

1 **REPATRIATION TRANSITION TAX AMENDMENTS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Steve Eliason**

5 Senate Sponsor: Lincoln Fillmore

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies corporate income tax provisions relating to deferred foreign income.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ modifies the definition of unadjusted income as the definition relates to deferred
13 foreign income; and

14 ▶ modifies the payment schedule for a corporate taxpayer to pay the income tax on
15 deferred foreign income.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 This bill provides a special effective date.

20 This bill provides retrospective operation.

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **59-7-101**, as last amended by Laws of Utah 2018, Second Special Session, Chapters 2
24 and 3

25 **59-7-118**, as last amended by Laws of Utah 2018, Second Special Session, Chapter 2

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

28 Section 1. Section **59-7-101** is amended to read:

29 **59-7-101. Definitions.**

30 As used in this chapter:

31 (1) "Adjusted income" means unadjusted income as modified by Sections 59-7-105
32 and 59-7-106.

33 (2) (a) "Affiliated group" means one or more chains of corporations that are connected
34 through stock ownership with a common parent corporation that meet the following
35 requirements:

36 (i) at least 80% of the stock of each of the corporations in the group, excluding the
37 common parent corporation, is owned by one or more of the other corporations in the group;
38 and

39 (ii) the common parent directly owns at least 80% of the stock of at least one of the
40 corporations in the group.

41 (b) "Affiliated group" does not include corporations that are qualified to do business
42 but are not otherwise doing business in this state.

43 (c) For purposes of this Subsection (2), "stock" does not include nonvoting stock which
44 is limited and preferred as to dividends.

45 (3) "Apportionable income" means adjusted income less nonbusiness income net of
46 related expenses, to the extent included in adjusted income.

47 (4) "Apportioned income" means apportionable income multiplied by the
48 apportionment fraction as determined in Section 59-7-311.

49 (5) "Business income" means the same as that term is defined in Section 59-7-302.

50 (6) (a) "Captive real estate investment trust" means a real estate investment trust if:

51 (i) the shares or beneficial interests of the real estate investment trust are not regularly
52 traded on an established securities market; and

53 (ii) more than 50% of the voting power or value of the shares or beneficial interests of
54 the real estate investment trust are directly, indirectly, or constructively:

55 (A) owned by a controlling entity of the real estate investment trust; or

56 (B) controlled by a controlling entity of the real estate investment trust.

57 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

58 commission may make rules defining "established securities market."

59 (7) (a) "Common ownership" means the direct or indirect control or ownership of more
60 than 50% of the outstanding voting stock of:

61 (i) a parent-subsidiary controlled group as defined in Section 1563, Internal Revenue
62 Code, except that 50% shall be substituted for 80%;

63 (ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue
64 Code; or

65 (iii) three or more corporations each of which is a member of a group of corporations
66 described in Subsection (2)(a)(i) or (ii), and one of which is:

67 (A) a common parent corporation included in a group of corporations described in
68 Subsection (2)(a)(i); and

69 (B) included in a group of corporations described in Subsection (2)(a)(ii).

70 (b) Ownership of outstanding voting stock shall be determined by Section 1563,
71 Internal Revenue Code.

72 (8) (a) "Controlling entity of a captive real estate investment trust" means an entity
73 that:

74 (i) is treated as an association taxable as a corporation under the Internal Revenue
75 Code;

76 (ii) is not exempt from federal income taxation under Section 501(a), Internal Revenue
77 Code; and

78 (iii) directly, indirectly, or constructively holds more than 50% of:

79 (A) the voting power of a captive real estate investment trust; or

80 (B) the value of the shares or beneficial interests of a captive real estate investment
81 trust.

82 (b) "Controlling entity of a captive real estate investment trust" does not include:

83 (i) a real estate investment trust, except for a captive real estate investment trust;

84 (ii) a qualified real estate investment subsidiary described in Section 856(i), Internal
85 Revenue Code, except for a qualified real estate investment trust subsidiary of a captive real

86 estate investment trust; or

87 (iii) a foreign real estate investment trust.

88 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
89 commission may make rules defining "established securities market."

90 (9) "Corporate return" or "return" includes a combined report.

91 (10) "Corporation" includes:

92 (a) entities defined as corporations under Sections 7701(a) and 7704, Internal Revenue
93 Code; and

94 (b) other organizations that are taxed as corporations for federal income tax purposes
95 under the Internal Revenue Code.

96 (11) "Dividend" means any distribution, including money or other type of property,
97 made by a corporation to its shareholders out of its earnings or profits accumulated after
98 December 31, 1930.

99 (12) (a) "Doing business" includes any transaction in the course of its business by a
100 domestic corporation, or by a foreign corporation qualified to do or doing intrastate business in
101 this state.

102 (b) Except as provided in Subsection 59-7-102(3), "doing business" includes:

103 (i) the right to do business through incorporation or qualification;

104 (ii) the owning, renting, or leasing of real or personal property within this state; and

105 (iii) the participation in joint ventures, working and operating agreements, the
106 performance of which takes place in this state.

107 (13) "Domestic corporation" means a corporation that is incorporated or organized
108 under the laws of this state.

109 (14) (a) "Farmers' cooperative" means an association, corporation, or other
110 organization that is:

111 (i) (A) an association, corporation, or other organization of farmers or fruit growers; or

112 (B) an association, corporation, or other organization that is similar to an association,
113 corporation, or organization described in Subsection (14)(a)(i)(A); and

114 (ii) organized and operated on a cooperative basis to:
115 (A) (I) market the products of members of the cooperative or the products of other
116 producers; and
117 (II) return to the members of the cooperative or other producers the proceeds of sales
118 less necessary marketing expenses on the basis of the quantity of the products of a member or
119 producer or the value of the products of a member or producer; or

120 (B) (I) purchase supplies and equipment for the use of members of the cooperative or
121 other persons; and
122 (II) turn over the supplies and equipment described in Subsection (14)(a)(ii)(B)(I) at
123 actual costs plus necessary expenses to the members of the cooperative or other persons.

124 (b) (i) Subject to Subsection (14)(b)(ii), for purposes of this Subsection (14), the
125 commission by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative
126 Rulemaking Act, shall define:

127 (A) the terms "member" and "producer"; and
128 (B) what constitutes an association, corporation, or other organization that is similar to
129 an association, corporation, or organization described in Subsection (14)(a)(i)(A).

130 (ii) The rules made under this Subsection (14)(b) shall be consistent with the filing
131 requirements under federal law for a farmers' cooperative.

132 (15) "Foreign corporation" means a corporation that is not incorporated or organized
133 under the laws of this state.

134 (16) (a) "Foreign operating company" means a corporation that:

135 (i) is incorporated in the United States;
136 (ii) conducts at least 80% of the corporation's business activity, as determined under
137 Section 59-7-401, outside the United States; and

138 (iii) as calculated in accordance with Part 3, Allocation and Apportionment of Income -
139 Utah UDITPA Provisions, has:

140 (A) at least \$1,000,000 of payroll located outside the United States; and
141 (B) at least \$2,000,000 of property located outside the United States.

142 (b) "Foreign operating company" does not include a corporation that qualifies for the
143 Puerto Rico and possession tax credit as provided in Section 936, Internal Revenue Code.

144 (17) (a) "Foreign real estate investment trust" means:

145 (i) a business entity organized outside the laws of the United States if:

146 (A) at least 75% of the business entity's total asset value at the close of the business
147 entity's taxable year is represented by:

148 (I) real estate assets, as defined in Section 856(c)(5)(B), Internal Revenue Code;

149 (II) cash or cash equivalents; or

150 (III) one or more securities issued or guaranteed by the United States;

151 (B) the business entity is:

152 (I) not subject to income taxation:

153 (Aa) on amounts distributed to the business entity's beneficial owners; and

154 (Bb) in the jurisdiction in which the business entity is organized; or

155 (II) exempt from income taxation on an entity level in the jurisdiction in which the
156 business entity is organized;

157 (C) the business entity distributes at least 85% of the business entity's taxable income,
158 as computed in the jurisdiction in which the business entity is organized, to the holders of the
159 business entity's:

160 (I) shares or beneficial interests; and

161 (II) on an annual basis;

162 (D) (I) not more than 10% of the following is held directly, indirectly, or constructively
163 by a single person:

164 (Aa) the voting power of the business entity; or

165 (Bb) the value of the shares or beneficial interests of the business entity; or

166 (II) the shares of the business entity are regularly traded on an established securities
167 market; and

168 (E) the business entity is organized in a country that has a tax treaty with the United
169 States; or

- 170 (ii) a listed Australian property trust.
- 171 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 172 commission may make rules defining:
 - 173 (i) "cash or cash equivalents";
 - 174 (ii) "established securities market"; or
 - 175 (iii) "listed Australian property trust."
- 176 (18) "Income" includes losses.
- 177 (19) "Internal Revenue Code" means Title 26 of the United States Code as effective
- 178 during the year in which Utah taxable income is determined.
- 179 (20) "Nonbusiness income" means the same as that term is defined in Section
- 180 [59-7-302](#).
- 181 (21) "Real estate investment trust" means the same as that term is defined in Section
- 182 856, Internal Revenue Code.
- 183 (22) "Related expenses" means:
 - 184 (a) expenses directly attributable to nonbusiness income; and
 - 185 (b) the portion of interest or other expense indirectly attributable to both nonbusiness
 - 186 and business income that bears the same ratio to the aggregate amount of such interest or other
 - 187 expense, determined without regard to this Subsection (22), as the average amount of the asset
 - 188 producing the nonbusiness income bears to the average amount of all assets of the taxpayer
 - 189 within the taxable year.
- 190 (23) "S corporation" means an S corporation as defined in Section 1361, Internal
- 191 Revenue Code.
- 192 (24) "Safe harbor lease" means a lease that qualified as a safe harbor lease under
- 193 Section 168, Internal Revenue Code.
- 194 (25) "State of the United States" includes any of the 50 states or the District of
- 195 Columbia.
- 196 (26) (a) "Taxable year" means the calendar year or the fiscal year ending during such
- 197 calendar year upon the basis of which the adjusted income is computed.

198 (b) In the case of a return made for a fractional part of a year under this chapter or
199 under rules prescribed by the commission, "taxable year" includes the period for which such
200 return is made.

201 (27) "Taxpayer" means any corporation subject to the tax imposed by this chapter.

202 (28) "Threshold level of business activity" means business activity in the United States
203 equal to or greater than 20% of the corporation's total business activity as determined under
204 Section 59-7-401.

205 (29) (a) "Unadjusted income" means federal taxable income as determined on a
206 separate return basis before intercompany eliminations as determined by the Internal Revenue
207 Code, before the net operating loss deduction and special deductions for dividends received.

208 (b) [~~For the last taxable year of a taxpayer beginning on or before December 31, 2017;~~
209 ~~"unadjusted]~~ "Unadjusted income" includes deferred foreign income described in Section
210 965(a), Internal Revenue Code.

211 (30) (a) "Unitary group" means a group of corporations that:

212 (i) are related through common ownership; and

213 (ii) by a preponderance of the evidence as determined by a court of competent
214 jurisdiction or the commission, are economically interdependent with one another as
215 demonstrated by the following factors:

216 (A) centralized management;

217 (B) functional integration; and

218 (C) economies of scale.

219 (b) "Unitary group" includes a captive real estate investment trust.

220 (c) "Unitary group" does not include an S corporation.

221 (31) "United States" includes the 50 states and the District of Columbia.

222 (32) "Utah net loss" means the current year Utah taxable income before Utah net loss
223 deduction, if determined to be less than zero.

224 (33) "Utah net loss deduction" means the amount of Utah net losses from other taxable
225 years that a taxpayer may carry forward to the current taxable year in accordance with Section

226 59-7-110.

227 (34) (a) "Utah taxable income" means Utah taxable income before net loss deduction
228 less Utah net loss deduction.

229 (b) "Utah taxable income" includes income from tangible or intangible property located
230 or having situs in this state, regardless of whether carried on in intrastate, interstate, or foreign
231 commerce.

232 (35) "Utah taxable income before net loss deduction" means apportioned income plus
233 nonbusiness income allocable to Utah net of related expenses.

234 (36) (a) "Water's edge combined report" means a report combining the income and
235 activities of:

236 (i) all members of a unitary group that are:

237 (A) corporations organized or incorporated in the United States, including those
238 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section
239 936, Internal Revenue Code, in accordance with Subsection (36)(b); and

240 (B) corporations organized or incorporated outside of the United States meeting the
241 threshold level of business activity; and

242 (ii) an affiliated group electing to file a water's edge combined report under Subsection
243 59-7-402(2).

244 (b) There is a rebuttable presumption that a corporation which qualifies for the Puerto
245 Rico and possession tax credit provided in Section 936, Internal Revenue Code, is part of a
246 unitary group.

247 (37) "Worldwide combined report" means the combination of the income and activities
248 of all members of a unitary group irrespective of the country in which the corporations are
249 incorporated or conduct business activity.

250 Section 2. Section 59-7-118 is amended to read:

251 **59-7-118. Section 965, Internal Revenue Code -- Installment payments.**

252 (1) Subject to the other provisions of this section, a corporation may pay in
253 installments the tax owed under this chapter on deferred foreign income described in Section

254 965, Internal Revenue Code.

255 (2) Subsection (1) applies:

256 (a) to a corporation that:

257 (i) is authorized to make an election under Section 965(h), Internal Revenue Code; and

258 (ii) apportions deferred foreign income described in Section 965, Internal Revenue
259 Code, to this state; and

260 (b) for a tax year in which a corporation makes an election under Section 965(h),
261 Internal Revenue Code, for purposes of the corporation's federal income tax.

262 (3) (a) Except as provided in Subsection (3)(b), the same provisions that apply to an
263 election made under Section 965(h), Internal Revenue Code, for federal purposes apply to an
264 installment payment made under this section.

265 (b) A corporation shall make:

266 (i) the first installment under this section on or before the due date, including any
267 extension, of the [2017] tax return filed under this chapter for the first taxable year in which the
268 corporation reports deferred foreign income described in Section 965, Internal Revenue Code;
269 and

270 (ii) a subsequent installment on or before the due date, including any extension, of the
271 tax return filed under this chapter in each of the following seven years.

272 Section 3. **Effective date.**

273 If approved by two-thirds of all the members elected to each house, this bill takes effect
274 upon approval by the governor, or the day following the constitutional time limit of Utah
275 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
276 the date of veto override.

277 Section 4. **Retrospective operation.**

278 (1) Except as provided in Subsection (2), this bill has retrospective operation for:

279 (a) the last taxable year of a taxpayer beginning on or before December 31, 2017; and

280 (b) a taxable year beginning on or after January 1, 2018.

281 (2) The amendments to Section 59-7-118 have retrospective operation for a taxable

282 year beginning on or after January 1, 2017.