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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-

mer Subsections (1) to (3) as present Subsections (2)(a) to (2)(c) and made minor stylistic changes in Subsection (1).

Effective Dates. — Laws 1983 (1st S.S.), ch. 7, § 2 provides: "This act shall take effect upon approval and have retrospective operations to January 1, 1983." Approved August 9, 1983.

Retrospective Operation. — Laws 1984, ch. 58, § 3 provides: "This act shall have retro-

spective 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. — Uniform Division of Income for Tax Purposes Act, Part 3 of this chapter.

COLLATERAL REFERENCES

C.J.S. — 85 C.J.S. Taxation § 1093.

Key Numbers. — Taxation ⇌ 1015.

59-7-202. "Net income" defined.

For purposes of the tax imposed by § 59-7-201, net income derived from or attributable to sources within this state includes income from tangible or intangible property located or having a situs in this state, regardless of whether carried on in intrastate, interstate, or foreign commerce.

History: C. 1953, 59-13-66, enacted by L. 1959, ch. 108, § 1; 1977, ch. 227, § 6; renumbered by L. 1987, ch. 2, § 132.

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

this section, which formerly appeared as § 59-13-66, 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 § 1089.

Key Numbers. — Taxation ⇌ 980.

59-7-203. Computation of net income.

For purposes of the tax imposed by § 59-7-201, net income shall be determined in accordance with the provisions of §§ 59-7-106 through 59-7-122, except that wherever the date December 31, 1930 appears, the date December 31, 1958 shall be substituted, and wherever the date January 1, 1931 appears, the date January 1, 1959 shall be substituted.

History: C. 1953, 59-13-67, enacted by L. 1959, ch. 108, § 1; renumbered by L. 1987, ch. 2, § 133.

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

this section, which formerly appeared as § 59-13-67, 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 to 1101.

Key Numbers. — Taxation ⇌ 980.

59-7-204. Income attributed to sources within the state.

For purposes of the tax imposed by § 59-7-201, the portion of net income derived from or attributable to sources within this state, shall be determined in accordance with the rules set forth in the Uniform Division of Income for Tax Purposes Act.

History: C. 1953, 59-13-68, enacted by L. 1959, ch. 108, § 1; L. 1967, ch. 158, § 22; renumbered by L. 1987, ch. 2, § 134.

Amendment Notes. — The 1987 amendment, effective February 6, 1987, renumbered this section which formerly appeared as § 59-13-68, and made a minor stylistic change.

Uniform Division of Income for Tax Purposes Act. — See Part 3 of this chapter.

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 ⇌ 983.

59-7-205. Sections applicable for purposes of tax imposed.

For purposes of the tax imposed by § 59-7-201, all of the provisions of the following sections of this chapter shall be fully applicable: § 59-7-101, §§ 59-7-123 through 59-7-152, § 59-7-154, § 59-7-158, and §§ 59-7-301 through 59-7-321.

History: C. 1953, 59-13-69, enacted by L. 1959, ch. 108, § 1; L. 1977, ch. 227, § 7; renumbered by L. 1987, ch. 2, § 135.

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

this section, which formerly appeared as § 59-13-69, 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 § 1090.

Key Numbers. — Taxation ⇌ 965.

59-7-206. Offsets against tax.

There shall be offset against the tax imposed by § 59-7-201 for any period the amount of any tax imposed on the taxpayer under § 59-7-102 for the same period. In the event that taxes, interest, and penalties have been or shall be assessed against, paid by, or collected from a taxpayer under § 59-7-201, which assessment, payment, or collection should have been made under § 59-7-102, such taxes, interest, and penalties shall be considered as having been assessed, paid, or collected under § 59-7-102 as of the dates they were made.

History: C. 1953, 59-13-70, enacted by L. 1959, ch. 108, § 1; L. 1973, ch. 146, § 6; renumbered by L. 1987, ch. 2, § 136.

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

this section, which formerly appeared as § 59-13-70, 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 § 1099.

Key Numbers. — Taxation ⇌ 1031 et seq., 1047.

59-7-207. Corporations becoming subject to tax — Assessment under other sections.

Where a corporation formerly subject to tax under § 59-7-102 becomes subject to tax under § 59-7-201, it shall file an information return for the income year in which the change occurs. The tax for the year in which the change occurs will be assessed under § 59-7-102 and not under § 59-7-201. For years subsequent to the year in which the change occurs, the tax will be assessed under § 59-7-201.

History: C. 1953, 59-13-71, enacted by L. 1959, ch. 108, § 1; L. 1973, ch. 146, § 7; renumbered by L. 1987, ch. 2, § 137.

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

this section, which formerly appeared as § 59-13-71, 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 § 1093.

Key Numbers. — Taxation ⇌ 1015.

59-7-208. Provisions followed for purposes of tax collected.

For the purposes of the tax collected under § 59-7-201, and interest and penalties arising in connection therewith, the provisions of § 59-7-153 shall be followed.

History: C. 1953, 59-13-72, enacted by L. 1959, ch. 108, § 1; L. 1967, ch. 157, § 2; renumbered by L. 1987, ch. 2, § 138.

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

this section, which formerly appeared as § 59-13-72, 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 § 1090.

Key Numbers. — Taxation ⇌ 965.

PART 3
UNIFORM DIVISION OF INCOME FOR TAX
PURPOSES ACT

59-7-301. Short title.

This part is known as the "Uniform Division of Income for Tax Purposes Act."

History: L. 1967, ch. 158, § 20; C. 1953, 59-13-97; renumbered by L. 1987, ch. 2, § 161.

Amendment Notes. — The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-97, and made minor stylistic changes.

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

Comparable Provisions. — States that have adopted the Uniform Division of Income for Tax Purposes Act include Idaho and New Mexico.

59-7-302. Definitions.

As used in this part, unless the context otherwise requires:

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

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

(3) "Common ownership" in the case of corporations means the direct or indirect control or ownership of more than 50% of the outstanding voting stock of the corporation carrying on unitary business activity. Unitary business activity can ordinarily be illustrated where the activities of the corporations are:

(i) in the same general line of business, such as insurance, transportation, or finance, or the manufacturing, wholesaling, or retailing of similar products;

(ii) steps in a vertically integrated enterprise or process; or

(iii) horizontally integrated;

and the corporations are economically interdependent as demonstrated by the exercise of strong centralized management, functional integration, and attainment of operational economies of scale. Tax haven corporations shall be included in the unitary group.

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

(5) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, investment company, or any type of insurance company.

(6) "Foreign operating company" means a corporation incorporated in the United States, 80% or more of whose business activity as measured according to Subsection 59-7-303(2) is conducted outside the United States.

(7) "Nonbusiness income" means all income other than business income.

(8) "Public utility" means any business entity which owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, oil, oil products, or gas.

(9) "Sales" means all gross receipts of the taxpayer not allocated under §§ 59-7-306 through 59-7-310.

(10) "Separate and distinct" means two or more corporations related through common ownership whose business activities are unrelated by product, service, or industry and are not vertically or horizontally integrated. Corporations required, by statute or administrative determination, to determine income derived from or attributable to this taxing jurisdiction by apportionment formulas which are materially different, either with regard to composition of the factors or with respect to the methods used to determine the factors, shall be deemed to be engaged in separate and distinct lines of business unless vertically or horizontally integrated.

(11) "State" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(12) "State of the United States" includes any of the 50 states or the District of Columbia and "United States" includes the 50 states and the District of Columbia.

(13) "Tax haven corporation" means any corporation:

(a) which is incorporated in a foreign country or United States' possession or commonwealth that either does not impose a corporation tax based upon income, or imposes a corporation tax based upon income at an effective rate lower than 65% of the maximum marginal federal tax rate applied to the taxable income of the corporation determined under federal law as if it were a domestic corporation; and

(b) which does not perform substantial business activity independent of that involving affiliates which are members of a unitary group which files a combined report.

(14) "Threshold level of business activity" means business activity in the United States equal to or greater than 20% of the corporation's total business activity as determined under Subsection 59-7-303(2).

(15) (a) "Unitary business" and "unitary group" are interchangeable and mean two or more corporations related through common ownership whose business activities are integrated with, dependent upon, and contribute to each other.

(b) "Unitary business" or "unitary group" does not include any corporation related by stock ownership or otherwise to any corporation liable to report under §§ 59-7-301 through 59-7-321 whose principal business activities relate to a separate and distinct line of business.

(16) "Worldwide report" or "worldwide combined report" means the combination of the income and activities of all affiliated corporations

engaged in a unitary business irrespective of the country or countries in which the corporations are incorporated or conduct business activity.

History: L. 1967, ch. 158, § 1; 1986, ch. 80, § 3; C. 1953, 59-13-78; renumbered by L. 1987, ch. 2, § 141.

Amendment Notes. — The 1986 amendment redesignated former Subsections (a) and (b) as present Subsections (1) and (2), (c) and (d) as (4) and (5), (e) to (g) as (7) to (9) and (h) as (11); added Subsections (3), (6), (10) and (12) to (16); and made minor stylistic changes throughout the section.

The 1987 amendment, effective February 6,

1987, renumbered this section, which formerly appeared as § 59-13-78, and made minor stylistic changes in the introductory paragraph and in Subsections (6), (9), (14) and (15).

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

Brigham Young Law Review. — Impact of the Mobil Case on Apportionment of Income, 1981 B.Y.U. L. Rev. 87.

Tax Apportionment of the Income of a Unitary Business: An Examination of Mobil Oil

Corp. v. Commissioner of Taxes of Vermont, 1981 B.Y.U. L. Rev. 107.

C.J.S. — 85 C.J.S. Taxation §§ 1090, 1097.

Key Numbers. — Taxation ⇌ 983, 1001.

59-7-303. Apportionable income.

(1) When the income of a taxpayer subject to the tax imposed under this part is derived from or attributable to sources both within and without the state the tax shall be measured by the net income derived from or attributable to sources within the state in accordance with this chapter.

(2) In determining whether a corporation is a foreign operating company or has met the threshold level of business activity, business activity within and without the United States shall be measured by means of the factors ordinarily applicable under §§ 59-7-312 through 59-7-319 except that, in the case of a taxpayer which would ordinarily be required to apportion business income by means of the three-factor formula of property, payroll, and sales, the taxpayer may not use the sales factor in the computation and the results of the property and payroll factor computation shall be divided by two, or by one if either the property or payroll factor has a denominator of zero.

(3) In determining income apportionable to this state, the factors for a foreign operating company shall be included in the combined report factors in the same percentage its net income is included in the combined net income.

(4) In determining income apportionable to this state, the factors for a foreign subsidiary or affiliate shall be included in the combined report factors to the degree determined by multiplying the percentage derived by dividing the foreign subsidiary or affiliate's dividends by its current year earnings and profits as determined under the Internal Revenue Code (but not to exceed 100%), times the percentage of its dividends included in the combined net income.

History: C. 1953, 59-13-79, enacted by L. 1986, ch. 80, § 4; renumbered by L. 1987, ch. 2, § 142.

Repeals and Enactments. — Laws 1986, ch. 80, § 4 repeals former § 59-13-79, as enacted by Laws 1967, ch. 158, § 2, relating to

the same subject matter, and enacts the present section, formerly numbered § 59-13-79.

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

§ 59-13-79, and made minor stylistic changes in Subsections (1) and (2).

Internal Revenue Code. — The federal Internal Revenue Code, referred to in Subsection (4), appears as 26 U.S.C.

Compiler's Notes. — Laws 1986, ch. 56, purported to amend former § 59-13-79, as enacted by Laws 1967, ch. 158, § 2, but could not be given effect because of the repeal and enactment by Laws 1986, Chapter 80.

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

Brigham Young Law Review. — The "Unitary" Business in State Taxation: Confusion at the Supreme Court?, 1982 B.Y.U. L. Rev. 465.

C.J.S. — 85 C.J.S. Taxation §§ 1091, 1096.

Key Numbers. — Taxation ⇨ 980, 1005.

59-7-304. Combined report.

(1) In the case of a corporation liable to report under this part owning or controlling, either directly or indirectly, another corporation, or other corporations, and in the case of a corporation liable to report under this part and owned or controlled, either directly or indirectly, by another corporation, and meeting the definition of a unitary business, there shall be filed a combined report showing the combined net income of all such corporations. Foreign operating companies and foreign subsidiaries or affiliates other than tax haven corporations, may not be included in the unitary business except as provided in Subsection (3). However, 50% of the net income after deduction for foreign taxes of any foreign operating company otherwise meeting the definition of a unitary business shall be included in computing the combined net income. Any amount deducted in computing net income under this section may not be included in the computation of excess foreign taxes determined under § 59-7-108.

(2) Corporations incorporated outside the United States whose business activities in the United States meet the threshold level of business activity shall be treated the same as corporations incorporated in the United States for purposes of the corporate franchise tax.

(3) Corporations required to file a combined report under Subsection (1) may elect to file a worldwide combined report. If a worldwide combined report is filed, there shall be no exclusion of income for any corporation based upon its country of incorporation or where it conducts its business activity. Corporations electing to file a worldwide combined report may not thereafter elect to file returns on a basis other than a worldwide combined report without the consent of the commission, which shall require a showing of a significant change in circumstances.

(4) The commission may assess the tax against any taxpayer whose net income is included in the combined report upon the basis of the entire combined net income and other information it may possess, or it may adjust a taxpayer's income, expenses, or both, in any other manner it determines to be equitable in order to accurately reflect taxable income or to prevent evasion of taxes.

History: C. 1953, 59-13-79.5, enacted by L. 1986, ch. 80, § 5; renumbered by L. 1987, ch. 2, § 143.

Amendment Notes. — The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-79.5, and made minor stylistic changes.

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."

59-7-305. When taxable in another state.

For purposes of allocation and apportionment of income under this part, a taxpayer is taxable in another state if:

- (1) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or
- (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

History: L. 1967, ch. 158, § 3; L. 1986, ch. 56, § 16; C. 1953, 59-13-80; renumbered by L. 1987, ch. 2, § 144.

Amendment Notes. — The 1986 amendment substituted "the taxpayer" for "he" in Subsection (1).

The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-80, 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."

COLLATERAL REFERENCES

Key Numbers. Taxation ⇌ 1001.

59-7-306. Allocation of certain nonbusiness income.

Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in §§ 59-7-307 through 59-7-310.

History: L. 1967, ch. 158, § 4; C. 1953, 59-13-81; renumbered by L. 1987, ch. 2, § 145.

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

this section, which formerly appeared as § 59-13-81, 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 ⇌ 1074.

59-7-307. Allocation of rents and royalties.

(1) Net rents and royalties from real property located in this state are allocable to this state.

(2) Net rents and royalties from tangible personal property are allocable to this state:

(a) if and to the extent that the property is utilized in this state; or

(b) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

History: L. 1967, ch. 158, § 5; C. 1953, 59-13-82; renumbered by L. 1987, ch. 2, § 146.

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

this section, which formerly appeared as § 59-13-82, 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 ⇌ 993.

59-7-308. Allocation of capital gains and losses.

(1) Capital gains and losses from sales of real property located in this state are allocable to this state.

(2) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(a) the property had a situs in this state at the time of the sale; or

(b) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(3) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

History: L. 1967, ch. 158, § 6; C. 1953, 59-13-83; renumbered by L. 1987, ch. 2, § 147.

Amendment Notes. — The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-13-83, and made minor stylistic changes.

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

Cross-References. — Gains and losses, §§ 59-7-114 to 59-7-116.

COLLATERAL REFERENCES

C.J.S. — 85 C.J.S. Taxation § 1096.
 A.L.R. — Initiation and termination of "holding period" in determining whether gain or loss on sale of stock or securities is entitled to capital gains or loss treatment, 7 A.L.R.3d 382.
 Key Numbers. — Taxation ⇌ 996 et seq.

59-7-309. Allocation of interest and dividends.

Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

History: L. 1967, ch. 158, § 7; C. 1953, 59-13-84; renumbered by L. 1987, ch. 2, § 148.

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

this section, which formerly appeared as § 59-13-84.

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 ⇌ 988 to 992.

59-7-310. Allocation of patent and copyright royalties.

(1) Patent and copyright royalties are allocable to this state:

(a) if and to the extent that the patent or copyright is utilized by the payer in this state; or

(b) if and to extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(2) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

History: L. 1967, ch. 158, § 8; C. 1953, 59-13-85; renumbered by L. 1987, ch. 2, § 149.

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

this section, which formerly appeared as § 59-13-85, 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 ⇌ 993.

59-7-311. Method of apportionment of business income.

All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

History: L. 1967, ch. 158, § 9; C. 1953, 59-13-86; renumbered by L. 1987, ch. 2, § 150.

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

this section, which formerly appeared as § 59-13-86.

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

NOTES TO DECISIONS

ANALYSIS

Constitutionality.

Alternative methods of apportionment.

Apportionment formula.

Discretion to disregard statutory allocation rules.

"Doing business."

Income from interest and dividends.

Royalty income from leases of land located outside of state.

Sales of property by stockholders.

Situs of sales.

Constitutionality.

Tax commission decision basing franchise tax in part on income from sales of property to be shipped from Utah to purchasers in other states does not violate the commerce clause or the Fourteenth Amendment to the U.S. Constitution. *Kennecott Copper Corp. v. State Tax Comm.*, 27 Utah 2d 119, 493 P.2d 632, appeal dismissed, 409 U.S. 973, 93 S. Ct. 323, 34 L. Ed. 2d 237 (1972).

Alternative methods of apportionment.

Where the formula in this section does not fairly represent the extent of the taxpayer's business activity in this state, alternative methods of apportionment and allocation may be used pursuant to § 59-7-320. *Deseret Pharmaceutical Co. v. State Tax Comm.*, 579 P.2d 1322 (Utah 1978).

Apportionment formula.

Subsection (6) of former § 59-13-20 did not purport to tax directly a corporation doing business both inside and outside of Utah on the net income credited to it by a system of accounting on the business done within Utah. Rather, it sought to tax a percentage of the entire net income, wherever it may have been earned, by a formula of apportionment com-

posed of three distinct ratios, and to attribute this portion to the business carried on within Utah. *Western Contracting Corp. v. State Tax Comm.*, 18 Utah 2d 23, 414 P.2d 579 (1966).

Discretion to disregard statutory allocation rules.

Under former statute, commission had some discretion to modify prescribed statutory method for determining portion of net income assignable to business done within this state, and before Supreme Court could interfere with method imposed on or used by taxpayer, it must appear that commission acted arbitrarily and abused its discretion. *Kennecott Copper Co. v. State Tax Comm.*, 118 Utah 140, 221 P.2d 857 (1950).

"Doing business."

The mere acquisition and ownership of property and the holding of the same for investment purposes unaccompanied by anything further did not constitute "doing business" within the meaning of the former statute. *J.M. & M.S. Browning Co. v. State Tax Comm.*, 107 Utah 457, 154 P.2d 993 (1945).

In determining what constituted "doing business" in the case of a corporation conducting an investment business for the purposes of levy-

ing a franchise tax, it was held that all income derived from that business was subject to the Utah franchise tax, and that rents from properties situated without the state of Utah should be allocated to Utah where there was nothing to show that any of the business activities connected with the management and control of these rental properties was carried on from offices located without the state. *J.M. & M.S. Browning Co. v. State Tax Comm.*, 107 Utah 457, 154 P.2d 993 (1945) (decided under prior law).

Income from interest and dividends.

Former statute seemed to manifest a clear intention on the part of the Legislature that so-called "financial income" not derived from business done in Utah should not be included in gross receipts for tax computation purposes by the state, and the commission was in error in including income from interest and dividends derived from properties outside the state and evidenced by muniments of title held outside the state. *California Packing Corp. v. State Tax Comm.*, 97 Utah 367, 93 P.2d 463 (1939).

If the business which produced the dividend was done outside of this state, it was not allocable as income received from business, or the right to do business, in this state. *American Inv. Corp. v. State Tax Comm.*, 101 Utah 189, 120 P.2d 331 (1941)(decided under prior law).

Royalty income from leases of land located outside of state.

Where a domestic corporation owned land

outside of the state and leased the land to another corporation, the royalty income was attributable to business done in Utah. The corporation was not doing business within the other state and a substantial part of the business activities took place within Utah. *Emerald Oil Co. v. State Tax Comm.*, 1 Utah 2d 379, 267 P.2d 772 (1954)(decided under prior law).

Sales of property by stockholders.

A corporation was not obligated to pay capital gain income tax on certain sales of property which were made by individual stockholders of the corporation in their individual name where evidence was insufficient to sustain finding that such sales were sales of the corporation. *Budget Homes v. State Tax Comm.*, 120 Utah 425, 235 P.2d 501 (1951)(decided under prior law).

Situs of sales.

Where a corporation was divisional in operation and the only operation in Utah was the mining of ore and the sales division and administrative division was in New York, the sales made by such corporation from its New York division were not subject to the franchise tax. The Utah division had no power to negotiate a sale nor have its officers attempt to sell any of the products. It was concerned only with production and shipment. *Kennecott Copper Corp. v. State Tax Comm.*, 5 Utah 2d 306, 301 P.2d 562 (1956)(decided under prior law).

COLLATERAL REFERENCES

C.J.S. — 85 C.J.S. Taxation § 1103.

Key Numbers. — Taxation ⇌ 983, 1005.

59-7-312. Property factor for apportionment of business income.

The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible property owned or rented and used during the tax period.

History: L. 1967, ch. 158, § 10; C. 1953, 59-13-87; renumbered by L. 1987, ch. 2, § 151.

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

this section, which formerly appeared as § 59-13-87.

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 ⇌ 983, 1005.

59-7-313. Valuation of property for inclusion in property factor.

Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

History: L. 1967, ch. 158, § 11; C. 1953, 59-13-88; renumbered by L. 1987, ch. 2, § 152. this section, which formerly appeared as § 59-13-88.

Amendment Notes. — The 1987 amendment, effective February 6, 1987, renumbered **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 ⇌ 993.

59-7-314. Averaging property values for inclusion in property factors.

The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the commission may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

History: L. 1967, ch. 158, § 12; C. 1953, 59-13-89; renumbered by L. 1987, ch. 2, § 153. this section, which formerly appeared as § 59-13-89, and made minor stylistic changes.

Amendment Notes. — The 1987 amendment, effective February 6, 1987, renumbered **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 ⇌ 993.

59-7-315. Payroll factor for apportionment of business income.

The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

History: L. 1967, ch. 158, § 13; C. 1953, § 59-13-90; renumbered by L. 1987, ch. 2, § 154.

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

this section, which formerly appeared as § 59-13-90.

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 ⇌ 986, 1005.

59-7-316. Determination of compensation for inclusion in payroll factor.

Compensation is paid if:

- (1) the individual's service is performed entirely within the state; or
- (2) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the service performed within the state; or
- (3) some of the service is performed in the state and:
 - (a) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or
 - (b) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

History: L. 1967, ch. 158, § 14; C. 1953, § 59-13-91; renumbered by L. 1987, ch. 2, § 155.

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

this section, which formerly appeared as § 59-13-91, 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 § 1103.

Key Numbers. — Taxation ⇌ 986, 1005.

59-7-317. Sales factor for apportionment of business income.

The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

History: L. 1967, ch. 158, § 15; C. 1953, § 59-13-92; renumbered by L. 1987, ch. 2, § 156.

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

this section, which formerly appeared as § 59-13-92.

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 ⇌ 996, 1002, 1005.

59-7-318. Sales of tangible personal property.

(1) Sales of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States Government, within this state, regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state, and:

(i) the purchaser is the United States Government; or

(ii) the taxpayer is not taxable in the state of the purchaser.

(2) Sales of tangible personal property are not in this state if the seller and the purchaser would be members of the same unitary business group but for the fact that either the seller or the purchaser is a foreign operating company, and the property is purchased for retail outside the United States.

History: L. 1967, ch. 158, § 16; 1973, ch. 146, § 8; 1977, ch. 227, § 8; 1986, ch. 80, § 6; C. 1953, 59-13-93; renumbered by L. 1987, ch. 2, § 157.

Amendment Notes. — The 1986 amendment redesignated subsections; and added Subsection (2).

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

appeared as § 59-13-93, and made a minor stylistic change.

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."

NOTES TO DECISIONS

Equitable allocation of income.

Where necessary to effect an equitable allocation of a mining company's income, the tax commission could, acting under § 59-7-320, base the sales factor in the statutory formula on the portion of sales allocated to Utah for the

purpose of computing depletion allowances rather than on the rule set forth in this section. *Kennecott Copper Corp. v. State Tax Comm.*, 27 Utah 2d 119, 493 P.2d 632, appeal dismissed, 409 U.S. 973, 93 S. Ct. 323, 34 L. Ed. 2d 237 (1972)(decided under prior law).

COLLATERAL REFERENCES

C.J.S. — 85 C.J.S. Taxation § 1103.

Key Numbers. — Taxation ⇌ 996, 1002.

59-7-319. Sales of items other than tangible personal property — When deemed to occur in this state.

Sales, other than sales of tangible personal property, are in this state if:

(1) the income-producing activity is performed in this state; or

(2) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

History: L. 1967, ch. 158, § 17; C. 1953, 59-13-94; renumbered by L. 1987, ch. 2, § 158.

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

this section, which formerly appeared as § 59-13-94, 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 § 1103.

Key Numbers. — Taxation ⇌ 996, 1002.

59-7-320. Equitable adjustment of standard allocation or apportionment.

If the allocation and apportionment provisions of this part do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the commission may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (1) separate accounting;
- (2) the exclusion of any one or more of the factors;
- (3) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or
- (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

History: L. 1967, ch. 158, § 18; C. 1953, 59-13-95; renumbered by L. 1987, ch. 2, § 159.

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

this section, which formerly appeared as § 59-13-95, 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

Burden of proof.
Depletion allowances.

Burden of proof.

Party seeking relief under this section has the burden to prove that the method of apportionment and allocation in § 59-7-311 does not fairly represent the extent of the taxpayer's business activity in this state. *Deseret Pharmaceutical Co. v. State Tax Comm.*, 579 P.2d 1322 (Utah 1978).

Depletion allowances.

Where necessary to effect an equitable allocation of a mining company's income, the tax

commission could, acting under this section, base the sales factor in the statutory formula on the portion of sales allocated to Utah for the purpose of computing depletion allowances rather than on the portion of sales made to Utah purchasers. *Kennecott Copper Corp. v. State Tax Comm.*, 27 Utah 2d 119, 493 P.2d 632, appeal dismissed, 409 U.S. 973, 93 S. Ct. 323, 34 L. Ed. 2d 237 (1972)(decided under prior law).

COLLATERAL REFERENCES

Utah Law Review. — The Relief Provision of the Uniform Division of Income for Tax Purposes Act, 1972 Utah L. Rev. 598.

C.J.S. — 85 C.J.S. Taxation § 1104(1).
Key Numbers. — Taxation ⇌ 1005, 1074 to 1077.

59-7-321. Construction.

This part shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: L. 1967, ch. 158, § 19; C. 1953, 59-13-96; renumbered by L. 1987, ch. 2, § 160.

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

this section, which formerly appeared as § 59-13-96, 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 § 1090.

Key Numbers. — Taxation ⇌ 965.

CHAPTER 8

GROSS RECEIPTS TAX ACT

Section

59-8-101. Short title.
 59-8-102. Purpose.
 59-8-103. Definitions.
 59-8-104. Rate — Change of rate.

Section

59-8-105. Time for filing of return — Other applicable provisions.
 59-8-106. Rulemaking authority.

59-8-101. Short title.

This chapter is known as the "Gross Receipts Tax Act."

History: C. 1953, 59-17-1, enacted by L. 1980, ch. 67, § 1; renumbered by L. 1987, ch. 2, § 261.

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

this section, which formerly appeared as § 59-17-1, and made minor stylistic changes.

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

COLLATERAL REFERENCES

Key Numbers. — Taxation ⇌ 1202.5.

59-8-102. Purpose.

The purpose of this chapter is to provide for the imposition of an in lieu excise tax on the gross receipts of corporations, other than eleemosynary, religious or charitable institutions, operating in the state of Utah who are not otherwise required to pay income or franchise taxes to the state or to declare dividends.