

NONRESIDENT INCOME AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Robert M. Spendlove

LONG TITLE

General Description:

This bill modifies income tax provisions related to income received for personal services rendered.

Highlighted Provisions:

This bill:

- ▶ provides that a salary, a wage, a commission, or compensation received for personal services rendered within the state is derived from Utah sources;
- ▶ excludes a salary, a wage, a commission, or compensation received for personal services rendered from business income;
- ▶ provides that an employer's exemption from the withholding requirement is not an individual's exemption from the obligation to pay income taxes; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

59-10-117, as last amended by Laws of Utah 2017, Chapter 318

59-10-118, as last amended by Laws of Utah 2008, Chapters 105 and 389

59-10-402, as last amended by Laws of Utah 1987, Chapter 96

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

Section 1. Section **59-10-117** is amended to read:

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

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

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

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

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

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

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

(2) For purposes of Subsection (1):

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

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

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

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

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

(i) inside this state is considered to be income derived from Utah sources; and

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

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

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

(f) if a trade, business, profession, or occupation is carried on partly within and partly without this state[;];

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

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

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

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

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

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

Section 2. Section 59-10-118 is amended to read:

59-10-118. Division of income for tax purposes.

(1) As used in this section:

(a) [~~"Business"~~] (i) Except as provided in Subsection (1)(a)(ii), "business income" means income arising from transactions and activity in the regular course of a 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.

(ii) "Business income" does not include a salary, a wage, a commission, or compensation for personal services rendered.

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

(c) "Nonbusiness income" means all income other than business income.

(d) "Sales" means all gross receipts of a taxpayer not allocated under Subsections (3) through (7).

(e) "State" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any possession of the United States.

(2) A taxpayer having business income that is taxable both within and without this state[;] shall allocate and apportion the taxpayer's net income as provided in this section.

(3) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that [~~they~~] rents and royalties constitute nonbusiness income, shall be allocated as provided in Subsections (4) through (7).

(4) (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state:

(i) if and to the extent that the property is utilized in this state; or

(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) (i) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year.

(ii) If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(5) (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) the property has a situs in this state at the time of the sale; or

(ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(6) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(7) (a) Patent and copyright royalties are allocable to this state:

(i) if and to the extent that the patent or copyright is utilized by the payer in this state; or

(ii) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) (i) A patent is utilized in a state to the extent that ~~[it]~~ the patent is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state.

(ii) If the basis of receipts from patent royalties does not permit allocation to states or if

the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(8) All business income shall be apportioned to this state using the same methods, procedures, and requirements of Sections 59-7-311 through 59-7-320.

Section 3. Section 59-10-402 is amended to read:

59-10-402. Requirement of withholding.

(1) Each employer making payment of wages shall deduct and withhold from wages an amount to be determined by a commission rule which will, as closely as possible, pay the income tax imposed by this chapter.

(2) (a) (i) Any ~~[such employer who]~~ employer described in Subsection (1) that is to do business within the state [of Utah] for a period not to exceed 60 days in the aggregate during any calendar year may be relieved from the requirement provided for under this part for such period by furnishing to the commission in advance a certificate so certifying. ~~[If that employer]~~

(ii) If an employer described in Subsection (2)(a)(i) thereafter does business within the state [of Utah] for a period in excess of 60 days, that employer shall be liable for all the tax [which otherwise he] that the employer would have been required to deduct and withhold.

(iii) Upon a showing of good cause by the employer, the commission may extend for a period of not to exceed 30 days the time during which the employer is not required to deduct and withhold the tax.

(b) The exemption described in Subsection (2)(a) is from the withholding requirement described in Subsection (1), not from an individual's obligation to pay income taxes as provided in Part 1, Determination and Reporting of Tax Liability and Information.

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

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

(c) If more than one taxable year begins in a calendar year, ~~[such]~~ the withheld amount

170 shall be allowed as a credit for the last taxable year [~~so beginning~~] that begins in the calendar
171 year in which the amount is withheld.

172 Section 4. **Retrospective operation.**

173 This bill has retrospective operation for a taxable year beginning on or after January 1,
174 2020.