

1 **MOBILE WORKFORCE INCOME TAX AMENDMENTS**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: Jefferson Moss

6

LONG TITLE

7 **Committee Note:**

8 The Revenue and Taxation Interim Committee recommended this bill.

9 Legislative Vote: 12 voting for 3 voting against 4 absent

10 **General Description:**

11 This bill addresses the tax liability and withholding requirements for a nonresident
12 individual earning wages in the state.

13 **Highlighted Provisions:**

14 This bill:

15 ▶ creates an exemption from income tax if a nonresident individual works in the state
16 for 20 or fewer days during a taxable year and provides the circumstances for
17 qualification;

18 ▶ modifies the employer's withholding obligations, including penalties, for a
19 nonresident individual whose wages are exempt from income tax; and

20 ▶ makes technical changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 This bill provides a special effective date.

25 **Utah Code Sections Affected:**

26 AMENDS:
27



28 **59-10-116**, as last amended by Laws of Utah 2008, Chapters 382 and 389

29 **59-10-117**, as last amended by Laws of Utah 2020, Chapter 239

30 **59-10-402**, as last amended by Laws of Utah 2020, Chapter 239

31 **59-10-405.5**, as last amended by Laws of Utah 2021, Chapter 16

32 ENACTS:

33 **59-10-117.5**, Utah Code Annotated 1953



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

36 Section 1. Section **59-10-116** is amended to read:

37 **59-10-116. Tax on nonresident individual -- Calculation -- Exemption.**

38 (1) Except as provided in Subsection (2), a tax is imposed on a nonresident individual
39 in an amount equal to the product of the:

40 (a) nonresident individual's state taxable income; and

41 (b) percentage listed in Subsection **59-10-104(2)**.

42 (2) This section does not apply to a nonresident individual:

43 (a) exempt from taxation under Section **59-10-104.1**~~[-]~~; or

44 (b) whose only state source income is wages that are excluded in accordance with

45 Section **59-10-117.5**.

46 Section 2. Section **59-10-117** is amended to read:

47 **59-10-117. State taxable income derived from Utah sources.**

48 (1) For purposes of Section **59-10-116**, state taxable income derived from Utah sources
49 includes state taxable income attributable to or resulting from:

50 (a) the ownership in this state of any interest in real or tangible personal property,
51 including real property or property rights from which gross income from mining as described
52 by Section 613(c), Internal Revenue Code, is derived;

53 (b) the carrying on of a business, trade, profession, or occupation in this state;

54 (c) an addition to adjusted gross income required by Subsection **59-10-114(1)(c)**, (d),
55 or (h) to the extent that the addition was previously subtracted from state taxable income;

56 (d) a subtraction from adjusted gross income required by Subsection **59-10-114(2)(c)**
57 for a refund described in Subsection **59-10-114(2)(c)** to the extent that the refund subtracted is
58 related to a tax imposed by this state; or

59 (e) an adjustment to adjusted gross income required by Section 59-10-115 to the extent
60 the adjustment is related to an item described in Subsections (1)(a) through (d).

61 (2) For purposes of Subsection (1):

62 (a) income from intangible personal property, including annuities, dividends, interest,
63 and gains from the disposition of intangible personal property, shall constitute income derived
64 from Utah sources only to the extent that the income is from property employed in a trade,
65 business, profession, or occupation carried on in this state;

66 (b) a deduction with respect to a capital loss, net long-term capital gain, or net
67 operating loss shall be:

68 (i) based solely on income, gain, loss, and deduction connected with Utah sources,
69 under rules prescribed by the commission in accordance with Title 63G, Chapter 3, Utah
70 Administrative Rulemaking Act; and

71 (ii) otherwise determined in the same manner as the corresponding federal deductions;

72 (c) a salary, wage, commission, or compensation for personal services rendered:

73 (i) subject to Section 59-10-117.5, inside this state is considered to be income derived
74 from Utah sources; and

75 (ii) outside this state may not be considered to be income derived from Utah sources;

76 (d) a share of income, gain, loss, deduction, or credit of a nonresident pass-through
77 entity taxpayer, as defined in Section 59-10-1402, derived from or connected with Utah sources
78 shall be determined in accordance with Section 59-10-118;

79 (e) a nonresident, other than a dealer holding property primarily for sale to customers
80 in the ordinary course of the dealer's trade or business, may not be considered to carry on a
81 trade, business, profession, or occupation in this state solely by reason of the purchase or sale
82 of property for the nonresident's own account;

83 (f) if a trade, business, profession, or occupation is carried on partly within and partly
84 without this state:

85 (i) an item of income, gain, loss, or a deduction derived from or connected with Utah
86 sources shall be determined in accordance with Section 59-10-118; and

87 (ii) a salary, a wage, a commission, or compensation for personal services rendered is
88 not considered to be an item of income from the carrying on of a business, trade, profession, or
89 occupation;

90 (g) the share of a nonresident estate or trust or a nonresident beneficiary of any estate
91 or trust in income, gain, loss, or deduction derived from or connected with Utah sources shall
92 be determined under Section 59-10-207; and

93 (h) any dividend, interest, or distributive share of income, gain, or loss from a real
94 estate investment trust, as defined in Section 59-7-101, distributed or allocated to a nonresident
95 investor in the trust, including any shareholder, beneficiary, or owner of a beneficial interest in
96 the trust, shall:

97 (i) be income from intangible personal property under Subsection (2)(a); and

98 (ii) constitute income derived from Utah sources only to the extent the nonresident
99 investor is employing its beneficial interest in the trust in a trade, business, profession, or
100 occupation carried on by the investor in this state.

101 Section 3. Section 59-10-117.5 is enacted to read:

102 **59-10-117.5. Nonresident individual wage exemption.**

103 (1) As used in this section:

104 (a) "Day" means any period of time during a calendar day that an individual is present
105 in the state, unless the presence is solely for transportation through the state.

106 (b) "Wages" means income that:

107 (i) is received by an individual for employment duties performed inside this state; and

108 (ii) would be subject to withholding in accordance with Section 59-10-402 without
109 regard to Subsection 59-10-402(5)(a).

110 (2) A nonresident individual's wages may not be considered income derived from Utah
111 sources if:

112 (a) the nonresident individual has no other income from sources within this state for
113 the taxable year in which the nonresident individual receives the wages;

114 (b) the nonresident individual is present in this state to perform employment duties for
115 20 or fewer days during the tax year; and

116 (c) the nonresident individual's state of residence:

117 (i) provides a substantially similar exclusion; or

118 (ii) does not impose a state individual income tax.

119 (3) This section does not apply to wages received by:

120 (a) an individual who is a professional athlete or a member of a professional athletic

121 team;

122 (b) an individual who is a professional entertainer and who performs services in the
 123 professional performing arts;

124 (c) an individual of prominence who performs services for wages on a per-event basis;

125 (d) an individual who performs construction services to improve real property,
 126 predominantly on a construction site, as a laborer;

127 (e) an individual who is a key employee, without regard to ownership or the existence
 128 of a benefit plan, for the year immediately preceding the current tax year pursuant to

129 Subsection 416(i), Internal Revenue Code; ~~§~~ **or** ~~§~~

130 (f) an individual who is an employee of a non-corporate employer, and who would be a
 131 key employee without regard to ownership or the existence of a benefit plan, for the year
 132 immediately preceding the current tax year pursuant to Subsection 416(i), Internal Revenue
 133 Code, if:

134 (i) the term "employee" were substituted for the term "officer"; and

135 (ii) the individual is one of the non-corporate employer's 50 highest paid employees
 136 without regard to whether the individual is an officer.

137 Section 4. Section **59-10-402** is amended to read:

138 **59-10-402. Requirement of withholding -- Exceptions.**

139 (1) As used in this section:

140 (a) "Day" means any period of time during a calendar day that an individual is present
 141 in the state, unless the presence is solely for transportation through the state.

142 (b) "Related entity" means:

143 (i) a stockholder who is an individual, or a member of the stockholder's family as
 144 described in Section 318, Internal Revenue Code, if the stockholder and the members of the
 145 stockholder's family own, in the aggregate, at least 50% of the value of the nonresident
 146 individual's outstanding stock;

147 (ii) a stockholder, or a stockholder's partnership, limited liability company, estate, trust,
 148 or corporation, if the stockholder and the stockholder's partnerships, limited liability
 149 companies, estates, trusts, or corporations own, in the aggregate, at least 50% of the value of
 150 the nonresident individual's outstanding stock; or

151 (iii) a corporation, or a party related to the corporation in a manner that would require

152 an attribution of stock from the corporation to the party or from the party to the corporation
 153 under the attribution rules of the Internal Revenue Code if the taxpayer owns, directly,
 154 indirectly, beneficially, or constructively, at least 50% of the value of the corporation's
 155 outstanding stock.

156 (c) "Related person" means a person that, with respect to the nonresident individual
 157 during all or any portion of the taxable year, is:

158 (i) a related entity;

159 (ii) a component member as defined in Subsection 1563(b), Internal Revenue Code;

160 (iii) a person to or from whom there is attribution of stock ownership in accordance
 161 with Subsection 1563(e), Internal Revenue Code; or

162 (iv) a person that, notwithstanding the form of organization, bears the same
 163 relationship to the nonresident individual as a person described in Subsection (1)(c)(i), (ii), or
 164 (iii).

165 (2) For purposes of determining whether the ownership requirements of a related entity
 166 are satisfied, a person shall:

167 (a) use the attribution rules of the Internal Revenue Code; and

168 (b) include direct, indirect, beneficial, or constructive ownership.

169 ~~[(+)]~~ (3) Each employer making payment of wages shall deduct and withhold from
 170 wages an amount to be determined by a commission rule ~~[which]~~ that will, as closely as
 171 possible, pay the income tax imposed by this chapter.

172 ~~[(2)]~~ (4) (a) ~~[(+)]~~ Any employer described in Subsection ~~[(+)]~~ (3) that is to do business
 173 within the state for a period not to exceed 60 days in the aggregate during any calendar year
 174 may be relieved from the requirement provided for under this part for such period by furnishing
 175 to the commission in advance a certificate so certifying.

176 ~~[(+)]~~ (b) If an employer described in Subsection ~~[(2)(a)(+)]~~ (4)(a) thereafter does
 177 business within the state for a period in excess of 60 days, that employer shall be liable for all
 178 the tax that the employer would have been required to deduct and withhold.

179 ~~[(+)]~~ (c) Upon a showing of good cause by the employer, the commission may extend
 180 for a period of not to exceed 30 days the time during which the employer is not required to
 181 deduct and withhold the tax.

182 ~~[(b) The exemption described in Subsection (2)(a) is from the withholding requirement~~

183 described in Subsection (1), not from an individual's obligation to pay income taxes as
 184 provided in Part 1, ~~Determination and Reporting of Tax Liability and Information.~~]

185 (5) (a) (i) An employer described in Subsection (3) may not deduct or withhold any
 186 amount from wages paid to a nonresident individual if the nonresident individual's wages are
 187 excluded from state source income in accordance with Section 59-10-117.5 without regard to
 188 Subsection 59-10-117.5(2)(a).

189 (ii) For purposes of Subsection (5)(a)(i), an employer shall calculate the number of
 190 days described in Subsection 59-10-117.5(2)(b) by including the days the nonresident
 191 employee is present in the state to perform employment duties on behalf of the employer or any
 192 related person.

193 (b) If a nonresident individual is present in this state to perform employment duties for
 194 the employer, a related person, or a combination of the employer and a related person for more
 195 than 20 days during a calendar year, the employer shall be liable for all the tax that the
 196 employer would have been required to deduct and withhold.

197 (6) The exceptions described in Subsections (4)(a) and (5)(a) are from the withholding
 198 requirement described in Subsection (3), not from an individual's obligation to pay income
 199 taxes as provided in Part 1, Determination and Reporting of Tax Liability and Information.

200 ~~[(3)]~~ (7) (a) The amount withheld under this section shall be allowed to the recipient of
 201 the income as a credit against the tax imposed by this chapter.

202 (b) Except as provided in Subsection ~~[(3)]~~ (7)(c), the amount withheld during any
 203 calendar year shall be allowed as a credit for the taxable year that begins in the calendar year in
 204 which the amount is withheld.

205 (c) If more than one taxable year begins in a calendar year, the withheld amount shall
 206 be allowed as a credit for the last taxable year that begins in the calendar year in which the
 207 amount is withheld.

208 Section 5. Section 59-10-405.5 is amended to read:

209 **59-10-405.5. Definitions -- Withholding tax license requirements -- Penalty --**
 210 **Application process and requirements -- Fee not required -- Bonds -- Exception.**

211 (1) As used in this section:

212 (a) ~~["applicant"]~~ "Applicant" means a person that:

213 (i) is required by this section to obtain a license; and

- 214 (ii) submits an application:
- 215 (A) to the commission; and
- 216 (B) for a license under this section[;].
- 217 (b) [~~"application"~~] "Application" means an application for a license under this
- 218 section[;].
- 219 (c) [~~"fiduciary of the applicant"~~] "Fiduciary of the applicant" means a person that:
- 220 (i) is required to collect, truthfully account for, and pay over an amount under this part
- 221 for an applicant; and
- 222 (ii) (A) is a corporate officer of the applicant described in Subsection (1)(c)(i);
- 223 (B) is a director of the applicant described in Subsection (1)(c)(i);
- 224 (C) is an employee of the applicant described in Subsection (1)(c)(i);
- 225 (D) is a partner of the applicant described in Subsection (1)(c)(i);
- 226 (E) is a trustee of the applicant described in Subsection (1)(c)(i); or
- 227 (F) has a relationship to the applicant described in Subsection (1)(c)(i) that is similar to
- 228 a relationship described in Subsections (1)(c)(ii)(A) through (E) as determined by the
- 229 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 230 Rulemaking Act[;].
- 231 (d) [~~"fiduciary of the licensee"~~] "Fiduciary of the licensee" means a person that:
- 232 (i) is required to collect, truthfully account for, and pay over an amount under this part
- 233 for a licensee; and
- 234 (ii) (A) is a corporate officer of the licensee described in Subsection (1)(d)(i);
- 235 (B) is a director of the licensee described in Subsection (1)(d)(i);
- 236 (C) is an employee of the licensee described in Subsection (1)(d)(i);
- 237 (D) is a partner of the licensee described in Subsection (1)(d)(i);
- 238 (E) is a trustee of the licensee described in Subsection (1)(d)(i); or
- 239 (F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to
- 240 a relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the
- 241 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 242 Rulemaking Act[;].
- 243 (e) [~~"license"~~] "License" means a license under this section[; ~~and~~].
- 244 (f) [~~"licensee"~~] "Licensee" means a person that is licensed under this section by the

245 commission.

246 (2) The following persons are guilty of a criminal violation as provided in Section
247 59-1-401:

248 (a) a person that:

249 (i) is required to withhold, report, or remit any amounts under this part; and

250 (ii) engages in business within the state before obtaining a license under this section; or

251 (b) a person that:

252 (i) pays wages under this part; and

253 (ii) engages in business within the state before obtaining a license under this section.

254 (3) The license described in Subsection (2):

255 (a) shall be granted and issued:

256 (i) by the commission in accordance with this section;

257 (ii) without a license fee; and

258 (iii) if:

259 (A) an applicant:

260 (I) states the applicant's name and address in the application; and

261 (II) provides other information in the application that the commission may require; and

262 (B) the person meets the requirements of this section to be granted a license as

263 determined by the commission;

264 (b) may not be assigned to another person; and

265 (c) is valid:

266 (i) only for the person named on the license; and

267 (ii) until:

268 (A) the person described in Subsection (3)(c)(i):

269 (I) ceases to do business; or

270 (II) changes that person's business address; or

271 (B) the commission revokes the license.

272 (4) The commission shall review an application and determine whether:

273 (a) the applicant meets the requirements of this section to be issued a license; and

274 (b) a bond is required to be posted with the commission in accordance with

275 Subsections (5) and (6) before the applicant may be issued a license.

276 (5) (a) Except as provided in Subsection (5)(c), an applicant shall post a bond with the
277 commission before the commission may issue the applicant a license if:

278 (i) a license under this section was revoked for a delinquency under this part for:

279 (A) the applicant;

280 (B) a fiduciary of the applicant; or

281 (C) a person for which the applicant or the fiduciary of the applicant is required to
282 collect, truthfully account for, and pay over an amount under this part; or

283 (ii) there is a delinquency in withholding, reporting, or remitting any amount under this
284 part for:

285 (A) an applicant;

286 (B) a fiduciary of the applicant; or

287 (C) a person for which the applicant or the fiduciary of the applicant is required to
288 collect, truthfully account for, and pay over an amount under this part.

289 (b) If the commission determines it is necessary to ensure compliance with this part,
290 the commission may require a licensee to:

291 (i) for a licensee that has not posted a bond under this section with the commission,
292 post a bond with the commission in accordance with Subsection (6); or

293 (ii) for a licensee that has posted a bond under this section with the commission,
294 increase the amount of the bond posted with the commission.

295 (c) The commission may waive the bond requirement described in Subsection (5)(a), if
296 the applicant is in compliance with a payment agreement that:

297 (i) relates to the delinquency; and

298 (ii) is approved by the commission.

299 (6) (a) A bond required by Subsection (5) shall be:

300 (i) executed by:

301 (A) for an applicant, the applicant as principal, with a corporate surety; or

302 (B) for a licensee, the licensee as principal, with a corporate surety; and

303 (ii) payable to the commission conditioned upon the faithful performance of all of the
304 requirements of this part including:

305 (A) the withholding or remitting of any amount under this part;

306 (B) the payment of any:

- 307 (I) penalty as provided in Section 59-1-401; or
- 308 (II) interest as provided in Section 59-1-402; or
- 309 (C) any other obligation of the~~[:]~~ applicant or the licensee under this part.
- 310 [~~(F) applicant under this part; or~~]
- 311 [~~(H) licensee under this part.~~]
- 312 (b) Except as provided in Subsection (6)(d), the commission shall calculate the amount
- 313 of a bond required by Subsection (5) on the basis of:
- 314 (i) commission estimates of:
- 315 (A) for an applicant, any amounts the applicant withholds, reports, or remits under this
- 316 part; or
- 317 (B) for a licensee, any amounts the licensee withholds, reports, or remits under this
- 318 part; and
- 319 (ii) any amount of a delinquency described in Subsection (6)(c).
- 320 (c) Except as provided in Subsection (6)(d), for purposes of Subsection (6)(b)(ii):
- 321 (i) for an applicant, the amount of the delinquency is the sum of:
- 322 (A) the amount of any delinquency that served as a basis for revoking the license under
- 323 this section of:
- 324 (I) the applicant;
- 325 (II) a fiduciary of the applicant; or
- 326 (III) a person for which the applicant or the fiduciary of the applicant is required to
- 327 collect, truthfully account for, and pay over an amount under this part; or
- 328 (B) the amount that any of the following owe under this part:
- 329 (I) the applicant;
- 330 (II) a fiduciary of the applicant; and
- 331 (III) a person for which the applicant or the fiduciary of the applicant is required to
- 332 collect, truthfully account for, and pay over an amount under this part; or
- 333 (ii) for a licensee, the amount of the delinquency is the sum of:
- 334 (A) the amount of any delinquency that served as a basis for revoking the license under
- 335 this section of:
- 336 (I) the licensee;
- 337 (II) a fiduciary of the licensee; or

338 (III) a person for which the licensee or the fiduciary of the licensee is required to
339 collect, truthfully account for, and pay over an amount under this part; or

340 (B) the amount that any of the following owe under this part:

341 (I) the licensee;

342 (II) a fiduciary of the licensee; and

343 (III) a person for which the licensee or the fiduciary of the licensee is required to
344 collect, truthfully account for, and pay over an amount under this part.

345 (d) Notwithstanding Subsection (6)(b) or (c), a bond required by Subsection (5) may
346 not:

347 (i) be less than \$25,000; or

348 (ii) exceed \$500,000.

349 (7) (a) The commission shall revoke a license under this section if:

350 (i) a licensee violates any provision of this part; and

351 (ii) before the commission revokes the license the commission provides the licensee:

352 (A) reasonable notice; and

353 (B) a hearing.

354 (b) If the commission revokes a licensee's license in accordance with Subsection (7)(a),
355 the commission may not issue another license to that licensee until that licensee complies with
356 the requirements of this part, including:

357 (i) paying any:

358 (A) amounts due under this part;

359 (B) penalty as provided in Section 59-1-401; or

360 (C) interest as provided in Section 59-1-402; and

361 (ii) posting a bond in accordance with Subsections (5) and (6).

362 (8) An employer that has erroneously applied the exception described in Subsection
363 59-10-402(5)(a) solely as a result of miscalculating the number of days a nonresident
364 individual is present in this state to perform employment duties may not be assessed a penalty
365 under this section if:

366 (a) the employer relied on a regularly maintained time and attendance system that:

367 (i) requires the employee to record, on a contemporaneous basis, the work location
368 each day the employee is present in a state other than:

369 (A) the employee's state of residence; or
370 (B) the place where services are considered performed for purposes of Section
371 35A-4-204; and
372 (ii) is used by the employer to allocate the employee's wages between all taxing
373 jurisdictions in which the employee performs employment duties;
374 (b) the employer does not maintain a time and attendance system described in
375 Subsection (8)(a) and relied on employee travel records that the employer requires the
376 employee to maintain and record on a regular and contemporaneous basis; or
377 (c) the employer does not maintain a time and attendance system described in
378 Subsection (8)(a) or require the maintenance of employee records described in Subsection
379 (8)(b) and relied on travel expense reimbursement records that the employer requires the
380 employee to submit on a regular and contemporaneous basis.
381 Section 6. **Effective date.**
382 This bill takes effect for a taxable year beginning on or after January 1, 2023.