

1 **INCOME TAX REVISIONS**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Robert M. Spendlove**

5 Senate Sponsor: Lincoln Fillmore

6

LONG TITLE

7 **General Description:**

8 This bill modifies the tax obligations of pass-through entities and pass-through entity
9 taxpayers.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ authorizes a pass-through entity to pay a tax on behalf of pass-through entity
13 taxpayers who are individuals for a taxable year that begins on or after January 1,
14 2022, but begins on or before December 31, 2025;

15 ▶ requires an individual whose tax on income attributed to the pass-through entity
16 taxpayer is paid by the pass-through entity to add the amount of tax paid to the
17 pass-through entity taxpayer's individual tax return;

18 ▶ creates a nonrefundable income tax credit equal to the amount of the tax paid by the
19 pass-through entity;

20 ▶ requires a pass-through entity to report information to a pass-through entity taxpayer
21 regarding income attributed to the pass-through entity taxpayer and tax paid;

22 ▶ creates penalties for failure to provide the report or to pay the tax; and
23 ▶ makes technical and conforming changes.

24 **Money Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 This bill provides a special effective date.

29 This bill provides retrospective operation.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **59-1-401**, as last amended by Laws of Utah 2021, Chapter 367

33 **59-10-114**, as last amended by Laws of Utah 2021, Chapter 367

34 **59-10-406**, as last amended by Laws of Utah 2017, Chapter 226

35 **59-10-1103**, as last amended by Laws of Utah 2009, Chapter 312

36 **59-10-1402**, as last amended by Laws of Utah 2012, Chapter 95

37 **59-10-1403**, as last amended by Laws of Utah 2021, Chapter 367

38 **59-10-1403.2**, as last amended by Laws of Utah 2012, Chapter 95

39 ENACTS:

40 **59-10-1044**, Utah Code Annotated 1953

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

43 Section 1. Section **59-1-401** is amended to read:

44 **59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute
of limitations -- Commission authority to waive, reduce, or compromise penalty or
interest.**

47 (1) As used in this section:

48 (a) "Activated tax, fee, or charge" means a tax, fee, or charge with respect to which the
49 commission:

50 (i) has implemented the commission's GenTax system; and

51 (ii) at least 30 days before implementing the commission's GenTax system as described
52 in Subsection (1)(a)(i), has provided notice in a conspicuous place on the commission's website
53 stating:

54 (A) the date the commission will implement the GenTax system with respect to the tax,
55 fee, or charge; and

56 (B) that, at the time the commission implements the GenTax system with respect to the
57 tax, fee, or charge:

58 (I) a person that files a return after the due date as described in Subsection (2)(a) is
59 subject to the penalty described in Subsection (2)(c)(ii); and

60 (II) a person that fails to pay the tax, fee, or charge as described in Subsection (3)(a) is
61 subject to the penalty described in Subsection (3)(b)(ii).

62 (b) "Activation date for a tax, fee, or charge" means with respect to a tax, fee, or
63 charge, the later of:

64 (i) the date on which the commission implements the commission's GenTax system
65 with respect to the tax, fee, or charge; or

66 (ii) 30 days after the date the commission provides the notice described in Subsection
67 (1)(a)(ii) with respect to the tax, fee, or charge.

68 (c) (i) Except as provided in Subsection (1)(c)(ii), "tax, fee, or charge" means:

69 (A) a tax, fee, or charge the commission administers under:

70 (I) this title;

71 (II) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

72 (III) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

73 (IV) Section [19-6-410.5](#);

74 (V) Section [19-6-714](#);

75 (VI) Section [19-6-805](#);

76 (VII) Section [34A-2-202](#);

77 (VIII) Section [40-6-14](#); or

78 (IX) Title 69, Chapter 2, Part 4, Prepaid Wireless Telecommunications Service
79 Charges; or

80 (B) another amount that by statute is subject to a penalty imposed under this section.

81 (ii) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:

82 (A) Title 41, Chapter 1a, Motor Vehicle Act, except for Section [41-1a-301](#);

- 83 (B) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
- 84 (C) Chapter 2, Property Tax Act, except for Section **59-2-1309**;
- 85 (D) Chapter 3, Tax Equivalent Property Act; or
- 86 (E) Chapter 4, Privilege Tax.
- 87 (d) "Unactivated tax, fee, or charge" means a tax, fee, or charge except for an activated
88 tax, fee, or charge.
- 89 (2) (a) The due date for filing a return is:
- 90 (i) if the person filing the return is not allowed by law an extension of time for filing
91 the return, the day on which the return is due as provided by law; or
- 92 (ii) if the person filing the return is allowed by law an extension of time for filing the
93 return, the earlier of:
- 94 (A) the date the person files the return; or
- 95 (B) the last day of that extension of time as allowed by law.
- 96 (b) A penalty in the amount described in Subsection (2)(c) is imposed if a person files a
97 return after the due date described in Subsection (2)(a).
- 98 (c) For purposes of Subsection (2)(b), the penalty is an amount equal to the greater of:
- 99 (i) if the return described in Subsection (2)(b) is filed with respect to an unactivated
100 tax, fee, or charge:
- 101 (A) \$20; or
- 102 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or
- 103 (ii) if the return described in Subsection (2)(b) is filed with respect to an activated tax,
104 fee, or charge, beginning on the activation date for the tax, fee, or charge:
- 105 (A) \$20; or
- 106 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the return is
107 filed no later than five days after the due date described in Subsection (2)(a);
- 108 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the return is filed
109 more than five days after the due date but no later than 15 days after the due date described in

- 110 Subsection (2)(a); or
- 111 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the return is
- 112 filed more than 15 days after the due date described in Subsection (2)(a).
- 113 (d) This Subsection (2) does not apply to:
- 114 (i) an amended return; or
- 115 (ii) a return with no tax due.
- 116 (3) (a) [A] Except as provided in Subsection (15), a person is subject to a penalty for
- 117 failure to pay a tax, fee, or charge if:
- 118 (i) the person files a return on or before the due date for filing a return described in
- 119 Subsection (2)(a), but fails to pay the tax, fee, or charge due on the return on or before that due
- 120 date;
- 121 (ii) the person:
- 122 (A) is subject to a penalty under Subsection (2)(b); and
- 123 (B) fails to pay the tax, fee, or charge due on a return within a 90-day period after the
- 124 due date for filing a return described in Subsection (2)(a);
- 125 (iii) (A) the person is subject to a penalty under Subsection (2)(b); and
- 126 (B) the commission estimates an amount of tax due for that person in accordance with
- 127 Subsection 59-1-1406(2);
- 128 (iv) the person:
- 129 (A) is mailed a notice of deficiency; and
- 130 (B) within a 30-day period after the day on which the notice of deficiency described in
- 131 Subsection (3)(a)(iv)(A) is mailed:
- 132 (I) does not file a petition for redetermination or a request for agency action; and
- 133 (II) fails to pay the tax, fee, or charge due on a return;
- 134 (v) (A) the commission:
- 135 (I) issues an order constituting final agency action resulting from a timely filed petition
- 136 for redetermination or a timely filed request for agency action; or

- 137 (II) is considered to have denied a request for reconsideration under Subsection
138 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed
139 request for agency action; and
- 140 (B) the person fails to pay the tax, fee, or charge due on a return within a 30-day period
141 after the date the commission:
- 142 (I) issues the order constituting final agency action described in Subsection
143 (3)(a)(v)(A)(I); or
- 144 (II) is considered to have denied the request for reconsideration described in
145 Subsection (3)(a)(v)(A)(II); or
- 146 (vi) the person fails to pay the tax, fee, or charge within a 30-day period after the date
147 of a final judicial decision resulting from a timely filed petition for judicial review.
- 148 (b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:
149 (i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with
150 respect to an unactivated tax, fee, or charge:
- 151 (A) \$20; or
- 152 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or
- 153 (ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with
154 respect to an activated tax, fee, or charge, beginning on the activation date:
- 155 (A) \$20; or
- 156 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the activated
157 tax, fee, or charge due on the return is paid no later than five days after the due date for filing a
158 return described in Subsection (2)(a);
- 159 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the activated tax,
160 fee, or charge due on the return is paid more than five days after the due date for filing a return
161 described in Subsection (2)(a) but no later than 15 days after that due date; or
- 162 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the activated
163 tax, fee, or charge due on the return is paid more than 15 days after the due date for filing a

164 return described in Subsection (2)(a).

165 (4) (a) [Beginning January 1, 1995, in] In the case of any underpayment of estimated
166 tax or quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104,
167 there shall be added a penalty in an amount determined by applying the interest rate provided
168 under Section 59-1-402 plus four percentage points to the amount of the underpayment for the
169 period of the underpayment.

170 (b) (i) For purposes of Subsection (4)(a), the amount of the underpayment shall be the
171 excess of the required installment over the amount, if any, of the installment paid on or before
172 the due date for the installment.

173 (ii) The period of the underpayment shall run from the due date for the installment to
174 whichever of the following dates is the earlier:

175 (A) the original due date of the tax return, without extensions, for the taxable year; or
176 (B) with respect to any portion of the underpayment, the date on which that portion is
177 paid.

178 (iii) For purposes of this Subsection (4), a payment of estimated tax shall be credited
179 against unpaid required installments in the order in which the installments are required to be
180 paid.

181 (5) (a) Notwithstanding Subsection (2) and except as provided in Subsection (6), a
182 person allowed by law an extension of time for filing a corporate franchise or income tax return
183 under Chapter 7, Corporate Franchise and Income Taxes, or an individual income tax return
184 under Chapter 10, Individual Income Tax Act, is subject to a penalty in the amount described in
185 Subsection (5)(b) if, on or before the day on which the return is due as provided by law, not
186 including the extension of time, the person fails to pay:

187 (i) for a person filing a corporate franchise or income tax return under Chapter 7,
188 Corporate Franchise and Income Taxes, the payment required by Subsection 59-7-507(1)(b); or

189 (ii) for a person filing an individual income tax return under Chapter 10, Individual
190 Income Tax Act, the payment required by Subsection 59-10-516(2).

191 (b) For purposes of Subsection (5)(a), the penalty per month during the period of the
192 extension of time for filing the return is an amount equal to 2% of the tax due on the return,
193 unpaid as of the day on which the return is due as provided by law.

194 (6) If a person does not file a return within an extension of time allowed by Section
195 [59-7-505](#) or [59-10-516](#), the person:

196 (a) is not subject to a penalty in the amount described in Subsection (5)(b); and
197 (b) is subject to a penalty in an amount equal to the sum of:
198 (i) a late file penalty in an amount equal to the greater of:
199 (A) \$20; or
200 (B) 10% of the tax due on the return, unpaid as of the day on which the return is due as
201 provided by law, not including the extension of time; and
202 (ii) a late pay penalty in an amount equal to the greater of:
203 (A) \$20; or
204 (B) 10% of the unpaid tax due on the return, unpaid as of the day on which the return is
205 due as provided by law, not including the extension of time.

206 (7) (a) Additional penalties for an underpayment of a tax, fee, or charge are as provided
207 in this Subsection (7)(a).

208 (i) Except as provided in Subsection (7)(c), if any portion of an underpayment of a tax,
209 fee, or charge is due to negligence, the penalty is 10% of the portion of the underpayment that
210 is due to negligence.

211 (ii) Except as provided in Subsection (7)(d), if any portion of an underpayment of a
212 tax, fee, or charge is due to intentional disregard of law or rule, the penalty is 15% of the entire
213 underpayment.

214 (iii) If any portion of an underpayment is due to an intent to evade a tax, fee, or charge,
215 the penalty is the greater of \$500 per period or 50% of the entire underpayment.

216 (iv) If any portion of an underpayment is due to fraud with intent to evade a tax, fee, or
217 charge, the penalty is the greater of \$500 per period or 100% of the entire underpayment.

218 (b) If the commission determines that a person is liable for a penalty imposed under
219 Subsection (7)(a)(ii), (iii), or (iv), the commission shall notify the person of the proposed
220 penalty.

221 (i) The notice of proposed penalty shall:
222 (A) set forth the basis of the assessment; and
223 (B) be mailed by certified mail, postage prepaid, to the person's last-known address.

224 (ii) Upon receipt of the notice of proposed penalty, the person against whom the
225 penalty is proposed may:

226 (A) pay the amount of the proposed penalty at the place and time stated in the notice;
227 or

228 (B) proceed in accordance with the review procedures of Subsection (7)(b)(iii).

229 (iii) A person against whom a penalty is proposed in accordance with this Subsection
230 (7) may contest the proposed penalty by filing a petition for an adjudicative proceeding with
231 the commission.

232 (iv) (A) If the commission determines that a person is liable for a penalty under this
233 Subsection (7), the commission shall assess the penalty and give notice and demand for
234 payment.

235 (B) The commission shall mail the notice and demand for payment described in
236 Subsection (7)(b)(iv)(A):

237 (I) to the person's last-known address; and
238 (II) in accordance with Section [59-1-1404](#).

239 (c) A seller that voluntarily collects a tax under Subsection [59-12-107](#)(2)(d) is not
240 subject to the penalty under Subsection (7)(a)(i) if on or after July 1, 2001:

241 (i) a court of competent jurisdiction issues a final unappealable judgment or order
242 determining that:

243 (A) the seller meets one or more of the criteria described in Subsection [59-12-107](#)(2)(a)
244 or is a seller required to pay or collect and remit sales and use taxes under Subsection

245 59-12-107(2)(b) or (2)(c); and

246 (B) the commission or a county, city, or town may require the seller to collect a tax
247 under Subsections 59-12-103(2)(a) through (e); or

248 (ii) the commission issues a final unappealable administrative order determining that:

249 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
250 or is a seller required to pay or collect and remit sales and use taxes under Subsection
251 59-12-107(2)(b) or (2)(c); and

252 (B) the commission or a county, city, or town may require the seller to collect a tax
253 under Subsections 59-12-103(2)(a) through (e).

254 (d) A seller that voluntarily collects a tax under Subsection 59-12-107(2)(d) is not
255 subject to the penalty under Subsection (7)(a)(ii) if:

256 (i) (A) a court of competent jurisdiction issues a final unappealable judgment or order
257 determining that:

258 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
259 or is a seller required to pay or collect and remit sales and use taxes under Subsection
260 59-12-107(2)(b) or (2)(c); and

261 (II) the commission or a county, city, or town may require the seller to collect a tax
262 under Subsections 59-12-103(2)(a) through (e); or

263 (B) the commission issues a final unappealable administrative order determining that:

264 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
265 or is a seller required to pay or collect and remit sales and use taxes under Subsection
266 59-12-107(2)(b) or (2)(c); and

267 (II) the commission or a county, city, or town may require the seller to collect a tax
268 under Subsections 59-12-103(2)(a) through (e); and

269 (ii) the seller's intentional disregard of law or rule is warranted by existing law or by a
270 nonfrivolous argument for the extension, modification, or reversal of existing law or the
271 establishment of new law.

272 (8) (a) Subject to Subsections (8)(b) and (c), the penalty for failure to file an
273 information return, information report, or a complete supporting schedule is \$50 for each
274 information return, information report, or supporting schedule up to a maximum of \$1,000.

275 (b) If an employer is subject to a penalty under Subsection (13), the employer may not
276 be subject to a penalty under Subsection (8)(a).

277 (c) If an employer is subject to a penalty under this Subsection (8) for failure to file a
278 return in accordance with Subsection 59-10-406(3) on or before the due date described in
279 Subsection 59-10-406(3)(b)(ii), the commission may not impose a penalty under this
280 Subsection (8) unless the return is filed more than 14 days after the due date described in
281 Subsection 59-10-406(3)(b)(ii).

282 (9) If a person, in furtherance of a frivolous position, has a *prima facie* intent to delay
283 or impede administration of a law relating to a tax, fee, or charge and files a purported return
284 that fails to contain information from which the correctness of reported tax, fee, or charge
285 liability can be determined or that clearly indicates that the tax, fee, or charge liability shown is
286 substantially incorrect, the penalty is \$500.

287 (10) (a) A seller that fails to remit a tax, fee, or charge monthly as required by
288 Subsection 59-12-108(1)(a):

289 (i) is subject to a penalty described in Subsection (2); and
290 (ii) may not retain the percentage of sales and use taxes that would otherwise be
291 allowable under Subsection 59-12-108(2).

292 (b) A seller that fails to remit a tax, fee, or charge by electronic funds transfer as
293 required by Subsection 59-12-108(1)(a)(ii)(B):

294 (i) is subject to a penalty described in Subsection (2); and
295 (ii) may not retain the percentage of sales and use taxes that would otherwise be
296 allowable under Subsection 59-12-108(2).

297 (11) (a) A person is subject to the penalty provided in Subsection (11)(c) if that person:
298 (i) commits an act described in Subsection (11)(b) with respect to one or more of the

299 following documents:

300 (A) a return;

301 (B) an affidavit;

302 (C) a claim; or

303 (D) a document similar to Subsections (11)(a)(i)(A) through (C);

304 (ii) knows or has reason to believe that the document described in Subsection (11)(a)(i)

305 will be used in connection with any material matter administered by the commission; and

306 (iii) knows that the document described in Subsection (11)(a)(i), if used in connection
307 with any material matter administered by the commission, would result in an understatement of
308 another person's liability for a tax, fee, or charge.

309 (b) The following acts apply to Subsection (11)(a)(i):

310 (i) preparing any portion of a document described in Subsection (11)(a)(i);

311 (ii) presenting any portion of a document described in Subsection (11)(a)(i);

312 (iii) procuring any portion of a document described in Subsection (11)(a)(i);

313 (iv) advising in the preparation or presentation of any portion of a document described
314 in Subsection (11)(a)(i);

315 (v) aiding in the preparation or presentation of any portion of a document described in
316 Subsection (11)(a)(i);

317 (vi) assisting in the preparation or presentation of any portion of a document described
318 in Subsection (11)(a)(i); or

319 (vii) counseling in the preparation or presentation of any portion of a document
320 described in Subsection (11)(a)(i).

321 (c) For purposes of Subsection (11)(a), the penalty:

322 (i) shall be imposed by the commission;

323 (ii) is \$500 for each document described in Subsection (11)(a)(i) with respect to which
324 the person described in Subsection (11)(a) meets the requirements of Subsection (11)(a); and

325 (iii) is in addition to any other penalty provided by law.

326 (d) The commission may seek a court order to enjoin a person from engaging in
327 conduct that is subject to a penalty under this Subsection (11).

328 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
329 commission may make rules prescribing the documents that are similar to Subsections
330 (11)(a)(i)(A) through (C).

331 (12) (a) As provided in Section [76-8-1101](#), criminal offenses and penalties are as
332 provided in Subsections (12)(b) through (e).

333 (b) (i) A person who is required by this title or any laws the commission administers or
334 regulates to register with or obtain a license or permit from the commission, who operates
335 without having registered or secured a license or permit, or who operates when the registration,
336 license, or permit is expired or not current, is guilty of a class B misdemeanor.

337 (ii) Notwithstanding Section [76-3-301](#), for purposes of Subsection (12)(b)(i), the
338 penalty may not:

339 (A) be less than \$500; or
340 (B) exceed \$1,000.

341 (c) (i) With respect to a tax, fee, or charge, a person who knowingly and intentionally,
342 and without a reasonable good faith basis, fails to make, render, sign, or verify a return within
343 the time required by law or to supply information within the time required by law, or who
344 makes, renders, signs, or verifies a false or fraudulent return or statement, or who supplies false
345 or fraudulent information, is guilty of a third degree felony.

346 (ii) Notwithstanding Section [76-3-301](#), for purposes of Subsection (12)(c)(i), the
347 penalty may not:

348 (A) be less than \$1,000; or
349 (B) exceed \$5,000.

350 (d) (i) A person who intentionally or willfully attempts to evade or defeat a tax, fee, or
351 charge or the payment of a tax, fee, or charge is, in addition to other penalties provided by law,
352 guilty of a second degree felony.

- 353 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(d)(i), the
354 penalty may not:
- 355 (A) be less than \$1,500; or
356 (B) exceed \$25,000.
- 357 (e) (i) A person is guilty of a second degree felony if that person commits an act:
358 (A) described in Subsection (12)(e)(ii) with respect to one or more of the following
359 documents:
- 360 (I) a return;
361 (II) an affidavit;
362 (III) a claim; or
363 (IV) a document similar to Subsections (12)(e)(i)(A)(I) through (III); and
364 (B) subject to Subsection (12)(e)(iii), with knowledge that the document described in
365 Subsection (12)(e)(i)(A):
366 (I) is false or fraudulent as to any material matter; and
367 (II) could be used in connection with any material matter administered by the
368 commission.
- 369 (ii) The following acts apply to Subsection (12)(e)(i):
370 (A) preparing any portion of a document described in Subsection (12)(e)(i)(A);
371 (B) presenting any portion of a document described in Subsection (12)(e)(i)(A);
372 (C) procuring any portion of a document described in Subsection (12)(e)(i)(A);
373 (D) advising in the preparation or presentation of any portion of a document described
374 in Subsection (12)(e)(i)(A);
375 (E) aiding in the preparation or presentation of any portion of a document described in
376 Subsection (12)(e)(i)(A);
377 (F) assisting in the preparation or presentation of any portion of a document described
378 in Subsection (12)(e)(i)(A); or
379 (G) counseling in the preparation or presentation of any portion of a document

380 described in Subsection (12)(e)(i)(A).

381 (iii) This Subsection (12)(e) applies:

382 (A) regardless of whether the person for which the document described in Subsection

383 (12)(e)(i)(A) is prepared or presented:

384 (I) knew of the falsity of the document described in Subsection (12)(e)(i)(A); or

385 (II) consented to the falsity of the document described in Subsection (12)(e)(i)(A); and

386 (B) in addition to any other penalty provided by law.

387 (iv) Notwithstanding Section 76-3-301, for purposes of this Subsection (12)(e), the
388 penalty may not:

389 (A) be less than \$1,500; or

390 (B) exceed \$25,000.

391 (v) The commission may seek a court order to enjoin a person from engaging in
392 conduct that is subject to a penalty under this Subsection (12)(e).

393 (vi) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
394 the commission may make rules prescribing the documents that are similar to Subsections
395 (12)(e)(i)(A) through (III).

396 (f) The statute of limitations for prosecution for a violation of this Subsection (12) is
397 the later of six years:

398 (i) from the date the tax should have been remitted; or

399 (ii) after the day on which the person commits the criminal offense.

400 (13) (a) Subject to Subsection (13)(b), an employer that is required to file a form with
401 the commission in accordance with Subsection 59-10-406(8) or (9) is subject to a penalty
402 described in Subsection (13)(b) if the employer:

403 (i) fails to file the form with the commission in an electronic format approved by the
404 commission as required by Subsection 59-10-406(8) or (9);

405 (ii) fails to file the form on or before the due date provided in Subsection 59-10-406(8)
406 or (9);

407 (iii) fails to provide accurate information on the form; or
408 (iv) fails to provide all of the information required by the Internal Revenue Service to
409 be contained on the form.

410 (b) For purposes of Subsection (13)(a), the penalty is:
411 (i) \$30 per form, not to exceed \$75,000 in a calendar year, if the employer files the
412 form in accordance with Subsection **59-10-406(8) or (9)**, more than 14 days after the due date
413 provided in Subsection **59-10-406(8) or (9)** but no later than 30 days after the due date
414 provided in Subsection **59-10-406(8) or (9)**;

415 (ii) \$60 per form, not to exceed \$200,000 in a calendar year, if the employer files the
416 form in accordance with Subsection **59-10-406(8) or (9)**, more than 30 days after the due date
417 provided in Subsection **59-10-406(8) or (9)** but on or before June 1; or

418 (iii) \$100 per form, not to exceed \$500,000 in a calendar year, if the employer:
419 (A) files the form in accordance with Subsection **59-10-406(8) or (9)** after June 1; or
420 (B) fails to file the form.

421 (14) Upon making a record of [its] the commission's actions, and upon reasonable
422 cause shown, the commission may waive, reduce, or compromise any of the penalties or
423 interest imposed under this part.

424 (15) Failure to pay a tax described in Subsection 59-10-1403.2(2) shall be subject to a
425 penalty as described in Subsection (3) except that the penalty shall be:

426 (a) assessed only if the pass-through entity reports tax paid on a Utah Schedule K-1 but
427 does not pay some or all of the tax reported; and

428 (b) calculated based on the difference between the amount of tax reported and the
429 amount of tax paid.

430 Section 2. Section **59-10-114** is amended to read:

431 **59-10-114. Additions to and subtractions from adjusted gross income of an**
432 **individual.**

433 (1) There shall be added to adjusted gross income of a resident or nonresident

434 individual:

435 (a) a lump sum distribution that the taxpayer does not include in adjusted gross income
436 on the taxpayer's federal individual income tax return for the taxable year;

437 (b) the amount of a child's income calculated under Subsection (4) that:

438 (i) a parent elects to report on the parent's federal individual income tax return for the
439 taxable year; and

440 (ii) the parent does not include in adjusted gross income on the parent's federal
441 individual income tax return for the taxable year;

442 (c) (i) a withdrawal from a medical care savings account and any penalty imposed for
443 the taxable year if:

444 (A) the resident or nonresident individual does not deduct the amounts on the resident
445 or nonresident individual's federal individual income tax return under Section 220, Internal
446 Revenue Code;

447 (B) the withdrawal is subject to Subsections [31A-32a-105](#)(1) and (2); and

448 (C) the withdrawal is subtracted on, or used as the basis for claiming a tax credit on, a
449 return the resident or nonresident individual files under this chapter;

450 (ii) a disbursement required to be added to adjusted gross income in accordance with
451 Subsection [31A-32a-105](#)(3); or

452 (iii) an amount required to be added to adjusted gross income in accordance with
453 Subsection [31A-32a-105](#)(5)(c);

454 (d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan,
455 from the account of a resident or nonresident individual who is an account owner as defined in
456 Section [53B-8a-102](#), for the taxable year for which the amount is withdrawn, if that amount
457 withdrawn from the account of the resident or nonresident individual who is the account
458 owner:

459 (i) is not expended for:

460 (A) higher education costs as defined in Section [53B-8a-102.5](#); or

461 (B) a payment or distribution that qualifies as an exception to the additional tax for
462 distributions not used for educational expenses provided in Sections 529(c) and 530(d),
463 Internal Revenue Code; and

464 (ii) is:

465 (A) subtracted by the resident or nonresident individual:

466 (I) who is the account owner; and

467 (II) on the resident or nonresident individual's return filed under this chapter for a
468 taxable year beginning on or before December 31, 2007; or

469 (B) used as the basis for the resident or nonresident individual who is the account
470 owner to claim a tax credit under Section [59-10-1017](#);

471 (e) except as provided in Subsection (5), for bonds, notes, and other evidences of
472 indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other
473 evidences of indebtedness:

474 (i) issued by one or more of the following entities:

475 (A) a state other than this state;

476 (B) the District of Columbia;

477 (C) a political subdivision of a state other than this state; or

478 (D) an agency or instrumentality of an entity described in Subsections (1)(e)(i)(A)
479 through (C); and

480 (ii) to the extent the interest is not included in adjusted gross income on the taxpayer's
481 federal income tax return for the taxable year;

482 (f) subject to Subsection (2)(c), any distribution received by a resident beneficiary of a
483 resident trust of income that was taxed at the trust level for federal tax purposes, but was
484 subtracted from state taxable income of the trust pursuant to Subsection [59-10-202](#)(2)(b);

485 (g) any distribution received by a resident beneficiary of a nonresident trust of
486 undistributed distributable net income realized by the trust on or after January 1, 2004, if that
487 undistributed distributable net income was taxed at the trust level for federal tax purposes, but

488 was not taxed at the trust level by any state, with undistributed distributable net income
489 considered to be distributed from the most recently accumulated undistributed distributable net
490 income; [and]

491 (h) any adoption expense:

492 (i) for which a resident or nonresident individual receives reimbursement from another
493 person; and

494 (ii) to the extent to which the resident or nonresident individual subtracts that adoption
495 expense:

496 (A) on a return filed under this chapter for a taxable year beginning on or before
497 December 31, 2007; or

498 (B) from federal taxable income on a federal individual income tax return[:];

499 (i) the amount of tax paid on income attributed to the individual in accordance with
500 Subsection 59-10-1403.2(2); and

501 (j) the amount of tax paid:

502 (i) on income attributed to the individual and taxable in this state;

503 (ii) to another state; and

504 (iii) that the commission determines is substantially similar to the tax imposed under
505 Subsection 59-10-1403.2(2).

506 (2) There shall be subtracted from adjusted gross income of a resident or nonresident
507 individual:

508 (a) the difference between:

509 (i) the interest or a dividend on an obligation or security of the United States or an
510 authority, commission, instrumentality, or possession of the United States, to the extent that
511 interest or dividend is:

512 (A) included in adjusted gross income for federal income tax purposes for the taxable
513 year; and

514 (B) exempt from state income taxes under the laws of the United States; and

- 515 (ii) any interest on indebtedness incurred or continued to purchase or carry the
516 obligation or security described in Subsection (2)(a)(i);
517 (b) if the conditions of Subsection (3)(a) are met, the amount of income derived by a
518 Ute tribal member:
519 (i) during a time period that the Ute tribal member resides on homesteaded land
520 diminished from the Uintah and Ouray Reservation; and
521 (ii) from a source within the Uintah and Ouray Reservation;
522 (c) an amount received by a resident or nonresident individual or distribution received
523 by a resident or nonresident beneficiary of a resident trust:
524 (i) if that amount or distribution constitutes a refund of taxes imposed by:
525 (A) a state; or
526 (B) the District of Columbia; and
527 (ii) to the extent that amount or distribution is included in adjusted gross income for
528 that taxable year on the federal individual income tax return of the resident or nonresident
529 individual or resident or nonresident beneficiary of a resident trust;
530 (d) the amount of a railroad retirement benefit:
531 (i) paid:
532 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
533 seq.;
534 (B) to a resident or nonresident individual; and
535 (C) for the taxable year; and
536 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on
537 that resident or nonresident individual's federal individual income tax return for that taxable
538 year;
539 (e) an amount:
540 (i) received by an enrolled member of an American Indian tribe; and
541 (ii) to the extent that the state is not authorized or permitted to impose a tax under this

542 part on that amount in accordance with:

543 (A) federal law;

544 (B) a treaty; or

545 (C) a final decision issued by a court of competent jurisdiction;

546 (f) an amount received:

547 (i) for the interest on a bond, note, or other obligation issued by an entity for which

548 state statute provides an exemption of interest on its bonds from state individual income tax;

549 (ii) by a resident or nonresident individual;

550 (iii) for the taxable year; and

551 (iv) to the extent the amount is included in adjusted gross income on the taxpayer's

552 federal income tax return for the taxable year;

553 (g) the amount of all income, including income apportioned to another state, of a

554 nonmilitary spouse of an active duty military member if:

555 (i) both the nonmilitary spouse and the active duty military member are nonresident

556 individuals;

557 (ii) the active duty military member is stationed in Utah;

558 (iii) the nonmilitary spouse is subject to the residency provisions of 50 U.S.C. Sec.

559 4001(a)(2); and

560 (iv) the income is included in adjusted gross income for federal income tax purposes

561 for the taxable year;

562 (h) for a taxable year beginning on or after January 1, 2019, but beginning on or before

563 December 31, 2019, only:

564 (i) the amount of any FDIC premium paid or incurred by the taxpayer that is

565 disallowed as a deduction for federal income tax purposes under Section 162(r), Internal

566 Revenue Code, on the taxpayer's 2018 federal income tax return; plus

567 (ii) the amount of any FDIC premium paid or incurred by the taxpayer that is

568 disallowed as a deduction for federal income tax purposes under Section 162(r), Internal

569 Revenue Code, for the taxable year;

570 (i) for a taxable year beginning on or after January 1, 2020, the amount of any FDIC
571 premium paid or incurred by the taxpayer that is disallowed as a deduction for federal income
572 tax purposes under Section 162(r), Internal Revenue Code, for the taxable year; and

573 (j) an amount of a distribution from a qualified retirement plan under Section 401(a),
574 Internal Revenue Code, if:

575 (i) the amount of the distribution is included in adjusted gross income on the resident
576 or nonresident individual's federal individual income tax return for the taxable year; and

577 (ii) for the taxable year when the amount of the distribution was contributed to the
578 qualified retirement plan, the amount of the distribution:

579 (A) was not included in adjusted gross income on the resident or nonresident
580 individual's federal individual income tax return for the taxable year; and

581 (B) was taxed by another state of the United States, the District of Columbia, or a
582 possession of the United States.

583 (3) (a) A subtraction for an amount described in Subsection (2)(b) is allowed only if:

584 (i) the taxpayer is a Ute tribal member; and

585 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
586 requirements of this Subsection (3).

587 (b) The agreement described in Subsection (3)(a):

588 (i) may not:

589 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

590 (B) provide a subtraction under this section greater than or different from the
591 subtraction described in Subsection (2)(b); or

592 (C) affect the power of the state to establish rates of taxation; and

593 (ii) shall:

594 (A) provide for the implementation of the subtraction described in Subsection (2)(b);

595 (B) be in writing;

596 (C) be signed by:
597 (I) the governor; and
598 (II) the chair of the Business Committee of the Ute tribe;
599 (D) be conditioned on obtaining any approval required by federal law; and
600 (E) state the effective date of the agreement.

601 (c) (i) The governor shall report to the commission by no later than February 1 of each
602 year regarding whether or not an agreement meeting the requirements of this Subsection (3) is
603 in effect.

604 (ii) If an agreement meeting the requirements of this Subsection (3) is terminated, the subtraction
605 permitted under Subsection (2)(b) is not allowed for taxable years beginning on or
606 after the January 1 following the termination of the agreement.

607 (d) For purposes of Subsection (2)(b) and in accordance with Title 63G, Chapter 3,
608 Utah Administrative Rulemaking Act, the commission may make rules:
609 (i) for determining whether income is derived from a source within the Uintah and
610 Ouray Reservation; and
611 (ii) that are substantially similar to how adjusted gross income derived from Utah
612 sources is determined under Section 59-10-117.

613 (4) (a) For purposes of this Subsection (4), "Form 8814" means:
614 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's
615 Interest and Dividends; or
616 (ii) (A) a form designated by the commission in accordance with Subsection
617 (4)(a)(ii)(B) as being substantially similar to 2000 Form 8814 if for purposes of federal
618 individual income taxes the information contained on 2000 Form 8814 is reported on a form
619 other than Form 8814; and
620 (B) for purposes of Subsection (4)(a)(ii)(A) and in accordance with Title 63G, Chapter
621 3, Utah Administrative Rulemaking Act, the commission may make rules designating a form as
622 being substantially similar to 2000 Form 8814 if for purposes of federal individual income

623 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
624 8814.

625 (b) The amount of a child's income added to adjusted gross income under Subsection
626 (1)(b) is equal to the difference between:

627 (i) the lesser of:

628 (A) the base amount specified on Form 8814; and

629 (B) the sum of the following reported on Form 8814:

630 (I) the child's taxable interest;

631 (II) the child's ordinary dividends; and

632 (III) the child's capital gain distributions; and

633 (ii) the amount not taxed that is specified on Form 8814.

634 (5) Notwithstanding Subsection (1)(e), interest from bonds, notes, and other evidences
635 of indebtedness issued by an entity described in Subsections (1)(e)(i)(A) through (D) may not
636 be added to adjusted gross income of a resident or nonresident individual if, as annually
637 determined by the commission:

638 (a) for an entity described in Subsection (1)(e)(i)(A) or (B), the entity and all of the
639 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on
640 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

641 (b) for an entity described in Subsection (1)(e)(i)(C) or (D), the following do not
642 impose a tax based on income on any part of the bonds, notes, and other evidences of
643 indebtedness of this state:

644 (i) the entity; or

645 (ii) (A) the state in which the entity is located; or

646 (B) the District of Columbia, if the entity is located within the District of Columbia.

647 Section 3. Section **59-10-406** is amended to read:

648 **59-10-406. Collection and payment of tax -- Forms filed electronically.**

649 (1) (a) Each employer shall, on or before the last day of April, July, October, and

650 January, pay to the commission the amount required to be deducted and withheld from wages
651 paid to any employee during the preceding calendar quarter under this part.

652 (b) The commission may change the time or period for making reports and payments
653 if:

654 (i) in its opinion, the tax is in jeopardy; or
655 (ii) a different time or period will facilitate the collection and payment of the tax by the
656 employer.

657 (2) (a) Each employer shall file a return, in a form the commission prescribes, with
658 each payment of the amount deducted and withheld under this part showing:

659 (i) the total amount of wages paid to his employees;
660 (ii) the amount of federal income tax deducted and withheld;
661 (iii) the amount of tax under this part deducted and withheld; and
662 (iv) any other information the commission may require.

663 (b) The employer shall file the return described in Subsection (2)(a) in an electronic
664 format approved by the commission.

665 (3) (a) Each employer shall file an annual return, in a form the commission prescribes,
666 summarizing:

667 (i) the total compensation paid;
668 (ii) the federal income tax deducted and withheld; and
669 (iii) the state tax deducted and withheld for each employee during the calendar year.

670 (b) The return required by Subsection (3)(a) shall be filed with the commission:

671 (i) in an electronic format approved by the commission; and
672 (ii) on or before January 31 of the year following that for which the report is made.

673 (4) (a) Each employer shall also, in accordance with rules prescribed by the
674 commission, provide each employee from whom state income tax has been withheld with a
675 statement of the amounts of total compensation paid and the amounts deducted and withheld
676 for that employee during the preceding calendar year in accordance with this part.

677 (b) The statement shall be made available to each employee described in Subsection
678 (4)(a) on or before January 31 of the year following that for which the report is made.

679 (5) (a) The employer is liable to the commission for the payment of the tax required to
680 be deducted and withheld under this part.

681 (b) If an employer pays the tax required to be deducted and withheld under this part:

682 (i) an employee of the employer is not liable for the amount of any payment described
683 in Subsection (5)(a); and

684 (ii) the employer is not liable to any person or to any employee for the amount of any
685 such payment described in Subsection (5)(a).

686 (c) For the purpose of making penal provisions of this title applicable, any amount
687 deducted or required to be deducted and remitted to the commission under this part is
688 considered to be the tax of the employer and with respect to such amounts the employer is
689 considered to be the taxpayer.

690 (6) (a) Each employer that deducts and withholds any amount under this part shall hold
691 the amount in trust for the state for the payment of the amount to the commission in the manner
692 and at the time provided for in this part.

693 (b) So long as any delinquency continues, the state shall have a lien to secure the
694 payment of any amounts withheld, and not remitted as provided under this section, upon all of
695 the assets of the employer and all property owned or used by the employer in the conduct of the
696 employer's business, including stock-in-trade, business fixtures, and equipment.

697 (c) The lien described in Subsection (6)(b) shall be prior to any lien of any kind,
698 including existing liens for taxes.

699 (7) To the extent consistent with this section, the commission may use all the
700 provisions of this chapter relating to records, penalties, interest, deficiencies, redetermination
701 of deficiencies, overpayments, refunds, assessments, and venue to enforce this section.

702 (8) (a) Subject to Subsections (8)(b) and (c), the commission shall require an employer
703 that issues the following forms for a taxable year to file the forms with the commission in an

704 electronic format approved by the commission:

705 (i) a federal Form W-2;

706 (ii) a federal Form 1099 filed for purposes of withholding under Section **59-10-404**; or

707 (iii) a federal form substantially similar to a form described in Subsection (8)(a)(i) or

708 (ii) if designated by the commission in accordance with Subsection (8)(d).

709 (b) An employer that is required to file a form with the commission in accordance with
710 Subsection (8)(a) shall file the form on or before January 31.

711 (c) An employer that is required to file a form with the commission in accordance with
712 Subsection (8)(a) shall provide:

713 (i) accurate information on the form; and

714 (ii) all of the information required by the Internal Revenue Service to be contained on
715 the form.

716 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
717 purposes of Subsection (8)(a), the commission may designate a federal form as being
718 substantially similar to a form described in Subsection (8)(a)(i) or (ii) if:

719 (i) for purposes of federal individual income taxes a different federal form contains
720 substantially similar information to a form described in Subsection (8)(a)(i) or (ii); or

721 (ii) the Internal Revenue Service replaces a form described in Subsection (8)(a)(i) or
722 (ii) with a different federal form.

723 (9) (a) Subject to Subsection (9)(b), a pass-through entity shall file with the
724 commission in an electronic format approved by the commission a Utah Schedule K-1, or a
725 substantially similar form designated by the commission, for each pass-through entity taxpayer
726 of a pass-through entity that elected to pay a tax in accordance with Subsection
727 **59-10-1403.2(2)**.

728 (b) The pass-through entity shall file a form described in Subsection (9)(a) with the
729 pass-through entity's return.

730 Section 4. Section **59-10-1044** is enacted to read:

731 **59-10-1044. Nonrefundable tax credit for taxes paid by pass-through entity.**

732 (1) As used in this section, "taxed pass-through entity taxpayer" means a resident or
733 nonresident individual who:

734 (a) has income attributed to the individual by a pass-through entity;

735 (b) receives the income described in Subsection (1)(a) after the pass-through entity
736 pays the tax described in Subsection 59-10-1403.2(2); and

737 (c) adds the amount of tax paid on the income described in Subsection (1)(a) to
738 adjusted gross income in accordance with Subsection 59-10-114(1)(i).

739 (2) (a) A taxed pass-through entity taxpayer may claim a nonrefundable tax credit for
740 the taxes imposed under Subsection 59-10-1403.2(2).

741 (b) The tax credit is equal to the amount of the tax paid under Subsection
742 59-10-1403.2(2) by the pass-through entity on the income attributed to the taxed pass-through
743 entity taxpayer.

744 (3) (a) A taxed pass-through entity taxpayer may carry forward the amount of the tax
745 credit that exceeds the taxed pass-through entity's tax liability for a period that does not exceed
746 the next five taxable years.

747 (b) A taxed pass-through entity taxpayer may not carry back the amount of the tax
748 credit that exceeds the taxed pass-through entity's tax liability for the taxable year.

749 Section 5. Section **59-10-1103** is amended to read:

750 **59-10-1103. Tax credit for pass-through entity taxpayer.**

751 (1) As used in this section:

752 (a) "Pass-through entity" [is as] means the same as that term is defined in Section
753 59-10-1402.

754 (b) "Pass-through entity taxpayer" [is as] means the same as that term is defined in
755 Section 59-10-1402.

756 (2) A pass-through entity taxpayer may claim a refundable tax credit against the tax
757 otherwise due under this chapter if that pass-through entity taxpayer is a:

- 758 (a) claimant;
759 (b) estate; or
760 (c) trust.
- 761 (3) The tax credit described in Subsection (2) is equal to the amount paid or withheld
762 by the pass-through entity on behalf of the pass-through entity taxpayer described in Subsection
763 (2) in accordance with Section 59-10-1403.2, other than a tax described in Subsection
764 59-10-1403.2(2).
- 765 (4) A pass-through entity taxpayer may not claim a tax credit under this section for an
766 amount for which the pass-through entity taxpayer claims a tax credit under Section
767 59-7-614.4.
- 768 Section 6. Section **59-10-1402** is amended to read:
- 769 **59-10-1402. Definitions.**
- 770 As used in this part:
- 771 (1) "Addition, subtraction, or adjustment" means:
772 (a) for a pass-through entity taxpayer that is classified as a C corporation for federal
773 income tax purposes, under Chapter 7, Corporate Franchise and Income Taxes:
774 (i) an addition to unadjusted income described in Section 59-7-105; or
775 (ii) a subtraction from unadjusted income described in Section 59-7-106;
776 (b) for a pass-through entity taxpayer that is classified as an individual, partnership, or
777 S corporation for federal income tax purposes:
778 (i) an addition to or subtraction from adjusted gross income described in Section
779 59-10-114; or
780 (ii) an adjustment to adjusted gross income described in Section 59-10-115; or
781 (c) for a pass-through entity taxpayer that is classified as an estate or a trust for federal
782 income tax purposes:
783 (i) an addition to or subtraction from unadjusted income described in Section
784 59-10-202; or

785 (ii) an adjustment to unadjusted income described in Section [59-10-209.1](#).

786 (2) "Business income" means income arising from transactions and activity in the
787 regular course of a pass-through entity's trade or business and includes income from tangible
788 and intangible property if the acquisition, management, and disposition of the property
789 constitutes integral parts of the pass-through entity's regular trade or business operations.

790 (3) "C corporation" [is as] means the same as that term is defined in Section 1361,
791 Internal Revenue Code.

792 (4) "Commercial domicile" means the principal place from which the trade or business
793 of a business entity is directed or managed.

794 (5) "Dependent beneficiary" means an individual who:

795 (a) is claimed as a dependent under Section 151, Internal Revenue Code, on another
796 person's federal income tax return; and

797 (b) is a beneficiary of a trust that is a pass-through entity.

798 (6) "Derived from or connected with Utah sources" means:

799 (a) if a pass-through entity taxpayer is classified as a C corporation for federal income
800 tax purposes, derived from or connected with Utah sources in accordance with Chapter 7, Part
801 3, Allocation and Apportionment of Income - Utah UDITPA Provisions; or

802 (b) if a pass-through entity or pass-through entity taxpayer is classified as an estate,
803 individual, partnership, S corporation, or a trust for federal income tax purposes, derived from
804 or connected with Utah sources in accordance with Sections [59-10-117](#) and [59-10-118](#).

805 (7) "Final pass-through entity taxpayer" means a pass-through entity taxpayer who is a
806 resident or nonresident individual.

807 [~~(7)~~] (8) "Nonbusiness income" means all income of a pass-through entity other than
808 business income.

809 [~~(8)~~] (9) "Nonresident business entity" means a business entity that does not have its
810 commercial domicile in this state.

811 [~~(9)~~] (10) "Nonresident pass-through entity taxpayer" means a pass-through entity

812 taxpayer that is a:

813 (a) nonresident individual; or

814 (b) nonresident business entity.

815 [~~(10)~~] (11) "Pass-through entity" means a business entity that is:

816 (a) the following if classified as a partnership for federal income tax purposes:

817 (i) a general partnership;

818 (ii) a limited liability company;

819 (iii) a limited liability partnership; or

820 (iv) a limited partnership;

821 (b) an S corporation;

822 (c) an estate or trust with respect to which the estate's or trust's income, gain, loss,

823 deduction, or credit is divided among and passed through to one or more pass-through entity

824 taxpayers; or

825 (d) a business entity similar to Subsections [~~(10)~~] (11)(a) through (c):

826 (i) with respect to which the business entity's income, gain, loss, deduction, or credit is

827 divided among and passed through to one or more pass-through entity taxpayers; and

828 (ii) as defined by the commission by rule made in accordance with Title 63G, Chapter

829 3, Utah Administrative Rulemaking Act.

830 [~~(11)~~] (12) "Pass-through entity taxpayer" means a resident or nonresident individual, a

831 resident or nonresident business entity, or a resident or nonresident estate or trust:

832 (a) that is:

833 (i) for a general partnership, a partner;

834 (ii) for a limited liability company, a member;

835 (iii) for a limited liability partnership, a partner;

836 (iv) for a limited partnership, a partner;

837 (v) for an S corporation, a shareholder;

838 (vi) for an estate or trust described in Subsection [~~(10)~~] (11)(c), a beneficiary; or

839 (vii) for a business entity described in Subsection [§10](11)(d), a member, partner,
840 shareholder, or other title designated by the commission by rule made in accordance with Title
841 63G, Chapter 3, Utah Administrative Rulemaking Act; and

842 (b) to which the income, gain, loss, deduction, or credit of a pass-through entity is
843 passed through.

844 [§12] (13) "Resident business entity" means a business entity that is not a nonresident
845 business entity.

846 [§13] (14) "Resident pass-through entity taxpayer" means a pass-through entity
847 taxpayer that is a:

- 848 (a) resident individual; or
849 (b) resident business entity.

850 [§14] (15) "Return" means a return that a pass-through entity taxpayer files:

- 851 (a) for a pass-through entity taxpayer that is classified as a C corporation for federal
852 income tax purposes, under Chapter 7, Corporate Franchise and Income Taxes; or
853 (b) for a pass-through entity taxpayer that is classified as an estate, individual,
854 partnership, S corporation, or a trust for federal income tax purposes, under this chapter.

855 [§15] (16) "S corporation" [is as] means the same as that term is defined in Section
856 1361, Internal Revenue Code.

857 [§16] (17) "Share of income, gain, loss, deduction, or credit of a pass-through entity"
858 means:

- 859 (a) for a pass-through entity except for a pass-through entity that is an S corporation:
860 (i) for a resident pass-through entity taxpayer, the resident pass-through entity
861 taxpayer's distributive share of income, gain, loss, deduction, or credit of the pass-through
862 entity as determined under Section 704 et seq., Internal Revenue Code; and
863 (ii) for a nonresident pass-through entity taxpayer, the nonresident pass-through entity
864 taxpayer's distributive share of income, gain, loss, deduction, or credit of the pass-through
865 entity:

866 (A) as determined under Section 704 et seq., Internal Revenue Code; and
867 (B) derived from or connected with Utah sources; or
868 (b) for an S corporation:
869 (i) for a resident pass-through entity taxpayer, the resident pass-through entity
870 taxpayer's pro rata share of income, gain, loss, deduction, or credit of the S corporation, as
871 determined under Sec. 1366 et seq., Internal Revenue Code; or
872 (ii) for a nonresident pass-through entity taxpayer, the nonresident pass-through entity
873 taxpayer's pro rata share of income, gain, loss, deduction, or credit of the S corporation:
874 (A) as determined under Section 1366 et seq., Internal Revenue Code; and
875 (B) derived from or connected with Utah sources.
876 [~~(17)~~] (18) "Statement of dependent beneficiary income" means a statement:
877 (a) signed by the person who claims a dependent beneficiary as a dependent under
878 Section 151, Internal Revenue Code, on the person's federal income tax return for the taxable
879 year;
880 (b) attesting that the dependent is a dependent beneficiary; and
881 (c) indicating that the person expects that the dependent beneficiary's adjusted gross
882 income for the taxable year will not exceed the basic standard deduction for the dependent
883 beneficiary, as calculated under Section 63, Internal Revenue Code, for that taxable year.
884 (19) "Voluntary taxable income" means the sum of a pass-through entity's income that
885 is:
886 (a) attributed to a final pass-through entity taxpayer who is a resident individual; and
887 (b) (i) business income and nonbusiness income that is derived from or connected with
888 Utah sources; and
889 (ii) attributed to a final pass-through entity taxpayer who is a nonresident individual.
890 Section 7. Section **59-10-1403** is amended to read:
891 **59-10-1403. Income tax treatment of a pass-through entity -- Returns --**
892 **Classification same as under Internal Revenue Code.**

893 (1) Subject to Subsection (3) and except as provided in Subsection 59-10-1403.2(2), a
894 pass-through entity is not subject to a tax imposed by this chapter.

895 (2) Except as provided in Section 59-10-1403.3, the income, gain, loss, deduction, or
896 credit of a pass-through entity shall be passed through to one or more pass-through entity
897 taxpayers as provided in this part.

898 (3) A pass-through entity is subject to the return filing requirements of Sections
899 59-10-507, 59-10-514, and 59-10-516.

900 (4) For purposes of taxation under this title, a pass-through entity that transacts
901 business in the state shall be classified in the same manner as the pass-through entity is
902 classified for federal income tax purposes.

903 Section 8. Section 59-10-1403.2 is amended to read:

904 **59-10-1403.2. Pass-through entity payment or withholding of tax on behalf of a
905 pass-through entity taxpayer -- Exceptions to payment or withholding requirement --
906 Procedures and requirements -- Failure to pay or withhold a tax on behalf of a
907 pass-through entity taxpayer.**

908 (1) (a) Except as provided in [Subsection (1)(b)] Subsections (1)(b) and (2), for a
909 taxable year, a pass-through entity shall pay or withhold a tax:

910 (i) on:
911 (A) the business income of the pass-through entity; and
912 (B) the nonbusiness income of the pass-through entity derived from or connected with
913 Utah sources; and
914 (ii) on behalf of a pass-through entity taxpayer.

915 (b) A pass-through entity is not required to pay or withhold a tax under Subsection
916 (1)(a):

917 (i) on behalf of a pass-through entity taxpayer who is a resident individual;
918 (ii) if the pass-through entity is an organization exempt from taxation under Subsection
919 59-7-102(1)(a);

(iii) if the pass-through entity:

(A) is a plan under Section 401, 408, or 457, Internal Revenue Code; and

(B) is not required to file a return under Chapter 7, Corporate Franchise and Income Taxes, or this chapter; [or]

(iv) if the pass-through entity is a publicly traded partnership:

(A) as defined in Section 7704(b), Internal Revenue Code;

(B) that is classified as a partnership for federal income tax purposes; and

(C) that files an annual information return reporting the following with respect to each partner of the publicly traded partnership with income derived from or connected with Utah sources that exceeds \$500 in a taxable year:

(I) the partner's name;

(II) the partner's address;

(III) the partner's taxpayer identification number; and

(IV) other information required by the commission[-]; or

(v) on behalf of a pass-through entity taxpayer that is a nonresident individual if the pass-through entity pays the tax described in Subsection (2).

(2) (a) For each taxable year that begins on or after January 1, 2022, but begins on or before December 31, 2025, a pass-through entity that is not a disregarded pass-through entity may elect to pay a tax in an amount equal to:

(i) the percentage listed in Subsection 59-10-104(2); and

(ii) voluntary taxable income.

(b) A pass-through entity that elects to pay the tax in accordance with Subsection (2)(a) shall notify any final pass-through entity taxpayer of that election.

(c) A pass-through entity that pays a tax described in Subsection (2)(a) shall provide to each pass-through entity taxpayer a statement that states the amount of tax paid on the income attributed to the pass-through entity taxpayer.

(d) A payment of the tax described in Subsection (2)(a) on or before the last day of the

947 taxable year is an irrevocable election to be subject to the tax for the taxable year.

948 [§2] (3)(a) Subject to Subsection [§2] (3)(b), the tax a pass-through entity shall
949 pay or withhold on behalf of a pass-through entity taxpayer for a taxable year is an amount:

950 (i) determined by the commission by rule made in accordance with Title 63G, Chapter
951 3, Utah Administrative Rulemaking Act; and

952 (ii) that the commission estimates will be sufficient to pay the tax liability of the
953 pass-through entity taxpayer under this chapter with respect to the income described in
954 Subsection (1)(a)(i) or (2)(a)(ii) of that pass-through entity for the taxable year.

955 (b) The rules the commission makes in accordance with Subsection [§2] (3)(a):

956 (i) except as provided in Subsection [§2] (3)(c):

957 (A) shall:

958 (I) for a pass-through entity except for a pass-through entity that is an S corporation,
959 take into account items of income, gain, loss, deduction, and credit as analyzed on the schedule
960 for reporting partners' distributive share items as part of the federal income tax return for the
961 pass-through entity; or

962 (II) for a pass-through entity that is an S corporation, take into account items of
963 income, gain, loss, deduction, and credit as reconciled on the schedule for reporting
964 shareholders' pro rata share items as part of the federal income tax return for the pass-through
965 entity; and

966 (B) notwithstanding Subsection [§2] (3)(b)(ii)(D), take into account the refundable tax
967 credit provided in Section 59-6-102; and

968 (ii) may not take into account the following items if taking those items into account
969 does not result in an accurate estimate of a pass-through entity taxpayer's tax liability under this
970 chapter for the taxable year:

971 (A) a capital loss;

972 (B) a passive loss;

973 (C) another item of deduction or loss if that item of deduction or loss is generally

974 subject to significant reduction or limitation in calculating:

975 (I) for a pass-through entity taxpayer that is classified as a C corporation for federal
976 income tax purposes, unadjusted income as defined in Section 59-7-101;

977 (II) for a pass-through entity that is classified as an individual, partnership, or S
978 corporation for federal income tax purposes, adjusted gross income; or

979 (III) for a pass-through entity that is classified as an estate or a trust for federal income
980 tax purposes, unadjusted income as defined in Section 59-10-103; or

981 (D) a tax credit allowed against a tax imposed under:

982 (I) Chapter 7, Corporate Franchise and Income Taxes; or

983 (II) this chapter.

984 (c) The rules the commission makes in accordance with Subsection [(2)] (3)(a) may
985 establish a method for taking into account items of income, gain, loss, deduction, or credit of a
986 pass-through entity if:

987 (i) for a pass-through entity except for a pass-through entity that is an S corporation,
988 the pass-through entity does not analyze the items of income, gain, loss, deduction, or credit on
989 the schedule for reporting partners' distributive share items as part of the federal income tax
990 return for the pass-through entity; or

991 (ii) for a pass-through entity that is an S corporation, the pass-through entity does not
992 reconcile the items of income, gain, loss, deduction, or credit on the schedule for reporting
993 shareholders' pro rata share items as part of the federal income tax return for the pass-through
994 entity.

995 [(3)-A] (4)(a) Except as provided in Subsection (4)(b), a pass-through entity shall
996 remit to the commission the tax the pass-through entity pays or withholds on behalf of a
997 pass-through entity taxpayer under this section:

998 [(a)] (i) on or before the due date of the pass-through entity's return, not including
999 extensions; and

1000 [(b)] (ii) on a form provided by the commission.

1001 (b) A pass-through entity shall remit the tax described in Subsection (2) on or before
1002 the last day of the pass-through entity's taxable year.

1003 [~~(4)~~] (5) A pass-through entity shall provide a statement to a pass-through entity
1004 taxpayer on behalf of whom the pass-through entity pays or withholds a tax under this section
1005 showing the amount of tax the pass-through entity pays or withholds under this section for the
1006 taxable year on behalf of the pass-through entity taxpayer.

1007 [~~(5)~~] (6) Notwithstanding Section ~~59-1-401~~ or ~~59-1-402~~, the commission may not
1008 collect an amount under this section for a taxable year from a pass-through entity and shall
1009 waive any penalty and interest on that amount if:

1010 (a) the pass-through entity fails to pay or withhold the tax on the amount as required by
1011 this section on behalf of the pass-through entity taxpayer;

1012 (b) the pass-through entity taxpayer:

1013 (i) files a return on or before the due date for filing the pass-through entity's return,
1014 including extensions; and

1015 (ii) on or before the due date including extensions described in Subsection [~~(5)~~]
1016 (6)(b)(i), pays the tax on the amount for the taxable year:

1017 (A) if the pass-through entity taxpayer is classified as a C corporation for federal
1018 income tax purposes, under Chapter 7, Corporate Franchise and Income Taxes; or

1019 (B) if the pass-through entity taxpayer is classified as an estate, individual, partnership,
1020 S corporation, or a trust for federal income tax purposes, under this chapter; and

1021 (c) the pass-through entity applies to the commission.

1022 [~~(6)~~] (7) Notwithstanding Section ~~59-1-401~~ or ~~59-1-402~~, the commission may not
1023 collect an amount under this section for a taxable year from a pass-through entity that is a trust
1024 and shall waive any penalty and interest on that amount if:

1025 (a) the pass-through entity fails to pay or withhold the tax on the amount as required by
1026 this section on behalf of a dependent beneficiary;

1027 (b) the pass-through entity applies to the commission; and

1028 (c) (i) the dependent beneficiary complies with the requirements of Subsection [5]
1029 (6)(b); or
1030 (ii) (A) the dependent beneficiary's adjusted gross income for the taxable year does not
1031 exceed the basic standard deduction for the dependent beneficiary, as calculated under Section
1032 63, Internal Revenue Code, for that taxable year; and
1033 (B) the trustee of the trust retains a statement of dependent beneficiary income on
1034 behalf of the dependent beneficiary.

1035 [7] (8) If a pass-through entity would have otherwise qualified for a waiver of a
1036 penalty and interest under Subsection [6] (7), except that the trustee of a trust has not applied
1037 to the commission as required by Subsection [6] (7)(b) or retained the statement of dependent
1038 beneficiary income required by Subsection [6] (7)(c)(ii)(B), it is a rebuttable presumption in
1039 an audit that the pass-through entity would have otherwise qualified for the waiver of the
1040 penalty and interest under Subsection [6] (7).

1041 **Section 9. Effective date.**

1042 If approved by two-thirds of all the members elected to each house, this bill takes effect
1043 upon approval by the governor, or the day following the constitutional time limit of Utah
1044 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
1045 the date of veto override.

1046 **Section 10. Retrospective operation.**

1047 (1) Except as provided in Subsection (2), this bill has retrospective operation for a
1048 taxable year beginning on or after January 1, 2022.

1049 (2) The changes to Section 59-10-114 have retrospective operation for a taxable year
1050 beginning on or after January 1, 2021.