

INCOME TAX REVISIONS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Robert M. Spendlove

Senate Sponsor: Lincoln Fillmore

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ authorizes a pass-through entity to pay a tax on behalf of pass-through entity taxpayers who are individuals;
- ▶ requires an individual whose tax on income attributed to the pass-through entity taxpayer is paid by the pass-through entity to add the amount of tax paid to the pass-through entity taxpayer's individual tax return;
- ▶ creates a nonrefundable income tax credit equal to the amount of the tax paid by the pass-through entity;
- ▶ requires a pass-through entity to report information to a pass-through entity taxpayer regarding income attributed to the pass-through entity taxpayer and tax paid;
- ▶ creates penalties for failure to provide the report or to pay the tax; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **59-1-401**, as last amended by Laws of Utah 2021, Chapter 367

31 **59-10-114**, as last amended by Laws of Utah 2021, Chapter 367

32 **59-10-406**, as last amended by Laws of Utah 2017, Chapter 226

33 **59-10-1103**, as last amended by Laws of Utah 2009, Chapter 312

34 **59-10-1402**, as last amended by Laws of Utah 2012, Chapter 95

35 **59-10-1403**, as last amended by Laws of Utah 2021, Chapter 367

36 **59-10-1403.2**, as last amended by Laws of Utah 2012, Chapter 95

37 ENACTS:

38 **59-10-1044**, Utah Code Annotated 1953



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

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

42 **59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute**
43 **of limitations -- Commission authority to waive, reduce, or compromise penalty or**
44 **interest.**

45 (1) As used in this section:

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

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

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

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

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

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

58 (II) a person that fails to pay the tax, fee, or charge as described in Subsection (3)(a) is

59 subject to the penalty described in Subsection (3)(b)(ii).

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

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

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

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

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

68 (I) this title;

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

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

71 (IV) Section 19-6-410.5;

72 (V) Section 19-6-714;

73 (VI) Section 19-6-805;

74 (VII) Section 34A-2-202;

75 (VIII) Section 40-6-14; or

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

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

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

80 (A) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;

81 (B) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;

82 (C) Chapter 2, Property Tax Act, except for Section 59-2-1309;

83 (D) Chapter 3, Tax Equivalent Property Act; or

84 (E) Chapter 4, Privilege Tax.

85 (d) "Unactivated tax, fee, or charge" means a tax, fee, or charge except for an activated
86 tax, fee, or charge.

87 (2) (a) The due date for filing a return is:

88 (i) if the person filing the return is not allowed by law an extension of time for filing
89 the return, the day on which the return is due as provided by law; or

90 (ii) if the person filing the return is allowed by law an extension of time for filing the
91 return, the earlier of:

- 92 (A) the date the person files the return; or
- 93 (B) the last day of that extension of time as allowed by law.

94 (b) A penalty in the amount described in Subsection (2)(c) is imposed if a person files a
95 return after the due date described in Subsection (2)(a).

96 (c) For purposes of Subsection (2)(b), the penalty is an amount equal to the greater of:

97 (i) if the return described in Subsection (2)(b) is filed with respect to an unactivated
98 tax, fee, or charge:

- 99 (A) \$20; or
- 100 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or

101 (ii) if the return described in Subsection (2)(b) is filed with respect to an activated tax,
102 fee, or charge, beginning on the activation date for the tax, fee, or charge:

- 103 (A) \$20; or
- 104 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the return is
105 filed no later than five days after the due date described in Subsection (2)(a);
- 106 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the return is filed
107 more than five days after the due date but no later than 15 days after the due date described in
108 Subsection (2)(a); or

109 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the return is
110 filed more than 15 days after the due date described in Subsection (2)(a).

111 (d) This Subsection (2) does not apply to:

- 112 (i) an amended return; or
- 113 (ii) a return with no tax due.

114 (3) (a) ~~[A]~~ Except as provided in Subsection (15), a person is subject to a penalty for
115 failure to pay a tax, fee, or charge if:

116 (i) the person files a return on or before the due date for filing a return described in
117 Subsection (2)(a), but fails to pay the tax, fee, or charge due on the return on or before that due
118 date;

119 (ii) the person:

- 120 (A) is subject to a penalty under Subsection (2)(b); and

- 121 (B) fails to pay the tax, fee, or charge due on a return within a 90-day period after the
122 due date for filing a return described in Subsection (2)(a);
- 123 (iii) (A) the person is subject to a penalty under Subsection (2)(b); and
124 (B) the commission estimates an amount of tax due for that person in accordance with
125 Subsection 59-1-1406(2);
- 126 (iv) the person:
127 (A) is mailed a notice of deficiency; and
128 (B) within a 30-day period after the day on which the notice of deficiency described in
129 Subsection (3)(a)(iv)(A) is mailed:
- 130 (I) does not file a petition for redetermination or a request for agency action; and
131 (II) fails to pay the tax, fee, or charge due on a return;
- 132 (v) (A) the commission:
133 (I) issues an order constituting final agency action resulting from a timely filed petition
134 for redetermination or a timely filed request for agency action; or
135 (II) is considered to have denied a request for reconsideration under Subsection
136 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed
137 request for agency action; and
- 138 (B) the person fails to pay the tax, fee, or charge due on a return within a 30-day period
139 after the date the commission:
- 140 (I) issues the order constituting final agency action described in Subsection
141 (3)(a)(v)(A)(I); or
142 (II) is considered to have denied the request for reconsideration described in
143 Subsection (3)(a)(v)(A)(II); or
- 144 (vi) the person fails to pay the tax, fee, or charge within a 30-day period after the date
145 of a final judicial decision resulting from a timely filed petition for judicial review.
- 146 (b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:
147 (i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with
148 respect to an unactivated tax, fee, or charge:
149 (A) \$20; or
150 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or
151 (ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with

152 respect to an activated tax, fee, or charge, beginning on the activation date:

153 (A) \$20; or

154 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the activated
155 tax, fee, or charge due on the return is paid no later than five days after the due date for filing a
156 return described in Subsection (2)(a);

157 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the activated tax,
158 fee, or charge due on the return is paid more than five days after the due date for filing a return
159 described in Subsection (2)(a) but no later than 15 days after that due date; or

160 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the activated
161 tax, fee, or charge due on the return is paid more than 15 days after the due date for filing a
162 return described in Subsection (2)(a).

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

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

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

173 (A) the original due date of the tax return, without extensions, for the taxable year; or

174 (B) with respect to any portion of the underpayment, the date on which that portion is
175 paid.

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

179 (5) (a) Notwithstanding Subsection (2) and except as provided in Subsection (6), a
180 person allowed by law an extension of time for filing a corporate franchise or income tax return
181 under Chapter 7, Corporate Franchise and Income Taxes, or an individual income tax return
182 under Chapter 10, Individual Income Tax Act, is subject to a penalty in the amount described in

183 Subsection (5)(b) if, on or before the day on which the return is due as provided by law, not
184 including the extension of time, the person fails to pay:

- 185 (i) for a person filing a corporate franchise or income tax return under Chapter 7,
186 Corporate Franchise and Income Taxes, the payment required by Subsection 59-7-507(1)(b); or
187 (ii) for a person filing an individual income tax return under Chapter 10, Individual
188 Income Tax Act, the payment required by Subsection 59-10-516(2).

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

192 (6) If a person does not file a return within an extension of time allowed by Section
193 59-7-505 or 59-10-516, the person:

194 (a) is not subject to a penalty in the amount described in Subsection (5)(b); and

195 (b) is subject to a penalty in an amount equal to the sum of:

196 (i) a late file penalty in an amount equal to the greater of:

197 (A) \$20; or

198 (B) 10% of the tax due on the return, unpaid as of the day on which the return is due as
199 provided by law, not including the extension of time; and

200 (ii) a late pay penalty in an amount equal to the greater of:

201 (A) \$20; or

202 (B) 10% of the unpaid tax due on the return, unpaid as of the day on which the return is
203 due as provided by law, not including the extension of time.

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

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

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

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

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

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

219 (i) The notice of proposed penalty shall:

220 (A) set forth the basis of the assessment; and

221 (B) be mailed by certified mail, postage prepaid, to the person's last-known address.

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

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

225 or

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

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

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

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

235 (I) to the person's last-known address; and

236 (II) in accordance with Section 59-1-1404.

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

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

241 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
242 or is a seller required to pay or collect and remit sales and use taxes under Subsection
243 59-12-107(2)(b) or (2)(c); and

244 (B) the commission or a county, city, or town may require the seller to collect a tax

245 under Subsections 59-12-103(2)(a) through (e); or
246 (ii) the commission issues a final unappealable administrative order determining that:
247 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
248 or is a seller required to pay or collect and remit sales and use taxes under Subsection
249 59-12-107(2)(b) or (2)(c); and
250 (B) the commission or a county, city, or town may require the seller to collect a tax
251 under Subsections 59-12-103(2)(a) through (e).
252 (d) A seller that voluntarily collects a tax under Subsection 59-12-107(2)(d) is not
253 subject to the penalty under Subsection (7)(a)(ii) if:
254 (i) (A) a court of competent jurisdiction issues a final unappealable judgment or order
255 determining that:
256 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
257 or is a seller required to pay or collect and remit sales and use taxes under Subsection
258 59-12-107(2)(b) or (2)(c); and
259 (II) the commission or a county, city, or town may require the seller to collect a tax
260 under Subsections 59-12-103(2)(a) through (e); or
261 (B) the commission issues a final unappealable administrative order determining that:
262 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
263 or is a seller required to pay or collect and remit sales and use taxes under Subsection
264 59-12-107(2)(b) or (2)(c); and
265 (II) the commission or a county, city, or town may require the seller to collect a tax
266 under Subsections 59-12-103(2)(a) through (e); and
267 (ii) the seller's intentional disregard of law or rule is warranted by existing law or by a
268 nonfrivolous argument for the extension, modification, or reversal of existing law or the
269 establishment of new law.
270 (8) (a) Subject to Subsections (8)(b) and (c), the penalty for failure to file an
271 information return, information report, or a complete supporting schedule is \$50 for each
272 information return, information report, or supporting schedule up to a maximum of \$1,000.
273 (b) If an employer is subject to a penalty under Subsection (13), the employer may not
274 be subject to a penalty under Subsection (8)(a).
275 (c) If an employer is subject to a penalty under this Subsection (8) for failure to file a

276 return in accordance with Subsection 59-10-406(3) on or before the due date described in
277 Subsection 59-10-406(3)(b)(ii), the commission may not impose a penalty under this
278 Subsection (8) unless the return is filed more than 14 days after the due date described in
279 Subsection 59-10-406(3)(b)(ii).

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

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

287 (i) is subject to a penalty described in Subsection (2); and

288 (ii) may not retain the percentage of sales and use taxes that would otherwise be
289 allowable under Subsection 59-12-108(2).

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

292 (i) is subject to a penalty described in Subsection (2); and

293 (ii) may not retain the percentage of sales and use taxes that would otherwise be
294 allowable under Subsection 59-12-108(2).

295 (11) (a) A person is subject to the penalty provided in Subsection (11)(c) if that person:

296 (i) commits an act described in Subsection (11)(b) with respect to one or more of the
297 following documents:

298 (A) a return;

299 (B) an affidavit;

300 (C) a claim; or

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

302 (ii) knows or has reason to believe that the document described in Subsection (11)(a)(i)
303 will be used in connection with any material matter administered by the commission; and

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

- 307 (b) The following acts apply to Subsection (11)(a)(i):
- 308 (i) preparing any portion of a document described in Subsection (11)(a)(i);
- 309 (ii) presenting any portion of a document described in Subsection (11)(a)(i);
- 310 (iii) procuring any portion of a document described in Subsection (11)(a)(i);
- 311 (iv) advising in the preparation or presentation of any portion of a document described
- 312 in Subsection (11)(a)(i);
- 313 (v) aiding in the preparation or presentation of any portion of a document described in
- 314 Subsection (11)(a)(i);
- 315 (vi) assisting in the preparation or presentation of any portion of a document described
- 316 in Subsection (11)(a)(i); or
- 317 (vii) counseling in the preparation or presentation of any portion of a document
- 318 described in Subsection (11)(a)(i).
- 319 (c) For purposes of Subsection (11)(a), the penalty:
- 320 (i) shall be imposed by the commission;
- 321 (ii) is \$500 for each document described in Subsection (11)(a)(i) with respect to which
- 322 the person described in Subsection (11)(a) meets the requirements of Subsection (11)(a); and
- 323 (iii) is in addition to any other penalty provided by law.
- 324 (d) The commission may seek a court order to enjoin a person from engaging in
- 325 conduct that is subject to a penalty under this Subsection (11).
- 326 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 327 commission may make rules prescribing the documents that are similar to Subsections
- 328 (11)(a)(i)(A) through (C).
- 329 (12) (a) As provided in Section 76-8-1101, criminal offenses and penalties are as
- 330 provided in Subsections (12)(b) through (e).
- 331 (b) (i) A person who is required by this title or any laws the commission administers or
- 332 regulates to register with or obtain a license or permit from the commission, who operates
- 333 without having registered or secured a license or permit, or who operates when the registration,
- 334 license, or permit is expired or not current, is guilty of a class B misdemeanor.
- 335 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(b)(i), the
- 336 penalty may not:
- 337 (A) be less than \$500; or

338 (B) exceed \$1,000.

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

344 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(c)(i), the
345 penalty may not:

346 (A) be less than \$1,000; or

347 (B) exceed \$5,000.

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

351 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(d)(i), the
352 penalty may not:

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

354 (B) exceed \$25,000.

355 (e) (i) A person is guilty of a second degree felony if that person commits an act:

356 (A) described in Subsection (12)(e)(ii) with respect to one or more of the following
357 documents:

358 (I) a return;

359 (II) an affidavit;

360 (III) a claim; or

361 (IV) a document similar to Subsections (12)(e)(i)(A)(I) through (III); and

362 (B) subject to Subsection (12)(e)(iii), with knowledge that the document described in
363 Subsection (12)(e)(i)(A):

364 (I) is false or fraudulent as to any material matter; and

365 (II) could be used in connection with any material matter administered by the
366 commission.

367 (ii) The following acts apply to Subsection (12)(e)(i):

368 (A) preparing any portion of a document described in Subsection (12)(e)(i)(A);

- 369 (B) presenting any portion of a document described in Subsection (12)(e)(i)(A);
- 370 (C) procuring any portion of a document described in Subsection (12)(e)(i)(A);
- 371 (D) advising in the preparation or presentation of any portion of a document described
- 372 in Subsection (12)(e)(i)(A);
- 373 (E) aiding in the preparation or presentation of any portion of a document described in
- 374 Subsection (12)(e)(i)(A);
- 375 (F) assisting in the preparation or presentation of any portion of a document described
- 376 in Subsection (12)(e)(i)(A); or
- 377 (G) counseling in the preparation or presentation of any portion of a document
- 378 described in Subsection (12)(e)(i)(A).
- 379 (iii) This Subsection (12)(e) applies:
- 380 (A) regardless of whether the person for which the document described in Subsection
- 381 (12)(e)(i)(A) is prepared or presented:
- 382 (I) knew of the falsity of the document described in Subsection (12)(e)(i)(A); or
- 383 (II) consented to the falsity of the document described in Subsection (12)(e)(i)(A); and
- 384 (B) in addition to any other penalty provided by law.
- 385 (iv) Notwithstanding Section [76-3-301](#), for purposes of this Subsection (12)(e), the
- 386 penalty may not:
- 387 (A) be less than \$1,500; or
- 388 (B) exceed \$25,000.
- 389 (v) The commission may seek a court order to enjoin a person from engaging in
- 390 conduct that is subject to a penalty under this Subsection (12)(e).
- 391 (vi) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
- 392 the commission may make rules prescribing the documents that are similar to Subsections
- 393 (12)(e)(i)(A)(I) through (III).
- 394 (f) The statute of limitations for prosecution for a violation of this Subsection (12) is
- 395 the later of six years:
- 396 (i) from the date the tax should have been remitted; or
- 397 (ii) after the day on which the person commits the criminal offense.
- 398 (13) (a) Subject to Subsection (13)(b), an employer that is required to file a form with
- 399 the commission in accordance with Subsection [59-10-406\(8\)](#) or [\(9\)](#) is subject to a penalty

400 described in Subsection (13)(b) if the employer:

401 (i) fails to file the form with the commission in an electronic format approved by the
402 commission as required by Subsection [59-10-406\(8\)](#) or [\(9\)](#);

403 (ii) fails to file the form on or before the due date provided in Subsection [59-10-406\(8\)](#)
404 [or \(9\)](#);

405 (iii) fails to provide accurate information on the form; or

406 (iv) fails to provide all of the information required by the Internal Revenue Service to
407 be contained on the form.

408 (b) For purposes of Subsection (13)(a), the penalty is:

409 (i) \$30 per form, not to exceed \$75,000 in a calendar year, if the employer files the
410 form in accordance with Subsection [59-10-406\(8\)](#) or [\(9\)](#), more than 14 days after the due date
411 provided in Subsection [59-10-406\(8\)](#) or [\(9\)](#) but no later than 30 days after the due date
412 provided in Subsection [59-10-406\(8\)](#) or [\(9\)](#);

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

416 (iii) \$100 per form, not to exceed \$500,000 in a calendar year, if the employer:

417 (A) files the form in accordance with Subsection [59-10-406\(8\)](#) or [\(9\)](#) after June 1; or

418 (B) fails to file the form.

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

422 (15) Failure to pay a tax described in Subsection [59-10-1403.2](#) shall be subject to a
423 penalty as described in Subsection (3) except that the penalty shall be:

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

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

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

429 **59-10-114. Additions to and subtractions from adjusted gross income of an**
430 **individual.**

431 (1) There shall be added to adjusted gross income of a resident or nonresident
432 individual:

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

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

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

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

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

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

445 (B) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and

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

448 (ii) a disbursement required to be added to adjusted gross income in accordance with
449 Subsection 31A-32a-105(3); or

450 (iii) an amount required to be added to adjusted gross income in accordance with
451 Subsection 31A-32a-105(5)(c);

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

457 (i) is not expended for:

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

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

- 462 (ii) is:
- 463 (A) subtracted by the resident or nonresident individual:
- 464 (I) who is the account owner; and
- 465 (II) on the resident or nonresident individual's return filed under this chapter for a
- 466 taxable year beginning on or before December 31, 2007; or
- 467 (B) used as the basis for the resident or nonresident individual who is the account
- 468 owner to claim a tax credit under Section 59-10-1017;
- 469 (e) except as provided in Subsection (5), for bonds, notes, and other evidences of
- 470 indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other
- 471 evidences of indebtedness:
- 472 (i) issued by one or more of the following entities:
- 473 (A) a state other than this state;
- 474 (B) the District of Columbia;
- 475 (C) a political subdivision of a state other than this state; or
- 476 (D) an agency or instrumentality of an entity described in Subsections (1)(e)(i)(A)
- 477 through (C); and
- 478 (ii) to the extent the interest is not included in adjusted gross income on the taxpayer's
- 479 federal income tax return for the taxable year;
- 480 (f) subject to Subsection (2)(c), any distribution received by a resident beneficiary of a
- 481 resident trust of income that was taxed at the trust level for federal tax purposes, but was
- 482 subtracted from state taxable income of the trust pursuant to Subsection 59-10-202(2)(b);
- 483 (g) any distribution received by a resident beneficiary of a nonresident trust of
- 484 undistributed distributable net income realized by the trust on or after January 1, 2004, if that
- 485 undistributed distributable net income was taxed at the trust level for federal tax purposes, but
- 486 was not taxed at the trust level by any state, with undistributed distributable net income
- 487 considered to be distributed from the most recently accumulated undistributed distributable net
- 488 income; [~~and~~]
- 489 (h) any adoption expense:
- 490 (i) for which a resident or nonresident individual receives reimbursement from another
- 491 person; and
- 492 (ii) to the extent to which the resident or nonresident individual subtracts that adoption

493 expense:

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

496 (B) from federal taxable income on a federal individual income tax return~~[-]~~; and

497 (i) the amount of tax imposed under Subsection 59-10-1403.2(2).

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

500 (a) the difference between:

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

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

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

507 (ii) any interest on indebtedness incurred or continued to purchase or carry the
508 obligation or security described in Subsection (2)(a)(i);

509 (b) if the conditions of Subsection (3)(a) are met, the amount of income derived by a
510 Ute tribal member:

511 (i) during a time period that the Ute tribal member resides on homesteaded land
512 diminished from the Uintah and Ouray Reservation; and

513 (ii) from a source within the Uintah and Ouray Reservation;

514 (c) an amount received by a resident or nonresident individual or distribution received
515 by a resident or nonresident beneficiary of a resident trust:

516 (i) if that amount or distribution constitutes a refund of taxes imposed by:

517 (A) a state; or

518 (B) the District of Columbia; and

519 (ii) to the extent that amount or distribution is included in adjusted gross income for
520 that taxable year on the federal individual income tax return of the resident or nonresident
521 individual or resident or nonresident beneficiary of a resident trust;

522 (d) the amount of a railroad retirement benefit:

523 (i) paid:

524 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
525 seq.;

526 (B) to a resident or nonresident individual; and

527 (C) for the taxable year; and

528 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on
529 that resident or nonresident individual's federal individual income tax return for that taxable
530 year;

531 (e) an amount:

532 (i) received by an enrolled member of an American Indian tribe; and

533 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
534 part on that amount in accordance with:

535 (A) federal law;

536 (B) a treaty; or

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

538 (f) an amount received:

539 (i) for the interest on a bond, note, or other obligation issued by an entity for which
540 state statute provides an exemption of interest on its bonds from state individual income tax;

541 (ii) by a resident or nonresident individual;

542 (iii) for the taxable year; and

543 (iv) to the extent the amount is included in adjusted gross income on the taxpayer's
544 federal income tax return for the taxable year;

545 (g) the amount of all income, including income apportioned to another state, of a
546 nonmilitary spouse of an active duty military member if:

547 (i) both the nonmilitary spouse and the active duty military member are nonresident
548 individuals;

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

550 (iii) the nonmilitary spouse is subject to the residency provisions of 50 U.S.C. Sec.
551 4001(a)(2); and

552 (iv) the income is included in adjusted gross income for federal income tax purposes
553 for the taxable year;

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

555 December 31, 2019, only:

556 (i) the amount of any FDIC premium paid or incurred by the taxpayer that is
557 disallowed as a deduction for federal income tax purposes under Section 162(r), Internal
558 Revenue Code, on the taxpayer's 2018 federal income tax return; plus

559 (ii) the amount of any FDIC premium paid or incurred by the taxpayer that is
560 disallowed as a deduction for federal income tax purposes under Section 162(r), Internal
561 Revenue Code, for the taxable year;

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

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

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

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

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

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

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

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

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

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

580 (i) may not:

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

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

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

585 (ii) shall:

- 586 (A) provide for the implementation of the subtraction described in Subsection (2)(b);
- 587 (B) be in writing;
- 588 (C) be signed by:
- 589 (I) the governor; and
- 590 (II) the chair of the Business Committee of the Ute tribe;
- 591 (D) be conditioned on obtaining any approval required by federal law; and
- 592 (E) state the effective date of the agreement.

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

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

599 (d) For purposes of Subsection (2)(b) and in accordance with Title 63G, Chapter 3,
600 Utah Administrative Rulemaking Act, the commission may make rules:

601 (i) for determining whether income is derived from a source within the Uintah and
602 Ouray Reservation; and

603 (ii) that are substantially similar to how adjusted gross income derived from Utah
604 sources is determined under Section [59-10-117](#).

605 (4) (a) For purposes of this Subsection (4), "Form 8814" means:

606 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's
607 Interest and Dividends; or

608 (ii) (A) a form designated by the commission in accordance with Subsection
609 (4)(a)(ii)(B) as being substantially similar to 2000 Form 8814 if for purposes of federal
610 individual income taxes the information contained on 2000 Form 8814 is reported on a form
611 other than Form 8814; and

612 (B) for purposes of Subsection (4)(a)(ii)(A) and in accordance with Title 63G, Chapter
613 3, Utah Administrative Rulemaking Act, the commission may make rules designating a form as
614 being substantially similar to 2000 Form 8814 if for purposes of federal individual income
615 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
616 8814.

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

619 (i) the lesser of:

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

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

622 (I) the child's taxable interest;

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

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

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

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

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

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

636 (i) the entity; or

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

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

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

640 **59-10-406. Collection and payment of tax -- Forms filed electronically.**

641 (1) (a) Each employer shall, on or before the last day of April, July, October, and
642 January, pay to the commission the amount required to be deducted and withheld from wages
643 paid to any employee during the preceding calendar quarter under this part.

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

646 (i) in its opinion, the tax is in jeopardy; or

647 (ii) a different time or period will facilitate the collection and payment of the tax by the

648 employer.

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

- 651 (i) the total amount of wages paid to his employees;
- 652 (ii) the amount of federal income tax deducted and withheld;
- 653 (iii) the amount of tax under this part deducted and withheld; and
- 654 (iv) any other information the commission may require.

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

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

- 659 (i) the total compensation paid;
- 660 (ii) the federal income tax deducted and withheld; and
- 661 (iii) the state tax deducted and withheld for each employee during the calendar year.

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

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

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

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

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

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

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

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

678 (c) For the purpose of making penal provisions of this title applicable, any amount

679 deducted or required to be deducted and remitted to the commission under this part is
680 considered to be the tax of the employer and with respect to such amounts the employer is
681 considered to be the taxpayer.

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

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

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

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

694 (8) (a) Subject to Subsections (8)(b) and (c), the commission shall require an employer
695 that issues the following forms for a taxable year to file the forms with the commission in an
696 electronic format approved by the commission:

697 (i) a federal Form W-2;

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

699 (iii) a federal form substantially similar to a form described in Subsection (8)(a)(i) or
700 (ii) if designated by the commission in accordance with Subsection (8)(d).

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

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

705 (i) accurate information on the form; and

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

708 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
709 purposes of Subsection (8)(a), the commission may designate a federal form as being

710 substantially similar to a form described in Subsection (8)(a)(i) or (ii) if:

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

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

715 (9) (a) Subject to Subsection (9)(b), a pass-through entity shall file with the
716 commission in an electronic format approved by the commission a Utah Schedule K-1, or a
717 substantially similar form designated by the commission, for each pass-through entity taxpayer
718 of a pass-through entity that elected to pay a tax in accordance with Subsection
719 59-10-1403.2(2).

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

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

723 **59-10-1044. Nonrefundable tax credit for taxes paid by pass-through entity.**

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

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

727 (b) receives the income described in Subsection (1)(a) after the pass-through entity
728 pays the tax described in Subsection 59-10-1403.2(2).

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

731 (b) The tax credit is equal to the amount of the tax paid by the pass-through entity on
732 the income attributed to the taxed pass-through entity taxpayer.

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

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

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

739 **59-10-1103. Tax credit for pass-through entity taxpayer.**

740 (1) As used in this section:

- 741 (a) "Pass-through entity" is as defined in Section [59-10-1402](#).
- 742 (b) "Pass-through entity taxpayer" is as defined in Section [59-10-1402](#).
- 743 (2) A pass-through entity taxpayer may claim a refundable tax credit against the tax
744 otherwise due under this chapter if that pass-through entity taxpayer is a:
- 745 (a) claimant;
- 746 (b) estate; or
- 747 (c) trust.
- 748 (3) The tax credit described in Subsection (2) is equal to the amount paid or withheld
749 by the pass-through entity on behalf of the pass-through entity taxpayer described in Subsection
750 (2) in accordance with Section [59-10-1403.2](#), other than a tax described in Subsection
751 [59-10-1403.2\(2\)](#).
- 752 (4) A pass-through entity taxpayer may not claim a tax credit under this section for an
753 amount for which the pass-through entity taxpayer claims a tax credit under Section
754 [59-7-614.4](#).
- 755 Section 6. Section **59-10-1402** is amended to read:
- 756 **59-10-1402. Definitions.**
- 757 As used in this part:
- 758 (1) "Addition, subtraction, or adjustment" means:
- 759 (a) for a pass-through entity taxpayer that is classified as a C corporation for federal
760 income tax purposes, under Chapter 7, Corporate Franchise and Income Taxes:
- 761 (i) an addition to unadjusted income described in Section [59-7-105](#); or
- 762 (ii) a subtraction from unadjusted income described in Section [59-7-106](#);
- 763 (b) for a pass-through entity taxpayer that is classified as an individual, partnership, or
764 S corporation for federal income tax purposes:
- 765 (i) an addition to or subtraction from adjusted gross income described in Section
766 [59-10-114](#); or
- 767 (ii) an adjustment to adjusted gross income described in Section [59-10-115](#); or
- 768 (c) for a pass-through entity taxpayer that is classified as an estate or a trust for federal
769 income tax purposes:
- 770 (i) an addition to or subtraction from unadjusted income described in Section
771 [59-10-202](#); or

772 (ii) an adjustment to unadjusted income described in Section 59-10-209.1.

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

777 (3) "C corporation" is as defined in Section 1361, Internal Revenue Code.

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

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

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

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

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

785 (a) if a pass-through entity taxpayer is classified as a C corporation for federal income
786 tax purposes, derived from or connected with Utah sources in accordance with Chapter 7, Part
787 3, Allocation and Apportionment of Income - Utah UDITPA Provisions; or

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

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

793 [~~7~~] (8) "Nonbusiness income" means all income of a pass-through entity other than
794 business income.

795 [~~8~~] (9) "Nonresident business entity" means a business entity that does not have its
796 commercial domicile in this state.

797 [~~9~~] (10) "Nonresident pass-through entity taxpayer" means a pass-through entity
798 taxpayer that is a:

799 (a) nonresident individual; or

800 (b) nonresident business entity.

801 [~~10~~] (11) "Pass-through entity" means a business entity that is:

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

- 803 (i) a general partnership;
- 804 (ii) a limited liability company;
- 805 (iii) a limited liability partnership; or
- 806 (iv) a limited partnership;
- 807 (b) an S corporation;
- 808 (c) an estate or trust with respect to which the estate's or trust's income, gain, loss,
- 809 deduction, or credit is divided among and passed through to one or more pass-through entity
- 810 taxpayers; or
- 811 (d) a business entity similar to Subsections ~~[(10)]~~(11)(a) through (c):
- 812 (i) with respect to which the business entity's income, gain, loss, deduction, or credit is
- 813 divided among and passed through to one or more pass-through entity taxpayers; and
- 814 (ii) as defined by the commission by rule made in accordance with Title 63G, Chapter
- 815 3, Utah Administrative Rulemaking Act.
- 816 ~~[(11)]~~ (12) "Pass-through entity taxpayer" means a resident or nonresident individual, a
- 817 resident or nonresident business entity, or a resident or nonresident estate or trust:
- 818 (a) that is:
- 819 (i) for a general partnership, a partner;
- 820 (ii) for a limited liability company, a member;
- 821 (iii) for a limited liability partnership, a partner;
- 822 (iv) for a limited partnership, a partner;
- 823 (v) for an S corporation, a shareholder;
- 824 (vi) for an estate or trust described in Subsection ~~[(10)]~~(11)(c), a beneficiary; or
- 825 (vii) for a business entity described in Subsection ~~[(10)]~~(11)(d), a member, partner,
- 826 shareholder, or other title designated by the commission by rule made in accordance with Title
- 827 63G, Chapter 3, Utah Administrative Rulemaking Act; and
- 828 (b) to which the income, gain, loss, deduction, or credit of a pass-through entity is
- 829 passed through.
- 830 ~~[(12)]~~ (13) "Resident business entity" means a business entity that is not a nonresident
- 831 business entity.
- 832 ~~[(13)]~~ (14) "Resident pass-through entity taxpayer" means a pass-through entity
- 833 taxpayer that is a:

834 (a) resident individual; or

835 (b) resident business entity.

836 ~~[(14)]~~ (15) "Return" means a return that a pass-through entity taxpayer files:

837 (a) for a pass-through entity taxpayer that is classified as a C corporation for federal
838 income tax purposes, under Chapter 7, Corporate Franchise and Income Taxes; or

839 (b) for a pass-through entity taxpayer that is classified as an estate, individual,
840 partnership, S corporation, or a trust for federal income tax purposes, under this chapter.

841 ~~[(15)]~~ (16) "S corporation" is as defined in Section 1361, Internal Revenue Code.

842 ~~[(16)]~~ (17) "Share of income, gain, loss, deduction, or credit of a pass-through entity"
843 means:

844 (a) for a pass-through entity except for a pass-through entity that is an S corporation:

845 (i) for a resident pass-through entity taxpayer, the resident pass-through entity
846 taxpayer's distributive share of income, gain, loss, deduction, or credit of the pass-through
847 entity as determined under Section 704 et seq., Internal Revenue Code; and

848 (ii) for a nonresident pass-through entity taxpayer, the nonresident pass-through entity
849 taxpayer's distributive share of income, gain, loss, deduction, or credit of the pass-through
850 entity:

851 (A) as determined under Section 704 et seq., Internal Revenue Code; and

852 (B) derived from or connected with Utah sources; or

853 (b) for an S corporation:

854 (i) for a resident pass-through entity taxpayer, the resident pass-through entity
855 taxpayer's pro rata share of income, gain, loss, deduction, or credit of the S corporation, as
856 determined under Sec. 1366 et seq., Internal Revenue Code; or

857 (ii) for a nonresident pass-through entity taxpayer, the nonresident pass-through entity
858 taxpayer's pro rata share of income, gain, loss, deduction, or credit of the S corporation:

859 (A) as determined under Section 1366 et seq., Internal Revenue Code; and

860 (B) derived from or connected with Utah sources.

861 ~~[(17)]~~ (18) "Statement of dependent beneficiary income" means a statement:

862 (a) signed by the person who claims a dependent beneficiary as a dependent under
863 Section 151, Internal Revenue Code, on the person's federal income tax return for the taxable
864 year;

865 (b) attesting that the dependent is a dependent beneficiary; and

866 (c) indicating that the person expects that the dependent beneficiary's adjusted gross
867 income for the taxable year will not exceed the basic standard deduction for the dependent
868 beneficiary, as calculated under Section 63, Internal Revenue Code, for that taxable year.

869 (19) "Voluntary taxable income" means the sum of a pass-through entity's income that
870 is:

871 (a) attributed to a final pass-through entity taxpayer; and

872 (b) if the final pass-through entity taxpayer is a nonresident, apportioned to Utah.

873 Section 7. Section **59-10-1403** is amended to read:

874 **59-10-1403. Income tax treatment of a pass-through entity -- Returns --**

875 **Classification same as under Internal Revenue Code.**

876 (1) Subject to Subsection (3) and except as provided in Subsection [59-10-1403.2\(2\)](#), a
877 pass-through entity is not subject to a tax imposed by this chapter.

878 (2) Except as provided in Section [59-10-1403.3](#), the income, gain, loss, deduction, or
879 credit of a pass-through entity shall be passed through to one or more pass-through entity
880 taxpayers as provided in this part.

881 (3) A pass-through entity is subject to the return filing requirements of Sections
882 [59-10-507](#), [59-10-514](#), and [59-10-516](#).

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

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

887 **59-10-1403.2. Pass-through entity payment or withholding of tax on behalf of a**

888 **pass-through entity taxpayer -- Exceptions to payment or withholding requirement --**

889 **Procedures and requirements -- Failure to pay or withhold a tax on behalf of a**

890 **pass-through entity taxpayer.**

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

893 (i) on:

894 (A) the business income of the pass-through entity; and

895 (B) the nonbusiness income of the pass-through entity derived from or connected with

896 Utah sources; and

897 (ii) on behalf of a pass-through entity taxpayer.

898 (b) A pass-through entity is not required to pay or withhold a tax under Subsection

899 (1)(a):

900 (i) on behalf of a pass-through entity taxpayer who is a resident individual;

901 (ii) if the pass-through entity is an organization exempt from taxation under Subsection

902 [59-7-102](#)(1)(a);

903 (iii) if the pass-through entity:

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

905 (B) is not required to file a return under Chapter 7, Corporate Franchise and Income

906 Taxes, or this chapter; ~~or~~

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

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

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

910 (C) that files an annual information return reporting the following with respect to each

911 partner of the publicly traded partnership with income derived from or connected with Utah

912 sources that exceeds \$500 in a taxable year:

913 (I) the partner's name;

914 (II) the partner's address;

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

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

917 (v) on behalf of a pass-through entity taxpayer that is a nonresident individual if the

918 pass-through entity pays the tax described in Subsection (2).

919 (2) (a) A pass-through entity that is not a disregarded pass-through entity may elect to

920 pay a tax in an amount equal to:

921 (i) the percentage listed in Subsection [59-10-104](#)(2); and

922 (ii) voluntary taxable income.

923 (b) A pass-through entity that elects to pay the tax in accordance with Subsection (2)(a)

924 shall notify any final pass-through entity taxpayer of that election.

925 (c) A pass-through entity that pays a tax described in Subsection (2)(a) shall provide to

926 each pass-through entity taxpayer a statement that states the amount of tax paid on the income

927 attributed to the pass-through entity taxpayer.

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

930 (i) determined by the commission by rule made in accordance with Title 63G, Chapter
931 3, Utah Administrative Rulemaking Act; and

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

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

936 (i) except as provided in Subsection ~~[(2)]~~ (3)(c):

937 (A) shall:

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

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

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

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

951 (A) a capital loss;

952 (B) a passive loss;

953 (C) another item of deduction or loss if that item of deduction or loss is generally
954 subject to significant reduction or limitation in calculating:

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

957 (II) for a pass-through entity that is classified as an individual, partnership, or S

958 corporation for federal income tax purposes, adjusted gross income; or

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

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

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

963 (II) this chapter.

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

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

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

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

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

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

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

983 ~~[(4)]~~ (5) A pass-through entity shall provide a statement to a pass-through entity
984 taxpayer on behalf of whom the pass-through entity pays or withholds a tax under this section
985 showing the amount of tax the pass-through entity pays or withholds under this section for the
986 taxable year on behalf of the pass-through entity taxpayer.

987 ~~[(5)]~~ (6) Notwithstanding Section 59-1-401 or 59-1-402, the commission may not
988 collect an amount under this section for a taxable year from a pass-through entity and shall

989 waive any penalty and interest on that amount if:

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

992 (b) the pass-through entity taxpayer:

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

995 (ii) on or before the due date including extensions described in Subsection [~~(5)~~]

996 (6)(b)(i), pays the tax on the amount for the taxable year:

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

999 (B) if the pass-through entity taxpayer is classified as an estate, individual, partnership,
1000 S corporation, or a trust for federal income tax purposes, under this chapter; and

1001 (c) the pass-through entity applies to the commission.

1002 [~~(6)~~] (7) Notwithstanding Section 59-1-401 or 59-1-402, the commission may not
1003 collect an amount under this section for a taxable year from a pass-through entity that is a trust
1004 and shall waive any penalty and interest on that amount if:

1005 (a) the pass-through entity fails to pay or withhold the tax on the amount as required by
1006 this section on behalf of a dependent beneficiary;

1007 (b) the pass-through entity applies to the commission; and

1008 (c) (i) the dependent beneficiary complies with the requirements of Subsection [~~(5)~~]

1009 (6)(b); or

1010 (ii) (A) the dependent beneficiary's adjusted gross income for the taxable year does not
1011 exceed the basic standard deduction for the dependent beneficiary, as calculated under Section
1012 63, Internal Revenue Code, for that taxable year; and

1013 (B) the trustee of the trust retains a statement of dependent beneficiary income on
1014 behalf of the dependent beneficiary.

1015 [~~(7)~~] (8) If a pass-through entity would have otherwise qualified for a waiver of a
1016 penalty and interest under Subsection [~~(6)~~] (7), except that the trustee of a trust has not applied
1017 to the commission as required by Subsection [~~(6)~~] (7)(b) or retained the statement of dependent
1018 beneficiary income required by Subsection [~~(6)~~] (7)(c)(ii)(B), it is a rebuttable presumption in
1019 an audit that the pass-through entity would have otherwise qualified for the waiver of the

1020 penalty and interest under Subsection [~~(6)~~] (7).

1021 Section 9. **Retrospective operation.**

1022 This bill has retrospective operation for a taxable year beginning on or after January 1,

1023 2022.