

1 **DETERMINATION OF STATE TAXABLE INCOME**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Evan J. Vickers**

5 Senate Sponsor: J. Stuart Adams

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Individual Income Tax Act to address the determination of state
10 taxable income.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ addresses the determination of state taxable income derived from Utah sources; 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 2011.

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **59-10-117**, as last amended by Laws of Utah 2009, Chapter 312

23 **59-10-536**, as last amended by Laws of Utah 2009, Chapter 212

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

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

27 **59-10-117. State taxable income derived from Utah sources.**

28 (1) For purposes of Section 59-10-116, state taxable income derived from Utah sources
29 includes those items includable in state taxable income attributable to or resulting from:

30 (a) the ownership in this state of any interest in real or tangible personal property,
31 including real property or property rights from which gross income from mining as defined by
32 Section 613(c), Internal Revenue Code, is derived; [or]

33 (b) the carrying on of a business, trade, profession, or occupation in this state[-];

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

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

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

41 (2) For the purposes of Subsection (1):

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

46 (b) a deduction with respect to a capital loss, net long-term capital gain, or net
47 operating loss shall be based solely on income, gain, loss, and deduction connected with Utah
48 sources, under rules prescribed by the commission in accordance with Title 63G, Chapter 3,
49 Utah Administrative Rulemaking Act, but otherwise shall be determined in the same manner as
50 the corresponding federal deductions;

51 (c) a salary, wage, commission, or compensation for personal services rendered outside
52 this state may not be considered to be derived from Utah sources;

53 (d) a nonresident shareholder's distributive share of ordinary income, gain, loss, and
54 deduction derived from or connected with Utah sources shall be determined under Section
55 59-10-118;

56 (e) a nonresident, other than a dealer holding property primarily for sale to customers
57 in the ordinary course of the dealer's trade or business, may not be considered to carry on a

58 trade, business, profession, or occupation in this state solely by reason of the purchase or sale
59 of property for the nonresident's own account;

60 (f) if a trade, business, profession, or occupation is carried on partly within and partly
61 without this state, an item of income, gain, loss, or a deduction derived from or connected with
62 Utah sources shall be determined in accordance with Section 59-10-118;

63 (g) a nonresident partner's distributive share of partnership income, gain, loss,
64 deduction, or credit derived from or connected with Utah sources shall be determined under
65 Part 14, Pass-Through Entities and Pass-Through Entity Taxpayers Act;

66 (h) the share of a nonresident estate or trust or a nonresident beneficiary of any estate
67 or trust in income, gain, loss, or deduction derived from or connected with Utah sources shall
68 be determined under Section 59-10-207; and

69 (i) any dividend, interest, or distributive share of income, gain, or loss from a real
70 estate investment trust, as defined in Section 59-7-101, distributed or allocated to a nonresident
71 investor in the trust, including any shareholder, beneficiary, or owner of a beneficial interest in
72 the trust, shall be income from intangible personal property under Subsection (2)(a), and shall
73 constitute income derived from Utah sources only to the extent the nonresident investor is
74 employing its beneficial interest in the trust in a trade, business, profession, or occupation
75 carried on by the investor in this state.

76 Section 2. Section **59-10-536** is amended to read:

77 **59-10-536. Assessment and collection of tax -- Change on federal income tax**
78 **return -- Taxpayer requirement to make certain filings with the commission.**

79 (1) (a) If, before the expiration of the time prescribed in this section for the assessment
80 of a tax, the commission and the taxpayer agree in writing to the assessment of the tax in a time
81 period after the time period prescribed in this section for the assessment of a tax, the tax may
82 be assessed at any time before the expiration of the period to which the commission and the
83 taxpayer agree.

84 (b) A time period that the commission and a taxpayer agree upon under Subsection
85 (1)(a) may be extended by written agreement:

86 (i) between the commission and the taxpayer; and
87 (ii) made before the expiration of the time period that the commission and the taxpayer
88 previously agreed upon.

89 (2) (a) (i) Except as provided in Subsection (2)(a)(iii), if a change is made in a
90 taxpayer's net income on the taxpayer's federal income tax return because of an action by the
91 federal government, the taxpayer shall file with the commission within 90 days after the date
92 there is a final determination of the action:

- 93 (A) a copy of the taxpayer's amended federal income tax return; and
- 94 (B) an amended state income tax return that conforms with the changes made in the
95 taxpayer's amended federal income tax return.

96 (ii) Except as provided in Subsection (2)(a)(iii), if a change is made in a taxpayer's net
97 income on the taxpayer's federal income tax return because the taxpayer files an amended
98 federal income tax return, the taxpayer shall file with the commission within 90 days after the
99 date the taxpayer files the amended federal income tax return:

- 100 (A) a copy of the taxpayer's amended federal income tax return; and
- 101 (B) an amended state income tax return that conforms with the changes made in the
102 taxpayer's amended federal income tax return.

103 (iii) A taxpayer is not required to file a return described in Subsection (2)(a)(i) or (ii) if
104 a change in the taxpayer's federal income tax return does not increase state tax liability.

105 (b) (i) Subject to Subsection (2)(b)(iii), the commission may assess a deficiency in state
106 income taxes within three years after a notification or amended federal income tax return
107 described in Subsection (2)(a) is filed.

108 (ii) The amount of an assessment of tax under this Subsection (2)(b) may not exceed
109 the amount of the increase in Utah tax attributable to the change described in Subsection (2)(a).

110 (iii) If a taxpayer fails to report to the commission a change specified in this Subsection
111 (2)(b), the assessment may be made at any time within six years after the date of the change.

112 (3) If a deficiency in federal income tax required to be reported is attributable to a net
113 operating loss carry back or carry forward, a deficiency in the tax imposed by this chapter may

114 be assessed within three years from the due date of the return for the taxable year of the net
115 operating loss.

116 (4) Except as provided in Subsections (1) through (3), this section does not affect the
117 time within which or the amount for which an assessment may otherwise be made.

118 (5) (a) An erroneous refund shall be considered an underpayment of tax on the date the
119 commission makes the erroneous refund.

120 (b) An assessment of a deficiency arising out of an erroneous refund may be made at
121 any time within three years from the date the refund is made, except that an assessment may be
122 made within five years from the time the refund is made if any part of the refund is induced by
123 fraud or misrepresentation of a material fact.

124 (6) (a) Subject to Subsection (6)(b), if a return is required for a decedent or for the
125 decedent's estate during the period of administration, the tax shall be assessed within 18
126 months after written request for the assessment:

127 (i) made after the return is filed; and

128 (ii) by:

129 (A) the personal representative; or

130 (B) another person representing the estate of the decedent.

131 (b) Except as otherwise provided in this section, the assessment described in
132 Subsection (6)(a) may not be made more than three years after the time the return is filed.

133 (7) (a) The amount of a tax imposed by this chapter may be assessed at any time within
134 six years after the time the return is filed if:

135 (i) a resident individual, resident estate, or resident trust omits from gross income as
136 reported for federal income tax purposes an amount properly includable in adjusted gross
137 income, which is in excess of 25% of the amount of gross income stated in the return; or

138 (ii) a nonresident individual, nonresident estate, or nonresident trust omits from gross
139 income as reported for federal income tax purposes an amount of adjusted gross income
140 derived from Utah sources [~~as defined by~~ determined in accordance with Section 59-10-117,
141 properly includable in adjusted gross income, [~~which~~ that is in excess of 25% of the amount of

142 adjusted gross income derived from Utah sources which is reflected in the return.

143 (b) For purposes of Subsection (7)(a)(ii), there may not be taken into account any
144 amount that is omitted in the return if the amount is disclosed:

145 (i) (A) in the return; or

146 (B) in a statement attached to the return; and

147 (ii) in a manner adequate to apprise the commission of the nature and amount of the
148 item.

149 **Section 3. Retrospective operation.**

150 This bill has retrospective operation for a taxable year beginning on or after January 1,
151 2011.