

NONRESIDENT INCOME AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Robert M. Spendlove

LONG TITLE

Committee Note:

The Revenue and Taxation Interim Committee recommended this bill.

Legislative Vote: 10 voting for 0 voting against 9 absent

General Description:

This bill modifies income tax provisions related to income received for personal services rendered.

Highlighted Provisions:

This bill:

- ▶ provides that a salary, a wage, a commission, or compensation received for personal services rendered within the state is derived from Utah sources;
- ▶ excludes a salary, a wage, a commission, or compensation received for personal services rendered from business income;
- ▶ provides that an employer's exemption from the withholding requirement is not an individual's exemption from the obligation to pay income taxes; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:



28 AMENDS:

29 **59-10-117**, as last amended by Laws of Utah 2017, Chapter 318

30 **59-10-118**, as last amended by Laws of Utah 2008, Chapters 105 and 389

31 **59-10-402**, as last amended by Laws of Utah 1987, Chapter 96

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

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

35 **59-10-117. State taxable income derived from Utah sources.**

36 (1) For purposes of Section **59-10-116**, state taxable income derived from Utah sources
37 includes state taxable income attributable to or resulting from:

38 (a) the ownership in this state of any interest in real or tangible personal property,
39 including real property or property rights from which gross income from mining as described
40 by Section 613(c), Internal Revenue Code, is derived;

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

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

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

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

49 (2) For purposes of Subsection (1):

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

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

56 (i) based solely on income, gain, loss, and deduction connected with Utah sources,
57 under rules prescribed by the commission in accordance with Title 63G, Chapter 3, Utah
58 Administrative Rulemaking Act; and

- 59 (ii) otherwise determined in the same manner as the corresponding federal deductions;
60 (c) a salary, wage, commission, or compensation for personal services rendered;
61 (i) inside this state is considered to be income derived from Utah sources; and
62 (ii) outside this state may not be considered to be income derived from Utah sources;
63 (d) a share of income, gain, loss, deduction, or credit of a nonresident pass-through
64 entity taxpayer, as defined in Section 59-10-1402, derived from or connected with Utah sources
65 shall be determined in accordance with Section 59-10-118;
- 66 (e) a nonresident, other than a dealer holding property primarily for sale to customers
67 in the ordinary course of the dealer's trade or business, may not be considered to carry on a
68 trade, business, profession, or occupation in this state solely by reason of the purchase or sale
69 of property for the nonresident's own account;
- 70 (f) if a trade, business, profession, or occupation is carried on partly within and partly
71 without this state[-];
- 72 (i) an item of income, gain, loss, or a deduction derived from or connected with Utah
73 sources shall be determined in accordance with Section 59-10-118; and
- 74 (ii) a salary, a wage, a commission, or compensation for personal services rendered is
75 not considered to be an item of income from the carrying on of a business, trade, profession, or
76 occupation;
- 77 (g) the share of a nonresident estate or trust or a nonresident beneficiary of any estate
78 or trust in income, gain, loss, or deduction derived from or connected with Utah sources shall
79 be determined under Section 59-10-207; and
- 80 (h) any dividend, interest, or distributive share of income, gain, or loss from a real
81 estate investment trust, as defined in Section 59-7-101, distributed or allocated to a nonresident
82 investor in the trust, including any shareholder, beneficiary, or owner of a beneficial interest in
83 the trust, shall:
- 84 (i) be income from intangible personal property under Subsection (2)(a); and
85 (ii) constitute income derived from Utah sources only to the extent the nonresident
86 investor is employing its beneficial interest in the trust in a trade, business, profession, or
87 occupation carried on by the investor in this state.
- 88 Section 2. Section 59-10-118 is amended to read:
- 89 **59-10-118. Division of income for tax purposes.**

90 (1) As used in this section:

91 (a) [~~"Business"~~] (i) Except as provided in Subsection (1)(a)(ii), "business income"
92 means income arising from transactions and activity in the regular course of a taxpayer's trade
93 or business and includes income from tangible and intangible property if the acquisition,
94 management, and disposition of the property constitutes integral parts of the taxpayer's regular
95 trade or business operations.

96 (ii) "Business income" does not include a salary, a wage, a commission, or
97 compensation for personal services rendered.

98 (b) "Commercial domicile" means the principal place from which the trade or business
99 of a taxpayer is directed or managed.

100 (c) "Nonbusiness income" means all income other than business income.

101 (d) "Sales" means all gross receipts of a taxpayer not allocated under Subsections (3)
102 through (7).

103 (e) "State" means any state of the United States, the District of Columbia, the
104 commonwealth of Puerto Rico, or any possession of the United States.

105 (2) A taxpayer having business income that is taxable both within and without this
106 state[;] shall allocate and apportion the taxpayer's net income as provided in this section.

107 (3) Rents and royalties from real or tangible personal property, capital gains, interest,
108 dividends, or patent or copyright royalties, to the extent that [~~they~~] rents and royalties constitute
109 nonbusiness income, shall be allocated as provided in Subsections (4) through (7).

110 (4) (a) Net rents and royalties from real property located in this state are allocable to
111 this state.

112 (b) Net rents and royalties from tangible personal property are allocable to this state:

113 (i) if and to the extent that the property is utilized in this state; or

114 (ii) in their entirety if the taxpayer's commercial domicile is in this state and the
115 taxpayer is not organized under the laws of or taxable in the state in which the property is
116 utilized.

117 (c) (i) The extent of utilization of tangible personal property in a state is determined by
118 multiplying the rents and royalties by a fraction, the numerator of which is the number of days
119 of physical location of the property in the state during the rental or royalty period in the taxable
120 year and the denominator of which is the number of days of physical location of the property

121 everywhere during all rental or royalty periods in the taxable year.

122 (ii) If the physical location of the property during the rental or royalty period is
123 unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state
124 in which the property was located at the time the rental or royalty payer obtained possession.

125 (5) (a) Capital gains and losses from sales of real property located in this state are
126 allocable to this state.

127 (b) Capital gains and losses from sales of tangible personal property are allocable to
128 this state if:

129 (i) the property has a situs in this state at the time of the sale; or

130 (ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in
131 the state in which the property had a situs.

132 (c) Capital gains and losses from sales of intangible personal property are allocable to
133 this state if the taxpayer's commercial domicile is in this state.

134 (6) Interest and dividends are allocable to this state if the taxpayer's commercial
135 domicile is in this state.

136 (7) (a) Patent and copyright royalties are allocable to this state:

137 (i) if and to the extent that the patent or copyright is utilized by the payer in this state;

138 or

139 (ii) if and to the extent that the patent or copyright is utilized by the payer in a state in
140 which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

141 (b) (i) A patent is utilized in a state to the extent that [~~it~~] the patent is employed in
142 production, fabrication, manufacturing, or other processing in the state or to the extent that a
143 patented product is produced in the state.

144 (ii) If the basis of receipts from patent royalties does not permit allocation to states or if
145 the accounting procedures do not reflect states of utilization, the patent is utilized in the state in
146 which the taxpayer's commercial domicile is located.

147 (8) All business income shall be apportioned to this state using the same methods,
148 procedures, and requirements of Sections 59-7-311 through 59-7-320.

149 Section 3. Section 59-10-402 is amended to read:

150 **59-10-402. Requirement of withholding.**

151 (1) Each employer making payment of wages shall deduct and withhold from wages an

152 amount to be determined by a commission rule which will, as closely as possible, pay the
153 income tax imposed by this chapter.

154 (2) (a) (i) Any [such employer who] employer described in Subsection (1) that is to do
155 business within the state [of Utah] for a period not to exceed 60 days in the aggregate during
156 any calendar year may be relieved from the requirement provided for under this part for such
157 period by furnishing to the commission in advance a certificate so certifying. [If that employer]

158 (ii) If an employer described in Subsection (2)(a)(i) thereafter does business within the
159 state [of Utah] for a period in excess of 60 days, that employer shall be liable for all the tax
160 [which otherwise he] that the employer would have been required to deduct and withhold.

161 (iii) Upon a showing of good cause by the employer, the commission may extend for a
162 period of not to exceed 30 days the time during which the employer is not required to deduct
163 and withhold the tax.

164 (b) The exemption described in Subsection (2)(a) is from the withholding requirement
165 described in Subsection (1), not from an individual's obligation to pay income taxes as
166 provided in Part 1, Determination and Reporting of Tax Liability and Information.

167 (3) (a) The amount withheld under this section shall be allowed to the recipient of the
168 income as a credit against the tax imposed by this chapter. [The amount so]

169 (b) Except as provided in Subsection (3)(c), the amount withheld during any calendar
170 year shall be allowed as a credit for the taxable year [beginning in such calendar year] that
171 begins in the calendar year in which the amount is withheld.

172 (c) If more than one taxable year begins in a calendar year, [such] the withheld amount
173 shall be allowed as a credit for the last taxable year [so beginning] that begins in the calendar
174 year in which the amount is withheld.

175 Section 4. **Retrospective operation.**

176 This bill has retrospective operation for a taxable year beginning on or after January 1,
177 2020.