

HB0056S01 compared with HB0056

~~{deleted text}~~ shows text that was in HB0056 but was deleted in HB0056S01.

inserted text shows text that was not in HB0056 but was inserted into HB0056S01.

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Representative Steve Eliason proposes the following substitute bill:

TAX ASSESSMENT AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: Lincoln Fillmore

LONG TITLE

~~{Committee Note:~~

~~— The Revenue and Taxation Interim Committee recommended this bill.~~

~~— Legislative Vote: 15 voting for 0 voting against 3 absent~~

~~{General Description:~~

This bill modifies provisions relating to tax assessments.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a county assessor to provide certain assessment data to the commission;
- ▶ establishes a date by which the county assessor must provide the assessment data to the commission;
- ▶ permits the commission to review the county's assessment data and to provide

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findings and make recommendations to the county;

- ▶ permits the commission to subscribe to a market data service; and
- ▶ establishes requirements for a pass-through entity when filing an amended return.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

[59-10-114, as last amended by Laws of Utah 2022, Chapter 238](#)

[59-10-406, as last amended by Laws of Utah 2022, Chapter 238](#)

[59-10-1045, as enacted by Laws of Utah 2022, Chapter 238](#)

[59-10-1402, as last amended by Laws of Utah 2022, Chapter 238](#)

59-10-1403, as last amended by Laws of Utah 2022, Chapter 238

59-10-1403.2, as last amended by Laws of Utah 2022, Chapter 238

ENACTS:

59-2-313.1, Utah Code Annotated 1953

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

Section 1. Section **59-2-313.1** is enacted to read:

59-2-313.1. County assessor duties to provide assessment data - Commission review - Subscription to market data service.

(1) As used in this section, "assessment data" means:

(a) the information described in Subsection 59-2-303.1(6) contained in a county's database used in mass appraisal; and

(b) any other assessment information the commission requires.

(2) A county assessor shall provide assessment data to the commission:

(a) (i) annually on or before March 31;

(ii) no later than 15 days after the date the county assessor provides the assessment book to the county auditor under Section 59-2-311;

(iii) no later than 15 days after the date the county auditor provides the assessment roll

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to the county treasurer under Section 59-2-326; ~~and~~ or

(b) at any other time requested by the commission.

(3) The commission may:

(a) review a county's annual update of property values the county is required to perform under Section 59-2-303.1;

(b) review a county's detailed review of property characteristics the county is required to perform under Section 59-2-303.1; and

(c) provide findings and recommendations to the county.

(4) The commission may subscribe to a market data service to assist:

(a) the commission in performing a review described in Subsection (3); and

(b) counties in meeting the requirements of Section 59-2-303.1.

Section 2. Section 59-10-114 is amended to read:

59-10-114. Additions to and subtractions from adjusted gross income of an individual.

(1) There shall be added to adjusted gross income of a resident or nonresident individual:

(a) a lump sum distribution that the taxpayer does not include in adjusted gross income on the taxpayer's federal individual income tax return for the taxable year;

(b) the amount of a child's income calculated under Subsection (4) that:

(i) a parent elects to report on the parent's federal individual income tax return for the taxable year; and

(ii) the parent does not include in adjusted gross income on the parent's federal individual income tax return for the taxable year;

(c) (i) a withdrawal from a medical care savings account and any penalty imposed for the taxable year if:

(A) the resident or nonresident individual does not deduct the amounts on the resident or nonresident individual's federal individual income tax return under Section 220, Internal Revenue Code;

(B) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and

(C) the withdrawal is subtracted on, or used as the basis for claiming a tax credit on, a return the resident or nonresident individual files under this chapter;

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(ii) a disbursement required to be added to adjusted gross income in accordance with Subsection 31A-32a-105(3); or

(iii) an amount required to be added to adjusted gross income in accordance with Subsection 31A-32a-105(5)(c);

(d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan, from the account of a resident or nonresident individual who is an account owner as defined in Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount withdrawn from the account of the resident or nonresident individual who is the account owner:

(i) is not expended for:

(A) higher education costs as defined in Section 53B-8a-102.5; or

(B) a payment or distribution that qualifies as an exception to the additional tax for distributions not used for educational expenses provided in Sections 529(c) and 530(d), Internal Revenue Code; and

(ii) is:

(A) subtracted by the resident or nonresident individual:

(I) who is the account owner; and

(II) on the resident or nonresident individual's return filed under this chapter for a taxable year beginning on or before December 31, 2007; or

(B) used as the basis for the resident or nonresident individual who is the account owner to claim a tax credit under Section 59-10-1017;

(e) except as provided in Subsection (5), for bonds, notes, and other evidences of indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness:

(i) issued by one or more of the following entities:

(A) a state other than this state;

(B) the District of Columbia;

(C) a political subdivision of a state other than this state; or

(D) an agency or instrumentality of an entity described in Subsections (1)(e)(i)(A) through (C); and

(ii) to the extent the interest is not included in adjusted gross income on the taxpayer's

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federal income tax return for the taxable year;

(f) subject to Subsection (2)(c), any distribution received by a resident beneficiary of a resident trust of income that was taxed at the trust level for federal tax purposes, but was subtracted from state taxable income of the trust pursuant to Subsection 59-10-202(2)(b);

(g) any distribution received by a resident beneficiary of a nonresident trust of undistributed distributable net income realized by the trust on or after January 1, 2004, if that undistributed distributable net income was taxed at the trust level for federal tax purposes, but was not taxed at the trust level by any state, with undistributed distributable net income considered to be distributed from the most recently accumulated undistributed distributable net income;

(h) any adoption expense:

(i) for which a resident or nonresident individual receives reimbursement from another person; and

(ii) to the extent to which the resident or nonresident individual subtracts that adoption expense:

(A) on a return filed under this chapter for a taxable year beginning on or before December 31, 2007; or

(B) from federal taxable income on a federal individual income tax return;

(i) the amount of tax paid on income attributed to the individual in accordance with Subsection 59-10-1403.2(2) that is not included in adjusted gross income; and

(j) the amount of tax paid:

(i) on income attributed to the individual and taxable in this state, that is not included in adjusted gross income;

(ii) to another state; and

(iii) that the commission determines is substantially similar to the tax imposed under Subsection 59-10-1403.2(2).

(2) There shall be subtracted from adjusted gross income of a resident or nonresident individual:

(a) the difference between:

(i) the interest or a dividend on an obligation or security of the United States or an authority, commission, instrumentality, or possession of the United States, to the extent that

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interest or dividend is:

(A) included in adjusted gross income for federal income tax purposes for the taxable year; and

(B) exempt from state income taxes under the laws of the United States; and

(ii) any interest on indebtedness incurred or continued to purchase or carry the obligation or security described in Subsection (2)(a)(i);

(b) if the conditions of Subsection (3)(a) are met, the amount of income derived by a Ute tribal member:

(i) during a time period that the Ute tribal member resides on homesteaded land diminished from the Uintah and Ouray Reservation; and

(ii) from a source within the Uintah and Ouray Reservation;

(c) an amount received by a resident or nonresident individual or distribution received by a resident or nonresident beneficiary of a resident trust:

(i) if that amount or distribution constitutes a refund of taxes imposed by:

(A) a state; or

(B) the District of Columbia; and

(ii) to the extent that amount or distribution is included in adjusted gross income for that taxable year on the federal individual income tax return of the resident or nonresident individual or resident or nonresident beneficiary of a resident trust;

(d) the amount of a railroad retirement benefit:

(i) paid:

(A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et seq.;

(B) to a resident or nonresident individual; and

(C) for the taxable year; and

(ii) to the extent that railroad retirement benefit is included in adjusted gross income on that resident or nonresident individual's federal individual income tax return for that taxable year;

(e) an amount:

(i) received by an enrolled member of an American Indian tribe; and

(ii) to the extent that the state is not authorized or permitted to impose a tax under this

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part on that amount in accordance with:

- (A) federal law;
- (B) a treaty; or
- (C) a final decision issued by a court of competent jurisdiction;
- (f) an amount received:
 - (i) for the interest on a bond, note, or other obligation issued by an entity for which state statute provides an exemption of interest on its bonds from state individual income tax;
 - (ii) by a resident or nonresident individual;
 - (iii) for the taxable year; and
 - (iv) to the extent the amount is included in adjusted gross income on the taxpayer's federal income tax return for the taxable year;
- (g) the amount of all income, including income apportioned to another state, of a nonmilitary spouse of an active duty military member if:
 - (i) both the nonmilitary spouse and the active duty military member are nonresident individuals;
 - (ii) the active duty military member is stationed in Utah;
 - (iii) the nonmilitary spouse is subject to the residency provisions of 50 U.S.C. Sec. 4001(a)(2); and
 - (iv) the income is included in adjusted gross income for federal income tax purposes for the taxable year;
- (h) for a taxable year beginning on or after January 1, 2019, but beginning on or before December 31, 2019, only:
 - (i) the amount of any FDIC premium paid or incurred by the taxpayer that is disallowed as a deduction for federal income tax purposes under Section 162(r), Internal Revenue Code, on the taxpayer's 2018 federal income tax return; plus
 - (ii) the amount of any FDIC premium paid or incurred by the taxpayer that is disallowed as a deduction for federal income tax purposes under Section 162(r), Internal Revenue Code, for the taxable year;
 - (i) for a taxable year beginning on or after January 1, 2020, the amount of any FDIC premium paid or incurred by the taxpayer that is disallowed as a deduction for federal income tax purposes under Section 162(r), Internal Revenue Code, for the taxable year; and

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(j) an amount of a distribution from a qualified retirement plan under Section 401(a), Internal Revenue Code, if:

(i) the amount of the distribution is included in adjusted gross income on the resident or nonresident individual's federal individual income tax return for the taxable year; and

(ii) for the taxable year when the amount of the distribution was contributed to the qualified retirement plan, the amount of the distribution:

(A) was not included in adjusted gross income on the resident or nonresident individual's federal individual income tax return for the taxable year; and

(B) was taxed by another state of the United States, the District of Columbia, or a possession of the United States.

(3) (a) A subtraction for an amount described in Subsection (2)(b) is allowed only if:

(i) the taxpayer is a Ute tribal member; and

(ii) the governor and the Ute tribe execute and maintain an agreement meeting the requirements of this Subsection (3).

(b) The agreement described in Subsection (3)(a):

(i) may not:

(A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

(B) provide a subtraction under this section greater than or different from the subtraction described in Subsection (2)(b); or

(C) affect the power of the state to establish rates of taxation; and

(ii) shall:

(A) provide for the implementation of the subtraction described in Subsection (2)(b);

(B) be in writing;

(C) be signed by:

(I) the governor; and

(II) the chair of the Business Committee of the Ute tribe;

(D) be conditioned on obtaining any approval required by federal law; and

(E) state the effective date of the agreement.

(c) (i) The governor shall report to the commission by no later than February 1 of each year regarding whether or not an agreement meeting the requirements of this Subsection (3) is in effect.

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(ii) If an agreement meeting the requirements of this Subsection (3) is terminated, the subtraction permitted under Subsection (2)(b) is not allowed for taxable years beginning on or after the January 1 following the termination of the agreement.

(d) For purposes of Subsection (2)(b) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

(i) for determining whether income is derived from a source within the Uintah and Ouray Reservation; and

(ii) that are substantially similar to how adjusted gross income derived from Utah sources is determined under Section 59-10-117.

(4) (a) For purposes of this Subsection (4), "Form 8814" means:

(i) the federal individual income tax Form 8814, Parents' Election To Report Child's Interest and Dividends; or

(ii) (A) a form designated by the commission in accordance with Subsection (4)(a)(ii)(B) as being substantially similar to 2000 Form 8814 if for purposes of federal individual income taxes the information contained on 2000 Form 8814 is reported on a form other than Form 8814; and

(B) for purposes of Subsection (4)(a)(ii)(A) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules designating a form as being substantially similar to 2000 Form 8814 if for purposes of federal individual income taxes the information contained on 2000 Form 8814 is reported on a form other than Form 8814.

(b) The amount of a child's income added to adjusted gross income under Subsection (1)(b) is equal to the difference between:

(i) the lesser of:

(A) the base amount specified on Form 8814; and

(B) the sum of the following reported on Form 8814:

(I) the child's taxable interest;

(II) the child's ordinary dividends; and

(III) the child's capital gain distributions; and

(ii) the amount not taxed that is specified on Form 8814.

(5) Notwithstanding Subsection (1)(e), interest from bonds, notes, and other evidences

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of indebtedness issued by an entity described in Subsections (1)(e)(i)(A) through (D) may not be added to adjusted gross income of a resident or nonresident individual if, as annually determined by the commission:

(a) for an entity described in Subsection (1)(e)(i)(A) or (B), the entity and all of the political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

(b) for an entity described in Subsection (1)(e)(i)(C) or (D), the following do not impose a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of this state:

(i) the entity; or

(ii) (A) the state in which the entity is located; or

(B) the District of Columbia, if the entity is located within the District of Columbia.

Section 3. Section 59-10-406 is amended to read:

59-10-406. Collection and payment of tax -- Forms filed electronically.

(1) (a) Each employer shall, on or before the last day of April, July, October, and January, pay to the commission the amount required to be deducted and withheld from wages paid to any employee during the preceding calendar quarter under this part.

(b) The commission may change the time or period for making reports and payments if:

(i) in its opinion, the tax is in jeopardy; or

(ii) a different time or period will facilitate the collection and payment of the tax by the employer.

(2) (a) Each employer shall file a return, in a form the commission prescribes, with each payment of the amount deducted and withheld under this part showing:

(i) the total amount of wages paid to his employees;

(ii) the amount of federal income tax deducted and withheld;

(iii) the amount of tax under this part deducted and withheld; and

(iv) any other information the commission may require.

(b) The employer shall file the return described in Subsection (2)(a) in an electronic format approved by the commission.

(3) (a) Each employer shall file an annual return, in a form the commission prescribes,

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summarizing:

- (i) the total compensation paid;
- (ii) the federal income tax deducted and withheld; and
- (iii) the state tax deducted and withheld for each employee during the calendar year.

(b) The return required by Subsection (3)(a) shall be filed with the commission:

- (i) in an electronic format approved by the commission; and
- (ii) on or before January 31 of the year following that for which the report is made.

(4) (a) Each employer shall also, in accordance with rules prescribed by the commission, provide each employee from whom state income tax has been withheld with a statement of the amounts of total compensation paid and the amounts deducted and withheld for that employee during the preceding calendar year in accordance with this part.

(b) The statement shall be made available to each employee described in Subsection (4)(a) on or before January 31 of the year following that for which the report is made.

(5) (a) The employer is liable to the commission for the payment of the tax required to be deducted and withheld under this part.

(b) If an employer pays the tax required to be deducted and withheld under this part:

(i) an employee of the employer is not liable for the amount of any payment described in Subsection (5)(a); and

(ii) the employer is not liable to any person or to any employee for the amount of any such payment described in Subsection (5)(a).

(c) For the purpose of making penal provisions of this title applicable, any amount deducted or required to be deducted and remitted to the commission under this part is considered to be the tax of the employer and with respect to such amounts the employer is considered to be the taxpayer.

(6) (a) Each employer that deducts and withholds any amount under this part shall hold the amount in trust for the state for the payment of the amount to the commission in the manner and at the time provided for in this part.

(b) So long as any delinquency continues, the state shall have a lien to secure the payment of any amounts withheld, and not remitted as provided under this section, upon all of the assets of the employer and all property owned or used by the employer in the conduct of the employer's business, including stock-in-trade, business fixtures, and equipment.

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(c) The lien described in Subsection (6)(b) shall be prior to any lien of any kind, including existing liens for taxes.

(7) To the extent consistent with this section, the commission may use all the provisions of this chapter relating to records, penalties, interest, deficiencies, redetermination of deficiencies, overpayments, refunds, assessments, and venue to enforce this section.

(8) (a) Subject to Subsections (8)(b) and (c), the commission shall require an employer that issues the following forms for a taxable year to file the forms with the commission in an electronic format approved by the commission:

- (i) a federal Form W-2;
- (ii) a federal Form 1099 filed for purposes of withholding under Section 59-10-404; or
- (iii) a federal form substantially similar to a form described in Subsection (8)(a)(i) or (ii) if designated by the commission in accordance with Subsection (8)(d).

(b) An employer that is required to file a form with the commission in accordance with Subsection (8)(a) shall file the form on or before January 31.

(c) An employer that is required to file a form with the commission in accordance with Subsection (8)(a) shall provide:

- (i) accurate information on the form; and
- (ii) all of the information required by the Internal Revenue Service to be contained on the form.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for purposes of Subsection (8)(a), the commission may designate a federal form as being substantially similar to a form described in Subsection (8)(a)(i) or (ii) if:

- (i) for purposes of federal individual income taxes a different federal form contains substantially similar information to a form described in Subsection (8)(a)(i) or (ii); or
- (ii) the Internal Revenue Service replaces a form described in Subsection (8)(a)(i) or (ii) with a different federal form.

(9) (a) Subject to Subsection (9)(b), a pass-through entity shall file with the commission in an electronic format approved by the commission a ~~Utah Schedule K-1, or a substantially similar~~ form designated by the commission, providing information for each final pass-through entity taxpayer of a pass-through entity that elected to pay a tax in accordance with Subsection 59-10-1403.2(2).

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(b) The pass-through entity shall file [a] the form described in Subsection (9)(a) [with the pass-through entity's return.] on or before the last day of the pass-through entity's taxable year.

Section 4. Section 59-10-1045 is amended to read:

59-10-1045. Nonrefundable tax credit for taxes paid by pass-through entity.

(1) As used in this section, "taxed pass-through entity taxpayer" means a resident or nonresident individual who:

(a) has income attributed to the individual by a pass-through entity;

(b) receives the income described in Subsection (1)(a) after the pass-through entity pays the tax described in Subsection 59-10-1403.2(2); and

(c) adds the amount of tax paid on the income described in Subsection (1)(a) to adjusted gross income in accordance with Subsection 59-10-114(1)(i).

(2) (a) A taxed pass-through entity taxpayer may claim a nonrefundable tax credit for the taxes imposed under Subsection 59-10-1403.2(2).

(b) The tax credit is equal to the amount of the tax paid under Subsection 59-10-1403.2(2) by the pass-through entity on the income attributed to the taxed pass-through entity taxpayer.

(3) (a) A taxed pass-through entity taxpayer may carry forward the amount of the tax credit that exceeds the taxed pass-through [entity's] entity taxpayer's tax liability for a period that does not exceed the next five taxable years.

(b) A taxed pass-through entity taxpayer may not carry back the amount of the tax credit that exceeds the taxed pass-through [entity's] entity taxpayer's tax liability for the taxable year.

Section 5. Section 59-10-1402 is amended to read:

59-10-1402. Definitions.

As used in this part:

(1) "Addition, subtraction, or adjustment" means:

(a) for a pass-through entity taxpayer that is classified as a C corporation for federal income tax purposes, under Chapter 7, Corporate Franchise and Income Taxes:

(i) an addition to unadjusted income described in Section 59-7-105; or

(ii) a subtraction from unadjusted income described in Section 59-7-106;

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(b) for a pass-through entity taxpayer that is classified as an individual, partnership, or S corporation for federal income tax purposes:

(i) an addition to or subtraction from adjusted gross income described in Section 59-10-114; or

(ii) an adjustment to adjusted gross income described in Section 59-10-115; or

(c) for a pass-through entity taxpayer that is classified as an estate or a trust for federal income tax purposes:

(i) an addition to or subtraction from unadjusted income described in Section 59-10-202; or

(ii) an adjustment to unadjusted income described in Section 59-10-209.1.

(2) "Business income" means income arising from transactions and activity in the regular course of a pass-through entity'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 pass-through entity's regular trade or business operations.

(3) "C corporation" means the same as that term is defined in Section 1361, Internal Revenue Code.

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

(5) "Dependent beneficiary" means an individual who:

(a) is claimed as a dependent under Section 151, Internal Revenue Code, on another person's federal income tax return; and

(b) is a beneficiary of a trust that is a pass-through entity.

(6) "Derived from or connected with Utah sources" means:

(a) if a pass-through entity taxpayer is classified as a C corporation for federal income tax purposes, derived from or connected with Utah sources in accordance with Chapter 7, Part 3, Allocation and Apportionment of Income - Utah UDITPA Provisions; or

(b) if a pass-through entity or pass-through entity taxpayer is classified as an estate, individual, partnership, S corporation, or a trust for federal income tax purposes, derived from or connected with Utah sources in accordance with Sections 59-10-117 and 59-10-118.

(7) (a) "Final pass-through entity taxpayer" means a pass-through entity taxpayer who is a resident or nonresident individual.

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(b) "Final pass-through entity taxpayer" does not include:

(i) a resident or nonresident business entity; or

(ii) a resident or nonresident estate or trust.

(8) "Nonbusiness income" means all income of a pass-through entity other than business income.

(9) "Nonresident business entity" means a business entity that does not have its commercial domicile in this state.

(10) "Nonresident pass-through entity taxpayer" means a pass-through entity taxpayer that is a:

(a) nonresident individual; or

(b) nonresident business entity.

(11) "Pass-through entity" means a business entity that is:

(a) the following if classified as a partnership for federal income tax purposes:

(i) a general partnership;

(ii) a limited liability company;

(iii) a limited liability partnership; or

(iv) a limited partnership;

(b) an S corporation;

(c) an estate or trust with respect to which the estate's or trust's income, gain, loss, deduction, or credit is divided among and passed through to one or more pass-through entity taxpayers; or

(d) a business entity similar to Subsections (11)(a) through (c):

(i) with respect to which the business entity's income, gain, loss, deduction, or credit is divided among and passed through to one or more pass-through entity taxpayers; and

(ii) as defined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(12) "Pass-through entity taxpayer" means a resident or nonresident individual, a resident or nonresident business entity, or a resident or nonresident estate or trust:

(a) that is:

(i) for a general partnership, a partner;

(ii) for a limited liability company, a member;

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- (iii) for a limited liability partnership, a partner;
- (iv) for a limited partnership, a partner;
- (v) for an S corporation, a shareholder;
- (vi) for an estate or trust described in Subsection(11)(c), a beneficiary; or
- (vii) for a business entity described in Subsection(11)(d), a member, partner,

shareholder, or other title designated by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(b) to which the income, gain, loss, deduction, or credit of a pass-through entity is passed through.

(13) "Resident business entity" means a business entity that is not a nonresident business entity.

(14) "Resident pass-through entity taxpayer" means a pass-through entity taxpayer that is a:

- (a) resident individual; or
- (b) resident business entity.

(15) "Return" means a return that a pass-through entity taxpayer files:

- (a) for a pass-through entity taxpayer that is classified as a C corporation for federal income tax purposes, under Chapter 7, Corporate Franchise and Income Taxes; or
- (b) for a pass-through entity taxpayer that is classified as an estate, individual, partnership, S corporation, or a trust for federal income tax purposes, under this chapter.

(16) "S corporation" means the same as that term is defined in Section 1361, Internal Revenue Code.

(17) "Share of income, gain, loss, deduction, or credit of a pass-through entity" means:

- (a) for a pass-through entity except for a pass-through entity that is an S corporation:
 - (i) for a resident pass-through entity taxpayer, the resident pass-through entity taxpayer's distributive share of income, gain, loss, deduction, or credit of the pass-through entity as determined under Section 704 et seq., Internal Revenue Code; and
 - (ii) for a nonresident pass-through entity taxpayer, the nonresident pass-through entity taxpayer's distributive share of income, gain, loss, deduction, or credit of the pass-through entity:

(A) as determined under Section 704 et seq., Internal Revenue Code; and

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(B) derived from or connected with Utah sources; or

(b) for an S corporation:

(i) for a resident pass-through entity taxpayer, the resident pass-through entity taxpayer's pro rata share of income, gain, loss, deduction, or credit of the S corporation, as determined under Sec. 1366 et seq., Internal Revenue Code; or

(ii) for a nonresident pass-through entity taxpayer, the nonresident pass-through entity taxpayer's pro rata share of income, gain, loss, deduction, or credit of the S corporation:

(A) as determined under Section 1366 et seq., Internal Revenue Code; and

(B) derived from or connected with Utah sources.

(18) "Statement of dependent beneficiary income" means a statement:

(a) signed by the person who claims a dependent beneficiary as a dependent under Section 151, Internal Revenue Code, on the person's federal income tax return for the taxable year;

(b) attesting that the dependent is a dependent beneficiary; and

(c) indicating that the person expects that the dependent beneficiary's adjusted gross income for the taxable year will not exceed the basic standard deduction for the dependent beneficiary, as calculated under Section 63, Internal Revenue Code, for that taxable year.

(19) "Voluntary taxable income" means the sum of a pass-through entity's income that is:

(a) attributed to a final pass-through entity taxpayer who is a resident individual unless the income is taxed by another state of the United States, the District of Columbia, or possession of the United States; and

(b) (i) business income and nonbusiness income that is derived from or connected with Utah sources; and

(ii) attributed to a final pass-through entity taxpayer who is a nonresident individual.

Section ~~2}6~~. Section **59-10-1403** is amended to read:

59-10-1403. Income tax treatment of a pass-through entity -- Returns --

Classification same as under Internal Revenue Code.

(1) Subject to Subsection (3) and except as provided in Subsection 59-10-1403.2(2), a pass-through entity is not subject to a tax imposed by this chapter.

(2) Except as provided in Section 59-10-1403.3, the income, gain, loss, deduction, or

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credit of a pass-through entity shall be passed through to one or more pass-through entity taxpayers as provided in this part.

(3) A pass-through entity is subject to the return filing requirements of Sections 59-10-507, 59-10-514, and 59-10-516.

(4) For purposes of taxation under this title, a pass-through entity that transacts business in the state shall be classified in the same manner as the pass-through entity is classified for federal income tax purposes.

(5) (a) If a change is made in a pass-through entity's net income or loss on the pass-through entity's federal income tax return because of an action of the federal government, the pass-through entity shall file with the commission ~~§~~ within 90 days after the date of a final determination of the action:

(i) a copy of the pass-through entity's amended federal income tax return or federal adjustment; and

(ii) an amended state income tax return that conforms with the changes made in the pass-through entity's amended federal income tax return.

(b) If a change is made in a pass-through entity's net income on the pass-through entity's federal income tax return because the pass-through entity files an amended federal income tax return, the pass-through entity shall file with the commission, within 90 days after the date the taxpayer files the amended federal income tax return:

(i) a copy of the pass-through entity's amended federal income tax return; and

(ii) an amended state income tax return that conforms with the changes made in the pass-through entity's amended federal income tax return.

Section ~~§~~7. Section **59-10-1403.2** is amended to read:

59-10-1403.2. Pass-through entity payment or withholding of tax on behalf of a pass-through entity taxpayer -- Exceptions to payment or withholding requirement -- Procedures and requirements -- Failure to pay or withhold a tax on behalf of a pass-through entity taxpayer.

(1) (a) Except as provided in Subsections (1)(b) and (2), for a taxable year, a pass-through entity shall pay or withhold a tax:

(i) on:

(A) the business income of the pass-through entity; and

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(B) the nonbusiness income of the pass-through entity derived from or connected with Utah sources; and

(ii) on behalf of a pass-through entity taxpayer.

(b) A pass-through entity is not required to pay or withhold a tax under Subsection

(1)(a):

(i) on behalf of a final pass-through entity taxpayer who is a resident individual;

(ii) if the pass-through entity is an organization exempt from taxation under Subsection 59-7-102(1)(a);

(iii) if the pass-through entity:

(A) is a plan under Section 401, 408, or 457, Internal Revenue Code; and

(B) is not required to file a return under Chapter 7, Corporate Franchise and Income Taxes, or this chapter;

(iv) if the pass-through entity is a publicly traded partnership:

(A) as defined in Section 7704(b), Internal Revenue Code;

(B) that is classified as a partnership for federal income tax purposes; and

(C) that files an annual information return reporting the following with respect to each partner of the publicly traded partnership with income derived from or connected with Utah sources that exceeds \$500 in a taxable year:

(I) the partner's name;

(II) the partner's address;

(III) the partner's taxpayer identification number; and

(IV) other information required by the commission; or

(v) on behalf of a final pass-through entity taxpayer that is a nonresident individual if the pass-through entity pays the tax described in Subsection (2).

(2) (a) For each taxable year that begins on or after January 1, 2022, but begins on or before December 31, 2025, a pass-through entity that is not a disregarded pass-through entity may elect to pay a tax in an amount equal to:

(i) the percentage listed in Subsection 59-10-104(2); and

(ii) voluntary taxable income.

(b) A pass-through entity that elects to pay the tax in accordance with Subsection (2)(a) shall notify any final pass-through entity taxpayer of that election.

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(c) A pass-through entity that pays a tax described in Subsection (2)(a) shall provide to each final pass-through entity taxpayer a statement that states:

(i) the amount of tax paid under Subsection (2)(a) on the income attributed to the final pass-through entity taxpayer[-]; and

(ii) the amount of tax paid to another state by the pass-through entity on income:

(A) attributed to the final pass-through entity taxpayer; and

(B) that the commission determines is substantially similar to the tax under Subsection (2)(a).

(d) A payment of the tax described in Subsection (2)(a) on or before the last day of the taxable year:

(i) is an irrevocable election to be subject to the tax for the taxable year; and [-]

(ii) may not be refunded.

(3) (a) Subject to Subsection (3)(b), the tax a pass-through entity shall pay or withhold on behalf of a pass-through entity taxpayer for a taxable year is an amount:

(i) determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(ii) that the commission estimates will be sufficient to pay the tax liability of the pass-through entity taxpayer under this chapter with respect to the income described in Subsection (1)(a)(i) or (2)(a)(ii) of that pass-through entity for the taxable year.

(b) The rules the commission makes in accordance with Subsection (3)(a):

(i) except as provided in Subsection (3)(c):

(A) shall:

(I) for a pass-through entity except for a pass-through entity that is an S corporation, take into account items of income, gain, loss, deduction, and credit as analyzed on the schedule for reporting partners' distributive share items as part of the federal income tax return for the pass-through entity; or

(II) for a pass-through entity that is an S corporation, take into account items of income, gain, loss, deduction, and credit as reconciled on the schedule for reporting shareholders' pro rata share items as part of the federal income tax return for the pass-through entity; and

(B) notwithstanding Subsection (3)(b)(ii)(D), take into account the refundable tax

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credit provided in Section 59-6-102; and

(ii) may not take into account the following items if taking those items into account does not result in an accurate estimate of a pass-through entity taxpayer's tax liability under this chapter for the taxable year:

(A) a capital loss;

(B) a passive loss;

(C) another item of deduction or loss if that item of deduction or loss is generally subject to significant reduction or limitation in calculating:

(I) for a pass-through entity taxpayer that is classified as a C corporation for federal income tax purposes, unadjusted income as defined in Section 59-7-101;

(II) for a pass-through entity that is classified as an individual, partnership, or S corporation for federal income tax purposes, adjusted gross income; or

(III) for a pass-through entity that is classified as an estate or a trust for federal income tax purposes, unadjusted income as defined in Section 59-10-103; or

(D) a tax credit allowed against a tax imposed under:

(I) Chapter 7, Corporate Franchise and Income Taxes; or

(II) this chapter.

(c) The rules the commission makes in accordance with Subsection (3)(a) may establish a method for taking into account items of income, gain, loss, deduction, or credit of a pass-through entity if:

(i) for a pass-through entity except for a pass-through entity that is an S corporation, the pass-through entity does not analyze the items of income, gain, loss, deduction, or credit on the schedule for reporting partners' distributive share items as part of the federal income tax return for the pass-through entity; or

(ii) for a pass-through entity that is an S corporation, the pass-through entity does not reconcile the items of income, gain, loss, deduction, or credit on the schedule for reporting shareholders' pro rata share items as part of the federal income tax return for the pass-through entity.

(4) (a) Except as provided in Subsection (4)(b), a pass-through entity shall remit to the commission the tax the pass-through entity pays or withholds on behalf of a pass-through entity taxpayer under this section:

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(i) on or before the due date of the pass-through entity's return, not including extensions; and

(ii) on a form provided by the commission.

(b) A pass-through entity shall remit the tax described in Subsection (2) on or before the last day of the pass-through entity's taxable year.

(c) The commission shall consider only the amount of tax remitted as provided in Subsection (4)(b), on or before the last day of the pass-through entity's taxable year as a payment described in Subsection (2).

(~~f~~~~c~~~~d~~) Except as provided in Subsection (1)(b), a pass-through entity that files an amended return under this part shall pay or withhold tax on any increase in the income described in Subsection (1)(a)(i) on behalf of the pass-through entity taxpayer and remit that tax to the commission.

(5) A pass-through entity shall provide a statement to a pass-through entity taxpayer on behalf of whom the pass-through entity pays or withholds a tax under this section showing the amount of tax the pass-through entity pays or withholds under this section for the taxable year on behalf of the pass-through entity taxpayer.

(6) Notwithstanding Section 59-1-401 or 59-1-402, the commission may not collect an amount under this section for a taxable year from a pass-through entity and shall waive any penalty and interest on that amount if:

(a) the pass-through entity fails to pay or withhold the tax on the amount as required by this section on behalf of the pass-through entity taxpayer;

(b) the pass-through entity taxpayer:

(i) files a return on or before the due date for filing the pass-through entity's return, including extensions; and

(ii) on or before the due date including extensions described in Subsection (6)(b)(i), pays the tax on the amount for the taxable year:

(A) if the pass-through entity taxpayer is classified as a C corporation for federal income tax purposes, under Chapter 7, Corporate Franchise and Income Taxes; or

(B) if the pass-through entity taxpayer is classified as an estate, individual, partnership, S corporation, or a trust for federal income tax purposes, under this chapter; and

(c) the pass-through entity applies to the commission.

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(7) Notwithstanding Section 59-1-401 or 59-1-402, the commission may not collect an amount under this section for a taxable year from a pass-through entity that is a trust and shall waive any penalty and interest on that amount if:

(a) the pass-through entity fails to pay or withhold the tax on the amount as required by this section on behalf of a dependent beneficiary;

(b) the pass-through entity applies to the commission; and

(c) (i) the dependent beneficiary complies with the requirements of Subsection (6)(b);

or

(ii) (A) the dependent beneficiary's adjusted gross income for the taxable year does not exceed the basic standard deduction for the dependent beneficiary, as calculated under Section 63, Internal Revenue Code, for that taxable year; and

(B) the trustee of the trust retains a statement of dependent beneficiary income on behalf of the dependent beneficiary.

(8) If a pass-through entity would have otherwise qualified for a waiver of a penalty and interest under Subsection (7), except that the trustee of a trust has not applied to the commission as required by Subsection (7)(b) or retained the statement of dependent beneficiary income required by Subsection (7)(c)(ii)(B), it is a rebuttable presumption in an audit that the pass-through entity would have otherwise qualified for the waiver of the penalty and interest under Subsection (7).

Section ~~{4}~~8. **Retrospective operation.**

(1) The following sections have retrospective operation for ~~{the}~~a taxable year ~~{that begins}~~beginning on or after January 1, 2023:

~~{1}~~a) Section 59-10-1403; and

~~{2}~~b) Section 59-10-1403.2.