

1 **APPORTIONMENT OF INCOME AMENDMENTS**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: Ryan D. Wilcox

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to the apportionment of income.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ amends a definition related to the apportionment of income for purposes of
- 13 corporate franchise and income taxes; and
- 14 ▶ makes technical and conforming changes.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

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

19 2014.

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **59-7-302**, as last amended by Laws of Utah 2010, Chapter 155

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

25 Section 1. Section **59-7-302** is amended to read:

26 **59-7-302. Definitions -- Determination of when a taxpayer is considered to be a**

27 **sales factor weighted taxpayer.**

28 (1) As used in this part, unless the context otherwise requires:

29 (a) "Aircraft type" means a particular model of aircraft as designated by the

30 manufacturer of the aircraft.

31 (b) "Airline" is as defined in Section 59-2-102.

32 (c) "Airline revenue ton miles" means, for an airline, the total revenue ton miles during
33 the airline's tax period.

34 (d) "Business income" means income arising from transactions and activity in the
35 regular course of the taxpayer's trade or business and includes income from tangible and
36 intangible property if the acquisition, management, and disposition of the property constitutes
37 integral parts of the taxpayer's regular trade or business operations.

38 (e) "Commercial domicile" means the principal place from which the trade or business
39 of the taxpayer is directed or managed.

40 (f) "Compensation" means wages, salaries, commissions, and any other form of
41 remuneration paid to employees for personal services.

42 (g) (i) Except as provided in Subsection (1)(g)(ii), "mobile flight equipment" is as
43 defined in Section 59-2-102.

44 (ii) "Mobile flight equipment" does not include:

45 (A) a spare engine; or

46 (B) tangible personal property described in Subsection 59-2-102(25) owned by an:

47 (I) air charter service; or

48 (II) air contract service.

49 (h) "Nonbusiness income" means all income other than business income.

50 (i) "Revenue ton miles" is determined in accordance with 14 C.F.R. Part 241.

51 (j) "Sales" means all gross receipts of the taxpayer not allocated under Sections
52 59-7-306 through 59-7-310.

53 (k) Subject to Subsection (2), "sales factor weighted taxpayer" means:

54 (i) for a taxpayer that is not a unitary group, regardless of the number of economic
55 activities the taxpayer performs, a taxpayer having greater than 50% of the taxpayer's total sales
56 everywhere generated by economic activities[~~:(A) performed by the taxpayer; and (B)]
57 performed by the taxpayer if the economic activities are classified in a NAICS code of the 2002~~

58 or 2007 North American Industry Classification System of the federal Executive Office of the
59 President, Office of Management and Budget, except for:

60 ~~[(F)]~~ (A) a NAICS code within NAICS Sector 21, Mining;

61 (B) a NAICS code within NAICS Industry Group 2212, Natural Gas Distribution;

62 ~~[(H)]~~ (C) a NAICS code within NAICS Sector 31-33, Manufacturing;

63 ~~[(HH)]~~ (D) a NAICS code within NAICS Sector 48-49, Transportation and
64 Warehousing;

65 ~~[(VV)]~~ (E) a NAICS code within NAICS Sector 51, Information, except for NAICS
66 Subsector 519, Other Information Services; or

67 ~~[(V)]~~ (F) a NAICS code within NAICS Sector 52, Finance and Insurance; or

68 (ii) for a taxpayer that is a unitary group, a taxpayer having greater than 50% of the
69 taxpayer's total sales everywhere generated by economic activities[: ~~(A) performed by the~~
70 ~~unitary group; and (B)] performed by the taxpayer if the economic activities are classified in a~~
71 NAICS code of the 2002 or 2007 North American Industry Classification System of the federal
72 Executive Office of the President, Office of Management and Budget, except for:

73 ~~[(F)]~~ (A) a NAICS code within NAICS Sector 21, Mining;

74 (B) a NAICS code within NAICS Industry Group 2212, Natural Gas Distribution;

75 ~~[(H)]~~ (C) a NAICS code within NAICS Sector 31-33, Manufacturing;

76 ~~[(HH)]~~ (D) a NAICS code within NAICS Sector 48-49, Transportation and
77 Warehousing;

78 ~~[(VV)]~~ (E) a NAICS code within NAICS Sector 51, Information, except for NAICS
79 Subsector 519, Other Information Services; or

80 ~~[(V)]~~ (F) a NAICS code within NAICS Sector 52, Finance and Insurance.

81 (l) "State" means any state of the United States, the District of Columbia, the
82 Commonwealth of Puerto Rico, any territory or possession of the United States, and any
83 foreign country or political subdivision thereof.

84 (m) "Transportation revenue" means revenue an airline earns from:

85 (i) transporting a passenger or cargo; or

86 (ii) from miscellaneous sales of merchandise as part of providing transportation
87 services.

88 (n) "Utah revenue ton miles" means, for an airline, the total revenue ton miles within
89 the borders of this state:

90 (i) during the airline's tax period; and

91 (ii) from flight stages that originate or terminate in this state.

92 (2) The following apply to Subsection (1)(k):

93 (a) (i) Subject to the other provisions of this Subsection (2), a taxpayer shall for each
94 taxable year determine whether the taxpayer is a sales factor weighted taxpayer.

95 (ii) A taxpayer shall make the determination required by Subsection (2)(a)(i) before the
96 due date for filing the taxpayer's return under this chapter for the taxable year, including
97 extensions.

98 (iii) For purposes of making the determination required by Subsection (2)(a)(i), total
99 sales everywhere include only the total sales everywhere:

100 (A) as determined in accordance with this part; and

101 (B) made during the taxable year for which a taxpayer makes the determination
102 required by Subsection (2)(a)(i).

103 (b) A taxpayer that files a return as a unitary group for a taxable year is considered to
104 be a unitary group for that taxable year.

105 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
106 commission may define the term "economic activity" consistent with the use of the term
107 "activity" in the 2007 North American Industry Classification System of the federal Executive
108 Office of the President, Office of Management and Budget.

109 Section 2. **Retrospective operation.**

110 This bill has retrospective operation for a taxable year beginning on or after January 1,
111 2014.