

TAX AND FEE REVISIONS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Waldrip

Senate Sponsor: Ronald Winterton

LONG TITLE

General Description:

This bill modifies certain tax and fee provisions.

Highlighted Provisions:

This bill:

- ▶ provides and repeals definitions;
- ▶ repeals provisions relating to hazardous and treated hazardous waste disposal fees that applied through June 30, 2014;
- ▶ repeals provisions for determining the taxable value of beryllium sold or otherwise disposed of by the producer of the beryllium through December 31, 2004;
- ▶ enacts an addition to unadjusted income of a corporate taxpayer for any deduction on a return for a royalty or other expense paid to a captive insurance company for the use of an intangible asset in certain circumstances;
- ▶ repeals provisions relating to a tax on radioactive waste received at a radioactive waste facility that applied through June 30, 2003;
- ▶ repeals the Hazardous Waste Facility and Nonhazardous Solid Waste Facility Tax Act that applied through December 31, 2003; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

29 This bill provides retrospective operation.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **19-6-118**, as last amended by Laws of Utah 2013, Chapter 201

33 **59-5-203**, as last amended by Laws of Utah 2008, Chapter 382

34 **59-7-101**, as last amended by Laws of Utah 2018, Second Special Session, Chapters 2

35 and 3

36 **59-7-105**, as last amended by Laws of Utah 2017, Chapter 389

37 **59-7-402**, as last amended by Laws of Utah 2009, Chapter 312

38 **59-24-104**, as enacted by Laws of Utah 2001, Chapter 314

39 REPEALS:

40 **59-24-103**, as last amended by Laws of Utah 2003, Chapter 295

41 **59-25-101**, as enacted by Laws of Utah 2003, Chapter 295

42 **59-25-102**, as enacted by Laws of Utah 2003, Chapter 295

43 **59-25-103**, as last amended by Laws of Utah 2004, Chapter 311

44 **59-25-104**, as enacted by Laws of Utah 2003, Chapter 295

45 **59-25-105**, as enacted by Laws of Utah 2003, Chapter 295

46 **59-25-106**, as enacted by Laws of Utah 2003, Chapter 295

47 **59-25-108**, as last amended by Laws of Utah 2008, Chapter 382

48 **59-25-109**, as enacted by Laws of Utah 2003, Chapter 295

49

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

51 Section 1. Section **19-6-118** is amended to read:

52 **19-6-118. Hazardous waste and treated hazardous waste disposal fees.**

53 [~~(1) As used in this section:~~]

54 [~~(a) "Demilitarization waste" means:~~]

55 [~~(i) a nerve, military, or chemical agent, including:~~]

56 ~~[(A) CX;]~~
57 ~~[(B) GA;]~~
58 ~~[(C) GB;]~~
59 ~~[(D) GD;]~~
60 ~~[(E) H;]~~
61 ~~[(F) HD;]~~
62 ~~[(G) HL;]~~
63 ~~[(H) HN-1;]~~
64 ~~[(I) HN-2;]~~
65 ~~[(J) HN-3;]~~
66 ~~[(K) HT;]~~
67 ~~[(L) L; or]~~
68 ~~[(M) VX; or]~~
69 ~~[(ii) waste or residue from demilitarization, treatment, testing, or disposal of an agent~~
70 ~~described in Subsection (1)(a)(i).]~~
71 ~~[(b) "Remediation project" means:]~~
72 ~~[(i) a superfund cleanup project;]~~
73 ~~[(ii) a Resource Conservation and Recovery Act closure or corrective action site; or]~~
74 ~~[(iii) a voluntary cleanup of:]~~
75 ~~[(A) hazardous debris; or]~~
76 ~~[(B) hazardous waste subject to regulation solely because of removal or remedial~~
77 ~~action taken in response to environmental contamination.]~~
78 ~~[(c) "Remediation waste" means waste from a remediation project.]~~
79 ~~[(2)]~~ (1) (a) An owner or operator of any commercial hazardous waste or mixed waste
80 disposal or treatment facility that primarily receives hazardous or mixed wastes generated by
81 off-site sources not owned, controlled, or operated by the facility or site owner or operator, and
82 that is subject to the requirements of Section 19-6-108, shall pay the fee under Subsection ~~[(3)]~~

83 (2).

84 (b) The owner or operator of each cement kiln, aggregate kiln, boiler, blender, or
85 industrial furnace that receives for burning hazardous waste generated by off-site sources not
86 owned, controlled, or operated by the owner or operator shall pay the fee under Subsection
87 ~~[(3)]~~ (2).

88 ~~[(3)(a)(i) Through June 30, 2014, the owner or operator of each facility under~~
89 ~~Subsection (2) shall pay a fee of \$28 per ton on all hazardous waste and mixed waste received~~
90 ~~at the facility for disposal, treatment, or both.]~~

91 ~~[(ii) The fee required under Subsection (3)(a)(i) shall be calculated by multiplying the~~
92 ~~total tonnage of waste, computed to the first decimal place, received during the calendar month~~
93 ~~by \$28.]~~

94 ~~[(b)(i) Through June 30, 2014, hazardous waste received at a land disposal facility is~~
95 ~~subject to a fee of \$14 per ton instead of the fee described in Subsection (3)(a) if the waste is~~
96 ~~treated so that it:]~~

97 ~~[(A) meets the state treatment standards required for land disposal at the facility; or]~~

98 ~~[(B) is no longer a hazardous waste at the time of disposal at that facility.]~~

99 ~~[(ii) Through June 30, 2014, demilitarization waste received at a land disposal facility~~
100 ~~is subject to the fee described in Subsection (3)(b)(i), if:]~~

101 ~~[(A) the demilitarization waste contains an additional constituent that is not~~
102 ~~demilitarization waste and is required by rule to be treated before land disposal; and]~~

103 ~~[(B) the additional constituent meets every applicable state treatment standard required~~
104 ~~for land disposal of that constituent at the facility.]~~

105 ~~[(iii) A fee required under Subsection (3)(b)(i) shall be calculated by multiplying the~~
106 ~~tonnage of waste, computed to the first decimal place, received during the calendar month by~~
107 ~~\$14.]~~

108 ~~[(c) Through June 30, 2014, when hazardous waste or mixed waste is received at a~~
109 ~~facility for treatment or disposal and the fee required under Subsection (3) is paid for that~~

110 ~~treatment or disposal, any subsequent treatment or disposal of the waste is not subject to~~
111 ~~additional fees under Subsection (3).]~~

112 ~~[(d)(i)] (2)(a)~~ In accordance with Section 63J-1-504, ~~[on or before July 1, 2014,]~~ the
113 department shall establish a fee schedule for the treatment and land disposal of hazardous
114 waste and mixed waste.

115 ~~[(ii)] (b)~~ To create the fee schedule described in Subsection ~~[(3)(d)(i)] (2)(a)~~, the
116 department shall, before establishing the fee schedule, complete a review of program costs and
117 indirect costs of regulating hazardous waste and mixed waste in the state.

118 ~~[(iii)] (c)~~ The fee schedule described in Subsection ~~[(3)(d)(i)] (2)(a)~~ shall:

119 ~~[(A)] (i)~~ implement a flat fee not calculated according to the amount of waste treated or
120 disposed;

121 ~~[(B)] (ii)~~ provide for reasonable and timely oversight by the department; and

122 ~~[(C)] (iii)~~ adequately meet the needs of industry and the department, including enabling
123 the department to employ qualified personnel to appropriately oversee industry regulation.

124 ~~[(iv)] (d)~~ A facility that treats or disposes of hazardous waste or mixed waste is
125 authorized to collect the fee established under Subsection ~~[(3)(d)(i)] (2)(a)~~ from the generator
126 of the waste.

127 ~~[(4)(a) Through June 30, 2014, remediation waste received at a hazardous waste land~~
128 ~~disposal or treatment facility from a remediation project is subject to a fee in the following~~
129 ~~amounts:]~~

[Amount of Remediation Waste Received	[Fee Amount]
— from a Remediation Project]	
[More than 0, but less than 1,000 tons]	[\$28 per ton]
[Equal to or greater than 1,000 tons, but less than 12,500 tons]	[\$10 per ton for all waste]
[Equal to or greater than 12,500 tons, but less than 25,000 tons]	[\$5 per ton for all waste]

134 [Equal to or greater than 25,000 tons] [\$2.50 per ton for all
waste]

135 ~~[(b) Through June 30, 2014, emission control dust/sludge from the primary production~~
136 ~~of steel in electric furnaces (K061, as defined in 40 C.F.R. Sec. 261.32) received at a hazardous~~
137 ~~waste land disposal or treatment facility is subject to a fee of \$5 per ton in lieu of the fee~~
138 ~~established in Subsection (3).]~~

139 ~~[(c) Through June 30, 2014, demilitarization waste received at a hazardous waste~~
140 ~~treatment, storage, or disposal facility is subject to a fee of \$5 per ton in addition to the fee~~
141 ~~established in Subsection (3).]~~

142 ~~[(d) (i) Through June 30, 2014, the department may in accordance with this Subsection~~
143 ~~(4)(d) assess a person required to pay a fee under this section a special assessment if the~~
144 ~~department determines that the aggregate of the following fees is insufficient to cover the~~
145 ~~department's costs of administering its hazardous waste program:]~~

146 ~~[(A) a fee imposed under this section; and]~~

147 ~~[(B) a fee imposed under Section 19-6-118.5.]~~

148 ~~[(ii) In determining the amount of a special assessment under this Subsection (4)(d);~~
149 ~~the department shall calculate the amount of the insufficiency and assess each person subject to~~
150 ~~the special assessment a proportion of the insufficiency equal to the proportion of fees paid by~~
151 ~~that person.]~~

152 ~~[(iii) The department shall deposit a special assessment collected under this Subsection~~
153 ~~(4)(d) into the Environmental Quality Restricted Account created in Section 19-1-108.]~~

154 ~~[(e) Through June 30, 2014, the department shall annually review the fee established in~~
155 ~~Subsection (4)(a) and make recommendations to the Legislature's Natural Resources,~~
156 ~~Agriculture, and Environment Interim Committee concerning the amount of the fee.]~~

157 ~~[(5) (a) Through June 30, 2014, the department shall allocate at least 10% of the fees~~
158 ~~received from a facility under this section to the county where the facility is located, not~~
159 ~~including a special assessment.]~~

160 ~~[(b)]~~ (3) (a) ~~[Beginning on July 1, 2014, the]~~ The department shall allocate and pay to a
161 county at least 10% of the fee established under Subsection ~~[(3)(d)(i)]~~ (2)(a) that the
162 department receives from a facility in that county.

163 ~~[(e)]~~ (b) The county may use fees allocated under this Subsection ~~[(5)]~~ (3) to carry out
164 its hazardous waste monitoring and response programs.

165 ~~[(6)]~~ (4) The department shall deposit the state portion of a fee received under this
166 section into the Environmental Quality Restricted Account created in Section 19-1-108.

167 ~~[(7) (a) (i)]~~ Except as provided in Subsection ~~(7)(a)(ii)~~, the owner or operator shall pay a
168 fee, accrued under this section before June 30, 2014, to the department on or before the 15th
169 day of the month following the month in which the fee accrued.]

170 ~~[(ii)]~~ If a fee accrues on remediation waste under this section before June 30, 2014, the
171 fee shall be paid in accordance with a schedule determined by the department:]

172 ~~[(A)]~~ made in consultation with the person paying the fee, and]

173 ~~[(B)]~~ considering any contractual schedule for payment between the person paying the
174 fee and another person with whom the person paying the fee has contracted:]

175 ~~[(b)]~~ With the monthly fee described in Subsection ~~(7)(a)(i)~~, the owner or operator shall
176 submit a completed form, as prescribed by the department, specifying information required by
177 the department to verify the amount of waste received and the fee amount for which the owner
178 or operator is liable:]

179 ~~[(e)]~~ (5) ~~[Beginning on July 1, 2014, an]~~ An owner or operator shall submit payment of
180 the fee established in Subsection ~~[(3)(d)(i)]~~ (2)(a) to the department:

181 ~~[(i)]~~ (a) in accordance with a schedule provided by the department; and

182 ~~[(ii)]~~ (b) using forms provided by the department.

183 ~~[(8)]~~ (6) (a) The department shall oversee and monitor hazardous waste treatment,
184 disposal, and incineration facilities, including federal government facilities located within the
185 state.

186 **(b)** The department may determine facility oversight priorities.

187 ~~[(9)]~~ (7) (a) The department, in preparing its budget for the governor and the
188 Legislature, shall separately indicate the amount necessary to administer the hazardous waste
189 program established by this part.

190 (b) The Legislature shall appropriate the costs of administering this program.

191 ~~[(10)]~~ (8) The Office of Legislative Fiscal Analyst shall monitor a fee collected under
192 this part.

193 ~~[(11)]~~ (9) Mixed waste subject to a fee under this section is not subject to a fee under
194 Section 19-3-106.

195 Section 2. Section 59-5-203 is amended to read:

196 **59-5-203. Determining taxable value.**

197 (1) Except as provided in Subsection (3), the basis for computing the gross proceeds,
198 prior to those deductions or adjustments specified in this chapter, in determining the taxable
199 value of the metals or metalliferous minerals sold or otherwise disposed of, in the order of
200 priority, is as follows:

201 (a) If the metals or metalliferous mineral products are actually sold, the value of those
202 metals or metalliferous mineral products shall be the gross amount the producer receives from
203 that sale, provided that the metals or metalliferous mineral products are sold under a bona fide
204 contract of sale between unaffiliated parties. In the case of a sale of uranium concentrates,
205 gross proceeds shall be the gross amount the producer receives from the sale of processed
206 uranium concentrate or "yellowcake," provided that the uranium concentrate is sold under a
207 bona fide contract of sale between unaffiliated parties.

208 (b) If the metals or metalliferous mineral products are not actually sold but are shipped,
209 transported, or delivered out of state, the gross proceeds shall be the multiple of the recoverable
210 units of finished metals, or of the finished metals contained in the metalliferous minerals
211 shipped, and the average daily price per unit of contained metals as quoted by an established
212 authority for market prices of metals for the period during which the tax imposed by this
213 chapter is due. The established authority or authorities shall be designated by the commission

214 by rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
215 Act.

216 (c) In the case of metals or metalliferous minerals not sold, but otherwise disposed of,
217 for which there is no established authority for market prices of metals for the period during
218 which the tax imposed by this chapter is due, gross proceeds is determined by allocating to the
219 state the same proportion of the producer's total sales of metals or metalliferous minerals sold
220 or otherwise disposed of as the producer's total Utah costs bear to the total costs associated
221 with sale or disposal of the metal or metalliferous mineral.

222 (d) In the event of a sale of metals or metalliferous minerals between affiliated
223 companies which is not a bona fide sale because the value received is not proportionate to the
224 fair market value of the metals or metalliferous minerals or in the event that Subsection (1)(a),
225 (b), or (c) are not applicable, the commission shall determine the value of such metals or
226 metalliferous minerals in an equitable manner by reference to an objective standard as specified
227 in a rule adopted in accordance with the provisions of Title 63G, Chapter 3, Utah
228 Administrative Rulemaking Act.

229 (2) For all metals except beryllium, the taxable value of the metalliferous mineral sold
230 or otherwise disposed of is 30% of the gross proceeds received for the metals sold or otherwise
231 disposed of by the producer of the metal.

232 ~~[(3)(a) Beginning on January 1, 1990, through December 31, 2004, for beryllium sold~~
233 ~~or otherwise disposed of, the taxable value is 20% of the gross proceeds received for the~~
234 ~~beryllium sold or otherwise disposed of by the producer.]~~

235 ~~[(b)(i)]~~ (3) Notwithstanding Subsection (1) or (4) ~~[and subject to Subsection (3)(b)(ii);~~
236 ~~beginning on January 1, 2005]~~, the taxable value of beryllium sold or otherwise disposed of by
237 the producer of the beryllium is equal to 125% of the direct mining costs incurred in mining the
238 beryllium.

239 ~~[(ii) For an action or proceeding filed on or after January 1, 2005, if the taxable value~~
240 ~~of beryllium is calculated under Subsection (3)(a) for purposes of imposing a tax on beryllium~~

241 ~~under this part, the taxable value of beryllium calculated under Subsection (3)(a) may not~~
242 ~~exceed the taxable value of beryllium calculated under Subsection (3)(b)(i).]~~

243 (4) Except as provided in Subsection (3), if the metalliferous mineral sold or otherwise
244 disposed of is sold or shipped out of state in the form of ore, then the taxable value is 80% of
245 the gross proceeds.

246 Section 3. Section **59-7-101** is amended to read:

247 **59-7-101. Definitions.**

248 As used in this chapter:

249 (1) "Adjusted income" means unadjusted income as modified by Sections [59-7-105](#)
250 and [59-7-106](#).

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

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

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

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

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

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

265 (4) "Apportioned income" means apportionable income multiplied by the
266 apportionment fraction as determined in Section [59-7-311](#).

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

268 (6) "Captive insurance company" means the same as that term is defined in Section
269 [31A-1-301](#).

270 ~~[(6)]~~ (7) (a) "Captive real estate investment trust" means a real estate investment trust
271 if:

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

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

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

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

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

280 ~~[(7)]~~ (8) (a) "Common ownership" means the direct or indirect control or ownership of
281 more than 50% of the outstanding voting stock of:

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

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

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

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

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

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

293 ~~[(8)]~~ (9) (a) "Controlling entity of a captive real estate investment trust" means an
294 entity that:

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

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

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

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

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

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

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

305 (ii) a qualified real estate investment subsidiary described in Section 856(i), Internal
306 Revenue Code, except for a qualified real estate investment trust subsidiary of a captive real
307 estate investment trust; or

308 (iii) a foreign real estate investment trust.

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

311 [~~9~~] (10) "Corporate return" or "return" includes a combined report.

312 [~~10~~] (11) "Corporation" includes:

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

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

317 [~~11~~] (12) "Dividend" means any distribution, including money or other type of
318 property, made by a corporation to its shareholders out of its earnings or profits accumulated
319 after December 31, 1930.

320 [~~12~~] (13) (a) "Doing business" includes any transaction in the course of its business
321 by a domestic corporation, or by a foreign corporation qualified to do or doing intrastate

322 business in this state.

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

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

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

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

328 [~~(13)~~] (14) "Domestic corporation" means a corporation that is incorporated or
329 organized under the laws of this state.

330 [~~(14)~~] (15) (a) "Farmers' cooperative" means an association, corporation, or other
331 organization that is:

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

333 (B) an association, corporation, or other organization that is similar to an association,
334 corporation, or organization described in Subsection [~~(14)~~] (15)(a)(i)(A); and

335 (ii) organized and operated on a cooperative basis to:

336 (A) (I) market the products of members of the cooperative or the products of other
337 producers; and

338 (II) return to the members of the cooperative or other producers the proceeds of sales
339 less necessary marketing expenses on the basis of the quantity of the products of a member or
340 producer or the value of the products of a member or producer; or

341 (B) (I) purchase supplies and equipment for the use of members of the cooperative or
342 other persons; and

343 (II) turn over the supplies and equipment described in Subsection [~~(14)~~]

344 (15)(a)(ii)(B)(I) at actual costs plus necessary expenses to the members of the cooperative or
345 other persons.

346 (b) (i) Subject to Subsection [~~(14)~~] (15)(b)(ii), for purposes of this Subsection [~~(14)~~]

347 (15), the commission by rule, made in accordance with Title 63G, Chapter 3, Utah

348 Administrative Rulemaking Act, shall define:

- 349 (A) the terms "member" and "producer"; and
- 350 (B) what constitutes an association, corporation, or other organization that is similar to
- 351 an association, corporation, or organization described in Subsection [~~(14)~~] (15)(a)(i)(A).
- 352 (ii) The rules made under this Subsection [~~(14)~~] (15)(b) shall be consistent with the
- 353 filing requirements under federal law for a farmers' cooperative.
- 354 [~~(15)~~] (16) "Foreign corporation" means a corporation that is not incorporated or
- 355 organized under the laws of this state.
- 356 [~~(16)~~] (17) (a) "Foreign operating company" means a corporation that:
- 357 (i) is incorporated in the United States;
- 358 (ii) conducts at least 80% of the corporation's business activity, as determined under
- 359 Section 59-7-401, outside the United States; and
- 360 (iii) as calculated in accordance with Part 3, Allocation and Apportionment of Income -
- 361 Utah UDITPA Provisions, has:
 - 362 (A) at least \$1,000,000 of payroll located outside the United States; and
 - 363 (B) at least \$2,000,000 of property located outside the United States.
- 364 (b) "Foreign operating company" does not include a corporation that qualifies for the
- 365 Puerto Rico and possession tax credit as provided in Section 936, Internal Revenue Code.
- 366 [~~(17)~~] (18) (a) "Foreign real estate investment trust" means:
- 367 (i) a business entity organized outside the laws of the United States if:
 - 368 (A) at least 75% of the business entity's total asset value at the close of the business
 - 369 entity's taxable year is represented by:
 - 370 (I) real estate assets, as defined in Section 856(c)(5)(B), Internal Revenue Code;
 - 371 (II) cash or cash equivalents; or
 - 372 (III) one or more securities issued or guaranteed by the United States;
 - 373 (B) the business entity is:
 - 374 (I) not subject to income taxation:
 - 375 (Aa) on amounts distributed to the business entity's beneficial owners; and

376 (Bb) in the jurisdiction in which the business entity is organized; or
377 (II) exempt from income taxation on an entity level in the jurisdiction in which the
378 business entity is organized;

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

382 (I) shares or beneficial interests; and
383 (II) on an annual basis;

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

386 (Aa) the voting power of the business entity; or
387 (Bb) the value of the shares or beneficial interests of the business entity; or
388 (II) the shares of the business entity are regularly traded on an established securities
389 market; and

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

392 (ii) a listed Australian property trust.

393 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
394 commission may make rules defining:

395 (i) "cash or cash equivalents";
396 (ii) "established securities market"; or
397 (iii) "listed Australian property trust."

398 ~~[(18)]~~ (19) "Income" includes losses.
399 ~~[(19)]~~ (20) "Internal Revenue Code" means Title 26 of the United States Code as
400 effective during the year in which Utah taxable income is determined.

401 ~~[(20)]~~ (21) "Nonbusiness income" means the same as that term is defined in Section
402 59-7-302.

403 [~~(21)~~] (22) "Real estate investment trust" means the same as that term is defined in
404 Section 856, Internal Revenue Code.

405 [~~(22)~~] (23) "Related expenses" means:

406 (a) expenses directly attributable to nonbusiness income; and

407 (b) the portion of interest or other expense indirectly attributable to both nonbusiness
408 and business income that bears the same ratio to the aggregate amount of such interest or other
409 expense, determined without regard to this Subsection [~~(22)~~] (23), as the average amount of the
410 asset producing the nonbusiness income bears to the average amount of all assets of the
411 taxpayer within the taxable year.

412 [~~(23)~~] (24) "S corporation" means an S corporation as defined in Section 1361, Internal
413 Revenue Code.

414 [~~(24)~~] (25) "Safe harbor lease" means a lease that qualified as a safe harbor lease under
415 Section 168, Internal Revenue Code.

416 [~~(25)~~] (26) "State of the United States" includes any of the 50 states or the District of
417 Columbia.

418 [~~(26)~~] (27) (a) "Taxable year" means the calendar year or the fiscal year ending during
419 such calendar year upon the basis of which the adjusted income is computed.

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

423 [~~(27)~~] (28) "Taxpayer" means any corporation subject to the tax imposed by this
424 chapter.

425 [~~(28)~~] (29) "Threshold level of business activity" means business activity in the United
426 States equal to or greater than 20% of the corporation's total business activity as determined
427 under Section [59-7-401](#).

428 [~~(29)~~] (30) (a) "Unadjusted income" means federal taxable income as determined on a
429 separate return basis before intercompany eliminations as determined by the Internal Revenue

430 Code, before the net operating loss deduction and special deductions for dividends received.

431 (b) For the last taxable year of a taxpayer beginning on or before December 31, 2017,
432 "unadjusted income" includes deferred foreign income described in Section 965(a), Internal
433 Revenue Code.

434 ~~[(30)]~~ (31) (a) "Unitary group" means a group of corporations that:

435 (i) are related through common ownership; and

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

439 (A) centralized management;

440 (B) functional integration; and

441 (C) economies of scale.

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

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

444 ~~[(31)]~~ (32) "United States" includes the 50 states and the District of Columbia.

445 ~~[(32)]~~ (33) "Utah net loss" means the current year Utah taxable income before Utah net
446 loss deduction, if determined to be less than zero.

447 ~~[(33)]~~ (34) "Utah net loss deduction" means the amount of Utah net losses from other
448 taxable years that a taxpayer may carry forward to the current taxable year in accordance with
449 Section [59-7-110](#).

450 ~~[(34)]~~ (35) (a) "Utah taxable income" means Utah taxable income before net loss
451 deduction less Utah net loss deduction.

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

455 ~~[(35)]~~ (36) "Utah taxable income before net loss deduction" means apportioned income
456 plus nonbusiness income allocable to Utah net of related expenses.

457 [~~(36)~~] (37) (a) "Water's edge combined report" means a report combining the income
458 and activities of:

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

460 (A) corporations organized or incorporated in the United States, including those
461 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section
462 936, Internal Revenue Code, in accordance with Subsection [~~(36)~~] (37)(b); and

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

465 (ii) an affiliated group electing to file a water's edge combined report under Subsection
466 59-7-402(2).

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

470 [~~(37)~~] (38) "Worldwide combined report" means the combination of the income and
471 activities of all members of a unitary group irrespective of the country in which the
472 corporations are incorporated or conduct business activity.

473 Section 4. Section 59-7-105 is amended to read:

474 **59-7-105. Additions to unadjusted income.**

475 In computing adjusted income the following amounts shall be added to unadjusted
476 income:

477 (1) interest from bonds, notes, and other evidences of indebtedness issued by any state
478 of the United States, including any agency and instrumentality of a state of the United States;

479 (2) the amount of any deduction taken on a corporation's federal return for taxes paid
480 by a corporation:

481 (a) to Utah for taxes imposed by this chapter; and

482 (b) to another state of the United States, a foreign country, a United States possession,
483 or the Commonwealth of Puerto Rico for taxes imposed for the privilege of doing business, or

484 exercising its corporate franchise, including income, franchise, corporate stock and business
485 and occupation taxes;

486 (3) the safe harbor lease adjustment required under Subsections 59-7-111(1)(a) and
487 (2)(a);

488 (4) capital losses that have been deducted on a Utah corporate return in previous years;

489 (5) any deduction on the federal return that has been previously deducted on the Utah
490 return;

491 (6) charitable contributions, to the extent deducted on the federal return when
492 determining federal taxable income;

493 (7) the amount of gain or loss determined under Section 59-7-114 relating to a target
494 corporation under Section 338, Internal Revenue Code, unless such gain or loss has already
495 been included in the unadjusted income of the target corporation;

496 (8) the amount of gain or loss determined under Section 59-7-115 relating to
497 corporations treated for federal purposes as having disposed of its assets under Section 336(e),
498 Internal Revenue Code, unless such gain or loss has already been included in the unadjusted
499 income of the target corporation;

500 (9) adjustments to gains, losses, depreciation expense, amortization expense, and
501 similar items due to a difference between basis for federal purposes and basis as computed
502 under Section 59-7-107;

503 (10) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings
504 Plan, from the account of a corporation that is an account owner as defined in Section
505 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount withdrawn
506 from the account of the corporation that is the account owner:

507 (a) is not expended for:

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

509 (ii) a payment or distribution that qualifies as an exception to the additional tax for
510 distributions not used for educational expenses provided in Sections 529(c) and 530(d),

511 Internal Revenue Code; and

512 (b) is subtracted by the corporation:

513 (i) that is the account owner; and

514 (ii) in accordance with Subsection 59-7-106 (1)(r); ~~and~~

515 (11) the amount of the deduction for dividends paid, as defined in Section 561, Internal
516 Revenue Code, that is allowed under Section 857(b)(2)(B), Internal Revenue Code, in
517 computing the taxable income of a captive real estate investment trust, if that captive real estate
518 investment trust is subject to federal income taxation[-]; and

519 (12) any deduction on a return filed under this chapter for a royalty or other expense
520 paid to a captive insurance company for the use of an intangible asset where the intangible
521 asset is owned by the captive insurance company and used, in exchange for a royalty or other
522 fee, by an entity related by common ownership to the captive insurance company.

523 Section 5. Section 59-7-402 is amended to read:

524 **59-7-402. Water's edge combined report.**

525 (1) Except as provided in Section 59-7-403, if any corporation listed in Subsection
526 59-7-101[~~(36)~~](37)(a) is doing business in Utah, the unitary group shall file a water's edge
527 combined report.

528 (2) (a) A group of corporations that are not otherwise a unitary group may elect to file a
529 water's edge combined report if each member of the group is:

530 (i) doing business in Utah;

531 (ii) part of the same affiliated group; and

532 (iii) qualified, under Section 1501, Internal Revenue Code, to file a federal
533 consolidated return.

534 (b) Each corporation within the affiliated group that is doing business in Utah must
535 consent to filing a combined report. If an affiliated group elects to file a combined report, each
536 corporation within the affiliated group that is doing business in Utah must file a combined
537 report.

538 (c) Corporations that elect to file a water's edge combined report under this section may
539 not thereafter elect to file a separate return without the consent of the commission.

540 Section 6. Section **59-24-104** is amended to read:

541 **59-24-104. Payment of tax.**

542 (1) The tax imposed by Section [~~59-24-103~~] 59-24-103.5 shall be paid by the owner or
543 operator of a radioactive waste facility that receives radioactive waste for disposal or
544 reprocessing.

545 (2) The payment shall be accompanied by the form prescribed by the commission.

546 (3) The payment shall be paid quarterly on or before the last day of the month next
547 succeeding each calendar quarterly period.

548 Section 7. **Repealer.**

549 This bill repeals:

550 Section ~~59-24-103~~, **Tax imposed on radioactive waste.**

551 Section ~~59-25-101~~, **Title.**

552 Section ~~59-25-102~~, **Definitions.**

553 Section ~~59-25-103~~, **Hazardous waste facility and nonhazardous solid waste facility**
554 **tax.**

555 Section ~~59-25-104~~, **Payment of tax.**

556 Section ~~59-25-105~~, **Deposit of tax revenue.**

557 Section ~~59-25-106~~, **Records.**

558 Section ~~59-25-108~~, **Rulemaking authority.**

559 Section ~~59-25-109~~, **Penalties and interest.**

560 Section 8. **Effective date -- Retrospective operation.**

561 (1) Except as provided in Subsection (2), this bill has retrospective operation for a
562 taxable year beginning on or after January 1, 2019.

563 (2) The actions affecting the following sections take effect on May 14, 2019:

564 (a) Section ~~19-6-118~~;

- 565 (b) Section 59-5-203;
- 566 (c) Section 59-24-103;
- 567 (d) Section 59-24-104;
- 568 (e) Section 59-25-101;
- 569 (f) Section 59-25-102;
- 570 (g) Section 59-25-103;
- 571 (h) Section 59-25-104;
- 572 (i) Section 59-25-105;
- 573 (j) Section 59-25-106;
- 574 (k) Section 59-25-108; and
- 575 (l) Section 59-25-109.