

Senator Howard A. Stephenson proposes the following substitute bill:

TAX REVISIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel McCay

Senate Sponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill addresses apportionment of business income to the state for purposes of income taxes.

Highlighted Provisions:

This bill:

- addresses the apportionment of business income for purposes of income taxes by:
 - requiring certain taxpayers to use only the sales factor to calculate the fraction for apportioning business income to the state; and
 - allowing certain other taxpayers to choose a method to calculate the fraction for apportioning business income to the state; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

This bill provides coordination clauses.

Utah Code Sections Affected:

AMENDS:



26 **59-7-110**, as last amended by Laws of Utah 2016, Chapters 311 and 323

27 **59-7-302**, as last amended by Laws of Utah 2016, Chapters 311 and 368

28 **59-7-311**, as last amended by Laws of Utah 2016, Chapters 311 and 323

29 **Utah Code Sections Affected by Coordination Clause:**

30 **59-7-302**, as last amended by Laws of Utah 2016, Chapters 311 and 368

31 **59-7-311**, as last amended by Laws of Utah 2016, Chapters 311 and 323

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

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

35 **59-7-110. Utah net losses -- Carryforwards and carrybacks -- Deduction.**

36 (1) The amount of Utah net loss that shall be carried back or forward to offset income
37 of another taxable year is determined as provided in this section.

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

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

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

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

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

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

55 (ii) the remaining Utah taxable income before net loss deduction of the year identified in
56 Subsection (3) after deduction of Utah net losses from previous years that were carried or

required to be carried to the year identified in Subsection (3).

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

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

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

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

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

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

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

(a) subject to Subsection (7):

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

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

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

(C) an amount determined by ~~dividing~~ dividing the total sales of the acquired corporation in this state during the taxable year by the total sales of the unitary group everywhere during the taxable year; ~~and~~ or

~~[(H) if the unitary group elects to calculate the fraction for apportioning business income to this state using the method described in Subsection 59-7-311(2)(b), multiplying the~~

88 ~~amount calculated under Subsection (6)(a)(i)(C)(i) by two; or]~~

89 (ii) if the unitary group is required or elects to calculate the fraction for apportioning
90 business income to this state using the method described in Subsection 59-7-311[(3)](2),
91 calculating an amount determined by dividing the total sales of the acquired corporation in this
92 state during the taxable year by the total sales of the unitary group everywhere during the
93 taxable year;

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

96 (i) for that taxable year; and

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

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

101 (d) calculating the sum of:

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

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

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

105 (B) nonbusiness loss allocable to this state.

106 (7) The amounts calculated under Subsection (6)(a) shall be derived in the same manner
107 as those amounts are derived for purposes of apportioning the unitary group's business income
108 before deducting the net loss, including a modification made in accordance with Section
109 59-7-320.

110 Section 2. Section 59-7-302 is amended to read:

111 **59-7-302. Definitions.**

112 (1) As used in this part, unless the context otherwise requires:

113 (a) "Aircraft type" means a particular model of aircraft as designated by the
114 manufacturer of the aircraft.

115 (b) "Airline" means the same as that term is defined in Section 59-2-102.

116 (c) "Airline revenue ton miles" means, for an airline, the total revenue ton miles during
117 the airline's tax period.

118 (d) "Business income" means income arising from transactions and activity in the

regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitutes integral parts of the taxpayer's regular trade or business operations.

(e) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(f) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

(g) "Excluded NAICS code" means a NAICS code of the 2017 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, within:

(i) NAICS Subsector 2121, Coal Mining;

(ii) NAICS Code 211120, Crude Petroleum Extraction;

(iii) NAICS Subsector 2212, Natural Gas Distribution;

(iv) NAICS Subsector 311, Food Manufacturing;

(v) NAICS Subsector 3121, Beverage Manufacturing;

(vi) NAICS Code 327310, Cement Manufacturing;

(vii) NAICS Subsector 482, Rail Transportation; or

(viii) NAICS Sector 52, Finance and Insurance.

~~[(g)]~~ (h) (i) Except as provided in Subsection (1)(g)(ii), "mobile flight equipment" is as defined in Section 59-2-102.

(ii) "Mobile flight equipment" does not include:

(A) a spare engine; or

(B) tangible personal property described in Subsection 59-2-102(27) owned by an~~[(t)]~~ air charter service~~[:]~~ or ~~[(H)]~~ air contract service.

~~[(H)]~~ (i) "Nonbusiness income" means all income other than business income.

~~[(t)]~~ (j) "Optional ~~[sales factor weighted]~~ apportionment taxpayer" means~~[:]~~ a taxpayer as determined by Subsection (2).

~~[(i) for a taxpayer that is not a unitary group, regardless of the number of economic activities the taxpayer performs, a taxpayer having greater than 50% of the taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if the economic activities are classified in a NAICS code within NAICS Subsector 334 of the 2002 or 2007~~

North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; or]

~~[(ii) for a taxpayer that is a unitary group, a taxpayer having greater than 50% of the taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if the economic activities are classified in a NAICS code within NAICS Subsector 334 of the 2002 or 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget.]~~

~~[(j)] (k) "Revenue ton miles" is determined in accordance with 14 C.F.R. Part 241.~~

~~[(k)] (l) "Sales" means all gross receipts of the taxpayer not allocated under Sections 59-7-306 through 59-7-310.~~

~~[(l) Subject to Subsection (2), "sales factor weighted taxpayer" means:]~~

~~[(i) for a taxpayer that is not a unitary group, regardless of the number of economic activities the taxpayer performs, a taxpayer having greater than 50% of the taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if the economic activities are classified in a NAICS code of the 2002 or 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, except for:]~~

~~[(A) a NAICS code within NAICS Sector 21, Mining;]~~

~~[(B) a NAICS code within NAICS Industry Group 2212, Natural Gas Distribution;]~~

~~[(C) a NAICS code within NAICS Sector 31-33, Manufacturing;]~~

~~[(D) a NAICS code within NAICS Sector 48-49, Transportation and Warehousing;]~~

~~[(E) a NAICS code within NAICS Sector 51, Information, except for NAICS Subsector 519, Other Information Services; or]~~

~~[(F) a NAICS code within NAICS Sector 52, Finance and Insurance; or]~~

~~[(ii) for a taxpayer that is a unitary group, a taxpayer having greater than 50% of the taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if the economic activities are classified in a NAICS code of the 2002 or 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, except for a NAICS code under Subsections (1)(l)(i)(A) through (F).]~~

(m) "State" means any state of the United States, the District of Columbia, the

Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(n) "Transportation revenue" means revenue an airline earns from:

(i) transporting a passenger or cargo; or

(ii) from miscellaneous sales of merchandise as part of providing transportation services.

(o) "Utah revenue ton miles" means, for an airline, the total revenue ton miles within the borders of this state:

(i) during the airline's tax period; and

(ii) from flight stages that originate or terminate in this state.

~~[(2) The following apply to Subsection (1)(f):]~~

~~[(a)(i)]~~ (2) (a) Subject to the other provisions of this Subsection (2), a taxpayer shall ~~[for each taxable year]~~ determine for a taxable year whether the taxpayer is ~~[a sales factor weighted]~~ an optional apportionment taxpayer.

~~[(ii)]~~ (b) A taxpayer shall make the determination required by Subsection (2)(a)(i) before the due date for filing the taxpayer's return under this chapter for the taxable year, including extensions.

~~[(iii) For purposes of making the determination required by Subsection (2)(a)(i), total sales everywhere include only the total sales everywhere:]~~

~~[(A) as determined in accordance with this part; and]~~

~~[(B) made during the taxable year for which a taxpayer makes the determination required by Subsection (2)(a)(i).]~~

(c) A taxpayer shall calculate the following two fractions:

(i) the fraction reached by making the calculation described in Section 59-7-312, except that:

(A) the numerator shall be the property in this state that is attributable to economic activities that are classified in excluded NAICS codes; and

(B) the denominator shall be all property in this state; and

(ii) the fraction reached by making the calculation described in Section 59-7-315, except that:

(A) the numerator shall be the payroll in this state that is attributable to economic

activities that are classified in excluded NAICS codes; and

(B) the denominator shall be all payroll in this state.

(d) The taxpayer shall calculate an average of the fractions calculated in accordance with Subsection (2)(c) by:

(i) adding together the fractions calculated in accordance with Subsection (2)(c); and

(ii) dividing the sum calculated in Subsection (2)(d)(i) by two.

(e) The taxpayer is an optional apportionment taxpayer if the average calculated in accordance with Subsection (2)(d) is greater than .50.

~~[(b)]~~ (f) A taxpayer that files a return as a unitary group for a taxable year is considered to be a unitary group for that taxable year.

~~[(e)]~~ (g) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may define the term "economic activity" consistent with the use of the term "activity" in the 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget.

Section 3. Section **59-7-311** is amended to read:

59-7-311. Method of apportionment of business income.

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

~~[(2) Subject to the other provisions of this part, a taxpayer, except for a sales factor weighted taxpayer and an optional sales factor weighted taxpayer, shall calculate the fraction for apportioning business income to this state using one of the following fractions:]~~

~~[(a) a fraction where:]~~

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

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

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

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

~~[(ii) the denominator of the fraction is three; or]~~

~~[(b) a fraction where:]~~

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

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

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

243 ~~[(C) the sales factor as calculated under Section 59-7-317 multiplied by two; and]~~

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

245 ~~[(3)]~~ (2) Subject to the other provisions of this part, ~~[a sales factor weighted taxpayer]~~ a
246 taxpayer, except an optional apportionment taxpayer, shall calculate the fraction for
247 apportioning business income to this state using a fraction where:

248 (a) the numerator of the fraction is the sales factor as calculated under Section
249 59-7-317; and

250 (b) the denominator of the fraction is one.

251 ~~[(4)]~~ (3) Subject to the other provisions of this part, an optional ~~[sales factor weighted]~~
252 apportionment taxpayer shall calculate the fraction for apportioning business income to this
253 state using ~~[a method described in Subsection (2)(a), (2)(b), or (3).]~~ one of the following
254 fractions:

255 (a) the fraction described in Subsection (2); or

256 (b) a fraction where:

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

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

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

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

261 (ii) the denominator of the fraction is three.

262 ~~[(5)]~~ (4) (a) The taxpayer shall determine the method for calculating the fraction for
263 apportioning business income to this state under this section on or before the due date for filing
264 the taxpayer's return under this chapter for the taxable year, including extensions.

265 (b) The method described in Subsection ~~[(5)]~~ (4)(a) is in effect for the taxable year.

266 ~~[(6)]~~ (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
267 Act, the commission may make rules providing procedures for a taxpayer to make the election
268 required by ~~[Subsections (2) and (4)]~~ Subsection (3).

269 Section 4. **Retrospective operation.**

270 This bill has retrospective operation for a taxable year beginning on or after January 1,
271 2017.

272 Section 5. **Coordinating H.B. 377 with S.B. 229 -- Superseding technical and**
273 **substantive amendments.**

274 If this H.B. 377 and S.B. 229, Sales Factor Weighted Tax Modifications, both pass and
275 become law, it is the intent of the Legislature that this H.B. 377 supersedes S.B. 229 when the
276 Office of Legislative Research and General Counsel prepares the Utah Code database for
277 publication.

278 **Section 6. Coordinating H.B. 377 with S.B. 132 -- Superseding technical and**
279 **substantive amendments.**

280 If this H.B. 377 and S.B. 132, Tax Provision Amendments, both pass and become law, it
281 is the intent of the Legislature that the amendments to Section [59-7-302](#) in this H.B. 377
282 supersede the amendments to Section [59-7-302](#) in S.B. 132 when the Office of Legislative
283 Research and General Counsel prepares the Utah Code database for publication.

284 **Section 7. Coordinating H.B. 377 with S.B. 132 and S.B. 229 -- Superseding**
285 **technical and substantive amendments.**

286 If this H.B. 377 and S.B. 132, Tax Provision Amendments, and S.B. 229, Sales Factor
287 Weighted Tax Modifications, all pass and become law, it is the intent of the Legislature that
288 when the Office of Legislative Research and General Counsel prepares the Utah Code database
289 for publication:

290 (1) the amendments to Section [59-7-302](#) in this H.B. 377 supersede the amendments to
291 Section [59-7-302](#) in S.B. 132; and

292 (2) this H.B. 377 supersedes S.B. 229.