

CORPORATE TAX AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Jefferson Moss

LONG TITLE

General Description:

This bill amends corporate franchise and income tax provisions related to Utah net loss.

Highlighted Provisions:

This bill:

- ▶ provides that a corporate taxpayer may carry forward a Utah net loss arising from a taxable year beginning on or after January 1, 2008, for an unlimited number of years, subject to a cap on the amount of the loss carry forward at 80% of taxable income; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

59-7-110, as last amended by Laws of Utah 2021, Chapter 390

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

Section 1. Section **59-7-110** is amended to read:

59-7-110. Utah net loss -- Carry forward -- Deduction.

(1) A taxpayer shall determine the amount of Utah net loss that the taxpayer may carry forward to offset income of another taxable year as provided in this section.

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

31 (a) may carry forward a Utah net loss from a taxable year beginning on or after January
32 1, 2008, to a future taxable year until the Utah net loss is exhausted; and

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

34 (3) A taxpayer that carries forward a Utah net loss shall carry forward the Utah net loss
35 to the earliest eligible year for which the Utah taxable income before net loss deduction, minus
36 Utah net losses from previous years that a taxpayer applied or was required to apply to offset
37 income, is not less than zero.

38 (4) (a) Subject to Subsection (4)(b), the amount of Utah net loss that a taxpayer may
39 carry to the year identified in Subsection (3) is the lesser of:

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

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

45 (b) (i) For a Utah net loss carried forward to a taxable year beginning on or after
46 January 1, [2021] 2023, the amount of Utah net loss that a taxpayer may carry forward to a
47 taxable year may not exceed 80% of Utah taxable income [~~computed without regard to the~~
48 ~~deduction of any Utah net loss~~] calculated before deducting any Utah net loss from Utah
49 taxable income.

50 (ii) A taxpayer may carry a remaining Utah net loss to one or more taxable years in
51 accordance with this section.

52 [~~(c) If the only Utah net loss that a taxpayer carries forward is from a taxable year that~~
53 ~~began before January 1, 2018, the commission:]~~

54 [~~(i) shall instruct the taxpayer to calculate the 80% limitation described in Subsection~~
55 ~~(4)(b) by following federal guidance for calculating the 80% taxable income limitation for~~
56 ~~federal income tax purposes; or]~~

57 [~~(ii) if the commission determines that adequate federal corporate guidance on how to~~

58 calculate the 80% limitation is unavailable, may not apply the 80% limitation to the Utah net
59 loss.]

60 [~~(d) If a taxpayer carries forward a Utah net loss from a taxable year beginning before
61 January 1, 2018, and a Utah net loss from a taxable year beginning on or after January 1, 2018,
62 the commission shall instruct the taxpayer to calculate the 80% limitation described in
63 Subsection (4)(b) by:]~~

64 [~~(i) following federal guidance for calculating the 80% of taxable income limitation for
65 federal income tax purposes; or]~~

66 [~~(ii) if the commission determines that adequate federal corporate guidance on how to
67 calculate the 80% limitation is unavailable, by:]~~

68 [~~(A) calculating 80% of Utah taxable income before deducting any Utah net losses
69 from Utah taxable income; and]~~

70 [~~(B) applying the limitation that the Utah net loss that a taxpayer carries forward may
71 not exceed 80% of Utah taxable income to Utah net losses incurred on or after January 1, 2018,
72 without regard to Utah net losses from a previous taxable year that the taxpayer carries
73 forward.]~~

74 [~~(e) The commission shall:]~~

75 [~~(i) make a determination annually, on or before April 15 of the year after the taxable
76 year ends, about whether adequate federal corporate guidance on how to calculate the 80%
77 limitation is available; and]~~

78 [~~(ii) if the commission determines that adequate federal corporate guidance on how to
79 calculate the 80% limitation is unavailable, notify the Revenue and Taxation Interim
80 Committee, electronically before the next interim committee meeting, that the commission
81 intends to issue instructions in accordance with Subsection (4)(c)(ii) or (d)(ii).]~~

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

85 (ii) Subsection (5)(a)(i) does not apply if the only change in the corporation is that of

86 the state of incorporation.

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

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

93 (a) subject to Subsection (7):

94 (i) ~~[except as provided in Subsection (6)(a)(ii);]~~ calculating the sum of:

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

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

102 (C) an amount determined by ~~[-(F)]~~ dividing the total sales of the acquired corporation
103 in this state during the taxable year by the total sales of the unitary group everywhere during the
104 taxable year; ~~[and]~~ or

105 ~~[(H) if the unitary group elects or is required to calculate the fraction for apportioning
106 business income to this state using the method described in Subsection 59-7-311(4) in taxable
107 year 2019 or taxable year 2020, multiplying the amount calculated under Subsection (6)
108 (a)(i)(C)(F) by, for the taxable year 2019, four, or, for the taxable year 2020, eight; or]~~

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

113 (b) dividing the amount calculated under Subsection (6)(a) by the same denominator of

114 the fraction the unitary group uses to apportion business income to this state for that taxable
115 year in accordance with Section 59-7-311;

116 (c) multiplying the amount calculated under Subsection (6)(b) by the business income
117 of the unitary group for the taxable year that is subject to apportionment under Section
118 59-7-311; and

119 (d) calculating the sum of:

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

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

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

123 (B) nonbusiness loss allocable to this state.

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

128 Section 2. **Retrospective operation.**

129 This bill has retrospective operation for a taxable year beginning on or after January 1,
130 2023.