

INCOME TAX CODE AMENDMENTS

2018 SECOND SPECIAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill amends income tax provisions.

Highlighted Provisions:

This bill:

- ▶ prohibits a taxpayer from carrying a Utah net loss back to an earlier taxable year;
- ▶ limits the amount of Utah net loss that a taxpayer may carry forward;
- ▶ removes the 15-year time limit for a taxpayer to carry forward a Utah net loss;
- ▶ modifies the calculation of the taxpayer tax credit to create a Utah personal

exemption; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

59-7-101, as last amended by Laws of Utah 2011, Chapter 69

59-7-110 (Effective 01/01/19), as last amended by Laws of Utah 2018, Chapter 456

59-7-110 (Superseded 01/01/19), as last amended by Laws of Utah 2016, Chapters 311

and 323

29 [59-7-522](#), as last amended by Laws of Utah 2015, First Special Session, Chapter 3

30 [59-10-1018](#), as last amended by Laws of Utah 2018, Chapters 415 and 456

31

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

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

34 **59-7-101. Definitions.**

35 As used in this chapter:

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

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

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

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

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

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

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

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

54 (5) "Business income" [~~is as~~] means the same as that term is defined in Section
55 [59-7-302](#).

56 (6) (a) "Captive real estate investment trust" means a real estate investment trust if:
57 (i) the shares or beneficial interests of the real estate investment trust are not regularly
58 traded on an established securities market; and
59 (ii) more than 50% of the voting power or value of the shares or beneficial interests of
60 the real estate investment trust are directly, indirectly, or constructively:
61 (A) owned by a controlling entity of the real estate investment trust; or
62 (B) controlled by a controlling entity of the real estate investment trust.
63 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
64 commission may make rules defining "established securities market."
65 (7) (a) "Common ownership" means the direct or indirect control or ownership of more
66 than 50% of the outstanding voting stock of:
67 (i) a parent-subsidary controlled group as defined in Section 1563, Internal Revenue
68 Code, except that 50% shall be substituted for 80%;
69 (ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue
70 Code; or
71 (iii) three or more corporations each of which is a member of a group of corporations
72 described in Subsection (2)(a)(i) or (ii), and one of which is:
73 (A) a common parent corporation included in a group of corporations described in
74 Subsection (2)(a)(i); and
75 (B) included in a group of corporations described in Subsection (2)(a)(ii).
76 (b) Ownership of outstanding voting stock shall be determined by Section 1563,
77 Internal Revenue Code.
78 (8) (a) "Controlling entity of a captive real estate investment trust" means an entity
79 that:
80 (i) is treated as an association taxable as a corporation under the Internal Revenue
81 Code;
82 (ii) is not exempt from federal income taxation under Section 501(a), Internal Revenue

83 Code; and

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

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

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

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

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

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

93 (iii) a foreign real estate investment trust.

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

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

97 (10) "Corporation" includes:

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

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

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

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

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

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

110 (ii) the owning, renting, or leasing of real or personal property within this state; and
111 (iii) the participation in joint ventures, working and operating agreements, the
112 performance of which takes place in this state.

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

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

117 (i) (A) an association, corporation, or other organization of~~[-(F)]~~ farmers~~[-(F)]~~ or ~~[(F)]~~
118 fruit growers; or

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

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

122 (A) (I) market the products of members of the cooperative or the products of other
123 producers; and

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

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

129 (II) turn over the supplies and equipment described in Subsection (14)(a)(ii)(B)(I) at
130 actual costs plus necessary expenses to the members of the cooperative or other persons.

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

134 (A) the terms~~[-(F)]~~ "member"~~[-(F)]~~ and ~~[(F)]~~ "producer"; and

135 (B) what constitutes an association, corporation, or other organization that is similar to
136 an association, corporation, or organization described in Subsection (14)(a)(i)(A).

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

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

141 (16) (a) "Foreign operating company" means a corporation [if] that:

142 (i) [~~the corporation~~] is incorporated in the United States;

143 (ii) conducts at least 80% of the corporation's business activity, as determined under
144 Section 59-7-401, [~~is conducted~~] outside the United States; and

145 (iii) as calculated in accordance with Part 3, Allocation and Apportionment of Income -
146 Utah UDITPA Provisions, [~~the corporation~~] has:

147 (A) at least \$1,000,000 of payroll located outside the United States; and

148 (B) at least \$2,000,000 of property located outside the United States.

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

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

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

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

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

156 (II) cash or cash equivalents; or

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

158 (B) the business entity is:

159 (I) not subject to income taxation:

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

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

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

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

167 (I) shares or beneficial interests; and

168 (II) on an annual basis;

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

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

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

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

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

177 (ii) a listed Australian property trust.

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

180 (i) "cash or cash equivalents";

181 (ii) "established securities market"; or

182 (iii) "listed Australian property trust."

183 (18) "Income" includes losses.

184 (19) "Internal Revenue Code" means Title 26 of the United States Code as effective
185 during the year in which Utah taxable income is determined.

186 (20) "Nonbusiness income" [~~is as~~] means the same as that term is defined in Section
187 [59-7-302](#).

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

190 (22) "Related expenses" means:

191 (a) expenses directly attributable to nonbusiness income; and
192 (b) the portion of interest or other expense indirectly attributable to both nonbusiness
193 and business income [~~which~~] that bears the same ratio to the aggregate amount of such interest
194 or other expense, determined without regard to this Subsection (22), as the average amount of
195 the asset producing the nonbusiness income bears to the average amount of all assets of the
196 taxpayer within the taxable year.

197 [~~(24)~~] (23) "S corporation" means an S corporation as defined in Section 1361, Internal
198 Revenue Code.

199 [~~(23)~~] (24) "Safe harbor lease" means a lease that qualified as a safe harbor lease under
200 Section 168, Internal Revenue Code.

201 (25) "State of the United States" includes any of the 50 states or the District of
202 Columbia.

203 (26) (a) "Taxable year" means the calendar year or the fiscal year ending during such
204 calendar year upon the basis of which the adjusted income is computed.

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

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

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

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

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

216 (i) are related through common ownership; and

217 (ii) by a preponderance of the evidence as determined by a court of competent

218 jurisdiction or the commission, are economically interdependent with one another as
219 demonstrated by the following factors:

220 (A) centralized management;

221 (B) functional integration; and

222 (C) economies of scale.

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

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

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

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

228 (33) "Utah net loss deduction" means the amount of Utah net losses from other taxable
229 years that [~~may be carried back or carried~~] a taxpayer may carry forward to the current taxable
230 year in accordance with Section 59-7-110.

231 (34) (a) "Utah taxable income" means Utah taxable income before net loss deduction
232 less Utah net loss deduction.

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

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

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

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

241 (A) corporations organized or incorporated in the United States, including those
242 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section
243 936, Internal Revenue Code, in accordance with Subsection (36)(b); and

244 (B) corporations organized or incorporated outside of the United States meeting the

245 threshold level of business activity; and

246 (ii) an affiliated group electing to file a water's edge combined report under Subsection
247 59-7-402(2).

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

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

254 Section 2. Section 59-7-110 (Superseded 01/01/19) is amended to read:

255 **59-7-110 (Superseded 01/01/19). Utah net loss -- Carryforward -- Deduction.**

256 (1) ~~[The amount of Utah net loss that shall be carried back or]~~ A taxpayer shall
257 determine the amount of Utah net loss that the taxpayer may carry forward to offset income of
258 another taxable year [is determined] as provided in this section.

259 ~~[(2)(a) Subject to the other provisions of this section, a Utah net loss from a taxable~~
260 ~~year beginning before January 1, 1994, shall be carried back three taxable years preceding the~~
261 ~~taxable year of the loss and any remaining loss shall be carried forward five taxable years~~
262 ~~following the taxable year of the loss.]~~

263 ~~[(b)(i) Subject to the other provisions of this section, a Utah net loss from a taxable~~
264 ~~year beginning on or after January 1, 1994, may be carried back three taxable years preceding~~
265 ~~the taxable year of the loss and carried forward 15 taxable years following the taxable year of~~
266 ~~the loss.]~~

267 ~~[(ii) If an election is made to forego the federal net operating loss carryback, a Utah net~~
268 ~~loss is not eligible to be carried back unless an election is made for state purposes.]~~

269 (2) Subject to the other provisions of this section, a taxpayer:

270 (a) may carry forward a Utah net loss from a taxable year to a future taxable year; and

271 (b) may not carry back a Utah net loss from a taxable year.

272 (3) A taxpayer that carries forward a Utah net loss shall carry forward the Utah net loss
273 [~~shall be carried~~] to the earliest eligible year for which the Utah taxable income before net loss
274 deduction, minus Utah net losses from previous years [~~that were applied or required to be~~
275 ~~applied~~] that a taxpayer applied or was required to apply to offset income, is not less than zero.

276 (4) (a) [~~Except as provided in~~] Subject to Subsection (4)(b), the amount of Utah net
277 loss that [~~shall be carried~~] a taxpayer may carry to the year identified in Subsection (3) is the
278 lesser of:

279 (i) the remaining Utah net loss after deduction of any amounts of the Utah net loss that
280 [~~were~~] a taxpayer carried to previous years; or

281 (ii) the remaining Utah taxable income before net loss deduction of the year identified
282 in Subsection (3) after deduction of Utah net losses from previous years [~~that were carried or~~
283 ~~required to be carried~~] that a taxpayer carried or was required to carry to the year identified in
284 Subsection (3).

285 [~~(b) (i) The amount of Utah net loss carried back from a taxable year may not exceed~~
286 ~~\$1,000,000 in Utah taxable income for each return filed under this chapter in a taxable year.]~~

287 [~~(ii) A Utah net loss in excess of \$1,000,000 may be carried forward.]~~

288 (b) (i) The amount of Utah net loss that a taxpayer may carry forward to a taxable year
289 may not exceed 80% of Utah taxable income computed without regard to the deduction
290 allowable under this section.

291 [~~(iii) (ii) A taxpayer may carry a remaining Utah net loss [shall be available to be~~
292 ~~carried]~~ to one or more taxable years in accordance with this section.

293 (5) (a) (i) Subject to Subsection (5)(a)(ii), a corporation acquiring the assets or stock of
294 another corporation may not deduct any net loss incurred by the acquired corporation prior to
295 the date of acquisition.

296 (ii) Subsection (5)(a)(i) does not apply if the only change in the corporation is that of
297 the state of incorporation.

298 (b) An acquired corporation may deduct the acquired corporation's net losses incurred

299 before the date of acquisition against the acquired corporation's separate income as calculated
300 under Subsections (6) and (7) if the acquired corporation has continued to carry on a trade or
301 business substantially the same as that conducted before the acquisition.

302 (6) For purposes of Subsection (5)(b), the amount of net loss an acquired corporation
303 that is acquired by a unitary group may deduct is calculated by:

304 (a) subject to Subsection (7):

305 (i) except as provided in Subsection (6)(a)(ii), calculating the sum of:

306 (A) an amount determined by dividing the average value of the acquired corporation's
307 real and tangible personal property owned or rented and used in this state during the taxable
308 year by the average value of all of the unitary group's real and tangible personal property owned
309 or rented and used during the taxable year;

310 (B) an amount determined by dividing the total amount paid in this state during the
311 taxable year by the acquired corporation for compensation by the total compensation paid
312 everywhere by the unitary group during the taxable year; and

313 (C) an amount determined by:

314 (I) dividing the total sales of the acquired corporation in this state during the taxable
315 year by the total sales of the unitary group everywhere during the taxable year; and

316 (II) if the unitary group elects to calculate the fraction for apportioning business
317 income to this state using the method described in Subsection 59-7-311(2)(b), multiplying the
318 amount calculated under Subsection (6)(a)(i)(C)(I) by two; or

319 (ii) if the unitary group is required or elects to calculate the fraction for apportioning
320 business income to this state using the method described in Subsection 59-7-311(3), calculating
321 an amount determined by dividing the total sales of the acquired corporation in this state during
322 the taxable year by the total sales of the unitary group everywhere during the taxable year;

323 (b) dividing the amount calculated under Subsection (6)(a) by the same denominator of
324 the fraction the unitary group uses to apportion business income to this state:

325 (i) for that taxable year; and

- 326 (ii) in accordance with Section 59-7-311;
- 327 (c) multiplying the amount calculated under Subsection (6)(b) by the business income
- 328 of the unitary group for the taxable year that is subject to apportionment under Section
- 329 59-7-311; and
- 330 (d) calculating the sum of:
- 331 (i) the amount calculated under Subsection (6)(c); and
- 332 (ii) the following amounts allocable to the acquired corporation for the taxable year:
- 333 (A) nonbusiness income allocable to this state; or
- 334 (B) nonbusiness loss allocable to this state.
- 335 (7) The amounts calculated under Subsection (6)(a) shall be derived in the same
- 336 manner as those amounts are derived for purposes of apportioning the unitary group's business
- 337 income before deducting the net loss, including a modification made in accordance with
- 338 Section 59-7-320.
- 339 Section 3. Section 59-7-110 (Effective 01/01/19) is amended to read:
- 340 **59-7-110 (Effective 01/01/19). Utah net loss -- Carryforward -- Deduction.**
- 341 (1) A taxpayer shall determine the amount of Utah net loss that the taxpayer may carry
- 342 ~~[back or]~~ forward to offset income of another taxable year as provided in this section.
- 343 (2) ~~[(a)]~~ Subject to the other provisions of this section, a taxpayer ~~[may]~~:
- 344 ~~[(i) carry back a Utah net loss from a taxable year for three taxable years preceding the~~
- 345 ~~taxable year of the loss; and]~~
- 346 ~~[(ii)]~~ (a) may carry forward a Utah net loss from a taxable year [for 15 taxable years
- 347 following the taxable year of the loss.] to a future taxable year; and
- 348 ~~[(b) If a taxpayer elects to forego the federal net operating loss carryback, the taxpayer~~
- 349 ~~may not carry back a Utah net loss unless the taxpayer makes an election for state purposes.]~~
- 350 (b) may not carry back a Utah net loss from a taxable year.
- 351 (3) A taxpayer that carries forward a Utah net loss shall carry forward the Utah net loss
- 352 to the earliest eligible year for which the Utah taxable income before net loss deduction, minus

353 Utah net losses from previous years that a taxpayer applied or was required to apply to offset
354 income, is not less than zero.

355 (4) (a) ~~[Except as provided in]~~ Subject to Subsection (4)(b), the amount of Utah net
356 loss that a taxpayer may carry to the year identified in Subsection (3) is the lesser of:

357 (i) the remaining Utah net loss after deduction of any amounts of the Utah net loss that
358 a taxpayer carried to previous years; or

359 (ii) the remaining Utah taxable income before net loss deduction of the year identified
360 in Subsection (3) after deduction of Utah net losses from previous years that a taxpayer carried
361 or was required to carry to the year identified in Subsection (3).

362 ~~[(b) (i) The amount of Utah net loss that a taxpayer carries back from a taxable year
363 may not exceed \$1,000,000 in Utah taxable income for each return filed under this chapter in a
364 taxable year.]~~

365 ~~[(ii) A taxpayer may carry forward a Utah net loss in excess of \$1,000,000.]~~

366 (b) (i) The amount of Utah net loss that a taxpayer may carry forward to a taxable year
367 may not exceed 80% of Utah taxable income computed without regard to the deduction
368 allowable under this section.

369 ~~[(iii)]~~ (ii) A taxpayer may carry a remaining Utah net loss to one or more taxable years
370 in accordance with this section.

371 (5) (a) (i) Subject to Subsection (5)(a)(ii), a corporation acquiring the assets or stock of
372 another corporation may not deduct any net loss incurred by the acquired corporation prior to
373 the date of acquisition.

374 (ii) Subsection (5)(a)(i) does not apply if the only change in the corporation is that of
375 the state of incorporation.

376 (b) An acquired corporation may deduct the acquired corporation's net losses incurred
377 before the date of acquisition against the acquired corporation's separate income as calculated
378 under Subsections (6) and (7) if the acquired corporation has continued to carry on a trade or
379 business substantially the same as that conducted before the acquisition.

380 (6) For purposes of Subsection (5)(b), the amount of net loss an acquired corporation
381 that is acquired by a unitary group may deduct is calculated by:

382 (a) subject to Subsection (7):

383 (i) except as provided in Subsection (6)(a)(ii), calculating the sum of:

384 (A) an amount determined by dividing the average value of the acquired corporation's
385 real and tangible personal property owned or rented and used in this state during the taxable
386 year by the average value of all of the unitary group's real and tangible personal property owned
387 or rented and used during the taxable year;

388 (B) an amount determined by dividing the total amount paid in this state during the
389 taxable year by the acquired corporation for compensation by the total compensation paid
390 everywhere by the unitary group during the taxable year; and

391 (C) an amount determined by:

392 (I) dividing the total sales of the acquired corporation in this state during the taxable
393 year by the total sales of the unitary group everywhere during the taxable year; and

394 (II) if the unitary group elects or is required to calculate the fraction for apportioning
395 business income to this state using the method described in Subsection 59-7-311(4) in taxable
396 year 2019 or taxable year 2020, multiplying the amount calculated under Subsection
397 (6)(a)(i)(C)(I) by, for the taxable year 2019, four, or, for the taxable year 2020, eight; or

398 (ii) if the unitary group is required or elects to calculate the fraction for apportioning
399 business income to this state using the method described in Subsection 59-7-311(2), calculating
400 an amount determined by dividing the total sales of the acquired corporation in this state during
401 the taxable year by the total sales of the unitary group everywhere during the taxable year;

402 (b) dividing the amount calculated under Subsection (6)(a) by the same denominator of
403 the fraction the unitary group uses to apportion business income to this state for that taxable
404 year in accordance with Section 59-7-311;

405 (c) multiplying the amount calculated under Subsection (6)(b) by the business income
406 of the unitary group for the taxable year that is subject to apportionment under Section

407 [59-7-311](#); and

408 (d) calculating the sum of:

409 (i) the amount calculated under Subsection (6)(c); and

410 (ii) the following amounts allocable to the acquired corporation for the taxable year:

411 (A) nonbusiness income allocable to this state; or

412 (B) nonbusiness loss allocable to this state.

413 (7) The amounts calculated under Subsection (6)(a) shall be derived in the same
414 manner as those amounts are derived for purposes of apportioning the unitary group's business
415 income before deducting the net loss, including a modification made in accordance with
416 Section [59-7-320](#).

417 Section 4. Section **59-7-522** is amended to read:

418 **59-7-522. Overpayments.**

419 (1) As used in this section, "overpayment" means the same as that term is defined in
420 Section [59-1-1409](#).

421 (2) (a) Subject to Subsection (2)(b), a claim for credit or refund of an overpayment that
422 is attributable to a Utah net loss [~~carry back or~~] carry forward shall be filed within three years
423 from the due date of the return for the taxable year of the Utah net loss.

424 (b) The three-year period described in Subsection (2)(a) shall be extended by any
425 extension of time provided in statute for filing the return described in Subsection (2)(a).

426 (3) The commission shall make a credit against or refund of any overpayment of a tax
427 under this chapter for a taxable year if, in accordance with Section [59-7-519](#):

428 (a) (i) a corporation agrees with the commissioner of internal revenue for an extension,
429 or a renewal of an extension, of the period for proposing and assessing a deficiency in federal
430 income tax for that taxable year; or

431 (ii) there is a change in or correction of federal taxable income for that taxable year;

432 and

433 (b) the corporation files a claim for the credit or refund before the expiration of the

434 time period within which the commission may assess a deficiency.

435 (4) The commission shall make a credit or refund within a 30-day period after the day
436 on which a court's decision to require the commission to credit or refund the amount of an
437 overpayment to a taxpayer is final.

438 Section 5. Section **59-10-1018** is amended to read:

439 **59-10-1018. Definitions -- Nonrefundable taxpayer tax credits.**

440 (1) As used in this section:

441 ~~[(a) "Dependent adult with a disability" means an individual who:]~~

442 ~~[(i) a claimant claims as a dependent under Section 151, Internal Revenue Code, on the
443 claimant's federal individual income tax return for the taxable year;]~~

444 ~~[(ii) is not the claimant or the claimant's spouse; and]~~

445 ~~[(iii) is:]~~

446 ~~[(A) 18 years of age or older;]~~

447 ~~[(B) eligible for services under Title 62A, Chapter 5, Services for People with
448 Disabilities; and]~~

449 ~~[(C) not enrolled in an education program for students with disabilities that is
450 authorized under Section 53E-7-202.]~~

451 ~~[(b) "Dependent child with a disability" means an individual 21 years of age or younger
452 who:]~~

453 ~~[(i) a claimant claims as a dependent under Section 151, Internal Revenue Code, on the
454 claimant's federal individual income tax return for the taxable year;]~~

455 ~~[(ii) is not the claimant or the claimant's spouse; and]~~

456 ~~[(iii) is:]~~

457 ~~[(A) an eligible student with a disability; or]~~

458 ~~[(B) identified under guidelines of the Department of Health as qualified for Early
459 Intervention or Infant Development Services.]~~

460 ~~[(c) "Eligible student with a disability" means an individual who is:]~~

461 ~~[(i) diagnosed by a school district representative under rules the State Board of~~
462 ~~Education adopts in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking~~
463 ~~Act, as having a disability classified as autism, deafness, preschool developmental delay, dual~~
464 ~~sensory impairment, hearing impairment, intellectual disability, multidisability, orthopedic~~
465 ~~impairment, other health impairment, traumatic brain injury, or visual impairment;]~~

466 ~~[(ii) not receiving residential services from the Division of Services for People with~~
467 ~~Disabilities created under Section 62A-5-102 or a school established under Title 53E, Chapter~~
468 ~~8, Utah Schools for the Deaf and the Blind; and]~~

469 ~~[(iii) (A) enrolled in an education program for students with disabilities that is~~
470 ~~authorized under Section 53E-7-202; or]~~

471 ~~[(B) a recipient of a scholarship awarded under Title 53F, Chapter 4, Part 3, Carson~~
472 ~~Smith Scholarship Program.]~~

473 ~~[(d)] (a) "Head of household filing status" means a head of household, as defined in~~
474 ~~Section 2(b), Internal Revenue Code, who files a single federal individual income tax return for~~
475 ~~the taxable year.~~

476 ~~[(e)] (b) "Joint filing status" means:~~

477 (i) spouses who file a single return jointly under this chapter for a taxable year; or

478 (ii) a surviving spouse, as defined in Section 2(a), Internal Revenue Code, who files a
479 single federal individual income tax return for the taxable year.

480 (c) "Qualifying dependent" means an individual with respect to whom the claimant is
481 allowed to claim a tax credit under Section 24, Internal Revenue Code, on the claimant's
482 federal individual income tax return for the taxable year.

483 ~~[(f)] (d) "Single filing status" means:~~

484 (i) a single individual who files a single federal individual income tax return for the
485 taxable year; or

486 (ii) a married individual who:

487 (A) does not file a single federal individual income tax return jointly with that married

488 individual's spouse for the taxable year; and

489 (B) files a single federal individual income tax return for the taxable year.

490 ~~[(g)]~~ (e) "State or local income tax" means the lesser of:

491 (i) the amount of state or local income tax that the claimant:

492 (A) pays for the taxable year; and

493 (B) reports on the claimant's federal individual income tax return for the taxable year,
494 regardless of whether the claimant is allowed an itemized deduction on the claimant's federal
495 individual income tax return for the taxable year for the full amount of state or local income tax
496 paid; and

497 (ii) \$10,000.

498 ~~[(h)]~~ (f) (i) "Utah itemized deduction" means the amount the claimant deducts as
499 allowed as an itemized deduction on the claimant's federal individual income tax return for that
500 taxable year minus any amount of state or local income tax for the taxable year.

501 (ii) "Utah itemized deduction" does not include any amount of qualified business
502 income that the claimant subtracts as allowed by Section 199A, Internal Revenue Code, on the
503 claimant's federal income tax return for that taxable year.

504 (g) "Utah personal exemption" means, subject to Subsection (6), \$565 multiplied by
505 the number of the claimant's qualifying dependents.

506 (2) Except as provided in Section [59-10-1002.2](#), and subject to Subsections (3) through
507 (5), a claimant may claim a nonrefundable tax credit against taxes otherwise due under this part
508 equal to the sum of:

509 (a) (i) for a claimant that deducts the standard deduction on the claimant's federal
510 individual income tax return for the taxable year, 6% of the amount the claimant deducts as
511 allowed as the standard deduction on the claimant's federal individual income tax return for
512 that taxable year; or

513 (ii) for a claimant that itemizes deductions on the claimant's federal individual income
514 tax return for the taxable year, 6% of the amount of the claimant's Utah itemized deduction;

515 and

516 (b) ~~[the product of:]~~ 6% of the claimant's Utah personal exemption.

517 ~~[(i) 75% of the total amount the claimant deducts as allowed as a personal exemption~~
518 ~~deduction on the claimant's federal individual income tax return for that taxable year, plus an~~
519 ~~additional 75% of the amount the claimant deducts as allowed as a personal exemption~~
520 ~~deduction on the claimant's federal individual income tax return for that taxable year with~~
521 ~~respect to each dependent adult with a disability or dependent child with a disability; and]~~

522 ~~[(ii) 6%.]~~

523 (3) A claimant may not carry forward or carry back a tax credit under this section.

524 (4) The tax credit allowed by Subsection (2) shall be reduced by \$.013 for each dollar
525 by which a claimant's state taxable income exceeds:

526 (a) for a claimant who has a single filing status, \$12,000;

527 (b) for a claimant who has a head of household filing status, \$18,000; or

528 (c) for a claimant who has a joint filing status, \$24,000.

529 (5) (a) For a taxable year beginning on or after January 1, 2009, the commission shall
530 increase or decrease annually the following dollar amounts by a percentage equal to the
531 percentage difference between the consumer price index for the preceding calendar year and
532 the consumer price index for calendar year 2007:

533 (i) the dollar amount listed in Subsection (4)(a); and

534 (ii) the dollar amount listed in Subsection (4)(b).

535 (b) After the commission increases or decreases the dollar amounts listed in Subsection
536 (5)(a), the commission shall round those dollar amounts listed in Subsection (5)(a) to the
537 nearest whole dollar.

538 (c) After the commission rounds the dollar amounts as required by Subsection (5)(b),
539 the commission shall increase or decrease the dollar amount listed in Subsection (4)(c) so that
540 the dollar amount listed in Subsection (4)(c) is equal to the product of:

541 (i) the dollar amount listed in Subsection (4)(a); and

542 (ii) two.

543 (d) For purposes of Subsection (5)(a), the commission shall calculate the consumer
544 price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

545 (6) (a) For a taxable year beginning on or after January 1, 2019, the commission shall
546 increase annually the Utah personal exemption amount listed in Subsection (1)(g) by a
547 percentage equal to the percentage by which the consumer price index for the preceding
548 calendar year exceeds the consumer price index for calendar year 2017.

549 (b) After the commission increases the Utah personal exemption amount as described
550 in Subsection (6)(a), the commission shall round the Utah personal exemption amount to the
551 nearest whole dollar.

552 (c) For purposes of Subsection (6)(a), the commission shall calculate the consumer
553 price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

554 Section 6. **Effective date.**

555 (1) Except as provided in Subsection (2), if approved by two-thirds of all the members
556 elected to each house, this bill takes effect upon approval by the governor, or the day following
557 the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's
558 signature, or in the case of a veto, the date of veto override.

559 (2) The amendments to Section [59-7-110](#) (Effective 01/01/19) take effect on January 1,
560 2019.

561 Section 7. **Retrospective operation.**

562 The bill has retrospective operation for a taxable year beginning on or after January 1,
563 2018.