (1)(l), a foreign operating
431 company:

432 (i) may not subtract an amount provided for in Subsection (1)(k) or (l); and

433 (ii) prior to determining the subtraction under Subsection (1)(l), shall eliminate a
434 transaction that occurs between members of a unitary group.

435 (c) For purposes of the subtraction provided for in Subsection (1)(l), in determining
436 income apportionable to this state, the factors for a foreign operating company shall be
437 included in the combined report factors in the same percentages as the foreign operating
438 company's adjusted income is included in the combined adjusted income.

439 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
440 commission may by rule define what constitutes:

441 (i) income generated from intangible property; or

442 (ii) a capital gain, dividend, interest, rent, royalty, or other similar item that is
443 generated from an asset held for investment and not from a regular business trading activity.

444 (5) (a) For purposes of the subtraction provided for in Subsection (1)(o), the amount of
445 a reduction in basis shall be allowed as an expense for the taxable year in which a federal tax
446 credit is claimed if:

447 (i) there is a reduction in federal basis for a federal tax credit; and

448 (ii) there is no corresponding tax credit allowed in this state.

449 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
450 commission may by rule define what constitutes an item similar to Subsections (1)(o)(i)
451 through (iv).

452 Section 3. Section **59-7-402** is amended to read:

453 **59-7-402. Water's edge combined report.**

454 (1) Except as provided in Section **59-7-403**, if any corporation listed in Subsection
455 **59-7-101**[(39)](40)(a) is doing business in Utah, the unitary group shall file a water's edge
456 combined report.

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

459 (i) doing business in Utah;

460 (ii) part of the same affiliated group; and
461 (iii) qualified, under Section 1501, Internal Revenue Code, to file a federal
462 consolidated return.

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

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

469 Section 4. **Retrospective operation.**

470 This bill has retrospective operation for:

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

472 (2) a taxable year beginning on or after January 1, 2018.