

1987

## **Title 59 Chapter 07 Part 1-2: Corporate Franchise to Net Income Tax - 1987**

Utah Code Annotated

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# CHAPTER 7

## CORPORATE FRANCHISE AND INCOME TAXES

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## PART 1

### CORPORATE TAXATION GENERALLY

#### 59-7-101. Definitions.

For the purposes of this chapter, unless otherwise required by the context:

- (1) "Bank" includes national banking associations.
- (2) "Commission" means the State Tax Commission.
- (3) "Corporation" includes every corporation, and every company, joint-stock company, joint-stock association, business trust, society, or other association, organized for profit and doing business in this state, wherein interest or ownership is evidenced by certificates or other written instruments or wherein the interests or rights of shareholders, members, associates, or beneficiaries are represented or evidenced by units or shares.
- (4) "Dividend" means any distribution made by a bank or corporation to its shareholders whether in money or in other property out of its earnings or profits accumulated after December 31, 1930.
- (5) "Doing business" includes any transaction or transactions in the course of its business by a bank or corporation created under the laws of this state, or by a foreign corporation qualified to do or doing intrastate business in this state, and shall include the right to do business through such incorporation or qualification, and shall include the renting or leasing of real property within this state and the participation in joint ventures, working and operating agreements the performance of which takes place in the state of Utah.

(6) "Includes" and "including" when used in a definition contained in this chapter shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(7) "Paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed. The term "received" for the purpose of the computation of net income, means "received or accrued," and "received or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed.

(8) "Qualified alcohol producing facility" means any tangible property which is used in producing alcohol, the primary use of which is fuel for motor vehicles, from agricultural or cellulosic products, and which is of a character subject to the allowance for depreciation. Such term shall not include a building and its structural components unless the same is primarily an alcohol producing facility.

(9) "Shareholder" includes stockholder, member, associate or beneficiary in any corporation as defined in this section.

(10) "Stock" includes the share or unit of ownership in a corporation as defined in this section.

(11) (a) "Taxable year" means the calendar year or the fiscal year ending during such calendar year upon the basis of which the net income is computed, and also includes, in the case of a return made for a fractional part of a year under this chapter or under rules prescribed by the commission, the period for which such return is made.

(b) "Calendar year" means an accounting period of 12 months ending on December 31.

(c) "Fiscal year" means an accounting period of 12 months ending on the last day of any month other than December. In the case of any corporation which has made the election provided by § 441 (f) of the Internal Revenue Code of 1986, "fiscal year" means the annual period (varying from 52 to 53 weeks) so elected.

(d) The taxable year for Utah corporate franchise or income tax purposes shall be the same as the taxable year for federal income tax purposes.

(e) Sections 59-7-121 and 59-7-122 do not apply if a corporation is required to change its taxable year under Subsection (d), and if:

(i) the corporation has, for federal income tax purposes, previously elected a taxable year consisting of 52 to 53 weeks as provided by § 441 (f) of the Internal Revenue Code of 1986 and has since such election filed its Utah corporate franchise or income tax returns using the same taxable year; and

(ii) such change results in a short period of six days or less.

(12) "Taxpayer" means any bank or corporation as defined in this section subject to the tax imposed by this chapter.

**History:** L. 1931, ch. 39, § 2; R.S. 1933 & C. 1943, 80-13-1; L. 1957, ch. 123, § 1; 1980, ch. 63, § 1; C. 1953, 59-13-1; renumbered by L. 1987, ch. 2, § 73.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-1, rearranged the definitions in alpha-

betical order, substituted "rules" for "rules and regulations" in Subsection (11)(a), added Subsection (11)(b), added the second sentence of Subsection (11)(c), added Subsections (11)(d) and (11)(e), and made minor stylistic changes throughout the section.

**Internal Revenue Code.** — Section 441(f) of the federal Internal Revenue Code, referred

to in Subsections (11)(c) and (11)(e)(i), appears as 26 U.S.C. § 441(f).

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

**Cross-References.** — Constitutional authorization for tax, Utah Const. Art. XIII, Sec. 12.

## NOTES TO DECISIONS

### ANALYSIS

Construction and application.  
Doing business in state.

#### Construction and application.

Purpose of this statute is to require corporations doing business in the state to pay the tax imposed upon the income of the respective corporations. *First Sec. Corp. v. State Tax Comm.*, 91 Utah 101, 63 P.2d 1062 (1931); *American Inv. Corp. v. State Comm.*, 101 Utah 189, 120 P.2d 331 (1941).

State has no power or authority to require foreign corporation which has not accepted constitutional provisions of Utah, or qualified to do business within state, to make returns under income tax law. *First Sec. Corp. v. State Tax Comm.*, 91 Utah 101, 63 P.2d 1062 (1931).

The privilege of exercising corporate franchise is that for which the state requires this

annual tax. The tax law does not make payment of the tax for these franchises depend upon their exercise. The mere right or privilege of exercising them, possessed by the corporation, subjects it to the tax. The amount of the tax is computed according to the extent to which the franchise is exercised as measured by the net income derived from such use. *American Inv. Corp. v. State Tax Comm.*, 101 Utah 189, 120 P.2d 331 (1941).

#### Doing business in state.

Subsection (5) applies only to business done within this state; profits earned within this state. *American Inv. Corp. v. State Tax Comm.*, 101 Utah 189, 120 P.2d 331 (1941).

## COLLATERAL REFERENCES

**Brigham Young Law Review.** — State Taxation of Interstate Commerce Under Public Law 86-272: "A Riddle Wrapped in an Enigma Inside a Mystery," 1984 B.Y.U. L. Rev. 169.

**Am. Jur. 2d.** — 71 Am. Jur. 2d State and Local Taxation §§ 262 to 276.

**C.J.S.** — 84 C.J.S. Taxation § 1093.

**Key Numbers.** — Taxation ⇨ 965.

## 59-7-102. Tax basis — Rate.

Every state or national bank or corporation, other than corporations exempted in § 59-7-105, for the privilege of exercising its corporate franchise or for the privilege of doing business in the state, shall annually pay to the state a tax on its net income for the taxable year computed and apportioned to this state. The tax rate on the net income shall be:

- (1) 4% for tax years beginning prior to January 1, 1983;
- (2) 4.65% for tax years beginning on or after January 1, 1983; and
- (3) 5% for tax years beginning on or after January 1, 1984. In no case shall the tax be less than \$100.

**History:** L. 1931, ch. 39, § 4; R.S. 1933, 80-13-3; L. 1935, ch. 89, § 1; C. 1943, 80-13-3; L. 1955, ch. 122, § 1; 1965, ch. 123, § 2; 1969, ch. 183, § 1; 1973, ch. 146, § 1; 1977, ch. 229, § 1; 1983, ch. 261, § 1; 1984, ch. 58, § 1; C. 1953, 59-13-3; renumbered by L. 1987, ch. 2, § 74.

**Amendment Notes.** — The 1983 amendment substituted "tax on" for "tax equal to four per cent of" in the first sentence; deleted "in

the manner hereinafter provided, but in no case shall the tax be less than \$25" at the end of the first sentence; and added the second sentence, including Subsections (1) to (3).

The 1984 amendment increased the rate from 4% to 5% in Subsection (3); substituted the last paragraph for "but in no case shall the tax be less than \$50 for all tax years beginning on or after January 1, 1983"; and made minor changes in style.

The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-3, and made a minor stylistic change in the introductory paragraph.

**Retrospective Operation.** — Laws 1984, ch. 58, § 3 provides: "This act shall have retrospective operation to tax years beginning January 1, 1984."

Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

**Cross-References.** — Bank and corporation income tax, period applicable, § 59-7-201.

## NOTES TO DECISIONS

### ANALYSIS

Doing business within state.

Due date.

Foreign corporation not qualified to do business within state.

Nature of tax.

Value of corporation property.

#### Doing business within state.

The mere right or power of eminent domain, to be used by smelting company in connection with its right to operate its smelter, is not such franchise as is subject to taxation. *International Smelting Co. v. Tooele County*, 54 Utah 591, 182 P. 841 (1919).

The activities of a corporation in erecting steam generating plants in Utah, whereby the corporation kept men in the state for a period of two years in the construction, are of such a nature as may properly be regarded as intrastate in character so as to be subject to regulation under state laws, to the extent of the activities within the state, although the generating plants were manufacturing and sold outside the state. *Riley Stoker Corp. v. State Tax Comm.*, 3 Utah 2d 164, 280 P.2d 967 (1955).

Where corporations, located in Salt Lake City, purchased trailer sales contracts from trailer dealers in Nevada and Idaho, payments were made or forwarded to Utah, books, records and the muniments of title were in Utah, such corporations were doing business within the state and were subject to the tax imposed. *Nevada Trailer Fin. Co. v. State Tax Comm.*, 5 Utah 2d 177, 299 P.2d 126 (1956).

#### Due date.

Under prior law, fact that franchise tax on national bank became payable at end of tax year rather than at the beginning of the year as for state banks was not discriminatory. *Granite Nat'l Bank v. State Tax Comm.*, 30 Utah 2d 351, 517 P.2d 1310 (1974).

#### Foreign corporation not qualified to do business within state.

Foreign corporation, actually doing business within state, could not escape liability for tax on the ground that it was not qualified to do

business within the state. It should obtain no advantage over other foreign corporations legally doing business in the state by failing to comply with the terms of the statute. *Nevada Trailer Fin. Co. v. State Tax Comm.*, 5 Utah 2d 177, 299 P.2d 126 (1956).

#### Nature of tax.

This tax is in the nature of an excise tax levied against domestic and foreign corporations alike for the privilege of doing business in a corporate capacity within this state. *California Packing Corp. v. State Tax Comm.*, 97 Utah 367, 93 P.2d 463 (1939).

The tax imposed by this section is neither a property tax nor an organization tax, but a tax on the privilege of exercising the corporate franchise. *American Inv. Corp. v. State Tax Comm.*, 101 Utah 189, 120 P.2d 331 (1941).

"The tax is not an income tax. \* \* \* The tax is imposed on the privilege of exercising the corporate franchise or on the privilege of doing business in Utah." In reference to an investment business, the tax imposed by this section is upon the privilege of conducting such a business. *J.M. & M.S. Browning Co. v. State Tax Comm.*, 107 Utah 457, 154 P.2d 993 (1945).

#### Value of corporation property.

In determining the value of corporation property for the purpose of assessing the corporation franchise tax, it was arbitrary for the tax commission to take the depreciated book value of the property as shown by the books value of the property as shown by the books of the corporation in determining value, but the commission was not bound to use the appraisal by the county assessor of the corporation property. *University Heights, Inc. v. State Tax Comm.*, 12 Utah 2d 196, 364 P.2d 661 (1961) (decided prior to 1969 amendment).

## COLLATERAL REFERENCES

**C.J.S.** — 84 C.J.S. Taxation § 144.  
**Key Numbers.** — Taxation ⇐ 1015.

**59-7-103. Bonds, notes, other evidences of indebtedness of state, agencies and instrumentalities exempt from taxation except corporate franchise tax.**

All bonds, notes, or other evidences of indebtedness issued by the state, its agencies, and instrumentalities, shall be exempt from all taxation in this state, except for the corporate franchise tax.

**History:** C. 1953, 59-13-3.3, enacted by 1984, ch. 61, § 12; renumbered by L. 1987, ch. 2, § 75.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as

§ 59-13-3.3, and inserted the comma following "agencies."

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

**59-7-104. Credit of interest income from state and federal securities.**

(1) There shall be allowed as a credit against the tax an amount equal to a percentage of the gross interest income included in state taxable income from:

(a) bonds, notes, or other evidences of indebtedness issued by the state and its agencies and instrumentalities, and bonds, notes, or other evidences of indebtedness of any political subdivision as described in § 11-14-14.5; and

(b) stocks, notes, or obligations issued by, or guaranteed by the United States Government, or any of its agencies and instrumentalities as defined under federal law.

(2) The percentage in Subsection (1) shall be one-half of the highest marginal corporate franchise tax rates applicable in § 59-7-102 as determined by the commission.

(3) For purposes of computing the credit, the interest calculated under Subsection (1)(b) may not exceed the interest calculated under Subsection (1)(a).

(4) Amounts otherwise qualifying for the credit, but not allowable because the credit exceeds the tax, may be carried back three years but not to taxable years ending prior to 1981 or may be carried forward five years as a credit against the tax. Such carryover credits shall be applied against the tax before the application of the credits earned in the current year and on a first-earned first-used basis.

**History:** C. 1953, 59-13-3.5, enacted by L. 1984, ch. 61, § 13; renumbered by L. 1987, ch. 2, § 76.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as

§ 59-13-3.5, and made a minor stylistic change in Subsection (2).

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

**59-7-105. Exemptions.**

- (1) The following corporations are exempt from this chapter:
- (a) organizations meeting the requirements of § 501(c), as amended, of the Internal Revenue Code;
  - (b) insurance companies which are otherwise taxed upon their premiums under Chapter 9, Title 59;
  - (c) corporations whose sole business consists of holding the stock of other corporations for the purpose of controlling the management of affairs of such other corporations, if such other corporations make returns under this chapter;
  - (d) homeowner associations not organized for profit, which are organized to maintain or operate common area or facilities in a subdivision, planned unit development, or condominium, and a majority of the membership of which is living within the subdivision, planned unit development, or condominium as a primary place of residence;
  - (e) credit unions qualifying under § 7-9-34;
  - (f) farmers', fruit growers', or like associations organized and operated on a cooperative basis:
    - (i) for the purpose of marketing the products of members or other producers and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them; or
    - (ii) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses; and
  - (g) except as provided in Subsection (3), a small business corporation having in effect a valid election under Subchapter S of the Internal Revenue Code for any entire taxable year beginning on or after January 1, 1973.
- (2) (a) The exemption under Subsection (1)(f) may not be denied any association identified in that subsection because it has capital stock, if the dividend rate of that stock is fixed at not to exceed the legal rate of interest in the state of incorporation or 8% per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all the stock, other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise beyond the fixed dividends, is owned by producers who market their products or purchase their supplies and equipment through the association.
- (b) The exemption under Subsection (1)(f) may not be denied any such association because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve or surplus for any necessary purpose. Such association may market the products of nonmembers in an amount the value of which does not exceed the value of the products marketed for members, and may purchase supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, if the value of the purchases made for persons who are neither members nor agricultural producers does not exceed 15% of the value of all its purchases.



(c) Corporations organized by an association exempt under Subsection (1)(f), or its members, for the purpose of financing the ordinary crop operations of those members or other producers, and operated in conjunction with the association, are also exempt.

(d) The exemption under Subsection (1)(f) may not be denied any such corporation because it has capital stock, if the dividend rate of the stock is fixed at not to exceed the legal rate of interest in the state of incorporation or 8% per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock, other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, upon dissolution or otherwise beyond the fixed dividends, is owned by such association, or its members.

(e) The exemption under Subsection (1)(f) may not be denied any such corporation because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose.

(3) (a) If a corporation under Subsection (1)(g) had the privilege of exercising its corporate franchise or doing business in this state for all or any part of a taxable year which began before January 1, 1973, that exemption does not apply to relieve that corporation from liability for the payment of the tax imposed by this chapter for the exercise of that privilege for its next succeeding taxable year. If the prior taxable year of such corporation began in 1972 and ended after December 31, 1972, the tax imposed for the next succeeding taxable year is that portion of a tentative tax computed as if the law applicable to taxable years beginning on January 1, 1972, as provided in this chapter, were applicable to such taxable year which the number of days in such taxable year before January 1, 1973, bears to the total number of days in such taxable year.

(b) The exemption under Subsection (1)(g) does not apply to relieve such corporation from liability for the payment of the tax imposed by this chapter on any income which is subject to federal income tax.

(c) If on the last day of any taxable year of a corporation under Subsection (1)(g) beginning on or after January 1, 1973, and if any shareholders of it are nonresident individuals, the corporation is allowed the option of: (i) reporting on that percentage of its taxable income which is equal to the percentage of its outstanding shares of stock owned by such nonresident individuals on that day and paying the tax due on it at the current corporation tax rate, or (ii) withholding Utah individual income tax at the current corporation tax rate on each nonresident shareholder's share of the corporation's earnings from Utah sources, and remitting the tax withheld from it to the state of Utah as prescribed by the commission. The corporation shall furnish each nonresident shareholder a statement showing the amount of the shareholder's share of the corporate earnings from Utah sources and of the withholding from it and shall pay the commission the amount withheld, by the due date of the corporation return, including any extensions, or at the time the K-1 is issued to the shareholders, whichever is earlier, on forms furnished by the commission. Option (i) or (ii), once elected, shall be revocable only with the prior approval of the commission. Funds received by the commission under option (i) shall be deposited and credited according to § 59-7-153. Funds received under option (ii) shall be deposited and credited according to Subsection

59-10-544(4). To the extent that it is consistent with the provisions of this chapter, Chapter 10, Title 59, applicable to withholding of taxes by employers relating to records, penalties, interest, deficiencies, overpayments, refunds, assessments, venue, and civil and criminal penalties, is applicable to the withholding and payment of withheld taxes under this Subsection (c). The commission may adopt rules pursuant to the Utah Administrative Rulemaking Act, Chapter 46, Title 63, necessary to effectuate the purposes of this Subsection (c). This exemption does not apply to relieve such a corporation from liability for the payment of the applicable period minimum tax amount for the privilege of exercising its corporate franchise or for the privilege of doing business in the state, as prescribed in either § 59-7-102 or 59-7-201.

**History:** L. 1931, ch. 39, § 7; R.S. 1933 & C. 1943, 80-13-5; L. 1973, ch. 147, § 99; 1985, ch. 99, § 1; 1986, ch. 56, § 1; 1986, ch. 60, § 1; C. 1953, 59-13-4; renumbered by L. 1987, ch. 2, § 77.

**Amendment Notes.** — The 1985 amendment changed subsection designations throughout the section; and rewrote the section.

The 1986 amendment by Chapter 56 deleted "labor, agricultural, or horticultural" before "organizations" and inserted "meeting the requirements of Section 501(c), as amended, of the Internal Revenue Code" following "organizations" in Subsection (1)(a); deleted Subsections (1)(b) through (1)(i) and (3)(a) through (3)(d)(ii) and renumbered former Subsections (3)(e) through (3)(g) as present Subsections (1)(b) through (1)(d), inserted Subsection (1)(e), and renumbered former Subsection 3(j) as present Subsection (1)(f) and (3)(h) as (1)(g), and redesignated former Subsections (2)(e)(i), (2)(e)(ii), and (2)(e)(iii) as present Subsections (3)(a), (3)(b), and (3)(c); inserted "under Chapter 3, Title 31A" at the end of Subsection 1(b); made stylistic changes at the end of Subsection (1)(f)(ii); substituted "Subsection (3)" for "Subsections (i)(ii), and (iii) of this subsection" in Subsection (1)(g); substituted "(f)" for "(j)" in Subsection (2)(a) through (2)(e); inserted "under Subsection (1)(g)" following "corporation" and made stylistic changes in Subsections (3)(a) and (3)(c); inserted "under Subsection (1)(g)" following "exemption" and made stylistic changes in Subsection (3)(b).

The 1986 amendment by Chapter 60 rewrote Subsection (3)(i)(iii), the former provisions of which appear in Laws 1985, ch. 99, § 1.

This section was set out as reconciled by the Office of Legislative Research and General Counsel.

The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-4, and made minor stylistic changes.

**Internal Revenue Code.** — Section 501(c) of the federal Internal Revenue Code, referred to in Subsection (1)(a), appears as 26 U.S.C. § 501(c). Subchapter S of the code, referred to in Subsection (1)(g), appears as 26 U.S.C. §§ 1361 to 1379.

**Utah Administrative Rulemaking Act.** — The Utah Administrative Rulemaking Act, Chapter 46, Title 63, referred to in the next-to-last sentence in Subsection (3)(c), was repealed by Laws 1985, ch. 158, § 2. See now Chapter 46a, Title 63.

**Retrospective Operation.** — Laws 1985, ch. 99, § 2 provides: "This act has retrospective operation to January 1, 1985."

Laws 1986, ch. 56, § 18, provides: "This act has retrospective operation to taxable years beginning on or after January 1, 1986."

Laws 1986, ch. 60, § 4 provides: "This act has retrospective operation to taxable years for nonresident shareholders beginning on or after January 1, 1986."

Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

**No Retroactive Effect.** — Laws 1986, ch. 56, § 17 provides: "It is the intent of the Legislature that the changes made in this act not be construed to have retroactive effect."

## NOTES TO DECISIONS

## ANALYSIS

Agricultural corporations organized for profit.  
 Construction and application.  
 Family foundation.  
 Holding companies.  
 Nonprofit mutual companies.

**Agricultural corporations organized for profit.**

Although the words "not organized for profit" are not used in this section, the reasons and history of the enactment and the applicable federal regulations indicate that agricultural corporations organized for profit are not exempt and are subject to taxation. *Jackson Land & Livestock Co. v. State Tax Comm.*, 123 Utah 411, 259 P.2d 1084 (1953) (decided prior to 1986 amendment).

**Construction and application.**

The gist of the section is to exempt corporations which may be characterized by these features: They are organized and operated not for profit but for the benefits of their members, and they cannot, under their articles, engage in the trade, commerce, or business in the state. Since the tax is upon doing business in the state, it matters not as to the extent to which the franchise is exercised. It is still taxable if not exercised or if only partially exercised. *American Inv. Corp. v. State Tax Comm.*, 101 Utah 189, 120 P.2d 331 (1941).

**Family foundation.**

A family foundation, the funds of which were to be used for educational purposes for "any and all descendants and husbands or wives of such descendants" of the creator, was not a tax-exempt corporation under this section since its purpose is to ensure educational advantages to family members, thus serving a private interest. *Marriner W. Merrill Family Found. v. State Tax Comm.*, 3 Utah 2d 244, 282 P.2d 333 (1955) (decided prior to 1986 amendment).

**Holding companies.**

Classification of holding companies, under Subsection (1)(c), so as to exempt holding company whose subsidiaries may be required to and do pay tax, and at same time deny exemption to holding company with foreign subsidiaries, denies equal protection of law to latter company and is burden on property beyond jurisdiction of state. *First Sec. Corp. v. State Tax Comm.*, 91 Utah 101, 63 P.2d 1062 (1936).

A corporation which holds stock in other corporations for the purpose of managing their affairs, and which under its franchise from the state may for profit lawfully engage in business in the state, other than the business incidental to its "holding" business, is subject to the tax, but such a corporation, limited by its franchise to doing in the state the business incidental to its "holding business" is exempt from the franchise tax provided that its Utah subsidiaries make tax returns under the chapter. *American Inv. Corp. v. State Tax Comm.*, 101 Utah 189, 120 P.2d 331 (1941).

**Nonprofit mutual companies.**

Franchise tax was not applicable to nonprofit mutual irrigation company whose sole source of income was assessments against stockholders in proportion to their interest, and such organization would be exempt regardless of general language used in articles of incorporation, and where secretary of state canceled company's charter for nonpayment of tax, court issued peremptory writ commanding restoration thereof. *Green Ditch Water Co. v. Monson*, 100 Utah 446, 116 P.2d 387 (1941).

## COLLATERAL REFERENCES

**Am. Jur. 2d.** — 71 Am. Jur. 2d State and Local Taxation §§ 262 to 280.

**C.J.S.** — 84 C.J.S. Taxation § 262.  
**Key Numbers.** — Taxation ⇌ 1015.

**59-7-106. Gross income.**

Defined.

(1) "Gross income" includes gains, profits, and income derived from services, of whatever kind in whatever form paid, or from trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, or securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. Gross income also includes any recapture of bad debt reserves required by the provisions of Public Law 99-514, or successor statute, in an amount determined in accordance with those provisions.

Exclusions from Gross Income.

(2) The following items shall not be included in gross income in computing the tax under this chapter.

Life Insurance.

(a) Amounts received under a life insurance contract paid by reason of the death of the insured, whether in a single sum or in installments (but if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments shall be included in gross income).

Annuities or Endowments.

(b) Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts) under a life insurance endowment or annuity contract, but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year), then the excess shall be included in gross income. In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance, endowment, or annuity contract, or any interest therein, only the actual value of such consideration and the amount of the premiums and other sums subsequently paid by the transferee shall be excluded under this subsection or Subsection (2)(a).

Gifts, Bequests, and Devises.

(c) The value of property acquired by gift, bequest, or devise (but the income from such property shall be included in gross income).

Dividends from Affiliates or Subsidiaries.

(d) (i) fifty percent of the dividends received during the income year by a taxpayer from any affiliated or subsidiary corporation organized or incorporated outside the United States, and 100% of the dividends paid which were deemed received under § 951, Internal Revenue Code;

(ii) dividends received during the income year from any foreign operating company or tax haven corporation;

(iii) dividends received during the income year by a taxpayer from any affiliated or subsidiary corporation engaged in a business which is not unitary with that of the taxpayer or whose income is included in a combined report with the recipient corporation; and

(iv) any foreign dividend gross up under § 78, Internal Revenue Code.

(e) Deemed dividends included under § 951, Internal Revenue Code, shall be included in gross income unless the payor corporation's income is included in a combined report with the recipient corporation.

(f) In arriving at the amount of any dividend exclusion under Subsection (2)(d), there shall first be deducted from the dividends received the expense directly attributable to those dividends except to the extent the income of the payor is included in a combined report with the recipient. Interest expense attributable to excluded dividends shall be determined by multiplying interest expense by a fraction, the numerator of which is the taxpayer's average investment in such dividend paying affiliates or subsidiaries and the denominator of which is the taxpayer's average total investment in assets.

#### Use of Inventories.

(3) Whenever in the opinion of the commission the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the commission may prescribe, conforming as nearly as may be to the best accounting practice in the trade or business, and as most clearly reflecting the income.

#### Distributions by Corporations.

(4) Except as otherwise provided in Subsection (2)(d), distributions by corporations shall be included in gross income of the shareholders as provided in § 59-7-117.

#### Determination of Gain or Loss.

(5) In the case of a sale or other disposition of property, the gain or loss shall be computed as provided in §§ 59-7-114, 59-7-115, and 59-7-116.

**History:** L. 1931, ch. 39, § 9; R.S. 1933, 80-13-6; L. 1937, ch. 109, § 1; C. 1943, 80-13-6; 1986, ch. 80, § 1; C. 1953, 59-13-5; renumbered by L. 1937, ch. 2, § 78.

**Amendment Notes.** — The 1986 amendment inserted Subsections (2)(d) to (2)(f); and substituted "Except as otherwise provided in Subsection 59-13-5(2)(d), distributions" for "Distributions" at the beginning of Subsection (4).

The 1987 amendment, effective February 6, 1987, renumbered this section, which appeared as § 59-13-5, added the second sentence of Subsection (1), and made minor stylistic changes throughout the section.

**Internal Revenue Code.** — Section 951 of the federal Internal Revenue Code, referred to in Subsections (2)(d)(i) and (2)(e), appears as 26 U.S.C. § 951. Section 78 of the code, referred to in Subsection (2)(d)(iv), appears as 26 U.S.C. § 78.

**Retrospective Operation.** — Laws 1986, ch. 80, § 7 provides: "This act has retrospective operation to taxable years beginning on or after January 1, 1986."

Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

#### COLLATERAL REFERENCES

**Am. Jur. 2d.** — 71 Am. Jur. 2d State and Local Taxation §§ 270, 275.

**C.J.S.** — 85 C.J.S. Taxation § 1096.

**Key Numbers.** — Taxation ⇌ 979.

### 59-7-107. "Net income" defined.

"Net income" means the gross income computed under § 59-7-106 less the deductions allowed by § 59-7-108.

**History:** L. 1931, ch. 39, § 8; R.S. 1933 & C. 1943, 80-13-7; C. 1953, 59-13-6; renumbered by L. 1987, ch. 2, § 79.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered

this section, which formerly appeared as § 59-13-6, and made minor stylistic changes.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

## COLLATERAL REFERENCES

C.J.S. — 85 C.J.S. Taxation § 1096.

Key Numbers. — Taxation ⇔ 980.

### 59-7-108. Deductions from gross income.

In computing net income there shall be allowed as deductions:  
Expenses.

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any business, except as provided in § 59-7-111, including a reasonable allowance for salaries or other compensation for personal services actually rendered; and rentals or other payments required to be made as a condition to the continued use or possession, for the purposes of the business, of property to which the taxpayer has not taken or is not taking title or in which it has no equity.

Interest Paid.

(2) All interest paid or accrued within the taxable year on indebtedness, except as provided in § 59-7-111.

Taxes Paid.

(3) taxes paid or accrued within the taxable year, except:

(a) taxes imposed by this chapter;

(b) taxes assessed against local benefits of a kind tending to increase the value of the property assessed; provided, that so much of taxes as are properly allocable to maintenance or interest charges may be deducted;

(c) taxes measured by income during the taxable year other than the Windfall Profit Tax, as imposed by the Internal Revenue Code of the United States; and

(d) taxes imposed by any other state of the United States which is measured by income, a franchise tax for the privilege of doing business, or a corporate stock tax; or any such tax as imposed by a foreign country, United States possession, or the commonwealth of Puerto Rico, except in computing the total combined net income there shall be allowed a deduction for the excess qualified foreign taxes paid by and aggregated for all corporations included in a combined report.

(i) Excess qualified foreign taxes shall be determined as follows:

(A) the aggregate amount of foreign income taxes, except taxes claimed as a deduction in § 59-7-304 and taxes treated as a dividend under § 78, Internal Revenue Code, used or available for use in computing the federal foreign tax credit by those companies included in the combined report reduced by the actual federal foreign tax credit allowed for those same companies; or

(B) foreign income taxes deducted in computing taxable income for federal purposes.

(ii) If foreign taxes which were deducted as excess foreign taxes in any year are claimed as a credit for federal tax purposes in a later year the amount so credited shall be added to income in the combined report for the year the credit is claimed.

Taxes of Shareholder Paid by Corporation.

(4) The deduction for taxes allowed by Subsection (3) shall be allowed in the case of taxes imposed upon a shareholder of a bank or corporation upon his interest as shareholder which are paid by the bank or corporation without reimbursement from the shareholder.

**Losses Sustained.**

(5) Losses sustained during the taxable year and not compensated for by insurance or otherwise.

The basis for determining the amount of the deduction for losses sustained to be allowed under this subsection shall be the same as is provided in § 59-7-116 for determining the gain or loss from the sale or other disposition of property.

**Bad Debts.**

(6) Debts ascertained to be worthless within the taxable year in an amount determined in accordance with §§ 166, 585, and 593 of the Internal Revenue Code of 1986.

**Depreciation.**

(7) An amount for depreciation for the exhaustion and wear and tear of property used in the business.

**Depletion.**

(8) An amount for depletion, in the case of mines, oil and gas wells, other natural deposits, qualified alcohol producing facilities, and timber.

**Basis for Determining Depreciation and Depletion.**

(9) The amounts claimed as depreciation, cost recovery, amortization, or depletion are the same as used in determining tax liabilities under the United States Internal Revenue Code. Provided that in the transition from state to federal schedules and in order to equalize the state and federal allowances, an amount equal to the difference in Federal Accelerated Cost Recovery allowances and state depreciation allowances for the preceding year must be claimed on the first return filed under the provisions of this chapter. If assets are acquired which qualify for federal tax credits and the federal law requires an adjustment to the basis, an amount equal to the adjustment to the basis shall be allowed on the state return as additional first year depreciation. Any subsequent adjustment to the federal credits or basis of the property because of an early disposition or other action shall be reported and the state basis or allowance shall be adjusted in the same manner.

**Future Expense Liabilities in Case of Casual Sale of Real Property.**

(10) In the case of a casual sale or other casual disposition of real property, a reasonable allowance for future expense liabilities incurred under the provisions of the contract under which such sale or other disposition was made, under such rules as the commission may prescribe.

**Amounts Credited to Withdrawable Shares by Building and Loan Associations.**

(11) In the case of a building and loan association, organized and operating wholly or partly on a mutual plan, the return paid or credited on or apportioned to the withdrawable shares of such association, but in no event exceeding six percent per annum.

**Contributions to Pension Trust by Employers.**

(12) An employer establishing and maintaining a pension trust to provide for the payment of reasonable pensions to employees shall be allowed as a deduction (in addition to the contributions to such trust during the

taxable year to cover the pension liability accruing during the year, allowed as a deduction under Subsection (1) of this section) a reasonable amount transferred or paid into such trust during the taxable year in excess of such contributions; but only if such amount has not theretofore been allowable as a deduction.

Contributions to Governmental Units and Certain Organizations.

(13) contributions or gifts made within the taxable year to or for the use of:

(a) The United States, or any state, territory, or political subdivision thereof, or the District of Columbia, for exclusively public purposes.

(b) Any corporation or association or trust or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children, if no part of the net earnings inures to the benefit of any shareholder or individual.

The aggregate amount of contributions and gifts deductible under the provisions of this subsection shall not exceed five per cent of the taxpayer's net income computed without benefit of this subsection.

(14) There shall be allowed as a deduction for the taxable year, an amount equal to the aggregate of: the net loss carryovers to such year, plus, the net loss carrybacks to such year to the extent provided in this section.

(a) As used in this section, "net loss" means the total of the deductions allowed by this chapter in arriving at net income, reduced by the gross income.

(b) As used in this section, "net loss carryback" or "carryover" means that part of the loss which has not been previously applied against income for another year.

(c) A net loss is first carried back to the earliest of the next preceding three years; if not entirely used to offset income of that year, it is carried to the second year preceding the loss year; and any remaining amount is next carried to the taxable year immediately preceding the loss year. Any amount then remaining can be carried to each of the five taxable years following the taxable year of the net loss.

(d) For purposes of this section, no net loss shall be carried back and applied against any income earned prior to January 1, 1973. The amount of income earned prior to January 1, 1973, shall be, in the case of a return being filed on a fiscal year basis, determined by multiplying the total income earned by a fraction the numerator of which is the number of days in the filing period prior to January 1, 1973, and the denominator of which is the total number of days in the filing period.

(e) In the event that the corporation's income is subject to apportionment, only the net loss apportioned to Utah may be carried forward or back and used to reduce Utah apportioned net income.

(f) Corporations acquiring the assets or stock of another corporation may not deduct any net loss of the acquired corporation incurred prior to the date of acquisition. This Subsection (f) does not apply if the only change in the corporation is that of the state of incorporation.



(g) This section applies only to net losses occurring during years which the corporation is required to file Utah returns and for all taxable years beginning on or after January 1, 1973.

**History:** L. 1931, ch. 39, § 10; R.S. 1933 & C. 1943, 80-13-8; L. 1967, ch. 156, § 1; 1973, ch. 146, § 2; 1974, ch. 25, § 1; 1977, ch. 229, § 2; 1980, ch. 63, § 2; 1983, ch. 261, § 2; 1983 (1st S.S.), ch. 9, § 1; 1986, ch. 56, § 2; 1986, ch. 80, § 2; C. 1953, § 59-13-7, renumbered by L. 1987, ch. 2, § 80.

**Amendment Notes.** — The 1983 amendment rewrote Subsection (7), which read: "A reasonable allowance for the exhaustion, wear and tear of property used in the business, including a reasonable allowance for obsolescence"; inserted "An amount for depletion" at the beginning of Subsection (8); deleted "a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under rules and regulations to be prescribed by the tax commission. In the case of leases, the deduction shall be equitably apportioned between the lessee and the lessor" at the end of Subsection (8); and rewrote Subsection (9), which provided that the basis upon which depletion, depreciation, exhaustion, wear and tear and obsolescence are the same as provided in § 59-13-13 and provided a percentage allowance for depletion of thirty-three and one-third percent of the net income from the property during the taxable year computed without allowance for depletion or on the basis provided in § 59-13-13 as the taxpayer elected.

The 1983 (1st S.S.) amendment inserted "except as provided in section 59-13-8" in Subsection (1); and substituted "except as provided in section 59-13-8" in Subsection (2) for "except on indebtedness incurred or continued to purchase or carry obligations or securities, the interest upon which is wholly exempt from taxation."

The 1986 amendment by Chapter 56 made stylistic changes in Subsection (13)(b); substituted "Any amount" for "Anything" in the second sentence of Subsection (14)(c); added the last sentence of Subsection (14)(f); and in Subsection (14)(g) deleted "except that any loss incurred during a year beginning in 1972 and

ending in 1973 may be carried forward as described in Subsection (14)(c) of this section to the extent the loss was incurred in 1973. The amount of loss incurred in 1973 shall be computed by multiplying the total loss incurred by a fraction the numerator of which is the number of days in the filing period after December 31, 1972, and the denominator of which is the total number of days in the filing period" at the end of the subsection.

The 1986 amendment by Chapter 80 inserted "other than the Windfall Profit Tax" in Subsection (3)(c); and inserted all material after "or any such tax as imposed by a foreign country" in Subsection (3)(d).

The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-7, rewrote Subsection (6), substituted "rules" for "regulations" in Subsection (10), and made minor stylistic changes throughout the section.

**Internal Revenue Code.** — The federal Internal Revenue Code, referred to in Subsection (3)(c), and in the first sentence in Subsection (9), appears as 26 U.S.C. The provisions relating to the Windfall Profit Tax, also referred to in Subsection (3)(c), appear as 26 U.S.C. §§ 4986 to 4998. Section 78 of the Code, referred to in Subsection (2)(d)(i)(A), appears as 26 U.S.C. § 78. Sections 166, 585 and 593 of the Code, referred to in Subsection (6), appear as 26 U.S.C. §§ 166, 585 and 593, respectively.

**Retrospective Operation.** — Laws 1986, ch. 56, § 18 and Laws 1986, ch. 80, § 7 provides: "This act has retrospective operation to taxable years beginning on or after January 1, 1986."

Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

**No Retroactive Effect.** — Laws 1986, ch. 56, § 17 provides: "It is the intent of the Legislature that the changes made in this act not be construed to have retroactive effect."

**Cross-References.** — Overpayments, credits and refunds, § 59-7-141.

## NOTES TO DECISIONS

## ANALYSIS

Bad debts.  
Depletion allowance.

**Bad debts.**

Contributions by parent corporation to newly formed subsidiary corporation to enable it to get a start were contributions to capital and not "bad debts" within meaning of this section. *Bennett Glass & Paint Co. v. State Tax Comm.*, 98 Utah 458, 100 P.2d 567, 128 A.L.R. 1246 (1940).

**Depletion allowance.**

Federal income and excess-profits taxes must be deducted by mining corporations be-

fore computing percentage allowance for depletion to which they are entitled in determining their corporation franchise taxes, in view of provision that allowance for depletion shall be percentage of net income, and Subsection (3) hereunder providing that taxes shall be deducted from gross income to determine net income. *New Park Mining Co. v. State Tax Comm.*, 113 Utah 410, 196 P.2d 485 (1948); *Kennecott Copper Co. v. State Tax Comm.*, 118 Utah 140, 221 P.2d 857 (1950) (decided prior to 1983 amendment).

## COLLATERAL REFERENCES

C.J.S. — 85 C.J.S. Taxation § 1099.  
Key Numbers. — Taxation ⇌ 1031.

**59-7-109. Credit for cash contributions to sheltered workshops.**

For tax years beginning January 1, 1983, and thereafter, in computing the tax due the state of Utah pursuant to § 59-7-102, there shall be a tax credit allowed for cash contributions made within the taxable year to nonprofit rehabilitation sheltered workshop facilities for the handicapped operating in Utah which are certified by the Department of Social Services as a qualifying facility. The allowable credit is an amount equal to 50% of the aggregate amount of the cash contributions to qualifying rehabilitation facilities, but in no case shall the credit allowed exceed \$1,000. The amount of contribution claimed as a tax credit pursuant to this section may not also be claimed as a deduction pursuant to § 59-7-108.

**History:** C. 1953, 59-13-7.5, enacted by L. 1983, ch. 273, § 1; C. 1953, 59-13-7.5; renumbered by L. 1987, ch. 2, § 81.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-7.5, and made minor stylistic changes.

**Cross-References.** — Department of Social Services, § 63-35-3 et seq.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

**59-7-110. Credit for sophisticated technological equipment donated to schools.**

(1) A taxpayer subject to the corporate franchise provisions of § 59-7-102 is entitled to a tax credit in an amount equal to 25% of the fair market value of high technology contributions to public education, not to exceed the basis of the property contributed. Fair market value shall not exceed the original cost of the property.

(2) As used in this section, "high technology contribution" means a contribution of tangible personal property subject to the following requirements:

(a) the property is a computer, sophisticated technological equipment, or other apparatus intended for use with a computer to be used directly in the education of students;

(b) the contribution is to a public elementary, secondary, or accredited post secondary school located in the state;

(c) the contribution is made not later than two years after the date its construction is substantially completed;

(d) the property is used exclusively by the donee;

(e) the property is not transferred by the donee in exchange for money, other property, or services; and

(f) the taxpayer receives a written statement from the donee signifying approval of the property and representing that its use and disposition will be in accordance with the provisions of this section.

(3) The credit is in lieu of any deduction the taxpayer is otherwise entitled to under § 59-7-108.

**History:** C. 1953, 59-13-7.7, enacted by L. 1984, ch. 54, § 1; C. 1953, 59-13-7.7; renumbered by L. 1987, ch. 2, § 82.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-7.7, and made minor stylistic changes.

**Retrospective Operation.** — Laws 1984, ch. 54, § 2 provides: "This act has retrospective operation to January 1, 1984."

Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

## 59-7-111. Items not deductible.

### General Rule.

(1) In computing net income no deduction shall in any case be allowed in respect of:

(a) any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;

(b) any amount expended in restoring property for which a depreciation or amortization allowance is or has been made; or

(c) premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any business carried on by the taxpayer when the taxpayer is directly or indirectly a beneficiary under such policy.

### Losses on Sale of Stock or Securities.

(2) (a) In the case of any loss claimed to have been sustained in any sale or other disposition of shares of stock or securities, where it appears that within 30 days before or after the date of such sale or other disposition the taxpayer has acquired (otherwise than by bequest) or has entered into a contract or option to acquire substantially identical property and the property so acquired is held by the taxpayer for any period after such sale or other disposition, no deduction for the loss shall be allowed under Subsection 59-7-108(5), unless the claim is made by a taxpayer, a dealer in stocks or securities, and with respect to a transaction made in the ordinary course of its business. If such acquisition or the contract or option to acquire is to the extent of

part only of substantially identical property, then only a proportionate part of the loss shall be disallowed.

(b) If the amount of stock or securities acquired (or covered by the contract or option to acquire) is less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the loss from the sale or other disposition of which is not deductible shall be determined under rules prescribed by the commission.

(c) If the amount of stock or securities acquired (or covered by the contract or option to acquire) is not less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility of the loss shall be determined under rules prescribed by the commission.

(3) (a) In the case of a corporation whose income is computed pursuant to Part 3 of this chapter, the Uniform Division of Income for Tax Purposes Act, no interest or other expenses shall be allowed as a deduction under any provision of this chapter for any interest or other expense which is otherwise allowable as a deduction and which is allocable to income not subject to apportionment under the provisions of the Uniform Division of Income Tax Purposes Act.

(b) If an interest or other expense is indirectly allocable to both nonapportionable and apportionable income the amount of that interest and other expense allocable to nonapportionable income shall be an amount which bears the same ratio to the aggregate amount otherwise allowable (determined without regard to this subsection) as the average amount of the asset producing the nonapportionable income bears to the average amount of all assets of the taxpayer within the taxable year.

**History:** L. 1931, ch. 39, § 11; R.S. 1933 & C. 1943, 80-13-9; L. 1983 (1st S.S.), ch. 9, § 2; 1984, ch. 61, § 14; 1986, ch. 56, § 3; C. 1953, 59-13-8; renumbered by L. 1987, ch. 2, § 83.

**Amendment Notes.** — The 1983 (1st S.S.) amendment added a temporary subsection, which provided that expenses allocable to tax exempt income not be allowed as deductions; and added present Subsection (3).

The 1984 amendment deleted the temporary subsection added by the 1983 amendment, and made minor changes in style.

The 1986 amendment deleted "or in making good the exhaustion thereof" following "property" and substituted "a depreciation or amortization" for "an" in Subsection (1)(b).

The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-8, substituted "rules" for "rules and regulations" in Subsections (2)(b) and (2)(c), and made minor stylistic changes throughout the section.

**Compiler's Notes.** — Laws 1983 (1st S.S.), ch. 9, § 4 provides: "The newly enacted mate-

rial in this act in section 59-13-8, subsections (3)(a) and (3)(b) shall be repealed on March 29, 1984."

Laws 1984, ch. 61, § 26 provides: "Uncodified Section 4, Chapter 9, Laws of Utah 1983, First Special Session, is repealed."

**Effective Dates.** — Laws 1983 (1st S.S.), ch. 9, § 3 provides: "This act shall take effect upon approval and have retrospective operations to all tax years against which the statute of limitations had not run as of April 10, 1983." Approved August 9, 1983.

**Retrospective Operation.** — Laws 1986, ch. 56, § 18 provides: "This act has retrospective operation to taxable years beginning on or after January 1, 1986."

Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

**No Retroactive Effect.** — Laws 1986, ch. 56, § 17 provides: "It is the intent of the Legislature that the changes made in this act not be construed to have retroactive effect."

## COLLATERAL REFERENCES

**C.J.S.** — 85 C.J.S. Taxation § 1099.  
**Key Numbers.** — Taxation ⇌ 1031.

### 59-7-112. Recomputation of tax — When deduction declared invalid.

If any deduction provided for in § 59-7-108 is finally adjudged discriminatory against a national banking association, contrary to the statutes of the United States, or is for any reason finally adjudged invalid, the tax of the favored taxpayer shall be recomputed by the commission for the tax year in question, as of the time of the allowance of a deduction, by disallowing the deduction, and any difference between the amount of the tax as recomputed and the amount of the tax as originally computed shall be subject to the provisions hereof relating to original computations, but no tax shall be recomputed for any year prior to the tax year for which any deduction or item is adjudged discriminatory or invalid.

**History:** L. 1931, ch. 39, § 12; R.S. 1933 & C. 1943, 80-13-10; C. 1953, 59-13-9; renumbered by L. 1987, ch. 2, § 84.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered

this section, which formerly appeared as § 59-13-9, and made minor stylistic changes.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

## COLLATERAL REFERENCES

**C.J.S.** — 85 C.J.S. Taxation § 1104(1).  
**Key Numbers.** — Taxation ⇌ 1077.

### 59-7-113. Recomputation when any item of gross income declared invalid.

If any item required to be included in gross income is finally adjudged discriminatory or invalid, the tax of the prejudiced taxpayer shall be recomputed by the commission for the tax year in question by eliminating such item or items and the difference between the amount of the tax as recomputed and the amount of tax as originally computed shall be subject to the provisions hereof relating to original computations.

**History:** L. 1931, ch. 39, § 13; R.S. 1933 & C. 1943, 80-13-11; C. 1953, 59-13-10; renumbered by L. 1987, ch. 2, § 85.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered

this section, which formerly appeared as § 59-13-10, and made a minor stylistic change.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

## COLLATERAL REFERENCES

**C.J.S.** — 85 C.J.S. Taxation § 1104(1).  
**Key Numbers.** — Taxation ⇌ 1077.

**59-7-114. Determination of gain or loss.****Computation.**

(1) Except as hereinafter provided in this section, the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the basis provided in § 59-7-116, and the loss shall be the excess of such basis over the amount realized.

**Adjustment of Basis.**

(2) In computing the amount of gain or loss under Subsection (1):

(a) Proper adjustment shall be made for any expenditure, receipt, loss, or other item properly chargeable to capital account.

(b) The basis shall be diminished by the amount of the deductions for exhaustion, wear and tear, obsolescence, amortization, and depletion which have, since the acquisition of the property, been allowable in respect of such property under this chapter; and in all such cases the amount of the diminution in respect of depletion shall be a depletion deduction computed as provided in Subsection 59-7-108(9). In addition, if the property was acquired before January 1, 1931, the basis (if other than the fair market value as of January 1, 1931) shall be diminished in the amount of exhaustion, wear and tear, obsolescence, and depletion actually sustained before such date.

(c) In the case of stock the basis shall be diminished by the amount of distributions previously made in respect of such stock, to the extent provided under this chapter.

**"Amount Realized" Defined.**

(3) The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received.

**Recognition of Gain or Loss.**

(4) In the case of sale or exchange the extent to which the gain or loss determined under this section shall be recognized for the purposes of this chapter, shall be determined under the provisions of § 59-7-115.

**In Case of Installment Sales.**

(5) Nothing in this section shall be construed to prevent (in the case of property sold under contract providing for payment in installments) the inclusion in gross income of that portion of any installment payments representing gain or profit in the year in which such payment is received.

**History:** L. 1931, ch. 39, § 14; R.S. 1933 & C. 1943, 80-13-12; 1986, ch. 56, § 4; C. 1953, 59-13-11; renumbered by L. 1987, ch. 2, § 86.

**Amendment Notes.** — The 1986 amendment made stylistic changes in Subsections (2)(a) and (2)(b); and deleted "(a) without reference to percentage depletion under Subsection 59-13-7(9)(b)" following "59-13-7(9)" in the first sentence of Subsection (2)(b).

The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-11, and made minor stylistic changes.

**Retrospective Operation.** — Laws 1986, ch. 56, § 18 provides: "This act has retrospective operation to taxable years beginning on or after January 1, 1986."

Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

**No Retroactive Effect.** — Laws 1986, ch. 56, § 17 provides: "It is the intent of the Legislature that the changes made in this act not be construed to have retroactive effect."

**Cross-References.** — Allocation of capital gains and losses, § 59-7-308.

## COLLATERAL REFERENCES

C.J.S. — 85 C.J.S. Taxation § 1097.

Key Numbers. — Taxation ⇨ 996.

### 59-7-115. Recognition of gain or loss — Exceptions.

#### General Rule.

(1) Upon the sale or exchange of property, the entire amount of the gain or loss determined under § 59-7-114, shall be recognized, except as hereinafter provided in this section.

#### Exchanges Solely in Kind — Property Held for Productive Use or Investment.

(2) (a) No gain or loss shall be recognized if property held for productive use in business or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in business or for investment.

#### Stock for Stock in Same Corporation.

(b) No gain or loss shall be recognized if common stock in a corporation is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation.

#### Stock for Stock on Reorganization.

(c) No gain or loss shall be recognized if stock or securities in a corporation, a party to a reorganization, are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation, a party to the reorganization.

#### Gain or Loss on Stock on Reorganization.

(d) No gain or loss shall be recognized if a corporation, a party to a reorganization, exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation, a party to the reorganization.

#### Transfers to Corporation Controlled by Transferor.

(e) No gain or loss shall be recognized if property is transferred to a corporation by one or more persons or corporations solely in exchange for stock or securities in such corporation, and if immediately after the exchange such persons or corporations are in control of the corporation; but in the case of an exchange by two or more persons or corporations, this subsection shall apply only if the amount of the stock and securities received by each is substantially in proportion to his or its interest in the property prior to the exchange.

#### Exchanges Not Solely in Kind.

(3) If an exchange would be within the provisions of Subsection (2)(a), (b), (c), or (e) of this section, if it were not for the fact that the property received in exchange consists not only of property permitted by said subsections to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

#### Exchange of Stock for Other Property.

(4) If an exchange would be within the provisions of Subsection (2)(d) of this section, if it were not for the fact that the property received in exchange consists not only of stock or securities permitted by said subsection to be received without the recognition of gain, but also of other property or money, then:

(a) If the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but,

(b) If the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property so received, which is not so distributed.

#### Loss From Exchanges Not Solely in Kind.

(5) If an exchange would be within the provisions of Subsection (2) of this section, if it were not for the fact that the property received in exchange consists not only of property permitted by said subsection to be received without the recognition of gain or loss but also of other property or money, then no loss from the exchange shall be recognized.

#### Involuntary Conversions.

(6) If property (as a result of its destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) is compulsorily or involuntarily converted within the time period allowed under § 1033, Internal Revenue Code, or successor statute, which is effective for the taxable year, into property similar or related in service or use to the property so converted, or into money which is forthwith in good faith, under rules prescribed by the commission, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund, no gain or loss shall be recognized. If any part of the money is not so expended, the gain, if any, shall be recognized, but only in an amount not in excess of the money which is not so expended.

#### Distributions of Stock on Reorganization.

(7) If, in pursuance of a plan of reorganization, there is distributed to a shareholder in a corporation, a party to the reorganization, stock or securities in such corporation or in another corporation, a party to the reorganization, without the surrender by such shareholder of stock or securities in any of the corporations involved, no gain to the distributee from the receipt of such stock or securities shall be recognized.

#### Effect on Subsequent Distributions.

(8) The distribution, in pursuance of a plan of reorganization, by or on behalf of a corporation, a party to the reorganization, of its own stock or securities or stock or securities in another corporation, a party to the reorganization, shall not be considered a distribution of earnings or profits within the meaning of Subsection 59-7-117(1) for the purpose of determining the taxability of subsequent distributions by the corporation.

#### "Reorganization" Defined.

(9) As used in this section and §§ 59-7-116 and 59-7-117:



## (a) "Reorganization" means:

(1st) a merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation, or substantially all the properties of another corporation);

(2nd) a transfer by a corporation of all or a part of its assets to another corporation, if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred;

(3rd) a recapitalization; or

(4th) a mere change in identity, form, place, or organization, however affected.

(b) "A party to a reorganization" includes a corporation resulting from a reorganization and also includes both corporations in the case of an acquisition by one corporation of at least a majority of the total number of shares of all other classes of stock of another corporation.

**"Control" Defined.**

(10) As used in this section the term "control" means the ownership of at least 80% of the voting stock and at least 80% of the total number of shares of all other classes of stock of the corporation.

**History:** L. 1931, ch. 39, § 15; R.S. 1933 & C. 1943, 80-13-13; 1986, ch. 56, § 5; C. 1953, 59-13-12; renumbered by L. 1987, ch. 2, § 87.

**Amendment Notes.** — The 1986 amendment inserted "within the time period allowed under Section 1033, Internal Revenue Code, or successor statute, which is effective for the taxable year" following "converted" in the first sentence of Subsection (6); and deleted "or" at the end of Subsections (9)(a)(1st) and (9)(a)(2nd).

The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-12, substituted "rules" for "regulations" in the first sentence of Subsection (6), and made minor stylistic changes throughout the section.

**Internal Revenue Code.** — Section 1033 of the federal Internal Revenue Code, referred to in the first sentence in Subsection (6), appears as 26 U.S.C. § 1033.

**Retrospective Operation.** — Laws 1986, ch. 56, § 18 provides: "This act has retrospective operation to taxable years beginning on or after January 1, 1986."

Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

**No Retroactive Effect.** — Laws 1986, ch. 56, § 17 provides: "It is the intent of the Legislature that the changes made in this act not be construed to have retroactive effect."

**Cross-References.** — Allocation of capital gains and losses, § 59-7-308.

## COLLATERAL REFERENCES

**C.J.S.** — 85 C.J.S. Taxation § 1097.

**Key Numbers.** — Taxation ⇌ 996.

**59-7-116. Basis for determining gain or loss — Exceptions.**

Property Acquired after December 31, 1930.

(1) The basis for determining the gain or loss from the sale or other disposition of property acquired after December 31, 1930, shall be the cost of such property, except that:

**Inventory Value.**

(a) If the property ought to have been included in the last inventory, the basis shall be the last inventory value thereof.

**Gifts.**

(b) If the property was acquired by gift, the basis shall be the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift. If the facts necessary to determine such basis are unknown to the donee, the commission shall, if possible, obtain such facts from such donor, or from the last preceding owner or any other person cognizant thereof. If the commission finds it impossible to obtain such facts, the basis shall be the fair market value of such property as found by the commission as of the date or approximate date at which, according to the best information that the commission is able to obtain, such property was acquired by such donor or last preceding owner by whom it was not acquired by gift.

**Transfers in Trust.**

(c) If the property was acquired by a transfer in trust (other than by a transfer in trust by a bequest or devise) the basis shall be the same as it would be in the hands of the grantor, increased in the amount of gain, or decreased in the amount of loss, recognized to the grantor upon such transfer under this chapter.

**Bequests and Devises.**

(d) If personal property was acquired by specific bequest, or if real property was acquired by general or specific devise, the basis shall be the fair market value of the property at the time of the death of the decedent. In all other cases if the property was acquired by will, the basis shall be the fair market value of the property at the time of the distribution to the taxpayer.

**Tax-Free Exchanges.**

(e) If the property was acquired upon an exchange described in Subsections 59-7-115(2) to (5), inclusive, the basis shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon such exchange by the terms of this chapter. If the property so acquired consisted in part of the type of property permitted by Subsection 59-7-115(2), to be received without the recognition of gain or loss, and in part of other property, the basis provided in this subsection shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such other property an amount equivalent to its fair market value at the date of the exchange. This subsection shall not apply to property acquired by a corporation by the issuance of its stock or securities as the consideration in whole or in part for the transfer of property to it.

**Transfers to Corporations Where Control Remains in Same Persons.**

(f) If the property was acquired by a corporation in connection with a reorganization, and immediately after the transfer an interest or control in such property of 80% or more remained in the same persons or any of them, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under this chapter. This subsection shall not apply if the property acquired consists of stock or securities in a corporation, the party to

the reorganization, unless acquired by the issuance of stock or securities of the transferee as the consideration in whole or in part for the transfer.

**Transfers to Corporations When Controlled by Transferor.**

(g) If the property was acquired by a corporation by the issuance of its stock or securities in connection with a transaction described in Subsection 59-7-115(2)(e) (including also cases where part of the consideration for the transfer of such property to the corporation was property or money, in addition to such stock or securities) then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under this chapter.

**Tax-Free Distributions.**

(h) If the property consists of stock or securities distributed to a taxpayer in connection with a transaction described in Subsection 59-7-115(7), the basis in the case of the stock in respect of which the distribution was made shall be apportioned, under rules prescribed by the commission, between such stock and the stock or securities distributed.

**Involuntary Conversions.**

(i) If the property was acquired as the result of a compulsory or involuntary conversion described in Subsection 59-7-115(6), the basis shall be the same as in the case of the property so converted, decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of said subsection, and increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion.

**Wash Sales.**

(j) If substantially identical property was acquired in place of stock or securities which were sold or disposed of and in respect of which loss was not allowed as a deduction under Subsection 59-7-111(2), the basis in the case of the stock or securities so sold or disposed of, except that, if the repurchase was in excess of the sale price, such basis shall be increased in the amount of the difference, or if the repurchase price was less than the sale price, such basis shall be decreased in the amount of the difference.

**Property Acquired During Affiliation.**

(k) The basis in case of property acquired by a corporation, in respect of which a consolidated return is made by such corporation under § 59-7-124, shall be determined in accordance with rules prescribed by the commission under Subsection 59-7-124(2).

**Property Acquired before January 1, 1931.**

(2) The basis for determining the gain or loss from the sale or other disposition of property acquired before January 1, 1931, shall be:

(a) the cost of such property (or in the case of such property as is described in Subsection (1)(a), (d), or (k) of this section the basis as therein provided, or, in the case of property acquired by gift or transfer in trust, the fair market value of such property at the time of such acquisition); or

(b) the fair market value of such property as of January 1, 1931, whichever is greater.

In determining the fair market value of stock in a corporation as of January 1, 1931, due regard shall be given to the fair market value of the assets of the corporation as of that date.

**History:** L. 1931, ch. 39, § 16; R.S. 1933 & C. 1943, 80-13-14; 1986, ch. 56, § 6; C. 1953, 59-13-13; renumbered by L. 1987, ch. 2, § 88.

**Amendment Notes.** — The 1986 amendment inserted "by whom it was not acquired by gift" following "owner" in the third sentence of Subsection (1)(b) and deleted "acquired shall be the basis in the case of the stock or securities so" following "securities so" in Subsection (1)(j).

The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-13, substituted "rules" for "rules and regulations" in Subsection (1)(h), substituted "rules" for "regulations" in Subsec-

tion (1)(k), and made minor stylistic changes throughout the section.

**Retrospective Operation.** — Laws 1986, ch. 56, § 18 provides: "This act has retrospective operation to taxable years beginning on or after January 1, 1986."

Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

**No Retroactive Effect.** — Laws 1986, ch. 56, § 17 provides: "It is the intent of the Legislature that the changes made in this act not be construed to have retroactive effect."

**Cross-References.** — Allocation of capital gains and losses, § 59-7-308.

#### COLLATERAL REFERENCES

C.J.S. — 85 C.J.S. Taxation § 1097.

Key Numbers. — Taxation ⇌ 996.

### 59-7-117. Distributions by corporations.

#### Source of Distributions.

(1) For the purpose of this chapter every distribution is made out of earnings or profits to the extent thereof, and from the most recently accumulated earnings or profits. Any earnings or profits accumulated, or increase in value of property accrued, before January 1, 1931, may be excluded from the basis of tax after the earnings and profits accumulated after December 31, 1930, have been distributed, but any such distribution shall be applied against and reduce the basis of the stock provided in § 59-7-116.

#### Distributions in Liquidation.

(2) Amounts distributed in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock, and amounts distributed in partial liquidation of a corporation shall be treated as in part or full payment in exchange for the stock. The gain or loss to the distributee resulting from such exchange shall be determined under § 59-7-114, but shall be recognized only to the extent provided in § 59-7-115. In the case of amounts distributed in partial liquidation (other than a distribution within the provisions of Subsection 59-7-115(8) of stock or securities in connection with a reorganization) the part of such distribution which is properly chargeable to capital account shall not be considered a distribution of earnings or profits within the meaning of Subsection (1) of this section for the purpose of determining the status of subsequent distributions by the corporation.

#### Other Distributions.

(3) If any distribution (not in partial or complete liquidation) made by a corporation to its shareholders is not out of increase in value of property

accrued before January 1, 1931, and is not out of earnings or profits, then the amount of such distribution shall be applied against and reduce the basis of the stock provided in § 59-7-116, and if in excess of such basis, such excess shall be treated as a gain from the sale or exchange of property. The provisions of this subsection shall also apply to distributions from depletion reserves based on percentage depletion allowed by this chapter.

#### Stock Dividends.

(4) A stock dividend shall not be deemed income to the recipient.

#### Cancellation or Redemption of Stock.

(5) If a corporation cancels or redeems its stock (whether or not such stock was issued as a stock dividend) at such time and in such manner as to make the distribution and cancellation or redemption in whole or in part essentially equivalent to the distribution of a dividend, the amount so distributed in redemption or cancellation of the stock, to the extent that it represents a distribution of earnings or profits accumulated after December 31, 1930, shall be treated as a dividend.

#### "Amounts Distributed in Partial Liquidation" Defined.

(6) As used in this section "amounts distributed in partial liquidation" means the distribution by a corporation in complete cancellation or redemption of a part of its stock, or one of a series of distributions in complete cancellation or redemption of all or a portion of its stock.

**History:** L. 1931, ch. 39, § 17; R.S. 1933 & C. 1943, 80-13-15; C. 1953, 59-13-14; renumbered by L. 1987, ch. 2, § 89.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered

this section, which formerly appeared as § 59-13-14, and made minor stylistic changes.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

#### COLLATERAL REFERENCES

**C.J.S.** — 85 C.J.S. Taxation § 1097.

**Key Numbers.** — Taxation ⇌ 988.

## 59-7-118. Accounting periods — Methods of accounting.

### Accounting Periods.

- (1) Net income shall be computed upon the basis of:
  - (a) the same taxable period used for federal income tax purposes;
  - (b) the corporation's annual accounting period if the corporation did not file a federal income tax return; or
  - (c) the calendar year if the corporation has an annual accounting period other than a fiscal year, has no annual accounting period, or does not keep books, and does not file a federal income tax return.
- (2) (a) Net income shall be computed under the method of accounting on the basis of which the corporation computes:
  - (i) its income for federal income tax purposes; or
  - (ii) its income in keeping its books if the corporation did not file a federal income tax return.
- (b) If no method of accounting has been regularly used by the corporation or if the method employed does not clearly reflect net income computed and apportioned to this state for the taxable year, net in-

come shall be computed in accordance with a method which in the opinion of the commission clearly reflects net income.

(3) If a corporation is required under Public Law 99-514, or successor statute, to change its method of accounting from the cash receipts and disbursements method to an accrual method or other permissible method, the transition period provision of Public Law 99-514, or successor statute, for taking into account the adjustments required by reasons of such change shall be followed.

(4) The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under the methods of accounting permitted under this section, any such amounts are to be properly accounted for as of a different period.

(5) The deductions provided for in this chapter shall be taken for the taxable year in which "paid or accrued" or "paid or incurred," dependent upon the method of accounting upon the basis of which the net income is computed, unless in order to clearly reflect the income the deductions ought to be taken as of a different period.

(6) For purposes of Subsections (4) and (5), transition periods for reporting income or deductions permitted or required by Public Law 99-514, or successor statute, shall be followed.

**History:** L. 1931, ch. 39, § 18; R.S. 1933 & C. 1943, 80-13-16; C. 1953, 59-13-15; renumbered by L. 1987, ch. 2, § 90.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-15, rewrote Subsection (1), redesignated former Subsections (2) and (3) as present Subsections (4) and (5), added present Subsec-

tions (2), (3) and (6), and deleted the headings which preceded former Subsections (2) and (3).

**Public Law 99-514.** — Public Law 99-514, referred to throughout Subsections (3) and (6), enacted the federal Tax Reform Act of 1986, which appears mainly as 26 U.S.C.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

#### COLLATERAL REFERENCES

C.J.S. — 85 C.J.S. Taxation § 1103.

Key Numbers. — Taxation ⇌ 1078.

### 59-7-119. Basis in case of installment sales.

By Dealers in Personal Property.

(1) Under rules prescribed by the commission a taxpayer who regularly sells or otherwise disposes of personal property on the installment plan may return as income therefrom in any taxable year that proportion of the installment payments actually received in that year which the gross profit realized, or to be realized when the payment is completed, bears to the total contract price.

Sales of Realty and Casual Sales of Personalty.

(2) In the case (a) of a casual sale or other casual disposition of personal property (other than property of a kind which property would be included in the inventory of the taxpayer if on hand at the close of the taxable year) for a price exceeding \$1,000, or (b) of a sale or other disposition of real property if in either case at least one payment is to be received after the close of the taxable year in which the disposition occurs, the income may, under rules prescribed by the commission, be returned on the basis

and in the manner above prescribed in this section. As used in this Subsection (2) "payment" means receipt in cash or property other than evidences of indebtedness of the purchaser.

**Change from Accrual to Installment Basis.**

(3) If a taxpayer entitled to the benefits of Subsection (1) elects for any taxable year to report its net income on the installment basis, then in computing its income for the year of change or any subsequent year, amounts actually received during any such year on account of sales or other dispositions of property made in any prior year shall not be excluded.

**Gain or Loss from Disposition of Installment Obligations.**

(4) If an installment obligation is satisfied at other than its face value, or distributed, transmitted, sold, or otherwise disposed of, gain or loss shall result to the extent of the difference between the basis of the obligation and:

(a) in the case of satisfaction at other than face value, or a sale or exchange, the amount realized; or

(b) in case of the distribution, transmission, or disposition otherwise than by sale or exchange, the fair market value of the obligation at the time of such distribution, transmission, or disposition. The basis of the obligation shall be the excess of the face value of the obligation over an amount equal to the income which would be returnable if the obligation had been satisfied in full.

**History:** L. 1931, ch. 39, § 19; R.S. 1933 & C. 1943, 80-13-17; 1986, ch. 56, § 7; C. 1953, 59-13-16; renumbered by L. 1987, ch. 2, § 91.

**Amendment Notes.** — The 1986 amendment, in Subsection (2) substituted "at least one payment is to be received after the close of the taxable year in which the disposition occurs" for "the initial payments do not exceed forty percent of the selling price" and "Subsection (2) 'payment'" for "section the term 'initial payments'" and "receipt" for "the payments received", and deleted "during the taxable year in which the sale or other disposition is made" at the end; and made a stylistic change in Subsection (4)(b).

The 1987 amendment, effective February 6,

1987, renumbered this section, which formerly appeared as § 59-13-16, substituted "rules" for "regulations" in Subsections (1) and (2), and made minor stylistic changes throughout the section.

**Retrospective Operation.** — Laws 1986, ch. 56, § 18 provides: "This act has retrospective operation to taxable years beginning on or after January 1, 1986."

Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

**No Retroactive Effect.** — Laws 1986, ch. 56, § 17 provides: "It is the intent of the Legislature that the changes made in this act not be construed to have retroactive effect."

COLLATERAL REFERENCES

**C.J.S.** — 85 C.J.S. Taxation § 1097.

**Key Numbers.** — Taxation ⇌ 1078.

**59-7-120. Allocation of income and deductions between several corporations controlled by same interests.**

In any case of two or more corporations (whether or not organized or doing business in this state, and whether or not affiliated) owned or controlled directly or indirectly by the same interest, the commission is authorized to

distribute, apportion, or allocate gross income or deductions between or among such corporations, if it determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such corporations.

**History:** L. 1931, ch. 39, § 20; R.S. 1933 & C. 1943, 80-13-18; C. 1953, 59-13-17; renumbered by L. 1987, ch. 2, § 92.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered

this section, which formerly appeared as § 59-13-17, and made minor stylistic changes.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

## NOTES TO DECISIONS

### ANALYSIS

Construction and legislative intent.  
Federal income tax deduction.

#### Construction and legislative intent.

The broad wording of this section indicates a legislative intent to cover all situations dealing with either director or indirect corporate affiliates without regard to whether they file individual or consolidated state corporate franchise tax returns; it authorizes the tax commission to so apportion income and deductions of corporations within such controlled groups as to fairly and equitably reflect the income earned in Utah. *Continental Tel. Co. v. State Tax Comm.*, 539 P.2d 447 (Utah 1975).

#### Federal income tax deduction.

Utah subsidiaries could not deduct total

amounts transferred to foreign parent corporation in payment of subsidiaries' federal income tax liability unless such sums were actually paid for it to the federal government by the parent; where parent, in computing its consolidated federal return, diverted a portion of the payments from its profitable Utah subsidiaries to other subsidiaries which showed a loss, Utah subsidiaries could deduct only the amount derived from the ratio that the federal taxable income of each profit-producing subsidiary bore to the total taxable income of all profit-producing subsidiaries. *Continental Tel. Co. v. State Tax Comm.*, 539 P.2d 447 (Utah 1975).

## COLLATERAL REFERENCES

C.J.S. — 85 C.J.S. Taxation §§ 1099, 1103.  
Key Numbers. — Taxation ☞ 1078.

### 59-7-121. Change of taxable year or accounting period.

(1) If a corporation changes its taxable year for federal income tax purposes, the new taxable year shall become the corporation's taxable year for Utah corporate franchise or income tax purposes.

(2) If a corporation which does not file a federal tax return changes its accounting period, the new accounting period shall become the corporation's taxable year for Utah corporate franchise or income tax purposes if the change is approved by the commission.

**History:** L. 1931, ch. 39, § 21; R.S. 1933 & C. 1943, 80-13-19; C. 1953, 59-13-18; renumbered by L. 1987, ch. 2, § 93.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as

§ 59-13-18, and rewrote the contents thereof to the extent that a detailed analysis is impracticable.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."



## COLLATERAL REFERENCES

C.J.S. — 85 C.J.S. Taxation § 1103.  
Key Numbers. — Taxation ⇌ 1078.

**59-7-122. Return where period changed.**

(1) If a corporation changes its taxable year in accordance with § 59-7-121, a separate return shall be made for the period of less than 12 months between the close of the last taxable year for which a return was made and the close of the new taxable year.

(2) Where a separate return is made under Subsection (1) on account of a change in the accounting period, and in all other cases where a separate return is required or permitted by rules prescribed by the commission to be made for a fractional part of a year, the tax shall be calculated at the rate provided in § 59-7-102 for the period covered by the return assignable to business done in Utah.

**History:** L. 1931, ch. 39, § 22; R.S. 1933, 80-13-20; L. 1935, ch. 89, § 1; C. 1943, 80-13-20; L. 1955, ch. 122, § 1; 1965, ch. 123, § 3; 1969, ch. 183, § 2; 1977, ch. 229, § 3; 1986, ch. 56, § 8; C. 1953, 59-13-19; renumbered by L. 1987, ch. 2, § 94.

**Amendment Notes.** — The 1986 amendment in Subsection (2) substituted "the rate provided in § 59-13-3" for "either four percent of the net income" and deleted "or \$25, whichever is the greater" at the end of the subsection.

The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-19, rewrote Subsection

(1), substituted "rules" for "regulations" in Subsection (2), and made minor stylistic changes throughout the section.

**Retrospective Operation.** — Laws 1986, ch. 56, § 18 provides: "This act has retrospective operation to taxable years beginning on or after January 1, 1986."

Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

**No Retroactive Effect.** — Laws 1986, ch. 56, § 17 provides: "It is the intent of the Legislature that the changes made in this act not be construed to have retroactive effect."

## COLLATERAL REFERENCES

C.J.S. — 85 C.J.S. Taxation § 1103.  
Key Numbers. — Taxation ⇌ 1078.

**59-7-122.5. Estimated tax payments — Penalty — Waiver.**

(1) Every corporation subject to taxation under this chapter expecting to have a tax liability of \$3,000 or more in the current tax year, or which had a tax liability of \$3,000 or more in the previous tax year, shall make payments of estimated tax in the same manner as is provided for corporations in the Internal Revenue Code of 1954, or successor statutes.

(2) If a quarterly estimated tax payment is not made or is underpaid, except as provided in Subsection (3), there shall be added a penalty as provided in § 59-1-401 and interest as provided in § 59-1-402.

(3) The penalty or interest may be waived under Subsection (2), if:

(a) the total estimated tax payments for the tax year equal or exceed the tax liability for the previous tax year;

(b) the total estimated tax payments for the tax year are equal to 90% of the current year tax liability; or

(c) the total estimated tax payments equal 90% of the tax liability computed on the current year's income using the previous year's tax law.

**History:** L. 1987, ch. 236, § 2.

**Internal Revenue Code.** — The federal Internal Revenue Code, referred to in Subsection (1), appears as 26 U.S.C.

**Compiler's Notes.** — Laws 1987, ch. 236,

§ 3 provides "This act takes effect with estimated payment due after April 15, 1987."

**Effective Dates.** — Laws 1987, ch. 236, § 4 makes the act effective on April 27, 1987.

### **59-7-123. Returns required — When due — Extension of time — Exemption from filing.**

(1) Each corporation subject to taxation under this chapter shall make a return stating specifically the items of its gross income and the deductions allowed by this chapter. The return shall be signed by a responsible officer of the corporation, the signature of whom need not be notarized but when signed shall be deemed made under oath. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns made by receivers, trustees, or assignees shall be collected in the same manner as if collected from the corporations of whose business or property they have custody and control.

(2) Returns shall be made on or before the 15th day of the fourth month following the close of the taxable year.

(3) The commission shall allow an extension of six months for filing returns if on or before the due date of the return a proper application (Form TC-559), accompanied by the remittance required by § 59-7-126, is filed with the commission.

(4) All returns shall be made to the commission.

(5) A corporation incorporated or qualified to do business in this state prior to January 1, 1973, is not liable for filing a return or paying tax measured by income for the taxable year in which it legally terminates its existence.

(6) A corporation incorporated or qualified to do business or which had its authority to do business reinstated on or after January 1, 1973, shall file a return and pay the tax measured by income for each period during which it had the right to do business in this state, and the return shall be filed and the tax paid within three months and 15 days after the close of this period.

(7) If a corporation terminates its existence under § 16-10-77, no returns are required to be filed if a statement is furnished to the commission that no business has been conducted during that period.

(8) (a) A corporation commencing to do business in Utah after qualification or incorporation with the Department of Business Regulation is not required to file a return for the period commencing with the date of incorporation or qualification and ending on the last day of the same month, if that corporation was not doing business in and received no income from sources in the state during such period.

(b) In determining whether a corporation comes within the provisions of this chapter, affidavits on behalf of the corporation that it did no business in and received no income from sources in Utah during such period shall be filed with the commission.

**History:** L. 1931, ch. 39, § 25; R.S. 1933 & C. 1943, 80-13-23; L. 1953, ch. 110, § 1; 1969, ch. 183, § 4; 1973, ch. 146, § 3; 1979, ch. 202, § 1; C. 1953, 59-13-22; renumbered by L. 1987, ch. 2, § 95.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as

§ 59-13-22, made minor stylistic changes in Subsections (1), (4) and (5), rewrote Subsections (2) and (3), and added Subsections (7) and (8).

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

#### NOTES TO DECISIONS

##### **Taxing de facto corporation.**

Where a defect was found in new corporation's articles of incorporation subsequent to filing of corporation's first tax return with a computed tax rate for the coming fiscal year, this first tax return was not rendered void by the defective articles, since the corporation op-

erated as a de facto corporation from the date the defective articles were filed, and the corporation was taxable as such from the date its de facto existence began. *Vincent Drug Co. v. Utah State Tax Comm.*, 17 Utah 2d 202, 407 P.2d 683 (1965).

#### COLLATERAL REFERENCES

**C.J.S.** — 85 C.J.S. Taxation § 1102.

**Key Numbers.** — Taxation ☞ 1079.

### 59-7-124. Consolidated returns.

#### By Affiliated Group.

- (1) An affiliated group of banks and/or other corporations shall, subject to the provisions of this section, have the privilege of making a consolidated return for any taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all the corporations which have been members of the affiliated group at any time during the taxable year for which the return is made consent to all the rules under Subsection (2) prescribed prior to the making of such return; and the making of a consolidated return shall be considered as such consent. In the case of a bank or other corporation which is a member of the affiliated group for a fractional part of the year, the consolidated return shall include the income of such bank and/or other corporation for such part of the year as it is a member of the affiliated group.

#### Rules.

- (2) The commission shall prescribe such rules as it may deem necessary in order that the tax liability of an affiliated group of banks and/or corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be determined, computed, assessed, collected, and adjusted in such manner as clearly to reflect the income and to prevent avoidance of tax liability.

#### Computation of Tax.

- (3) In any case in which a consolidated return is made the tax shall be determined, computed, assessed, collected, and adjusted in accordance with the rules under Subsection (2) prescribed prior to the date on which such return is made.

#### "Affiliated Group" Defined.

- (4) As used in this section an "affiliated group" means one or more chains of corporations connected through stock ownership with a common parent

corporation but excludes any corporation conducting no business in this state other than qualification to do business, if: (a) at least 80% of the stock of each of the banks and/or corporations (except the common parent corporation) is owned directly by one or more of the other banks and/or corporations; and (b) the common parent corporation owns directly at least 80% of the stock of at least one of the other corporations. As used in this subsection "stock" does not include nonvoting stock which is limited and preferred as to dividends.

#### Suspension of Statute of Limitations.

- (5) If a notice under § 59-7-136 in respect of a deficiency for any taxable year is mailed to a corporation, the suspension of the running of the statute of limitations provided in § 59-7-140 shall apply in the case of corporations with which such corporation made a consolidated return for such tax year.

**History:** L. 1931, ch. 39, § 26; R.S. 1933 & C. 1943, 80-13-24; L. 1977, ch. 227, § 1; 1986, ch. 56, § 9; C. 1953, 59-13-23; renumbered by L. 1987, ch. 2, § 96.

**Amendment Notes.** — The 1986 amendment made stylistic changes in Subsections (2) and (3); and substituted "80%" for "ninety-five percent" in Subsections (4)(a) and (4)(b).

The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-23, substituted "rules" for "regulations" in the second sentence of Subsection (1) and again in Subsections (2) and (3), deleted "and Regulations" in the heading for

Subsection (2), and made minor stylistic changes throughout the section.

**Retrospective Operation.** — Laws 1986, ch. 56, § 18 provides: "This act has retrospective operation to taxable years beginning on or after January 1, 1986."

Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

**No Retroactive Effect.** — Laws 1986, ch. 56, § 17 provides: "It is the intent of the Legislature that the changes made in this act not be construed to have retroactive effect."

## NOTES TO DECISIONS

### ANALYSIS

Affiliated group.  
Dissolution of subsidiary.

#### Affiliated group.

Parent corporation with only one qualified subsidiary does not constitute an affiliated group and they are not entitled to file a consolidated return. *Lockheed Aircraft Corp. v. State Tax Comm.*, 566 P.2d 1249 (Utah 1977).

#### Dissolution of subsidiary.

Several affiliated corporations were properly regarded as unified business entity within which transfers of assets could be permitted without incurring tax liability which would at-

tach only when assets were disposed of outside interrelated group; gain realized on dissolution of subsidiary was therefore not taxable to parent corporation even though parent did not include income of subsidiary or subsidiary's consent to consolidated return in tax return as first filed; mere making of consolidated return is considered consent to consolidated return and formal consent is not necessary. *Bennett Ass'n v. Utah State Tax Comm.*, 19 Utah 2d 108, 426 P.2d 812 (1966).

## COLLATERAL REFERENCES

**C.J.S.** — 85 C.J.S. Taxation § 1102.

**Key Numbers.** — Taxation ⇌ 1079.

### 59-7-125. Corporations to keep records — Special returns.

Every corporation doing business or entitled to do business in this state shall keep such records, render under oath such statements, make such returns, and comply with such rules as the commission may from time to time prescribe. Whenever deemed necessary by the commission, it may require any corporation, by notice served upon it, to make a return, render under oath such statements, or keep such records as the tax commissioner deems sufficient to show whether or not such corporation is liable to tax under this chapter.

**History:** L. 1931, ch. 39, § 27; R.S. 1933 & C. 1943, 80-13-25; C. 1953, 59-13-24; renumbered by L. 1987, ch. 2, § 97.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-24, substituted "rules" for "rules and

regulations" in the first sentence and made minor stylistic changes throughout the section.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

**Cross-References.** — State Tax Commission, § 59-1-201 et seq.

#### COLLATERAL REFERENCES

C.J.S. — 85 C.J.S. Taxation § 1102.

Key Numbers. — Taxation ⇐ 1079.

### 59-7-126. Payment of tax.

(1) If quarterly estimated payments are not made as provided in § 59-7-122.5, the amount of tax imposed by this chapter shall be paid when the return is filed, or if an application is made to the commission to extend the time for filing a return, as provided in Subsection 59-7-123(3), payment must accompany the application in an amount equal to at least 90% of the total amount of tax due with the return when filed, or the minimum tax due under § 59-7-102, whichever is greater. If payment with the application is less than 90% of the total amount of the tax determined to be due with the return filed by the taxpayer, or equal to the amount of tax paid for the previous year, there shall be added an underestimate penalty as provided in § 59-1-401, until the tax is paid, as if no extension of time for filing a return had been granted.

(2) At the request of the taxpayer, the commission may extend the time for payment of the amount determined as the tax by the taxpayer, or any part thereof, for a period not to exceed six months from the date prescribed for the payment of the tax. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

**History:** L. 1931, ch. 39, § 28; R.S. 1933 & C. 1943, 80-13-26; L. 1953, ch. 110, § 1; 1953, ch. 111, § 1; 1973, ch. 146, § [4]; 1977, ch. 227, § 2; 1986, ch. 56, § 10; C. 1953, 59-13-25; renumbered by L. 1987, ch. 2, § 98; 1987, ch. 3, § 13; 1987, ch. 236, § 1.

**Amendment Notes.** — The 1986 amendment substituted "the minimum tax due under § 59-13-3" for "\$25" in Subsection (1).

The 1987 amendment by Chapter 2, effective

February 6, 1987, renumbered this section, which formerly appeared as § 59-13-25, rewrote the second sentence of Subsection (1) and made minor stylistic changes throughout the section.

The 1987 amendment by Chapter 3, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-25, rewrote the second sentence of Subsection (1), and made stylistic changes throughout the sec-

tion, including the deletion of subsection headings.

The 1987 amendment by Chapter 236, effective April 27, 1987, in Subsection (1), substituted "If quarterly estimated payments are not made as provided in § 59-7-122.5, the" for "The" at the beginning of the first sentence and "90%" for "80%" near the end of that sentence and again in the second sentence.

**Compiler's Notes.** — Laws 1987, ch. 236, § 3 provides "This act takes effect with estimated payment due after April 15, 1987."

**Retrospective Operation.** — Laws 1986,

ch. 56, § 18 provides: "This act has retrospective operation to taxable years beginning on or after January 1, 1986."

Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

Laws 1987, ch. 3, § 59 provides: "This act has retrospective operation to January 1, 1987."

**No Retroactive Effect.** — Laws 1986, ch. 56, § 17 provides: "It is the intent of the Legislature that the changes made in this act not be construed to have retroactive effect."

#### COLLATERAL REFERENCES

C.J.S. — 85 C.J.S. Taxation § 1106.

Key Numbers. — Taxation ⇨ 1096.

### 59-7-127. Audit of returns.

As soon as practicable after the return is filed the commission shall examine it and shall determine the correct amount of the tax.

**History:** L. 1931, ch. 39, § 29; R.S. 1933 & C. 1943, 80-13-27; C. 1953, 59-13-26; renumbered by L. 1987, ch. 2, § 99.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered

this section, which formerly appeared as § 59-13-26, and made a minor stylistic change.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

#### COLLATERAL REFERENCES

C.J.S. — 85 C.J.S. Taxation § 1103.

Key Numbers. — Taxation ⇨ 1079.

### 59-7-128. Failure to file return — Penalty.

In case of any failure to make and file a return required by this chapter within the time prescribed by law or prescribed by the commission in pursuance of law, there shall be added to the amount required to be shown as tax on the return a penalty as provided in § 59-1-401. The amounts so added to any tax shall be collected at the same time and in the same manner and as a part of the tax, unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be collected in the same manner as the tax.

**History:** L. 1931, ch. 39, § 30; R.S. 1933 & C. 1943, 80-13-28; L. 1977, ch. 227, § 3; C. 1953, 59-13-27; renumbered by L. 1987, ch. 2, § 100; 1987, ch. 3, § 14.

**Amendment Notes.** — The 1987 amendment by Chapter 2, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-27, and rewrote the first sentence.

The 1987 amendment by Chapter 3, effective February 6, 1987, made changes identical to those made by Chapter 2.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

Laws 1987, ch. 3, § 59 provides: "This act has retrospective operation to January 1, 1987."

## COLLATERAL REFERENCES

**C.J.S.** — 85 C.J.S. Taxation § 1102.  
**Key Numbers.** — Taxation ⇌ 1079.

**59-7-129. Deficiency — Interest.**

Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the commission, and shall be collected as a part of the tax at the rate prescribed in § 59-1-402 from the date prescribed for the payment of the tax to the date the deficiency is assessed.

**History:** L. 1931, ch. 39, § 31; R.S. 1933 & C. 1943, 80-13-29; L. 1977, ch. 219, § 9; 1980, ch. 69, § 13; 1986, ch. 56, § 11; C. 1953, 59-13-28; renumbered by L. 1987, ch. 2, § 101.

**Amendment Notes.** — The 1986 amendment substituted "59-11-16" for "59-1-16".

The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-28, and made minor stylistic changes, including substituting "§ 59-1-402" for "§ 59-11-16."

**Retrospective Operation.** — Laws 1986, ch. 56, § 18 provides: "This act has retrospective operation to taxable years beginning on or after January 1, 1986."

Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

**No Retroactive Effect.** — Laws 1986, ch. 56, § 17 provides: "It is the intent of the Legislature that the changes made in this act not be construed to have retroactive effect."

## COLLATERAL REFERENCES

**Utah Law Review.** — Equitable Estoppel of the Utah State Tax Commission: A Recommended Departure after a Long Stay at Utah Hotel, 1972 Utah L. Rev. 157.

**C.J.S.** — 85 C.J.S. Taxation § 1102.  
**Key Numbers.** — Taxation ⇌ 1077.

**59-7-130. Addition to tax in case of deficiency.**

**When Due to Negligence.**

(1) If any part of any deficiency is due to negligence, or intentional disregard of rules, but without intent to defraud, 5% of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected, and paid in the same manner as if it were a deficiency, except that the provisions of § 59-7-129 relating to interest on deficiencies shall not be applicable.

**When Due to Fraud.**

(2) If any part of any deficiency is due to fraud with intent to evade tax, 50% of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid.

**History:** L. 1931, ch. 39, § 32; R.S. 1933 & C. 1943, 80-13-30; C. 1953, 59-13-29; renumbered by L. 1987, ch. 2, § 102.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as

§ 59-13-29, substituted "rules" for "rules and regulations" in Subsection (1) and made minor stylistic changes throughout the section.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

## COLLATERAL REFERENCES

C.J.S. — 85 C.J.S. Taxation § 1104(1).

Key Numbers. — Taxation ⇌ 1077.

### 59-7-131. Addition to tax in case of nonpayment.

Interest on Unpaid Amount.

(1) (a) Where the amount determined by the taxpayer as the tax imposed by this chapter, or any part of such amount, is not paid on or before the date prescribed for its payment, there shall be collected as a part of the tax interest upon such unpaid amount at the rate prescribed in § 59-1-402 from the date prescribed for payment until paid.

In Case Extension Is Granted.

(b) Where an extension of time for payment of the amount so determined as the tax by the taxpayer, or any part thereof, has been granted, and the amount (the time for payment of which has been extended) and the interest thereon determined under § 59-7-132 is not paid in full prior to the expiration of the period of the time of the extension, then, in lieu of the interest provided for in Subsection (1)(a), interest at the rate prescribed in § 59-1-402 shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

Interest on Deficiency and Additional Amounts, if Unpaid.

(2) When a deficiency, or any interest or additional amounts assessed in connection therewith under § 59-7-129, or under § 59-7-130, or any addition to the tax in case of delinquency provided for in § 59-7-128, is not paid in full within ten days from the date of notice and demand from the commission, there shall be collected, as part of the tax, interest upon the unpaid amount at the rate prescribed in § 59-1-402 from the date of such notice and demand until paid.

**History:** L. 1931, ch. 39, § 33; R.S. 1933 & C. 1943, 80-13-31; L. 1980, ch. 69, § 14; C. 1953, 59-13-30; renumbered by L. 1987, ch. 2, § 103.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered

this section, which formerly appeared as § 59-13-30, and made minor stylistic changes.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

## COLLATERAL REFERENCES

C.J.S. — 85 C.J.S. Taxation § 1104(1).

Key Numbers. — Taxation ⇌ 1077.

### 59-7-132. Interest when time for payment extended.

If the time for payment of the amount determined as the tax by the taxpayer is extended under the authority of Subsection 59-7-126(2), there shall be collected as a part of such amount interest at the rate prescribed in § 59-1-402 from the date when such payment should have been made, if no extension had been granted, until the expiration of the period of the extension.



**History:** L. 1931, ch. 39, § 34; R.S. 1933 & C. 1943, 80-13-32; L. 1977, ch. 219, § 10; 1980, ch. 69, § 15; C. 1953, 59-13-31; renumbered by L. 1987, ch. 2, § 104.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered

this section, which formerly appeared as § 59-13-31, and made minor stylistic changes.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

### 59-7-133. Extension of time to pay deficiency.

Where it is shown to the satisfaction of the commission that the payment of a deficiency upon the date prescribed for payment thereof will result in undue hardship to the taxpayer, the commission (except where the deficiency is due to negligence, to intentional disregard of rules, or to fraud with intent to evade tax) may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of six months. If an extension is granted, the commission may require the taxpayer to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties as the commission deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension.

**History:** R.S. 1933 & C. 1943, 80-13-33; C. 1953, 59-13-32; renumbered by L. 1987, ch. 2, § 105.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as

§ 59-13-32, substituted "rules" for "rules and regulations" in the first sentence and made minor stylistic changes throughout the section.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

### 59-7-134. Interest when deficiency extended.

If the time for the payment of any part of a deficiency is extended, there shall be collected as a part of the tax interest on the part of the deficiency (the time for payment of which is so extended) at the rate prescribed in § 59-1-402 for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period. If the part of the deficiency (the time for payment of which is so extended) is not paid in accordance with the terms of the extension, there shall be collected as a part of the tax interest on such unpaid amount at the rate prescribed in § 59-1-402 for the period from the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period.

**History:** L. 1931, ch. 39, § 35; R.S. 1933 & C. 1943, 80-13-34; L. 1977, ch. 219, § 11; 1980, ch. 69, § 16; C. 1953, 59-13-33; renumbered by L. 1987, ch. 2, § 106.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered

this section, which formerly appeared as § 59-13-33, and made minor stylistic changes.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

### 59-7-135. "Deficiency" defined.

In respect of a tax imposed by this chapter "deficiency" means:

- (1) the amount by which the tax imposed by this chapter exceeds the amount shown as the tax by the taxpayer upon its return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased

by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; or

(2) if no amount is shown as the tax by the taxpayer upon its return, or if no return is made by the taxpayer, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed (or collected without assessment) shall first be decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax.

**History:** L. 1931, ch. 39, § 36; R.S. 1933 & C. 1943, 80-13-35; C. 1953, § 59-13-34, renumbered by L. 1987, ch. 2, § 107.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered

this section, which formerly appeared as § 59-13-35, and made minor stylistic changes.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

### 59-7-136. Notice of deficiency — Petition for redetermination.

(1) (a) If the commission determines that there is a deficiency in any tax imposed by this chapter, the commission may send notice of the deficiency to the taxpayer by registered mail, postage prepaid.

(b) The notice shall set forth the details of the deficiency and the manner of computing the tax.

(c) Within 30 days after the notice is mailed, the taxpayer may file a petition with the commission for a redetermination of the deficiency.

(2) Except with the consent of the taxpayer, no assessment of a tax deficiency, and no levy or proceeding in court for its collection, shall be made, begun, or prosecuted until:

(a) notice has been mailed to the taxpayer;

(b) the 30-day period has expired; or

(c) if a petition has been filed with the commission, until its decision has become final.

**History:** L. 1931, ch. 39, § 37; R.S. 1933 & C. 1943, 80-13-36; L. 1983, ch. 283, § 2; 1986, ch. 56, § 12; C. 1953, 59-13-35; renumbered by L. 1987, ch. 2, § 108; 1987, ch. 161, § 228.

**Amendment Notes.** — The 1983 amendment inserted "registered" in the first sentence of Subsection (1); and added "as provided in Chapter 30, Title 59" to the last sentence of Subsection (1).

The 1986 amendment substituted "30" for "sixty" preceding "days" in Subsection (1) and (2) and made stylistic changes in Subsection (2).

The 1987 amendment by Chapter 2, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-35, and made minor stylistic changes.

The 1987 amendment by Chapter 161, effective January 1, 1988, added the (a), (b), and (c) designations in Subsection (1); in Subsection (1)(a), substituted "in any tax" for "in respect of the tax" and "the State Tax Commission may send notice of the deficiency" for "the Tax

Commission is authorized to send notice of such deficiency" and deleted "Such" from the end of the subsection; in Subsection (1)(c), deleted "as provided in Chapter 30, Title 59" from the end of the subsection; in Subsection (2), substituted "assessment of a tax deficiency" for "assessment of a deficiency in respect of the tax"; in Subsection (2)(a), deleted "nor until the expiration of such" from the end of the subsection; in Subsection (2)(b), added "has expired; or"; in Subsection (2)(c), inserted "State"; and made minor stylistic changes throughout the section.

**Retrospective Operation.** — Laws 1986, ch. 56, § 18 provides: "This act has retrospective operation to taxable years beginning on or after January 1, 1986."

Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

**No Retroactive Effect.** — Laws 1986, ch. 56, § 17 provides: "It is the intent of the Legis-

lature that the changes made in this act not be construed to have retroactive effect.”

### 59-7-137. Notices, how given.

All notices required to be mailed to a taxpayer under the provisions of this chapter, if mailed to it at its last known address as shown on the records of the commission, shall be sufficient for the purposes of this chapter.

**History:** L. 1931, ch. 398, § 41; R.S. 1933 & C. 1943, 80-13-40; C. 1953, 59-13-39; renumbered by L. 1987, ch. 2, § 109.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered

this section, which formerly appeared as § 59-13-39, and made a minor stylistic change.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: “This act has retrospective operation to January 1, 1987.”

### 59-7-138. Period of limitation for making assessments — Change, correction, or amendment of federal income tax — Duty of corporation to notify state.

(1) Except as provided in § 59-7-139, the amount of taxes imposed by this chapter shall be assessed within three years after the return was filed, and no proceeding in the court without assessment for the collection of such taxes shall be begun after the expiration of such period.

(2) In the case of a deficiency attributable to the application of a net loss carryback, this deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the net loss which results in the carryback may be assessed.

(3) If the amount of net income for any year of any corporation as returned to the United States treasury department is changed or corrected by the commissioner of internal revenue or other officer of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States results in a change of net income, such taxpayer shall report such change or corrected net income within 90 days after the final determination of such change or correction as required to the commission and shall concede the accuracy of such determination or state wherein it is erroneous. Any corporation filing an amended return with such department shall also file, within 90 days thereafter, an amended return with the commission which shall contain such information as it shall require.

(4) If a corporation shall fail to report a change or correction by the commissioner of internal revenue or other officer of the United States or other competent authority or shall fail to file an amended return, any deficiency resulting from such adjustments may be assessed and collected within three years after said change, correction, or amended return is reported to or filed with the Federal Government.

(5) If any corporation agrees with the United States commissioner of internal revenue for an extension, or renewals thereof, of the period for proposing and assessing deficiencies in federal income tax for any year, the period for mailing notices of proposed deficiency tax for such year shall be three years after the return was filed or six months after the date of the expiration of the agreed period for assessing deficiencies in federal income tax, whichever period expires the later.

**History:** L. 1931, ch. 39, § 42; R.S. 1933 & C. 1943, 80-13-41; L. 1955, ch. 122, § 1; 1957, ch. 123, § 1; 1977, ch. 227, § 4; C. 1953, 59-13-40; renumbered by L. 1987, ch. 2, § 110.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered

this section, which formerly appeared as § 59-13-40, added the subsection designations and made minor stylistic changes in Subsections (1), (3) and (4).

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

### 59-7-139. Limitation for enforcing collection.

In Case of Fraudulent Return or Failure to File Return.

(1) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time. Period of Limitation for Enforcing Collection.

(2) Where the assessment of any tax imposed by this chapter has been made within the period of limitation provided in § 59-7-138, such tax may be collected by warrant and levy as provided in §§ 59-7-147 and 59-7-148, or by a proceeding in court, but only if begun within three years after the assessment of the tax.

**History:** L. 1931, ch. 39, § 43; R.S. 1933 & C. 1943, 80-13-42; C. 1953, 59-13-41; renumbered by L. 1987, ch. 2, § 111.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as

§ 59-13-41, and made minor stylistic changes in Subsection (2).

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

### 59-7-140. Suspension of running of statute of limitations.

The running of the statute of limitations provided in § 59-7-138 or 59-7-139, on the making of assessments and the beginning of a proceeding for collection by warrant and levy, or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under § 59-7-136) be suspended for the period during which the commission is prohibited from making the assessment or beginning proceedings for collection and for 60 days thereafter.

**History:** L. 1931, ch. 39, § 44; R.S. 1933 & C. 1943, 80-13-43; C. 1953, 59-13-42; renumbered by L. 1987, ch. 2, § 112.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered

this section, which formerly appeared as § 59-13-42, and made minor stylistic changes.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

### 59-7-141. Overpayments.

Credits and Refunds.

(1) Where there has been an overpayment of any tax imposed by this chapter, the amount of such overpayment shall be credited against any tax then due from the taxpayer under this chapter, and any balance shall be refunded immediately to the taxpayer.

Limitations on Time.

(2) (a) No such credit or refund shall be allowed or made after three years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed with the commission by the taxpayer.

(b) If the claim for credit or refund relates to an overpayment attributable to a net loss carryback adjustment as provided in Subsection 59-7-108(14), in lieu of the three-year period provided for in Subsection (2)(a), the period shall be that period which ends with the expiration of the 15th day of the 40th month following the end of the taxable year of the net loss which results in the carryback.

(c) Where an overpayment relates to adjustments to net income referred to in § 59-7-138, credit may be allowed or a refund paid any time before the expiration of the period within which a deficiency may be assessed.

**Amount.**

(d) The amount of the credit or refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or if no claim was filed, then during the two years immediately preceding the allowance of the credit or refund.

**Overpayment Found on Appeal.**

(3) Except as provided in Subsections (2)(b) and (2)(c), if on appeal the tax division of the district court and/or the Supreme Court finds that there is no deficiency and further finds that the taxpayer has made an overpayment of tax in respect of the taxable year in respect to which the commission determined the deficiency, the tax division of the district court and/or the Supreme Court shall have jurisdiction to determine the amount of such overpayment and such amount shall, when the decision of the tax division of the district court and/or the Supreme Court has become final, be credited or refunded to the taxpayer. No such credit or refund shall be made of any portion of the tax paid more than three years before the filing of the claim or the filing of the appeal or petition, whichever is earlier.

**History:** L. 1931, ch. 39, § 45; R.S. 1933 & C. 1943, 80-13-44; L. 1955, ch. 122, § 1; 1977, ch. 80, § 4; 1977, ch. 227, § 5; C. 1953, 59-13-43; renumbered by L. 1987, ch. 2, § 113.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-43, and made minor stylistic changes.

**Compiler's Notes.** — This section was amended twice in the 1977 Session, once by

Chapter 80, approved March 19, 1977, and once by Chapter 227, effective for all taxable years beginning on or after January 1, 1977. The compiler has made a composite section including the changes made by both.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

**Cross-References.** — District court tax divisions, § 59-1-601 et seq.

**COLLATERAL REFERENCES**

**C.J.S.** — 85 C.J.S. Taxation §§ 1106, 1109.

**Key Numbers.** — Taxation ⇌ 1097.

**59-7-142. Period of limitation for claiming refund.**

Any taxpayer claiming to be entitled to a refund or credit under the provisions of § 59-7-141 may file a claim therefor with the commission within the time provided in said section; provided, that no such claim may be filed for refund or credit on account of any tax in respect of which a review by appeal to the tax division of the district court and/or the Utah Supreme Court has been had. Notice and an opportunity to be heard shall be given to the taxpayer, and after hearing a decision shall be made as quickly as possible.

**History:** L. 1931, ch. 39, § 46; R.S. 1933 & C. 1943, 80-13-45; L. 1977, ch. 80, § 5; C. 1953, 59-13-44; renumbered by L. 1987, ch. 2, § 114.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered

this section, which formerly appeared as § 59-13-44, and made minor stylistic changes.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

## COLLATERAL REFERENCES

C.J.S. — 85 C.J.S. Taxation § 1109.

**Key Numbers.** — Taxation ⇌ 1097.

**59-7-143. Chapter applicable to receivers, trustees in bankruptcy and assignees.**

Receivers, trustees in bankruptcy, and assignees for creditors required to make returns hereunder shall be subject to all of the provisions of this chapter which apply to corporations, except as otherwise expressly provided.

**History:** L. 1931, ch. 39, § 51; R.S. 1933 & C. 1943, 80-13-50; C. 1953, 59-13-49; renumbered by L. 1987, ch. 2, § 115.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered

this section, which formerly appeared as § 59-13-49, and made a minor stylistic change.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

## COLLATERAL REFERENCES

C.J.S. — 85 C.J.S. Taxation § 1092 et seq.

**Key Numbers.** — Taxation ⇌ 1011.

**59-7-144. Branch offices of commission.**

The commission shall administer and enforce the tax herein imposed, and for that purpose it may divide the state into districts, in each of which a branch office of the commission may be maintained; provided, that in no case shall a county be divided in forming a district.

**History:** L. 1931, ch. 39, § 52; R.S. 1933 & C. 1943, 80-13-51; C. 1953, 59-13-50; renumbered by L. 1987, ch. 2, § 116.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered

this section, which formerly appeared as § 59-13-50, and made minor stylistic changes.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

### 59-7-145. Collection agents — Bond.

The commission is authorized at its discretion to designate agents for the purpose of collecting taxes hereunder, and shall require from each of them an adequate bond.

**History:** L. 1931, ch. 39, § 53; R.S. 1933 & C. 1943, 80-13-52; C. 1953, 59-13-51; renumbered by L. 1987, ch. 2, § 117.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered

this section, which formerly appeared as § 59-13-51, and made a minor stylistic change.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

### 59-7-146. Further powers of commission.

If Taxpayer Fails to Make Return.

(1) If any taxpayer fails to make return as herein required, the commission is authorized to make an estimate of the taxes due from such taxpayer from any information in its possession.

Examination of Taxpayers' Records.

(2) The commission, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of net income of any corporation where information has been obtained, shall also have power to examine or to cause to have examined, by any agent or representative designated by it for that purpose, any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of any officer or employee of the corporation rendering such return or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for its information.

**History:** L. 1931, ch. 39, § 54; R.S. 1933 & C. 1943, 80-13-53; C. 1953, 59-13-52; renumbered by L. 1987, ch. 2, § 118.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered

this section, which formerly appeared as § 59-13-52, and made minor stylistic changes.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

### 59-7-147. Collection of tax by warrant.

If the tax imposed by this chapter or any portion thereof is not paid when the same becomes due, the commission may issue a warrant, in duplicate under its official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of the taxpayer found within his county, for the payment of the amount thereof, with the added penalties, interest, and the cost of executing the warrant, and to return such warrant to the commission and pay to it the money collected by virtue thereof by a time to be therein specified, not more than 60 days from the date of the warrant.

**History:** L. 1931, ch. 39, § 55; R.S. 1933 & C. 1943, 80-13-54; C. 1953, 59-13-53; renumbered by L. 1987, ch. 2, § 119.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered

this section, which formerly appeared as § 59-13-53, and made minor stylistic changes.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

## NOTES TO DECISIONS

**Power of commission.**

Legislature may grant to tax commission power to determine whether there has been a

violation of the tax law. *Tite v. State Tax Comm.*, 89 Utah 404, 57 P.2d 734 (1936).

**59-7-148. Duties of sheriff.**

Immediately upon receipt of said warrant in duplicate the sheriff shall file the duplicate with the clerk of the district court in his county, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the delinquent taxpayer mentioned in the warrant, and in appropriate columns the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such duplicate is filed, and thereupon the amount of such warrant so docketed shall have the force and effect of an execution against all personal property of the delinquent taxpayer, and shall also become a lien upon the real property of the corporation against whom it is issued in the same manner as a judgment duly rendered by any district court and docketed in the office of the clerk thereof. The sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner as is prescribed by law in respect to executions issued against property upon judgments of a court record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner.

**History:** L. 1931, ch. 39, § 56; R.S. 1933 & C. 1943, 80-13-55; C. 1953, 59-13-54; renumbered by L. 1987, ch. 2, § 120.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-54.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

**Cross-References.** — Execution and proceedings supplemental thereto, Rule 69, U.R.C.P.

**59-7-149. Failure to make return or supply information — Penalty.**

Every officer or employee of any corporation, who, without fraudulent intent, fails to make, render, sign, or verify any return, or to supply any information within the time required by or under the provisions of this chapter, shall be liable to a penalty as provided in § 59-1-401, assessed and collected by the commission in the same manner as is provided in this chapter with regard to delinquent taxes.

**History:** L. 1931, ch. 39, § 57; R.S. 1933 & C. 1943, 80-13-56; C. 1953, 59-13-55; renumbered by L. 1987, ch. 2, § 121; 1987, ch. 3, § 15.

**Amendment Notes.** — The 1987 amendment by Chapter 2, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-55, substituted "fails" for "shall fail" and "as provided in § 59-1-401" for "of not more than \$100 to be imposed" and deleted "tax" preceding "commission."

The 1987 amendment by Chapter 3, effective February 6, 1987, made changes identical to those made by Chapter 2.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

Laws 1987, ch. 3, § 59 provides: "This act has retrospective operation to January 1, 1987."



## COLLATERAL REFERENCES

**C.J.S.** — 85 C.J.S. Taxation § 1110(2).  
**Key Numbers.** — Taxation ⇌ 1103.

**59-7-150. General violations and penalties.**

(1) Every person who, without fraudulent intent, fails to make, render, sign, or verify any return, or to supply any information within the time required by or under the provisions of this chapter, is liable for a civil penalty as provided in § 59-1-401 imposed, assessed, and collected by the commission in the same manner as provided by this chapter for delinquent taxes.

(2) It is unlawful for any person, with intent to evade any tax, to fail to timely remit the full amount of tax required by the provisions of this chapter. A violation of this section is punishable as provided in § 59-1-401.

(3) Every person who knowingly or intentionally makes, renders, signs, or verifies any false or fraudulent information is guilty of a criminal violation as provided in § 59-1-401.

(4) Every person who, with intent to evade any tax or any requirement of this chapter, fails to make, render, sign, or verify any return, or supply any information within the time required under the provisions of this chapter, is guilty of a criminal violation as provided in § 59-1-401.

**History:** L. 1931, ch. 39, § 58; R.S. 1933 & C. 1943, 80-13-57; L. 1983, ch. 266, § 1; C. 1953, 59-13-56; renumbered by L. 1987, ch. 2, § 122; 1987, ch. 3, § 16.

**Amendment Notes.** — The 1983 amendment rewrote this section.

The 1987 amendment by Chapter 2, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-56; in Subsection (1), substituted "as provided in § 59-1-401" for "of \$50" and deleted the former second sentence, defining "person"; rewrote Subsection (2); substituted all of the language of Subsection (3) following "guilty of" for "the crime of making a false or inconsistent state-

ment, punishable as otherwise provided by law"; substituted all of language of Subsection (4) beginning with "criminal" for "class B misdemeanor"; deleted former Subsection (5), relating to the statute of limitations; and made minor stylistic changes.

The 1987 amendment by Chapter 3, effective February 6, 1987, made changes identical to those made by Chapter 2.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

Laws 1987, ch. 3, § 59 provides: "This act has retrospective operation to January 1, 1987."

## COLLATERAL REFERENCES

**C.J.S.** — 85 C.J.S. Taxation § 1110(2).  
**Key Numbers.** — Taxation ⇌ 1103.

**59-7-151. Power to waive penalties or interest.**

The commission may waive penalties or interest as provided in § 59-1-401.

**History:** L. 1931, ch. 39, § 59; R.S. 1933 & C. 1943, 80-13-58; L. 1983, ch. 266, § 2; C. 1953, 59-13-57; renumbered by L. 1987, ch. 2, § 123.

**Amendment Notes.** — The 1983 amendment inserted "civil."

The 1987 amendment, effective February 6,

1987, renumbered this section, which formerly appeared as § 59-13-57, and rewrote the contents thereof to the extent that a detailed analysis is impracticable.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

## COLLATERAL REFERENCES

C.J.S. — 85 C.J.S. Taxation §§ 1104(1), 1110(2).

Key Numbers. — Taxation ⇌ 1103.

**59-7-152. Venue of offenses — Evidence.**

The failure to do any act required by or under the provisions of this chapter shall be deemed an act committed in part at the office of the commission. The certificate of the commission to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this chapter, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

**History:** L. 1931, ch. 39, § 60; R.S. 1933 & C. 1943, 80-13-59; C. 1953, 59-13-58; renumbered by L. 1987, ch. 2, § 124.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered

this section, which formerly appeared as § 59-13-58, and made minor stylistic changes.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

## COLLATERAL REFERENCES

C.J.S. — 85 C.J.S. Taxation § 1110(2).

Key Numbers. — Taxation ⇌ 1103.

**59-7-153. Revenue received by commission — Deposit with state treasurer — Distribution or crediting to Uniform School Fund — Refund claim payments.**

(1) All revenue collected or received by the commission under this chapter shall be deposited daily with the state treasurer. Such revenue, subject to the refund provisions of this section, shall be periodically distributed or credited to the Uniform School Fund.

(2) The commission shall from time to time certify to the state auditor the amount of any refund authorized by it, the amount of interest computed thereon under the provisions of § 59-7-154, from whom the tax to be refunded was collected, or by whom it was paid, and such refund claims shall be paid in order out of the funds first accruing to the Uniform School Fund from the provisions of this section.

**History:** L. 1931, ch. 39, § 61; R.S. 1933, 80-13-60; L. 1935, ch. 89, § 1; C. 1943, 80-13-60; L. 1947, ch. 116, § 1; 1955, ch. 122, § 1; 1965, ch. 123, § 4; 1967, ch. 157, § 1; 1986, ch. 56, § 13; C. 1953, 59-13-59; renumbered by L. 1987, ch. 2, § 125.

**Amendment Notes.** — The 1986 amendment deleted the former third paragraph, which read: "As of the effective date of this act, the corporation income-base fund, the corporation property-base fund, the corporation income-base reserve fund, and the corporation property-base reserve fund, as formerly pro-

vided in this section, shall be closed and any balances remaining therein shall be distributed and credited to the uniform school fund."

The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-59, designated the previously undesignated two paragraphs as Subsections (1) and (2) and made minor stylistic changes.

**Retrospective Operation.** — Laws 1986, ch. 56, § 18 provides: "This act has retrospective operation to taxable years beginning on or after January 1, 1986."

Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

**No Retroactive Effect.** — Laws 1986, ch. 56, § 17 provides: "It is the intent of the Legis-

lature that the changes made in this act not be construed to have retroactive effect."

**Cross-References.** — Uniform School Fund, Chapter 7 of Title 53.

#### COLLATERAL REFERENCES

**C.J.S.** — 85 C.J.S. Taxation § 1110(1).

**Key Numbers.** — Taxation ⇌ 1104.

### 59-7-154. Interest on overpayments and refunds.

Interest shall be allowed and paid upon any overpayment in respect of any tax imposed by this chapter at the rate prescribed in § 59-1-402, as follows:

(1) in the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken; and

(2) in the case of a refund, from the date of the overpayment to a date preceding the date of the refund check by not more than 30 days, such date to be determined by the commission.

**History:** L. 1931, ch. 39, § 62; R.S. 1933 & C. 1943, 80-13-61; L. 1977, ch. 219, § 12; 1980, ch. 69, § 17; C. 1953, 59-13-60; renumbered by L. 1987, ch. 2, § 126.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered

this section, which formerly appeared as § 59-13-60, and made minor stylistic changes.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

#### COLLATERAL REFERENCES

**C.J.S.** — 85 C.J.S. Taxation § 1109.

**Key Numbers.** — Taxation ⇌ 1097.

### 59-7-155. Failure to pay tax — Suspension or forfeiture of corporate rights.

(1) If a tax computed and levied under this chapter is not paid before 5 p.m. on the last day of the 11th month after the date of delinquency, the corporate powers, rights, and privileges of the delinquent taxpayer, if it is a domestic corporation, shall be suspended, and if a foreign corporation, it shall forfeit its rights to do intrastate business in this state.

(2) The commission shall transmit the name of each such corporation to the Division of Corporations and Commercial Code, which shall immediately record the same in such manner that it may be available to the public. This suspension or forfeiture shall become effective from the time such record is made, and the certificate of the Division of Corporations and Commercial Code shall be prima facie evidence of such suspension or forfeiture.

**History:** L. 1931, ch. 39, § 63; R.S. 1933 & C. 1943, 80-13-62; L. 1984, ch. 66, § 179; C. 1953, 59-13-61; renumbered by L. 1987, ch. 2, § 127.

**Amendment Notes.** — The 1984 amend-

ment substituted "Division of Corporations and Commercial Code" for "secretary of state" in two places in the second paragraph.

The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly

appeared as § 59-13-61, designated the previously undesignated paragraphs as Subsections (1) and (2) and made minor stylistic changes.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

**Cross-References.** — Division of Corporations and Commercial Code, Chapter 1A of Title 13.

#### NOTES TO DECISIONS

##### **Rights of disenfranchised corporation.**

Even though a foreign corporation's franchise was revoked for the failure to pay taxes, it could enforce rights growing out of contracts made while it was franchised in the state because the bringing of one suit would not be doing "intrastate business" within meaning of this section. *Prudential Fed. Sav. & Loan Ass'n v. Hartford Accident & Indem. Co.*, 7 Utah 2d 366, 325 P.2d 899 (1958).

Although corporation had been suspended

for failure to pay its franchise taxes, and such suspension places corporation under some disabilities, fact that corporation was suspended did not prevent it from maintaining suit for damages on alleged grounds of negligence. *Mackay & Knobel Enters., Inc. v. Teton Van Gas, Inc.*, 23 Utah 2d 200, 460 P.2d 828 (1969).

Suspended corporation had capacity to sue for alleged breach of loan agreement. *M. & S. Constr. & Eng'g Co. v. Clearfield State Bank*, 24 Utah 2d 139, 467 P.2d 410 (1970).

#### COLLATERAL REFERENCES

**C.J.S.** — 84 C.J.S. Taxation § 1110(2).

**Key Numbers.** — Taxation ☞ 1103.

### 59-7-156. Doing business thereafter — Penalty.

Pursuant to any suspension or forfeiture under § 59-7-155, any person who attempts or purports to exercise any of the rights, privileges, or powers of any suspended domestic corporation, or who transacts or attempts to transact any intrastate business in this state in behalf of any forfeited foreign corporation, is guilty of a class B misdemeanor; a fine imposed shall be not less than \$250, and a penalty of imprisonment shall be not less than 50 days in the county jail. Jurisdiction of the offense shall be in any county in which any part of the attempted exercise of the powers, or any part of the transaction of business occurred. Every contract made in violation of this section is unenforceable by the corporation or person.

**History:** L. 1931, ch. 39, § 64, R.S. 1933 & C. 1943, 80-13-63; 1986, ch. 56, § 14; 1986, ch. 178, § 55; C. 1953, 59-13-62; renumbered by L. 1987, ch. 2, § 128.

**Amendment Notes.** — The 1986 amendment by Chapter 56, in the first sentence, substituted "Pursuant to any suspension or forfeiture under § 59-13-61" for "Any," "suspended" for "such" and "forfeited" for "such," inserted "class B" before "misdemeanor" and deleted "and shall be punished by a fine of not less than \$250 and not exceeding \$1,000, or by imprisonment in the county jail not less than fifty days or more than five hundred days, or by both such fine and imprisonment" at the end of the sentence.

The 1986 amendment by Chapter 178, in the first sentence, substituted "suspended" for "such" preceding "domestic corporation," inserted "class B," rewrote the limits on the fine and sentence to be imposed and made a minor

punctuation change; substituted "the" for "such" throughout the section; and, in the second sentence, deleted "held to be" preceding "in any county" and a comma following "business transaction."

This section was set out as reconciled by the Office of Legislature Research and General Counsel.

The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-62, and made a minor stylistic change.

**Retrospective Operation.** — Laws 1986, ch. 56, § 18 provides: "This act has retrospective operation to taxable years beginning on or after January 1, 1986."

Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

**No Retroactive Effect.** — Laws 1986, ch. 56, § 17 provides: "It is the intent of the Legis-

lature that the changes made in this act not be construed to have retroactive effect.”

#### COLLATERAL REFERENCES

C.J.S. — 84 C.J.S. Taxation § 1110(2).

Key Numbers. — Taxation ⇐ 1103.

### 59-7-157. Relief in case of suspension or forfeiture.

(1) Any corporation which has suffered the suspension or forfeiture referred to in § 59-7-155 may be relieved from that suspension or forfeiture by applying for that relief in writing, paying the tax and the interest and penalties for nonpayment of which the suspension or forfeiture occurred, and paying a reinstatement fee of \$100. If the corporation has done business in this state during the period of such suspension, a tax shall be computed according to this chapter for each year in which the business was done, and the tax shall be added to the delinquency and penalties provided in this section. If the due date of any return required in this section has not passed, a return need not be filed until that due date. Application for revivor may be made by any stockholder or creditor of the corporation or by a majority of the surviving trustees or directors, and the same shall be filed with the Division of Corporations and Commercial Code. Upon payment to the commission of the taxes, penalties, and reinstatement fee provided for in this section, the Division of Corporations and Commercial Code shall issue a certificate of revivor, and the applicant shall be revived. The revivor shall be without prejudice to any action, defense, or right which has accrued by reason of the original suspension or forfeiture. The certificate of revivor is prima facie evidence of the revivor.

(2) If any corporation has adopted, subsequent to such suspension or forfeiture, any name so closely resembling the name of the reviving corporation as will tend to deceive, then the reviving corporation is entitled to a certificate of revivor pursuant to the terms of this section only upon adopting a new name, and in such case nothing in this section may be construed as permitting the reviving corporation to carry on any business under its former name. The reviving corporation may use its former name or may take the new name only upon filing an application for it with the Division of Corporations and Commercial Code, and upon the issuing of a certificate to such corporation by the Division of Corporations and Commercial Code, setting forth the right of such corporation to take such new name or use its former name as the case may be. The Division of Corporations and Commercial Code may not issue any certificate permitting any corporation to take or use the name of any corporation already organized in this state and which has not suffered a forfeiture, or take or use a name so closely resembling the name of any corporation already organized in this state as will tend to deceive.

**History:** L. 1931, ch. 39, § 65, R.S. 1933 & C. 1943, 80-13-64; L. 1969, ch. 183, § 5; 1984, ch. 66, § 180; C. 1953, 59-13-63; renumbered by L. 1987, ch. 2, § 129; 1987, ch. 148, § 5.

**Amendment Notes.** — The 1984 amendment substituted “Division of Corporations and Commercial Code” for “secretary of state” throughout the section; and made a minor change in phraseology.

The 1987 amendment by Chapter 2, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-63, and made minor stylistic changes in Subsection (1).

The 1987 amendment by Chapter 148, effective March 16, 1987, in Subsection (1), rewrote the first sentence and added the third sentence; and made minor stylistic changes throughout the section.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

Laws 1987, ch. 148, § 8 provides: "This act has retrospective operation to January 1, 1987."

**Cross-References.** — Division of Corporations and Commercial Code, Chapter 1A of Title 13.

#### COLLATERAL REFERENCES

C.J.S. — 85 C.J.S. Taxation § 1110(2).

Key Numbers. — Taxation ⇨ 1103.

### 59-7-158. Confidentiality of information.

The confidentiality of returns and other information filed with the commission shall be governed by § 59-1-403.

**History:** L. 1931, ch. 39, § 67; R.S. 1933 & C. 1943, 80-13-65; L. 1969, ch. 183, § 6; C. 1953, 59-13-64; renumbered by L. 1987, ch. 2, § 130.

**Amendment Notes.** — The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as

§ 59-13-64, and rewrote the contents thereof to the extent that a detailed analysis is impracticable.

**Retrospective Operation.** — Laws 1987, ch. 2, § 331 provides: "This act has retrospective operation to January 1, 1987."

#### COLLATERAL REFERENCES

C.J.S. — 85 C.J.S. Taxation § 1110(2).

Key Numbers. — Taxation ⇨ 1103.

## PART 2

### NET INCOME TAX

#### 59-7-201. Tax basis — Exceptions — Rate.

(1) There is imposed upon every bank or corporation except those exempt under § 59-7-105 for each taxable year, a tax upon its net income derived from sources within this state on or after January 1, 1977, other than income for any period which the bank or corporation is required to include in its tax base under § 59-7-102.

(2) The tax rate on the net income shall be:

(a) 4% for tax years beginning prior to January 1, 1983;

(b) 4.65% for tax years beginning on or after January 1, 1983; and

(c) 5% thereafter for tax years beginning on or after January 1, 1984.

(3) In no case shall the tax be less than \$100.

**History:** C. 1953, 59-13-65, enacted by L. 1959, ch. 108, § 1; L. 1965, ch. 123, § 5; 1973, ch. 146, § 5; 1977, ch. 229, § 4; 1983 (1st S.S.), ch. 7, § 1; 1984, ch. 58, § 2; renumbered by L. 1987, ch. 2, § 131.

**Amendment Notes.** — The 1983 (1st S.S.) amendment deleted "at the rate of four per cent" after "a tax" in the first paragraph; and added the second paragraph, including Subsections (1) to (3).

The 1984 amendment increased the rate in Subsection (3) from 4% to 5%; substituted the last paragraph for "but in no case shall the tax be less than \$50 for all tax years beginning on or after January 1, 1983"; and made minor changes in style.

The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-65, added present subsection designations (1) to (3), redesignated for-