

CORPORATE FRANCHISE AND INCOME TAX

AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John L. Valentine

House Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill amends the Corporate Franchise and Income Taxes chapter.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of "foreign operating company" to provide requirements relating to property and payroll located outside the United States;
- ▶ addresses provisions relating to subtractions from unadjusted income, including a subtraction for a foreign operating company; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect for a taxable year beginning on or after January 1, 2011.

Utah Code Sections Affected:

AMENDS:

59-7-101, as last amended by Laws of Utah 2009, Chapter 312

59-7-105, as last amended by Laws of Utah 2008, Chapter 389

59-7-106, as last amended by Laws of Utah 2009, Chapter 312

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

Section 1. Section **59-7-101** is amended to read:

30 **59-7-101. Definitions.**

31 As used in this chapter:

32 (1) "Adjusted income" means unadjusted income as modified by Sections 59-7-105
33 and 59-7-106.

34 (2) (a) "Affiliated group" means one or more chains of corporations that are connected
35 through stock ownership with a common parent corporation that meet the following
36 requirements:

37 (i) at least 80% of the stock of each of the corporations in the group, excluding the
38 common parent corporation, is owned by one or more of the other corporations in the group;
39 and

40 (ii) the common parent directly owns at least 80% of the stock of at least one of the
41 corporations in the group.

42 (b) "Affiliated group" does not include corporations that are qualified to do business
43 but are not otherwise doing business in this state.

44 (c) For purposes of this Subsection (2), "stock" does not include nonvoting stock
45 which is limited and preferred as to dividends.

46 (3) "Apportionable income" means adjusted income less nonbusiness income net of
47 related expenses, to the extent included in adjusted income.

48 (4) "Apportioned income" means apportionable income multiplied by the
49 apportionment fraction as determined in Section 59-7-311.

50 (5) "Business income" is as defined in Section 59-7-302.

51 (6) (a) "Captive real estate investment trust" means a real estate investment trust if:

52 (i) the shares or beneficial interests of the real estate investment trust are not regularly
53 traded on an established securities market; and

54 (ii) more than 50% of the voting power or value of the shares or beneficial interests of
55 the real estate investment trust are directly, indirectly, or constructively:

56 (A) owned by a controlling entity of the real estate investment trust; or

57 (B) controlled by a controlling entity of the real estate investment trust.

58 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
59 the commission may make rules defining "established securities market."

60 (7) (a) "Common ownership" means the direct or indirect control or ownership of
61 more than 50% of the outstanding voting stock of:

62 (i) a parent-subsidiary controlled group as defined in Section 1563, Internal Revenue
63 Code, except that 50% shall be substituted for 80%;

64 (ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue
65 Code, except that 50% shall be substituted for 80%; or

66 (iii) three or more corporations each of which is a member of a group of corporations
67 described in Subsection (2)(a)(i) or ~~[(2)(a)]~~(ii), and one of which is:

68 (A) a common parent corporation included in a group of corporations described in
69 Subsection (2)(a)(i); and

70 (B) included in a group of corporations described in Subsection (2)(a)(ii).

71 (b) Ownership of outstanding voting stock shall be determined by Section 1563,
72 Internal Revenue Code.

73 (8) (a) "Controlling entity of a captive real estate investment trust" means an entity
74 that:

75 (i) is treated as an association taxable as a corporation under the Internal Revenue
76 Code;

77 (ii) is not exempt from federal income taxation under Section 501(a), Internal Revenue
78 Code; and

79 (iii) directly, indirectly, or constructively holds more than 50% of:

80 (A) the voting power of a captive real estate investment trust; or

81 (B) the value of the shares or beneficial interests of a captive real estate investment
82 trust.

83 (b) "Controlling entity of a captive real estate investment trust" does not include:

84 (i) a real estate investment trust, except for a captive real estate investment trust;

85 (ii) a qualified real estate investment subsidiary described in Section 856(i), Internal

86 Revenue Code, except for a qualified real estate investment trust subsidiary of a captive real
87 estate investment trust; or

88 (iii) a foreign real estate investment trust.

89 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
90 commission may make rules defining "established securities market."

91 (9) "Corporate return" or "return" includes a combined report.

92 (10) "Corporation" includes:

93 (a) entities defined as corporations under Sections 7701(a) and 7704, Internal Revenue
94 Code; and

95 (b) other organizations that are taxed as corporations for federal income tax purposes
96 under the Internal Revenue Code.

97 (11) "Dividend" means any distribution, including money or other type of property,
98 made by a corporation to its shareholders out of its earnings or profits accumulated after
99 December 31, 1930.

100 (12) (a) "Doing business" includes any transaction in the course of its business by a
101 domestic corporation, or by a foreign corporation qualified to do or doing intrastate business
102 in this state.

103 (b) Except as provided in Subsection 59-7-102(2), "doing business" includes:

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

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

106 (iii) the participation in joint ventures, working and operating agreements, the
107 performance of which takes place in this state.

108 (13) "Domestic corporation" means a corporation that is incorporated or organized
109 under the laws of this state.

110 (14) (a) "Farmers' cooperative" means an association, corporation, or other
111 organization that is:

112 (i) (A) an association, corporation, or other organization of:

113 (I) farmers; or

114 (II) fruit growers; or
115 (B) an association, corporation, or other organization that is similar to an association,
116 corporation, or organization described in Subsection (14)(a)(i)(A); and
117 (ii) organized and operated on a cooperative basis to:
118 (A) (I) market the products of members of the cooperative or the products of other
119 producers; and
120 (II) return to the members of the cooperative or other producers the proceeds of sales
121 less necessary marketing expenses on the basis of the quantity of the products of a member or
122 producer or the value of the products of a member or producer; or
123 (B) (I) purchase supplies and equipment for the use of members of the cooperative or
124 other persons; and
125 (II) turn over the supplies and equipment described in Subsection (14)(a)(ii)(B)(I) at
126 actual costs plus necessary expenses to the members of the cooperative or other persons.
127 (b) (i) Subject to Subsection (14)(b)(ii), for purposes of this Subsection (14), the
128 commission by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative
129 Rulemaking Act, shall define:
130 (A) the terms:
131 (I) "member"; and
132 (II) "producer"; and
133 (B) what constitutes an association, corporation, or other organization that is similar to
134 an association, corporation, or organization described in Subsection (14)(a)(i)(A).
135 (ii) The rules made under this Subsection (14)(b) shall be consistent with the filing
136 requirements under federal law for a farmers' cooperative.
137 (15) "Foreign corporation" means a corporation that is not incorporated or organized
138 under the laws of this state.
139 (16) (a) "Foreign operating company" means a corporation ~~[that]~~ if:
140 (i) the corporation is incorporated in the United States; ~~[and]~~
141 (ii) at least 80% ~~[or more of whose]~~ of the corporation's business activity, as

142 determined under Section 59-7-401, is conducted outside the United States[-]; and
143 (iii) as calculated in accordance with Part 3, Allocation and Apportionment of Income
144 - Utah UDITPA Provisions, the corporation has:
145 (A) at least \$1,000,000 of payroll located outside the United States; and
146 (B) at least \$2,000,000 of property located outside the United States.
147 (b) "Foreign operating company" does not include a corporation that qualifies for the
148 Puerto Rico and possession tax credit as provided in Section 936, Internal Revenue Code.
149 (17) (a) "Foreign real estate investment trust" means:
150 (i) a business entity organized outside the laws of the United States if:
151 (A) at least 75% of the business entity's total asset value at the close of the business
152 entity's taxable year is represented by:
153 (I) real estate assets, as defined in Section 856(c)(5)(B), Internal Revenue Code;
154 (II) cash or cash equivalents; or
155 (III) one or more securities issued or guaranteed by the United States;
156 (B) the business entity is:
157 (I) not subject to income taxation:
158 (Aa) on amounts distributed to the business entity's beneficial owners; and
159 (Bb) in the jurisdiction in which the business entity is organized; or
160 (II) exempt from income taxation on an entity level in the jurisdiction in which the
161 business entity is organized;
162 (C) the business entity distributes at least 85% of the business entity's taxable income,
163 as computed in the jurisdiction in which the business entity is organized, to the holders of the
164 business entity's:
165 (I) shares or beneficial interests; and
166 (II) on an annual basis;
167 (D) (I) not more than 10% of the following is held directly, indirectly, or
168 constructively by a single person:
169 (Aa) the voting power of the business entity; or

170 (Bb) the value of the shares or beneficial interests of the business entity; or
171 (II) the shares of the business entity are regularly traded on an established securities
172 market; and
173 (E) the business entity is organized in a country that has a tax treaty with the United
174 States; or
175 (ii) a listed Australian property trust.
176 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
177 the commission may make rules defining:
178 (i) "cash or cash equivalents";
179 (ii) "established securities market"; or
180 (iii) "listed Australian property trust."
181 (18) "Income" includes losses.
182 (19) "Internal Revenue Code" means Title 26 of the United States Code as effective
183 during the year in which Utah taxable income is determined.
184 (20) "Nonbusiness income" is as defined in Section 59-7-302.
185 (21) "Real estate investment trust" is as defined in Section 856, Internal Revenue
186 Code.
187 (22) "Related expenses" means:
188 (a) expenses directly attributable to nonbusiness income; and
189 (b) the portion of interest or other expense indirectly attributable to both nonbusiness
190 and business income which bears the same ratio to the aggregate amount of such interest or
191 other expense, determined without regard to this Subsection (22), as the average amount of the
192 asset producing the nonbusiness income bears to the average amount of all assets of the
193 taxpayer within the taxable year.
194 (23) "Safe harbor lease" means a lease that qualified as a safe harbor lease under
195 Section 168, Internal Revenue Code.
196 (24) "S corporation" means an S corporation as defined in Section 1361, Internal
197 Revenue Code.

198 (25) "State of the United States" includes any of the 50 states or the District of
199 Columbia.

200 (26) (a) "Taxable year" means the calendar year or the fiscal year ending during such
201 calendar year upon the basis of which the adjusted income is computed.

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

205 (27) "Taxpayer" means any corporation subject to the tax imposed by this chapter.

206 (28) "Threshold level of business activity" means business activity in the United States
207 equal to or greater than 20% of the corporation's total business activity as determined under
208 Section 59-7-401.

209 (29) "Unadjusted income" means federal taxable income as determined on a separate
210 return basis before intercompany eliminations as determined by the Internal Revenue Code,
211 before the net operating loss deduction and special deductions for dividends received.

212 (30) (a) "Unitary group" means a group of corporations that:

213 (i) are related through common ownership; and

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

217 (A) centralized management;

218 (B) functional integration; and

219 (C) economies of scale.

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

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

222 (31) "United States" includes the 50 states and the District of Columbia.

223 (32) "Utah net loss" means the current year Utah taxable income before Utah net loss
224 deduction, if determined to be less than zero.

225 (33) "Utah net loss deduction" means the amount of Utah net losses from other taxable

226 years that may be carried back or carried forward to the current taxable year in accordance
227 with Section 59-7-110.

228 (34) (a) "Utah taxable income" means Utah taxable income before net loss deduction
229 less Utah net loss deduction.

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

233 (35) "Utah taxable income before net loss deduction" means apportioned income plus
234 nonbusiness income allocable to Utah net of related expenses.

235 (36) (a) "Water's edge combined report" means a report combining the income and
236 activities of:

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

238 (A) corporations organized or incorporated in the United States, including those
239 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section
240 936, Internal Revenue Code, in accordance with Subsection (36)(b); and

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

243 (ii) an affiliated group electing to file a water's edge combined report under Subsection
244 59-7-402(2).

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

248 (37) "Worldwide combined report" means the combination of the income and
249 activities of all members of a unitary group irrespective of the country in which the
250 corporations are incorporated or conduct business activity.

251 Section 2. Section **59-7-105** is amended to read:

252 **59-7-105. Additions to unadjusted income.**

253 In computing adjusted income the following amounts shall be added to unadjusted

254 income:

255 (1) interest from bonds, notes, and other evidences of indebtedness issued by any state
256 of the United States, including any agency and instrumentality of a state of the United States;

257 (2) the amount of any deduction taken on a corporation's federal return for taxes paid
258 by a corporation:

259 (a) to Utah for taxes imposed by this chapter; and

260 (b) to another state of the United States, a foreign country, a United States possession,
261 or the Commonwealth of Puerto Rico for taxes imposed for the privilege of doing business, or
262 exercising its corporate franchise, including income, franchise, corporate stock and business
263 and occupation taxes;

264 (3) the safe harbor lease adjustment required under Subsections 59-7-111(1)(a) and
265 (2)(a);

266 (4) capital losses that have been deducted on a Utah corporate return in previous
267 years;

268 (5) any deduction on the federal return that has been previously deducted on the Utah
269 return;

270 (6) the amount of contributions claimed as a tax credit pursuant to Section 59-7-602;

271 (7) the amount of the deduction taken pursuant to Section 59-7-603 for sophisticated
272 technological equipment;

273 (8) charitable contributions, to the extent deducted on the federal return when
274 determining federal taxable income;

275 (9) the amount of gain or loss determined under Section 59-7-114 relating to a target
276 corporation under Section 338, Internal Revenue Code, unless such gain or loss has already
277 been included in the unadjusted income of the target corporation;

278 (10) the amount of gain or loss determined under Section 59-7-115 relating to
279 corporations treated for federal purposes as having disposed of its assets under Section 336(e),
280 Internal Revenue Code, unless such gain or loss has already been included in the unadjusted
281 income of the target corporation;

282 (11) adjustments to gains, losses, depreciation expense, amortization expense, and
 283 similar items due to a difference between basis for federal purposes and basis as computed
 284 under Section 59-7-107;

285 (12) the amount withdrawn under Title 53B, Chapter 8a, Higher Education Savings
 286 Incentive Program, from the account of a corporation that is an account owner as defined in
 287 Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount
 288 withdrawn from the account of the corporation that is the account owner:

289 (a) is not expended for higher education costs as defined in Section 53B-8a-102; and

290 (b) is subtracted by the corporation:

291 (i) that is the account owner; and

292 (ii) in accordance with Subsection 59-7-106~~[(18)]~~ (1)(r); and

293 (13) the amount of the deduction for dividends paid, as defined in Section 561,
 294 Internal Revenue Code, that is allowed under Section 857(b)(2)(B), Internal Revenue Code, in
 295 computing the taxable income of a captive real estate investment trust, if that captive real
 296 estate investment trust is subject to federal income taxation.

297 Section 3. Section **59-7-106** is amended to read:

298 **59-7-106. Subtractions from unadjusted income.**

299 (1) In computing adjusted income the following amounts shall be subtracted from
 300 unadjusted income:

301 ~~[(1)]~~ (a) the foreign dividend gross-up included in gross income for federal income tax
 302 purposes under Section 78, Internal Revenue Code;

303 ~~[(2)]~~ (b) subject to Subsection (2), the net capital loss, as defined for federal purposes,
 304 if the taxpayer elects to deduct the net capital loss on the current Utah return. ~~The deduction~~
 305 ~~shall be made by claiming the deduction on the current Utah return which shall be filed by the~~
 306 ~~due date of the return, including extensions. For the purposes of this Subsection (2) all capital~~
 307 ~~losses in a given year must be:~~ return filed under this chapter for the taxable year for which
 308 the net capital loss is incurred;

309 ~~[(a) deducted in the year incurred; or]~~

310 ~~[(b) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue~~
311 ~~Code;]~~

312 ~~[(3)] (c)~~ the decrease in salary expense deduction for federal income tax purposes due
313 to claiming the federal ~~[jobs]~~ work opportunity credit under Section 51, Internal Revenue
314 Code;

315 ~~[(4)] (d)~~ the decrease in qualified research and basic research expense deduction for
316 federal income tax purposes due to claiming the federal ~~[research and development]~~ credit for
317 increasing research activities under Section 41, Internal Revenue Code;

318 ~~[(5)] (e)~~ the decrease in qualified clinical testing expense deduction for federal income
319 tax purposes due to claiming the federal ~~[orphan drug credit under Section 28]~~ credit for
320 clinical testing expenses for certain drugs for rare diseases or conditions under Section 45C,
321 Internal Revenue Code;

322 ~~[(6)] (f)~~ any decrease in any expense deduction for federal income tax purposes due to
323 claiming any other federal credit;

324 ~~[(7)] (g)~~ the safe harbor lease adjustment required under Subsections 59-7-111(1)(b)
325 and (2)(b);

326 ~~[(8)] (h)~~ any income on the federal ~~[corporate]~~ corporation income tax return that has
327 been previously taxed by Utah;

328 ~~[(9) amounts]~~ (i) an amount included in federal taxable income that ~~[are]~~ is due to
329 ~~[refunds of taxes]~~ a refund of a tax, including a franchise tax, an income tax, a corporate stock
330 and business tax, or an occupation tax:

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

332 (A) doing business[;]; or

333 (B) exercising a corporate franchise[; including income, franchise, corporate stock and
334 business and occupation taxes];

335 (ii) if that tax is paid by the corporation to:

336 (A) Utah[;];

337 (B) another state of the United States[;];

338 (C) a foreign country[;];

339 (D) a United States possession[;]; or

340 (E) the Commonwealth of Puerto Rico; and

341 (iii) to the extent that ~~[the taxes were]~~ tax was added to unadjusted income under

342 Section 59-7-105;

343 ~~[(10)]~~ (j) a charitable [contributions] contribution, to the extent the charitable

344 contribution is allowed as a subtraction under Section 59-7-109;

345 ~~[(11)(a)]~~ (k) subject to Subsection (3), 50% of [the dividends deemed] a dividend

346 considered to be received or received from ~~[subsidiaries which are members of the]~~ a

347 subsidiary that:

348 (i) is a member of the unitary group [and are];

349 (ii) is organized or incorporated outside of the United States ~~[unless such subsidiaries~~

350 ~~are]; and~~

351 (iii) is not included in a combined report under Section 59-7-402 or 59-7-403[;]; ~~[In~~

352 ~~arriving at the amount of the dividend exclusion, the taxpayer shall first deduct from the~~

353 ~~dividends deemed received or received, the expense directly attributable to those dividends.~~

354 ~~Interest expense attributable to excluded dividends shall be determined by multiplying interest~~

355 ~~expense by a fraction, the numerator of which is the taxpayer's average investment in such~~

356 ~~dividend paying subsidiaries, and the denominator of which is the taxpayer's average total~~

357 ~~investment in assets;]~~

358 ~~[(b) in determining income apportionable to this state, a portion of the factors of a~~

359 ~~foreign subsidiary whose dividends are partially excluded under Subsection (11)(a) shall be~~

360 ~~included in the combined report factors. The portion to be included shall be determined by~~

361 ~~multiplying each factor of the foreign subsidiary by a fraction, but not to exceed 100%, the~~

362 ~~numerator of which is the amount of the dividend paid by the foreign subsidiary which is~~

363 ~~included in adjusted income, and the denominator of which is the current year earnings and~~

364 ~~profits of the foreign subsidiary as determined under the Internal Revenue Code;]~~

365 ~~[(12)(a)]~~ (l) subject to Subsection (4) and Section 59-7-401, 50% of the adjusted

366 income of a foreign operating company [~~unless the taxpayer has elected to file a worldwide~~
367 ~~combined report as provided in Section 59-7-403. For purposes of this Subsection (12), when~~
368 ~~calculating the adjusted income of a foreign operating company, a foreign operating company~~
369 ~~may not deduct the subtractions allowable under this Subsection (12) and Subsection (11)];~~

370 [~~(b) in determining income apportionable to this state, the factors for a foreign~~
371 ~~operating company shall be included in the combined report factors in the same percentage its~~
372 ~~adjusted income is included in the combined adjusted income;]~~

373 [~~(13)~~] (m) the amount of gain or loss [~~which~~] that is included in unadjusted income
374 but not recognized for federal purposes on stock sold or exchanged by a member of a selling
375 consolidated group as defined in Section 338, Internal Revenue Code, if an election has been
376 made [~~pursuant to~~] in accordance with Section 338(h)(10), Internal Revenue Code;

377 [~~(14)~~] (n) the amount of gain or loss [~~which~~] that is included in unadjusted income but
378 not recognized for federal purposes on stock sold, exchanged, or distributed by a corporation
379 [~~pursuant to~~] in accordance with Section 336(e), Internal Revenue Code, if an election under
380 Section 336(e), Internal Revenue Code, has been made for federal purposes;

381 [~~(15) (a) adjustments to gains, losses, depreciation expense, amortization expense, and~~
382 ~~similar items]~~

383 (o) subject to Subsection (5), an adjustment to the following due to a difference
384 between basis for federal purposes and basis as computed under Section 59-7-107[~~;~~ and];

385 [~~(b) if there has been a reduction in federal basis for a federal tax credit where there is~~
386 ~~no corresponding Utah tax credit, the amount of the reduction in basis shall be allowed as an~~
387 ~~expense in the year of the federal credit;]~~

388 (i) an amortization expense;

389 (ii) a depreciation expense;

390 (iii) a gain;

391 (iv) a loss; or

392 (v) an item similar to Subsections (1)(o)(i) through (iv);

393 [~~(16) any~~] (p) an interest expense that is not deducted on [the] a federal [corporate]

394 corporation income tax return under Section 265(b) or 291(e), Internal Revenue Code;

395 ~~[(17)]~~ (q) 100% of ~~[the]~~ dividends received from ~~[subsidiaries which are insurance~~

396 ~~companies]~~ a subsidiary that is an insurance company if that subsidiary that is an insurance

397 company is:

398 (i) exempt from this chapter under Subsection 59-7-102(1)(c); and ~~[are]~~

399 (ii) under common ownership;

400 ~~[(18)]~~ (r) subject to Subsection 59-7-105(12), the amount of a qualified investment as

401 defined in Section 53B-8a-102 that:

402 ~~[(a)]~~ (i) a corporation that is an account owner as defined in Section 53B-8a-102

403 makes during the taxable year;

404 ~~[(b)]~~ (ii) the corporation described in Subsection ~~[(18)(a)]~~ (1)(r)(i) does not deduct on

405 a federal corporation income tax return; and

406 ~~[(c)]~~ (iii) does not exceed the maximum amount of the qualified investment that may

407 be subtracted from unadjusted income for a taxable year in accordance with Subsections

408 53B-8a-106(1)(d) and (f); and

409 ~~[(19)]~~ (s) for purposes of income included in a combined report under Part 4,

410 Combined Reporting, the entire amount of the dividends a member of a unitary group receives

411 or is considered to receive from a captive real estate investment trust.

412 (2) For purposes of Subsection (1)(b):

413 (a) the subtraction shall be made by claiming the subtraction on a return filed:

414 (i) under this chapter for the taxable year for which the net capital loss is incurred; and

415 (ii) by the due date of the return, including extensions; and

416 (b) a net capital loss for a taxable year shall be:

417 (i) subtracted for the taxable year for which the net capital loss is incurred; or

418 (ii) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue

419 Code.

420 (3) (a) For purposes of calculating the subtraction provided for in Subsection (1)(k), a

421 taxpayer shall first subtract from a dividend considered to be received or received an expense

422 directly attributable to that dividend.

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

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

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

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

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

437 (A) not to exceed 100%; and

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

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

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

444 (i) if the taxpayer elects to file a worldwide combined report as provided in Section
445 59-7-403; or

446 (ii) for the following:

447 (A) income generated from intangible property; or

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

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

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

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

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

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

461 (i) income generated from intangible property; or

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

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

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

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

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

472 **Section 4. Effective date.**

473 This bill takes effect for a taxable year beginning on or after January 1, 2011.