

Representative Daniel McCay proposes the following substitute bill:

TAX REVISIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel McCay

Senate Sponsor: _____

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 to the state for purposes of income taxes by requiring all taxpayers, for certain taxable years, to use only the sales factor 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.

Utah Code Sections Affected:

AMENDS:

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

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



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

27 Section 1. Section **59-7-302** is amended to read:

28 **59-7-302. Definitions.**

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

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

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

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

35 (d) "Business income" means income arising from transactions and activity in the
36 regular course of the taxpayer's trade or business and includes income from tangible and
37 intangible property if the acquisition, management, and disposition of the property constitutes
38 integral parts of the taxpayer's regular trade or business operations.

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

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

43 (g) (i) Except as provided in Subsection (1)(g)(ii), "mobile flight equipment" [~~is as~~]
44 means the same as that term is defined in Section [59-2-102](#).

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

46 (A) a spare engine; or

47 (B) tangible personal property described in Subsection [59-2-102](#)(27) owned by an:

48 (I) air charter service; or

49 (II) air contract service.

50 (h) "Nonbusiness income" means all income other than business income.

51 (i) "Optional sales factor weighted taxpayer" means:

52 (i) for a taxpayer that is not a unitary group, regardless of the number of economic
53 activities the taxpayer performs, a taxpayer having greater than 50% of the taxpayer's total sales
54 everywhere generated by economic activities performed by the taxpayer if the economic
55 activities are classified in a NAICS code within NAICS Subsector 334 of the 2002 or 2007
56 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) "Revenue ton miles" is determined in accordance with 14 C.F.R. Part 241.

(k) "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)(l):

(a) (i) Subject to the other provisions of this Subsection (2) and except for a taxable year beginning on or after January 1, 2017, but ending on or before December 31, 2026, a taxpayer shall for each taxable year determine whether the taxpayer is a sales factor weighted taxpayer.

(ii) 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).

(b) 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.

(c) 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 2. 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

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

(ii) the denominator of the fraction is four.

(3) Subject to the other provisions of this part, a sales factor weighted taxpayer shall calculate the fraction for apportioning business income to this state using a fraction where:

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

(b) the denominator of the fraction is one.

(4) Subject to the other provisions of this part, an optional sales factor weighted taxpayer shall calculate the fraction for apportioning business income to this state using a method described in Subsection (2)(a), (2)(b), or (3).

(5) Notwithstanding Subsections (2) through (4) and subject to the other provisions of this part, for a taxable year beginning on or after January 1, 2017, but ending on or before December 31, 2026, all taxpayers shall calculate the fraction for apportioning business income to this state using the method described in Subsection (3).

~~[(5)]~~ (6) (a) The taxpayer shall determine the method for calculating the fraction for apportioning business income to this state under this section on or before the due date for filing the taxpayer's return under this chapter for the taxable year, including extensions.

(b) The method described in Subsection ~~[(5)]~~ (6)(a) is in effect for the taxable year.

150 [~~(6)~~] (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
151 Act, the commission may make rules providing procedures for a taxpayer to make the election
152 required by Subsections (2) and (4).

153 Section 3. **Retrospective operation.**

154 This bill has retrospective operation for a taxable year beginning on or after January 1,
155 2017.