LEGISLATIVE GENERAL COUNSEL
₵ Approved for Filing: A.V. Arthur ₵
₵ 12-09-15 12:47 PM ₵

1 **CORPORATE FRANCHISE AND INCOME TAX CHANGES**
2 2016 GENERAL SESSION
3 STATE OF UTAH
4 **Chief Sponsor: John Knotwell**
5 Senate Sponsor: _____
6

7 **LONG TITLE**
8 **Committee Note:**
9 The Revenue and Taxation Interim Committee recommended this bill.
10 **General Description:**
11 This bill addresses corporate franchise and income taxes.
12 **Highlighted Provisions:**
13 This bill:
14 ▸ addresses the apportionment of business income to the state for purposes of
15 corporate franchise and income taxes; and
16 ▸ makes technical and conforming changes.
17 **Money Appropriated in this Bill:**
18 None
19 **Other Special Clauses:**
20 This bill provides retrospective operation.
21 **Utah Code Sections Affected:**
22 AMENDS:
23 **59-7-110**, as last amended by Laws of Utah 2010, Chapter 155
24 **59-7-302**, as last amended by Laws of Utah 2014, Chapters 65 and 398
25 **59-7-311**, as last amended by Laws of Utah 2010, Chapter 155
26

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

H.B. 61

28 Section 1. Section **59-7-110** is amended to read:
29 **59-7-110. Utah net losses -- Carryforwards and carrybacks -- Deduction.**
30 (1) The amount of Utah net loss that shall be carried back or forward to offset income
31 of another taxable year is determined as provided in this section.
32 (2) (a) Subject to the other provisions of this section, a Utah net loss from a taxable
33 year beginning before January 1, 1994, shall be carried back three taxable years preceding the
34 taxable year of the loss and any remaining loss shall be carried forward five taxable years
35 following the taxable year of the loss.
36 (b) (i) Subject to the other provisions of this section, a Utah net loss from a taxable
37 year beginning on or after January 1, 1994, may be carried back three taxable years preceding
38 the taxable year of the loss and carried forward 15 taxable years following the taxable year of
39 the loss.
40 (ii) If an election is made to forego the federal net operating loss carryback, a Utah net
41 loss is not eligible to be carried back unless an election is made for state purposes.
42 (3) A Utah net loss shall be carried to the earliest eligible year for which the Utah
43 taxable income before net loss deduction, minus Utah net losses from previous years that were
44 applied or required to be applied to offset income, is not less than zero.
45 (4) (a) Except as provided in Subsection (4)(b), the amount of Utah net loss that shall
46 be carried to the year identified in Subsection (3) is the lesser of:
47 (i) the remaining Utah net loss after deduction of any amounts of the Utah net loss that
48 were carried to previous years; or
49 (ii) the remaining Utah taxable income before net loss deduction of the year identified
50 in Subsection (3) after deduction of Utah net losses from previous years that were carried or
51 required to be carried to the year identified in Subsection (3).
52 (b) (i) The amount of Utah net loss carried back from a taxable year may not exceed
53 $1,000,000 in Utah taxable income for each return filed under this chapter in a taxable year.
54 (ii) A Utah net loss in excess of $1,000,000 may be carried forward.
55 (iii) A remaining Utah net loss shall be available to be carried to one or more taxable
56 years in accordance with this section.
57 (5) (a) (i) Subject to Subsection (5)(a)(ii), a corporation acquiring the assets or stock of
58 another corporation may not deduct any net loss incurred by the acquired corporation prior to

59 the date of acquisition.
60 (ii) Subsection (5)(a)(i) does not apply if the only change in the corporation is that of
61 the state of incorporation.
62 (b) An acquired corporation may deduct the acquired corporation's net losses incurred
63 before the date of acquisition against the acquired corporation's separate income as calculated
64 under Subsections (6) and (7) if the acquired corporation has continued to carry on a trade or
65 business substantially the same as that conducted before the acquisition.
66 (6) For purposes of Subsection (5)(b), the amount of net loss an acquired corporation
67 that is acquired by a unitary group may deduct is calculated by:
68 (a) subject to Subsection (7):
69 (i) except as provided in Subsection (6)(a)(ii), calculating the sum of:
70 (A) an amount determined by dividing the average value of the acquired corporation's
71 real and tangible personal property owned or rented and used in this state during the taxable
72 year by the average value of all of the unitary group's real and tangible personal property owned
73 or rented and used during the taxable year;
74 (B) an amount determined by dividing the total amount paid in this state during the
75 taxable year by the acquired corporation for compensation by the total compensation paid
76 everywhere by the unitary group during the taxable year; and
77 (C) an amount determined by:
78 (I) dividing the total sales of the acquired corporation in this state during the taxable
79 year by the total sales of the unitary group everywhere during the taxable year; and
80 (II) [~~(Aa)~~] if the unitary group elects to calculate the fraction for apportioning business
81 income to this state using the method described in Subsection 59-7-311(2)[~~(d)~~](b), multiplying
82 the amount calculated under Subsection (6)(a)(i)(C)(I) by two; or
83 [~~(Bb) if the unitary group is required to calculate the fraction for apportioning business~~
84 ~~income to this state using the method described in Subsection 59-7-311(3)(a), multiplying the~~
85 ~~amount calculated under Subsection (6)(a)(i)(C)(I) by four; or~~]
86 [~~(Cc) if the unitary group is required to calculate the fraction for apportioning business~~
87 ~~income to this state using the method described in Subsection 59-7-311(3)(b), multiplying the~~
88 ~~amount calculated under Subsection (6)(a)(i)(C)(I) by 10; or~~]
89 (ii) if the unitary group [~~is required~~] elects to calculate the fraction for apportioning

90 business income to this state using the method described in Subsection 59-7-311[~~(3)(c)~~](2)(c),
91 calculating an amount determined by dividing the total sales of the acquired corporation in this
92 state during the taxable year by the total sales of the unitary group everywhere during the
93 taxable year;
94 (b) dividing the amount calculated under Subsection (6)(a) by the same denominator of
95 the fraction the unitary group uses to apportion business income to this state:
96 (i) for that taxable year; and
97 (ii) in accordance with Section 59-7-311;
98 (c) multiplying the amount calculated under Subsection (6)(b) by the business income
99 of the unitary group for the taxable year that is subject to apportionment under Section
100 59-7-311; and
101 (d) calculating the sum of:
102 (i) the amount calculated under Subsection (6)(c); and
103 (ii) the following amounts allocable to the acquired corporation for the taxable year:
104 (A) nonbusiness income allocable to this state; or
105 (B) nonbusiness loss allocable to this state.
106 (7) The amounts calculated under Subsection (6)(a) shall be derived in the same
107 manner as those amounts are derived for purposes of apportioning the unitary group's business
108 income before deducting the net loss, including a modification made in accordance with
109 Section 59-7-320.
110 Section 2. Section **59-7-302** is amended to read:
111 **59-7-302. Definitions.**
112 [~~(1)~~] As used in this part, unless the context otherwise requires:
113 [~~(a)~~] (1) "Aircraft type" means a particular model of aircraft as designated by the
114 manufacturer of the aircraft.
115 [~~(b)~~] (2) "Airline" is as defined in Section 59-2-102.
116 [~~(c)~~] (3) "Airline revenue ton miles" means, for an airline, the total revenue ton miles
117 during the airline's tax period.
118 [~~(d)~~] (4) "Business income" means income arising from transactions and activity in the
119 regular course of the taxpayer's trade or business and includes income from tangible and
120 intangible property if the acquisition, management, and disposition of the property constitutes

121 integral parts of the taxpayer's regular trade or business operations.
122 [~~(e)~~] (5) "Commercial domicile" means the principal place from which the trade or
123 business of the taxpayer is directed or managed.
124 [~~(f)~~] (6) "Compensation" means wages, salaries, commissions, and any other form of
125 remuneration paid to employees for personal services.
126 [~~(g) (i)~~] (7) (a) Except as provided in Subsection (1)(g)(ii), "mobile flight equipment"
127 is as defined in Section 59-2-102.
128 [~~(ii)~~] (b) "Mobile flight equipment" does not include:
129 [~~(A)~~] (i) a spare engine; or
130 [~~(B)~~] (ii) tangible personal property described in Subsection 59-2-102(26) owned by
131 an:
132 [~~(I)~~] (A) air charter service; or
133 [~~(II)~~] (B) air contract service.
134 [~~(h)~~] (8) "Nonbusiness income" means all income other than business income.
135 [~~(i)~~] (9) "Revenue ton miles" is determined in accordance with 14 C.F.R. Part 241.
136 [~~(j)~~] (10) "Sales" means all gross receipts of the taxpayer not allocated under Sections
137 59-7-306 through 59-7-310.
138 [~~(k) Subject to Subsection (2), "sales factor weighted taxpayer" means:~~]
139 [~~(i) for a taxpayer that is not a unitary group, regardless of the number of economic~~
140 ~~activities the taxpayer performs, a taxpayer having greater than 50% of the taxpayer's total sales~~
141 ~~everywhere generated by economic activities performed by the taxpayer if the economic~~
142 ~~activities are classified in a NAICS code of the 2002 or 2007 North American Industry~~
143 ~~Classification System of the federal Executive Office of the President, Office of Management~~
144 ~~and Budget, except for:~~]
145 [~~(A) a NAICS code within NAICS Sector 21, Mining;~~]
146 [~~(B) a NAICS code within NAICS Industry Group 2212, Natural Gas Distribution;~~]
147 [~~(C) a NAICS code within NAICS Sector 31-33, Manufacturing;~~]
148 [~~(D) a NAICS code within NAICS Sector 48-49, Transportation and Warehousing;~~]
149 [~~(E) a NAICS code within NAICS Sector 51, Information, except for NAICS Subsector~~
150 ~~519, Other Information Services; or~~]
151 [~~(F) a NAICS code within NAICS Sector 52, Finance and Insurance; or~~]

152 [~~(ii) for a taxpayer that is a unitary group, a taxpayer having greater than 50% of the~~
153 ~~taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if~~
154 ~~the economic activities are classified in a NAICS code of the 2002 or 2007 North American~~
155 ~~Industry Classification System of the federal Executive Office of the President, Office of~~
156 ~~Management and Budget, except for:~~]
157 [~~(A) a NAICS code within NAICS Sector 21, Mining;~~]
158 [~~(B) a NAICS code within NAICS Industry Group 2212, Natural Gas Distribution;~~]
159 [~~(C) a NAICS code within NAICS Sector 31-33, Manufacturing;~~]
160 [~~(D) a NAICS code within NAICS Sector 48-49, Transportation and Warehousing;~~]
161 [~~(E) a NAICS code within NAICS Sector 51, Information, except for NAICS Subsector~~
162 ~~519, Other Information Services; or~~]
163 [~~(F) a NAICS code within NAICS Sector 52, Finance and Insurance.~~]
164 [~~(l)~~] (11) "State" means any state of the United States, the District of Columbia, the
165 Commonwealth of Puerto Rico, any territory or possession of the United States, and any
166 foreign country or political subdivision thereof.
167 [~~(m)~~] (12) "Transportation revenue" means revenue an airline earns from:
168 [~~(i)~~] (a) transporting a passenger or cargo; or
169 [~~(ii)~~] (b) from miscellaneous sales of merchandise as part of providing transportation
170 services.
171 [~~(n)~~] (13) "Utah revenue ton miles" means, for an airline, the total revenue ton miles
172 within the borders of this state:
173 [~~(i)~~] (a) during the airline's tax period; and
174 [~~(ii)~~] (b) from flight stages that originate or terminate in this state.
175 [~~(2) The following apply to Subsection (1)(k):~~]
176 [~~(a) (i) Subject to the other provisions of this Subsection (2), a taxpayer shall for each~~
177 ~~taxable year determine whether the taxpayer is a sales factor weighted taxpayer.~~]
178 [~~(ii) A taxpayer shall make the determination required by Subsection (2)(a)(i) before~~
179 ~~the due date for filing the taxpayer's return under this chapter for the taxable year, including~~
180 ~~extensions.~~]
181 [~~(iii) For purposes of making the determination required by Subsection (2)(a)(i), total~~
182 ~~sales everywhere include only the total sales everywhere:~~]

183 [~~(A) as determined in accordance with this part; and~~]
184 [~~(B) made during the taxable year for which a taxpayer makes the determination~~
185 ~~required by Subsection (2)(a)(i).~~]
186 [~~(b) A taxpayer that files a return as a unitary group for a taxable year is considered to~~
187 ~~be a unitary group for that taxable year.~~]
188 [~~(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~
189 ~~the commission may define the term "economic activity" consistent with the use of the term~~
190 ~~"activity" in the 2007 North American Industry Classification System of the federal Executive~~
191 ~~Office of the President, Office of Management and Budget.~~]
192 Section 3. Section **59-7-311** is amended to read:
193 **59-7-311. Method of apportionment of business income.**
194 (1) For a taxable year, all business income shall be apportioned to this state by
195 multiplying the business income by a fraction calculated as provided in this section.
196 [~~(2) (a) Subject to the other provisions of this part, for the taxable year that begins on~~
197 ~~or after January 1, 2010, but begins on or before December 31, 2010, a taxpayer, including a~~
198 ~~sales factor weighted taxpayer, shall elect to calculate the fraction for apportioning business~~
199 ~~income to this state under this section using:~~]
200 [~~(i) the method described in Subsection (2)(c); or~~]
201 [~~(ii) the method described in Subsection (2)(d).~~]
202 [~~(b) Subject to the other provisions of this part, for a taxable year that begins on or after~~
203 ~~January 1, 2011, a taxpayer, except for a sales factor weighted taxpayer, shall elect to calculate~~
204 ~~the fraction for apportioning business income to this state under this section using:~~]
205 [~~(i) the method described in Subsection (2)(c); or~~]
206 [~~(ii) the method described in Subsection (2)(d).~~]
207 [~~(c) For purposes of Subsection (2)(a) or (b), a taxpayer described in Subsection (2)(a)~~
208 ~~or (b) may elect to calculate the fraction for apportioning business income as follows:~~]
209 [~~(i) the numerator of the fraction is the sum of:~~]
210 [~~(A) the property factor as calculated under Section 59-7-312;~~]
211 [~~(B) the payroll factor as calculated under Section 59-7-315; and~~]
212 [~~(C) the sales factor as calculated under Section 59-7-317; and~~]
213 [~~(ii) the denominator of the fraction is three.~~]

214 [~~(d) For purposes of Subsection (2)(a) or (b), a taxpayer described in Subsection (2)(a)~~
215 ~~or (b) may elect to calculate the fraction for apportioning business income as follows:~~]
216 [~~(i) the numerator of the fraction is the sum of:~~]
217 [~~(A) the property factor as calculated under Section 59-7-312;~~]
218 [~~(B) the payroll factor as calculated under Section 59-7-315; and~~]
219 [~~(C) the product of:~~]
220 [~~(I) the sales factor as calculated under Section 59-7-317; and~~]
221 [~~(II) two; and~~]
222 [~~(ii) the denominator of the fraction is four.~~]
223 [~~(e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~
224 ~~the commission may make rules providing procedures for a taxpayer described in Subsection~~
225 ~~(2)(a) or (b) to make the election required by this Subsection (2).~~]
226 [~~(3) (a) Subject to the other provisions of this part, for the taxable year that begins on~~
227 ~~or after January 1, 2011, but begins on or before December 31, 2011, a sales factor weighted~~
228 ~~taxpayer shall calculate the fraction for apportioning business income to this state as follows:~~]
229 [~~(i) the numerator of the fraction is the sum of:~~]
230 [~~(A) the property factor as calculated under Section 59-7-312;~~]
231 [~~(B) the payroll factor as calculated under Section 59-7-315; and~~]
232 [~~(C) the product of:~~]
233 [~~(I) the sales factor as calculated under Section 59-7-317; and~~]
234 [~~(II) four; and~~]
235 [~~(ii) the denominator of the fraction is six.~~]
236 [~~(b) Subject to the other provisions of this part, for the taxable year that begins on or~~
237 ~~after January 1, 2012, but begins on or before December 31, 2012, a sales factor weighted~~
238 ~~taxpayer shall calculate the fraction for apportioning business income to this state as follows:~~]
239 [~~(i) the numerator of the fraction is the sum of:~~]
240 [~~(A) the property factor as calculated under Section 59-7-312;~~]
241 [~~(B) the payroll factor as calculated under Section 59-7-315; and~~]
242 [~~(C) the product of:~~]
243 [~~(I) the sales factor as calculated under Section 59-7-317; and~~]
244 [~~(II) 10; and~~]

245 [~~(ii) the denominator of the fraction is 12.~~]
246 [~~(c) Subject to the other provisions of this part, for a taxable year that begins on or after~~
247 ~~January 1, 2013, a sales factor weighted taxpayer shall calculate the fraction for apportioning~~
248 ~~business income to this state as follows:~~]
249 [~~(i) the numerator of the fraction is the sales factor as calculated under Section~~
250 ~~59-7-317; and~~]
251 [~~(ii) the denominator of the fraction is one.~~]
252 (2) Subject to the other provisions of this part, a taxpayer shall calculate the fraction for
253 apportioning business income to this state using one of the following fractions:
254 (a) a fraction where:
255 (i) the numerator of the fraction is the sum of:
256 (A) the property factor as calculated under Section 59-7-312;
257 (B) the payroll factor as calculated under Section 59-7-315; and
258 (C) the sales factor as calculated under Section 59-7-317; and
259 (ii) the denominator of the fraction is three;
260 (b) a fraction where:
261 (i) the numerator of the fraction is the sum of:
262 (A) the property factor as calculated under Section 59-7-312;
263 (B) the payroll factor as calculated under Section 59-7-315; and
264 (C) the sales factor as calculated under Section 59-7-317 multiplied by two; and
265 (ii) the denominator of the fraction is four; or
266 (c) a fraction where:
267 (i) the numerator of the fraction is the sales factor as calculated under Section
268 59-7-317; and
269 (ii) the denominator of the fraction is one.
270 [~~(4) If a taxpayer calculates the fraction for apportioning business income to this state~~
271 ~~using a method described in this section:~~]
272 (3) (a) The taxpayer shall determine the method for calculating the fraction for
273 apportioning business income to this state under this section on or before the due date for filing
274 the taxpayer's return under this chapter for the taxable year, including extensions[~~; and~~].
275 (b) The method described in Subsection [~~(4)~~] (3)(a) is in effect for the [~~time period:~~]

276 taxable year.
277 [~~(i) beginning on the first day of the taxpayer's taxable year for which the taxpayer~~
278 ~~makes the determination described in Subsection (4)(a); and~~]
279 [~~(ii) ends on the last day of the taxable year described in Subsection (4)(b)(i).~~]
280 (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
281 commission may make rules providing procedures for a taxpayer to make the election required
282 by Subsection (2).
283 Section 4. **Retrospective operation.**
284 This bill has retrospective operation for a taxable year beginning on or after January 1,
285 2016.

Legislative Review Note
Office of Legislative Research and General Counsel

Fiscal Note
H.B. 61
2016 General Session
Corporate Franchise and Income Tax Changes
by Knotwell, J.

General, Education, and Uniform School Funds

JR4-5-101

	Ongoing	One-time	Total
Net GF/EF/USF (rev.-exp.)	$(138,317,000)	$6,586,000	$(131,731,000)

State Government

UCA 36-12-13(2)(b)

Enactment of this bill may reduce revenue to the Education Fund by $131,731,000 in FY 2017 and $138,317,000 in FY 2018. A dynamic fiscal analysis for this bill is available here: http://le.utah.gov/lfa/fnotes/2016/HB0061.dfn.pdf

Revenues	*FY 2016*	*FY 2017*	*FY 2018*
Education Fund	$0	$(138,317,000)	$(138,317,000)
Education Fund, One-Time	$0	$6,586,000	$0
Total Revenues	$0	$(131,731,000)	$(138,317,000)

Enactment of this legislation likely will not materially impact state expenditures.

Expenditures	*FY 2016*	*FY 2017*	*FY 2018*
Total Expenditures	$0	$0	$0
Net All Funds	$0	$(131,731,000)	$(138,317,000)

Local Government

UCA 36-12-13(2)(c)

Enactment of this legislation likely will not result in direct, measurable costs for local governments.

Individuals & Businesses

UCA 36-12-13(2)(d)

Enactment of this bill may reduce individual and business tax liability by $131,731,000 in FY 2017 and $138,317,000 in FY 2018. Of the businesses and individuals affected, the average tax change for an affected entity is $1,033 in FY 2017.

Performance Note

JR4-2-404

No performance note required for this bill

Notes on Notes

Fiscal notes estimate the direct costs or revenues of enacting a bill. The Legislature uses them to balance the budget. They do not measure a bill's benefits or non-fiscal impacts like opportunity costs, wait times, or inconvenience. A fiscal note is not an appropriation. The Legislature decides appropriations separately.

2016/02/01 11:39, Lead Analyst: Thomas E. Young Attorney: AVA