

1 **APPORTIONMENT OF BUSINESS INCOME AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Deidre M. Henderson**

5 House Sponsor: Daniel McCay

7 **LONG TITLE**

8 **General Description:**

9 This bill addresses the apportionment of business income for purposes of corporate
10 franchise and income taxes.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ addresses the apportionment of business income for purposes of corporate franchise
- 14 and income taxes;
- 15 ▶ repeals obsolete language; and
- 16 ▶ makes technical and conforming changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 This bill provides retrospective operation.

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **59-7-110**, as last amended by Laws of Utah 2010, Chapter 155

24 **59-7-311**, as last amended by Laws of Utah 2010, Chapter 155

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

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

28 **59-7-110. Utah net losses -- Carryforwards and carrybacks -- Deduction.**

29 (1) The amount of Utah net loss that shall be carried back or forward to offset income

30 of another taxable year is determined as provided in this section.

31 (2) (a) Subject to the other provisions of this section, a Utah net loss from a taxable
32 year beginning before January 1, 1994, shall be carried back three taxable years preceding the
33 taxable year of the loss and any remaining loss shall be carried forward five taxable years
34 following the taxable year of the loss.

35 (b) (i) Subject to the other provisions of this section, a Utah net loss from a taxable
36 year beginning on or after January 1, 1994, may be carried back three taxable years preceding
37 the taxable year of the loss and carried forward 15 taxable years following the taxable year of
38 the loss.

39 (ii) If an election is made to forego the federal net operating loss carryback, a Utah net
40 loss is not eligible to be carried back unless an election is made for state purposes.

41 (3) A Utah net loss shall be carried to the earliest eligible year for which the Utah
42 taxable income before net loss deduction, minus Utah net losses from previous years that were
43 applied or required to be applied to offset income, is not less than zero.

44 (4) (a) Except as provided in Subsection (4)(b), the amount of Utah net loss that shall
45 be carried to the year identified in Subsection (3) is the lesser of:

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

48 (ii) the remaining Utah taxable income before net loss deduction of the year identified
49 in Subsection (3) after deduction of Utah net losses from previous years that were carried or
50 required to be carried to the year identified in Subsection (3).

51 (b) (i) The amount of Utah net loss carried back from a taxable year may not exceed
52 \$1,000,000 in Utah taxable income for each return filed under this chapter in a taxable year.

53 (ii) A Utah net loss in excess of \$1,000,000 may be carried forward.

54 (iii) A remaining Utah net loss shall be available to be carried to one or more taxable
55 years in accordance with this section.

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

58 the date of acquisition.

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

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

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

67 (a) subject to Subsection (7):

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

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

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

76 (C) an amount determined by:

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

79 (II) ~~[(Aa)]~~ if the unitary group elects to calculate the fraction for apportioning business
80 income to this state using the method described in Subsection 59-7-311(2)~~[(d)]~~(b), multiplying the
81 amount calculated under Subsection (6)(a)(i)(C)(I) by two; or

82 ~~[(Bb) if the unitary group is required to calculate the fraction for apportioning business~~
83 ~~income to this state using the method described in Subsection 59-7-311(3)(a), multiplying the~~
84 ~~amount calculated under Subsection (6)(a)(i)(C)(I) by four; or]~~

85 ~~[(Cc) if the unitary group is required to calculate the fraction for apportioning business~~

86 income to this state using the method described in Subsection ~~59-7-311(3)(b)~~, multiplying the
87 amount calculated under Subsection ~~(6)(a)(i)(C)(I)~~ by 10; or]

88 (ii) if the unitary group is required to calculate the fraction for apportioning business
89 income to this state using the method described in Subsection ~~59-7-311(3)(e)~~, calculating an
90 amount determined by dividing the total sales of the acquired corporation in this state during
91 the taxable year by the total sales of the unitary group everywhere during the taxable year;

92 (b) dividing the amount calculated under Subsection (6)(a) by the same denominator of
93 the fraction the unitary group uses to apportion business income to this state:

94 (i) for that taxable year; and

95 (ii) in accordance with Section ~~59-7-311~~;

96 (c) multiplying the amount calculated under Subsection (6)(b) by the business income
97 of the unitary group for the taxable year that is subject to apportionment under Section
98 ~~59-7-311~~; and

99 (d) calculating the sum of:

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

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

102 (A) nonbusiness income allocable to this state; or

103 (B) nonbusiness loss allocable to this state.

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

108 Section 2. Section ~~59-7-311~~ is amended to read:

109 **~~59-7-311. Method of apportionment of business income.~~**

110 (1) For a taxable year, all business income shall be apportioned to this state by
111 multiplying the business income by a fraction calculated as provided in this section.

112 [~~(2)(a) Subject to the other provisions of this part, for the taxable year that begins on~~
113 ~~or after January 1, 2010, but begins on or before December 31, 2010, a taxpayer, including a~~

114 sales factor weighted taxpayer, shall elect to calculate the fraction for apportioning business
115 income to this state under this section using:]

116 [(i) the method described in Subsection (2)(c); or]

117 [(ii) the method described in Subsection (2)(d).]

118 [(b) Subject to the other provisions of this part, for a taxable year that begins on or after
119 January 1, 2011, a taxpayer, except for a sales factor weighted taxpayer, shall elect to calculate
120 the fraction for apportioning business income to this state under this section using:]

121 [(i) the method described in Subsection (2)(c); or]

122 [(ii) the method described in Subsection (2)(d).]

123 [(c) For purposes of Subsection (2)(a) or (b), a taxpayer described in Subsection (2)(a)
124 or (b) may elect to calculate the fraction for apportioning business income as follows:]

125 [(i) the numerator of the fraction is the sum of:]

126 [(A) the property factor as calculated under Section 59-7-312;]

127 [(B) the payroll factor as calculated under Section 59-7-315; and]

128 [(C) the sales factor as calculated under Section 59-7-317; and]

129 [(ii) the denominator of the fraction is three.]

130 [(d) For purposes of Subsection (2)(a) or (b), a taxpayer described in Subsection (2)(a)
131 or (b) may elect to calculate the fraction for apportioning business income as follows:]

132 [(i) the numerator of the fraction is the sum of:]

133 [(A) the property factor as calculated under Section 59-7-312;]

134 [(B) the payroll factor as calculated under Section 59-7-315; and]

135 [(C) the product of:]

136 [(D) the sales factor as calculated under Section 59-7-317; and]

137 [(H) two; and]

138 [(ii) the denominator of the fraction is four.]

139 [(e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
140 the commission may make rules providing procedures for a taxpayer described in Subsection
141 (2)(a) or (b) to make the election required by this Subsection (2).]

142 ~~[(3) (a) Subject to the other provisions of this part, for the taxable year that begins on~~
143 ~~or after January 1, 2011, but begins on or before December 31, 2011, a sales factor weighted~~
144 ~~taxpayer shall calculate the fraction for apportioning business income to this state as follows:]~~

145 ~~[(i) the numerator of the fraction is the sum of:]~~

146 ~~[(A) the property factor as calculated under Section 59-7-312;]~~

147 ~~[(B) the payroll factor as calculated under Section 59-7-315; and]~~

148 ~~[(C) the product of:]~~

149 ~~[(F) the sales factor as calculated under Section 59-7-317; and]~~

150 ~~[(H) four; and]~~

151 ~~[(ii) the denominator of the fraction is six.]~~

152 ~~[(b) Subject to the other provisions of this part, for the taxable year that begins on or~~
153 ~~after January 1, 2012, but begins on or before December 31, 2012, a sales factor weighted~~
154 ~~taxpayer shall calculate the fraction for apportioning business income to this state as follows:]~~

155 ~~[(i) the numerator of the fraction is the sum of:]~~

156 ~~[(A) the property factor as calculated under Section 59-7-312;]~~

157 ~~[(B) the payroll factor as calculated under Section 59-7-315; and]~~

158 ~~[(C) the product of:]~~

159 ~~[(F) the sales factor as calculated under Section 59-7-317; and]~~

160 ~~[(H) 10; and]~~

161 ~~[(ii) the denominator of the fraction is 12.]~~

162 (2) Subject to the other provisions of this part, a taxpayer, except for a sales factor
163 weighted taxpayer, shall calculate the fraction for apportioning business income to this state
164 using one of the following fractions:

165 (a) a fraction where:

166 (i) the numerator of the fraction is the sum of:

167 (A) the property factor as calculated under Section 59-7-312;

168 (B) the payroll factor as calculated under Section 59-7-315; and

169 (C) the sales factor as calculated under Section 59-7-317; and

- 170 (ii) the denominator of the fraction is three; or
- 171 (b) a fraction where:
- 172 (i) the numerator of the fraction is the sum of:
- 173 (A) the property factor as calculated under Section 59-7-312;
- 174 (B) the payroll factor as calculated under Section 59-7-315; and
- 175 (C) the sales factor as calculated under Section 59-7-317 multiplied by two; and
- 176 (ii) the denominator of the fraction is four.

177 ~~[(e)]~~ (3) Subject to the other provisions of this part, ~~[for a taxable year that begins on or~~
178 ~~after January 1, 2013,]~~ a sales factor weighted taxpayer shall calculate the fraction for
179 apportioning business income to this state as follows:

- 180 ~~[(i)]~~ (a) the numerator of the fraction is the sales factor as calculated under Section
181 59-7-317; and
- 182 ~~[(ii)]~~ (b) the denominator of the fraction is one.

183 (4) If a taxpayer calculates the fraction for apportioning business income to this state
184 using a method described in this section:

- 185 (a) the taxpayer shall determine the method for calculating the fraction for apportioning
186 business income to this state under this section on or before the due date for filing the
187 taxpayer's return under this chapter for the taxable year, including extensions; and
- 188 (b) the method described in Subsection (4)(a) is in effect for the time period:
 - 189 (i) beginning on the first day of the taxpayer's taxable year for which the taxpayer
190 makes the determination described in Subsection (4)(a); and
 - 191 (ii) ends on the last day of the taxable year described in Subsection (4)(b)(i).

192 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
193 commission may make rules providing procedures for a taxpayer to make the election required
194 by Subsection (2).

195 Section 3. **Retrospective operation.**

196 This bill has retrospective operation for a taxable year beginning on or after January 1,
197 2016.

