

1                                   **PASS-THROUGH ENTITY TAX AMENDMENTS**

2   2017 GENERAL SESSION

3   STATE OF UTAH

4   **Chief Sponsor: Steve Eliason**

5   Senate Sponsor: Curtis S. Bramble

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7   **LONG TITLE**

8   **Committee Note:**

9           The Revenue and Taxation Interim Committee recommended this bill.

10 **General Description:**

11          This bill amends individual income tax provisions related to pass-through entities.

12 **Highlighted Provisions:**

13          This bill:

- 14           ▶ addresses state taxable income for pass-through entities; and
- 15           ▶ makes technical and conforming changes.

16 **Money Appropriated in this Bill:**

17          None

18 **Other Special Clauses:**

19          This bill provides retrospective operation.

20 **Utah Code Sections Affected:**

21 AMENDS:

22           **59-10-117**, as last amended by Laws of Utah 2011, Chapter 53

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

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

26           **59-10-117. State taxable income derived from Utah sources.**

27           (1) For purposes of Section **59-10-116**, state taxable income derived from Utah sources



28 includes [~~those items includable in~~] state taxable income attributable to or resulting from:

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

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

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

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

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

40 (2) For [~~the~~] purposes of Subsection (1):

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

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

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

50 (ii) otherwise [~~shall be~~] determined in the same manner as the corresponding federal  
51 deductions;

52 (c) a salary, wage, commission, or compensation for personal services rendered outside  
53 this state may not be considered to be derived from Utah sources;

54 (d) a [~~nonresident shareholder's distributive~~] share of [~~ordinary~~] income, gain, loss,  
55 [~~and~~] deduction, or credit of a nonresident pass-through entity taxpayer, as defined in Section  
56 59-10-1402, derived from or connected with Utah sources shall be determined [~~under~~] in  
57 accordance with Section 59-10-118;

58 (e) a nonresident, other than a dealer holding property primarily for sale to customers

59 in the ordinary course of the dealer's trade or business, may not be considered to carry on a  
60 trade, business, profession, or occupation in this state solely by reason of the purchase or sale  
61 of property for the nonresident's own account;

62 (f) if a trade, business, profession, or occupation is carried on partly within and partly  
63 without this state, an item of income, gain, loss, or a deduction derived from or connected with  
64 Utah sources shall be determined in accordance with Section 59-10-118;

65 ~~[(g) a nonresident partner's distributive share of partnership income, gain, loss,  
66 deduction, or credit derived from or connected with Utah sources shall be determined under  
67 Part 14, Pass-Through Entities and Pass-Through Entity Taxpayers Act;]~~

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

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

75 (i) be income from intangible personal property under Subsection (2)(a)[5]; and ~~shall~~

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

79 Section 2. **Retrospective operation.**

80 This bill has retrospective operation for a taxable year beginning on or after January 1,  
81 2017.