

Senator Wayne A. Harper proposes the following substitute bill:

SALES FACTOR WEIGHTED TAX MODIFICATIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Daniel McCay

LONG TITLE

General Description:

This bill modifies the business income apportionment provisions.

Highlighted Provisions:

This bill:

- defines terms;
- describes how a taxpayer determines whether greater than 50% of the taxpayer's economic activities are classified within particular NAICS codes;
- addresses the timing for a taxpayer to determine if the taxpayer is an optional sales factor weighted taxpayer;
- requires that, for a taxable year beginning on or after January 1, 2017, a taxpayer that apportions business income using the single sales factor method continue to use the single sales factor method of apportionment; and
- provides the circumstances where a taxpayer that previously apportioned business income using the single sales factor method may change the method of apportionment.

Money Appropriated in this Bill:

None

Other Special Clauses:



This bill provides retrospective operation.

This bill provides a coordination clause.

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

Utah Code Sections Affected by Coordination Clause:

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

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

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

59-7-302. Definitions.

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

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

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

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

(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) (i) "Excluded NAICS code" means 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, within:

(A) NAICS Sector 21, Mining;

(B) NAICS Industry Group 2212, Natural Gas Distribution;

(C) NAICS Sector 31-33, Manufacturing;

(D) NAICS Sector 48-49, Transportation and Warehousing;

(E) except as provided in Subsection (1)(g)(ii), NAICS Sector 51, Information; or

(F) NAICS Sector 52, Finance and Insurance.

(ii) "Excluded NAICS code" does not include NAICS Subsector 519, Other Information Services.

(h) "Included NAICS code" means 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, that is not an excluded NAICS code.

~~[(g)]~~ (i) Except as provided in Subsection (1)~~[(g)]~~(i)(ii), "mobile flight equipment" ~~[is as]~~ means the same as that term is 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~~[(H)]~~ air charter service~~[:]~~ or ~~[(H)]~~ air contract service.

~~[(h)]~~ (j) "Nonbusiness income" means all income other than business income.

~~[(i)]~~ (k) "Optional sales factor weighted taxpayer" means~~[:]~~ a taxpayer as determined by Subsection (2)(b).

~~[(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.]~~

(l) (i) "Qualifying status change" means that an entity with business income:

(A) acquires another entity;

88 (B) is acquired by another entity; or

89 (C) merges with another entity.

90 (ii) "Qualifying status change" does not include any change in the structure, ownership,
91 or management of the entity with business income other than a change described in Subsection
92 (1)(l)(i).

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

94 ~~[(k)]~~ (n) "Sales" means all gross receipts of the taxpayer not allocated under Sections
95 59-7-306 through 59-7-310.

96 ~~[(t)]~~ (o) ~~[Subject to Subsection (2), "sales"]~~ "Sales factor weighted taxpayer" means~~[:]~~ a
97 taxpayer as determined by Subsection (2)(a).

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

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

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

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

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

108 ~~[(E) a NAICS code within NAICS Sector 51, Information, except for NAICS Subsector~~
109 ~~519, Other Information Services; or]~~

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

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

116 ~~[(m)]~~ (p) "State" means any state of the United States, the District of Columbia, the
117 Commonwealth of Puerto Rico, any territory or possession of the United States, and any
118 foreign country or political subdivision thereof.

119 ~~[(n)]~~ (q) "Transportation revenue" means revenue an airline earns from:

120 (i) transporting a passenger or cargo; or

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

123 ~~[(o)]~~ (r) "Utah revenue ton miles" means, for an airline, the total revenue ton miles
124 within the borders of this state:

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

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

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

128 (2) (a) (i) Subject to the other provisions of this Subsection (2), a taxpayer shall [for
129 each taxable year] determine for a taxable year whether the taxpayer is a sales factor weighted
130 taxpayer if the taxpayer is not subject to Subsection [59-7-311\(5\)](#).

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

134 (iii) For purposes of making the determination required by Subsection (2)(a)(i), ~~[total~~
135 ~~sales everywhere include only the total sales everywhere:]~~ a taxpayer shall determine whether
136 greater than 50% of the taxpayer's economic activities everywhere are classified in included
137 NAICS codes as provided in Subsections (2)(a)(iv) through (vi).

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

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

141 (iv) A taxpayer shall calculate the following two fractions, taking into account the
142 taxpayer's establishments and the taxpayer's economic activities everywhere, regardless of
143 whether the taxpayer eliminates intercompany sales or intercompany transactions for other
144 purposes on the taxpayer's income tax return:

145 (A) the fraction reached by making the calculation described in Subsection [59-7-312](#),
146 except that the numerator shall be the property everywhere that is attributable to economic
147 activities that are classified in included NAICS codes; and

148 (B) the fraction reached by making the calculation described in Subsection [59-7-315](#),
149 except that the numerator shall be the payroll everywhere that is attributable to economic

activities that are classified in included NAICS codes.

(v) The taxpayer shall calculate an average of the fractions calculated in accordance with Subsection (2)(a)(iv) by:

(A) adding together the fractions calculated in accordance with Subsection (2)(a)(iv); and

(B) dividing the sum calculated in Subsection (2)(a)(v)(A) by two.

(vi) If the average calculated in Subsection (2)(a)(v) is greater than .50, the taxpayer is a sales factor weighted taxpayer.

(b) (i) Subject to other provisions of this Subsection (2), a taxpayer that is not a sales factor weighted taxpayer may determine for a taxable year whether the taxpayer is an optional sales factor weighted taxpayer if the taxpayer is not subject to Subsection 59-7-311(5).

(ii) A taxpayer shall make the determination described in Subsection (2)(b)(i) before:

(A) the taxpayer may use the apportionment options described in Subsection 59-7-311(4); and

(B) 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 described in Subsection (2)(b)(i), a taxpayer shall determine whether greater than 50% of the taxpayer's economic activities everywhere are classified in a NAICS code within NAICS Subsector 334, Computer and Electronic Product Manufacturing, as provided in Subsections (2)(b)(iv) through (vi).

(iv) A taxpayer shall calculate the following two fractions, taking into account the taxpayer's establishments and the taxpayer's economic activities everywhere, regardless of whether the taxpayer eliminates intercompany sales or intercompany transactions for other purposes on the taxpayer's income tax return:

(A) the fraction reached by making the calculation described in Subsection 59-7-312, except that the numerator shall be the property everywhere attributable to economic activities that are classified in a NAICS code within Subsector 334, Computer and Electronic Product Manufacturing; and

(B) the fraction reached by making the calculation described in Subsection 59-7-315, except that the numerator shall be the payroll everywhere attributable to economic activities that are classified in a NAICS code within Subsector 334, Computer and Electronic Product

181 Manufacturing.

182 (v) The taxpayer shall calculate an average of the fractions calculated in accordance
183 with Subsection (2)(b)(iv) by:

184 (A) adding together the fractions calculated in accordance with Subsection (2)(b)(iv);
185 and

186 (B) dividing the sum calculated in Subsection (2)(b)(v)(A) by two.

187 (vi) If the average calculated in Subsection (2)(b)(v) is greater than .50, the taxpayer is
188 an optional sales factor weighted taxpayer.

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

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

195 Section 2. Section **59-7-311** is amended to read:

196 **59-7-311. Method of apportionment of business income.**

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

199 (2) Subject to the other provisions of this part, a taxpayer, except for a sales factor
200 weighted taxpayer ~~[and]~~, an optional sales factor weighted taxpayer, and a taxpayer subject to
201 Subsection (5), shall calculate the fraction for apportioning business income to this state using
202 one of the following fractions:

203 (a) a fraction where:

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

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

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

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

208 (ii) the denominator of the fraction is three; or

209 (b) a fraction where:

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

211 (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] Except as provided in Subsection (5) and 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) For a taxable year beginning on or after January 1, 2017, a taxpayer that apportions business income using the method described in Subsection (3) shall continue to apportion business income using the method described in Subsection (3) in subsequent taxable years except as provided in Subsection (6).

(6) (a) A taxpayer that is subject to Subsection (5) may make a new determination of the taxpayer's method of apportionment for a taxable year in which a qualifying status change occurs.

(b) Once a taxpayer described in Subsection (6)(a) apportions business income using the method described in Subsection (3) after a qualifying status change, the provisions of Subsection (5) apply.

~~[(5)]~~ (7) (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)]~~ (7)(a) is in effect for the taxable year.

~~[(6)]~~ (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules providing procedures for a taxpayer to make the election required by Subsections (2) and (4).

Section 3. **Retrospective operation.**

This bill has retrospective operation for taxable year beginning on or after January 1,

2017.

Section 4. **Coordinating S.B. 229 with S.B. 132 -- Substantive and technical amendments.**

If this S.B. 229 and S.B. 132, Tax Provision Amendments, both pass and become law, it is the intent of the Legislature that on January 1, 2018, the Office of Legislative Research and General Counsel shall prepare the Utah Code database for publication by making the following changes:

(1) modifying Subsection 59-7-302(1)(g)(ii) in this bill to read:

"(ii) "Excluded NAICS code" does not include NAICS Subsector 519, Other Information Services, or NAICS Code 336111, Automobile Manufacturing.";

(2) the amendments to Subsection 59-7-302(1)(k) in this bill supersede the amendments to Subsection 59-7-302(1)(i) in S.B. 132;

(3) the amendments to Subsection 59-7-302(1)(o) in this bill supersede the amendments to Subsection 59-7-302(1)(l) in S.B. 132; and

(4) the amendments to Subsection 59-7-302(2) in this bill supersede the amendments to Subsection 59-7-302(2) in S.B. 132.