

PASS-THROUGH ENTITY TAX AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ addresses state taxable income for pass-through entities; 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:

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

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 ~~[those items includable in]~~ 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 ~~[defined]~~ 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 ~~[the]~~ 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~~[-but];~~ and

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

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

(d) a ~~[nonresident shareholder's distributive]~~ share of ~~[ordinary]~~ income, gain, loss, ~~[and] 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 ~~[under]~~ 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, 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;

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

~~[(h)]~~ (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

~~[(i)]~~ (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)[~~5~~]; and ~~[shall]~~

(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. **Retrospective operation.**

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