

AMENDMENTS TO REVENUE AND TAXATION

TITLE

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill amends the Revenue and Taxation title to address penalties, the payment of income taxes, and estimated tax payments under the Individual Income Tax Act.

Highlighted Provisions:

This bill:

- ▶ modifies penalties related to a tax under Title 59, Chapter 7, Corporate Franchise and Income Taxes, or Title 59, Chapter 10, Individual Income Tax Act;
- ▶ addresses the amount of income tax required to be paid to avoid a penalty if a person makes estimated tax payments and receives an extension of time to file a return;
- ▶ enacts estimated tax payment requirements under Title 59, Chapter 10, Individual Income Tax Act, including:
 - defining terms;
 - establishing a required annual payment;
 - establishing procedures and requirements for making an estimated tax payment;
 - providing a penalty for failure to pay or underpaying an estimated tax payment;
 - authorizing the State Tax Commission to waive, reduce, or compromise the penalty for failure to pay or underpaying an estimated tax payment;
 - granting rulemaking authority to the State Tax Commission under certain



circumstances; and

- requiring the State Tax Commission to summarize the estimated tax payment provisions in a conspicuous place on the State Tax Commission's website; and
- making technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:

59-1-401, as last amended by Laws of Utah 2009, Chapters 31, 203, 212, and 336

59-1-1408, as enacted by Laws of Utah 2009, Chapter 212

59-7-507, as last amended by Laws of Utah 2007, Chapter 269

59-10-516, as last amended by Laws of Utah 2007, Chapter 269

ENACTS:

59-10-1501, Utah Code Annotated 1953

59-10-1502, Utah Code Annotated 1953

59-10-1503, Utah Code Annotated 1953

59-10-1504, Utah Code Annotated 1953

59-10-1505, Utah Code Annotated 1953

59-10-1506, Utah Code Annotated 1953

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

Section 1. Section **59-1-401** is amended to read:

59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute of limitations -- Commission authority to waive, reduce, or compromise penalty or interest.

(1) As used in this section:

(a) "Activated tax, fee, or charge" means a tax, fee, or charge with respect to which the commission:

(i) has implemented the commission's GenTax system; and

(ii) at least 30 days before implementing the commission's GenTax system as described in Subsection (1)(a)(i), has provided notice in a conspicuous place on the commission's website stating:

(A) the date the commission will implement the GenTax system with respect to the tax, fee, or charge; and

(B) that, at the time the commission implements the GenTax system with respect to the tax, fee, or charge:

(I) a person that files a return after the due date as described in Subsection (2)(~~b~~)(a) is subject to the penalty described in Subsection (2)(c)(ii); and

(II) a person that fails to pay the tax, fee, or charge as described in Subsection (3)(a) is subject to the penalty described in Subsection (3)(b)(ii).

(b) "Activation date for a tax, fee, or charge" means with respect to a tax, fee, or charge, the later of:

(i) the date on which the commission implements the commission's GenTax system with respect to the tax, fee, or charge; or

(ii) 30 days after the date the commission provides the notice described in Subsection (1)(a)(ii) with respect to the tax, fee, or charge.

(c) "Tax, fee, or charge" means:

(i) a tax, fee, or charge the commission administers under:

(A) this title;

(B) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

(C) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

(D) Section 19-6-410.5;

(E) Section 19-6-714;

(F) Section 19-6-805;

(G) Section 40-6-14;

(H) Section 69-2-5;

(I) Section 69-2-5.5; or

(J) Section 69-2-5.6; or

(ii) another amount that by statute is subject to a penalty imposed under this section.

(d) "Unactivated tax, fee, or charge" means a tax, fee, or charge except for an activated

90 tax, fee, or charge.

91 (2) (a) The due date for filing a return is:

92 (i) if the person filing the return is not allowed by law an extension of time for filing
93 the return, the day on which the return is due as provided by law; or

94 (ii) if the person filing the return is allowed by law an extension of time for filing the
95 return, the earlier of:

96 (A) the date the person files the return; or

97 (B) the last day of that extension of time as allowed by law.

98 (b) A penalty in the amount described in Subsection (2)(c) is imposed if a person files a
99 return after the due date described in Subsection (2)(a).

100 (c) For purposes of Subsection (2)(b), the penalty is an amount equal to the greater of:

101 (i) if the return described in Subsection (2)(b) is filed with respect to an unactivated
102 tax, fee, or charge:

103 (A) \$20; or

104 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or

105 (ii) if the return described in Subsection (2)(b) is filed with respect to an activated tax,
106 fee, or charge, beginning on the activation date for the tax, fee, or charge:

107 (A) \$20; or

108 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the return is
109 filed no later than five days after the due date described in Subsection (2)(a);

110 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the return is filed
111 more than five days after the due date but no later than 15 days after the due date described in
112 Subsection (2)(a); or

113 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the return is
114 filed more than 15 days after the due date described in Subsection (2)(a).

115 (d) This Subsection (2) does not apply to:

116 (i) an amended return; or

117 (ii) a return with no tax due.

118 (3) (a) A person is subject to a penalty for failure to pay a tax, fee, or charge if:

119 (i) the person files a return on or before the due date for filing a return described in
120 Subsection (2)(a), but fails to pay the tax, fee, or charge due on the return on or before that due

121 date;

122 (ii) the person:

123 (A) is subject to a penalty under Subsection (2)(b); and

124 (B) fails to pay the tax, fee, or charge due on a return within a 90-day period after the

125 due date for filing a return described in Subsection (2)(a);

126 (iii) (A) the person is subject to a penalty under Subsection (2)(b); and

127 (B) the commission estimates an amount of tax due for that person in accordance with

128 Subsection 59-1-1406(2);

129 (iv) the person:

130 (A) is mailed a notice of deficiency; and

131 (B) within a 30-day period after the day on which the notice of deficiency described in

132 Subsection (3)(a)(iv)(A) is mailed:

133 (I) does not file a petition for redetermination or a request for agency action; and

134 (II) fails to pay the tax, fee, or charge due on a return;

135 (v) (A) the commission:

136 (I) issues an order constituting final agency action resulting from a timely filed petition

137 for redetermination or a timely filed request for agency action; or

138 (II) is considered to have denied a request for reconsideration under Subsection

139 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed

140 request for agency action; and

141 (B) the person fails to pay the tax, fee, or charge due on a return within a 30-day period

142 after the date the commission:

143 (I) issues the order constituting final agency action described in Subsection

144 (3)(a)(v)(A)(I); or

145 (II) is considered to have denied the request for reconsideration described in

146 Subsection (3)(a)(v)(A)(II); or

147 (vi) the person fails to pay the tax, fee, or charge within a 30-day period after the date

148 of a final judicial decision resulting from a timely filed petition for judicial review.

149 (b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:

150 (i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with

151 respect to an unactivated tax, fee, or charge:

(A) \$20; or

(B) 10% of the unpaid unactivated tax, fee, or charge due on the return; ~~or~~

(ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with respect to an activated tax, fee, or charge except for a tax imposed under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act, beginning on the activation date:

(A) \$20; or

(B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the activated tax, fee, or charge due on the return is paid no later than five days after the due date for filing a return described in Subsection (2)(a);

(II) 5% of the unpaid activated tax, fee, or charge due on the return if the activated tax, fee, or charge due on the return is paid more than five days after the due date for filing a return described in Subsection (2)(a) but no later than 15 days after that due date; or

(III) 10% of the unpaid activated tax, fee, or charge due on the return if the activated tax, fee, or charge due on the return is paid more than 15 days after the due date for filing a return described in Subsection (2)(a); ~~or~~

(iii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with respect to a tax imposed under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act:

(A) \$20 if the tax due on the return is paid in full after the original due date for filing the return under Section 59-7-505 or 59-10-514, without extensions; or

(B) the lesser of:

(I) 25% of the unpaid tax due on the return; or

(II) the sum of:

(Aa) 0.5% of the unpaid tax per month for the number of months, as determined in accordance with Subsection (3)(c), that the unpaid tax due on the return is not paid in full, for the first six months after the original due date for filing the return under Section 59-7-505 or 59-10-514, without extensions; and

(Bb) 1% of the unpaid tax per month, as determined in accordance with Subsection (3)(c), that the unpaid tax due on the return is not paid in full, for any months after the first six months after the original due date for filing the return under Section 59-7-505 or 59-10-514,

183 without extensions.

184 (c) For purposes of determining the penalty under Subsection (3)(b)(iii)(B)(II), the
185 number of months shall be calculated by:

186 (i) determining the number of months the unpaid tax due on the return is not paid in
187 full, beginning with the original due date for filing the return under Section 59-7-505 or
188 59-10-514, without extensions, and ending on the date the unpaid tax is paid in full; and

189 (ii) including any fraction of a month as a full month.

190 (4) (a) [~~Beginning January 1, 1995, in~~] In the case of any underpayment of estimated
191 tax or quarterly installments required by [~~Sections~~] Section 59-5-107, 59-5-207, 59-7-504,
192 [~~and~~] 59-9-104, or 59-10-1503, there shall be added a penalty in an amount determined by
193 applying the interest rate provided under [~~Section~~] Subsection 59-1-402(2) plus [~~four~~] three
194 percentage points to the amount of the underpayment for the period of the underpayment.

195 (b) (i) For purposes of Subsection (4)(a), the amount of the underpayment shall be the
196 excess of the required installment over the amount, if any, of the installment paid on or before
197 the due date for the installment.

198 (ii) The period of the underpayment shall run from the due date for the installment to
199 whichever of the following dates is the earlier:

200 (A) the original due date of the tax return, without extensions, for the taxable year; or

201 (B) with respect to any portion of the underpayment, the date on which that portion is
202 paid.

203 (iii) For purposes of this Subsection (4), a payment of estimated tax shall be credited
204 against unpaid required installments in the order in which the installments are required to be
205 paid.

206 [~~(5) (a) Notwithstanding Subsection (2) and except as provided in Subsection (6), a~~
207 ~~person allowed by law an extension of time for filing a corporate franchise or income tax return~~
208 ~~under Chapter 7, Corporate Franchise and Income Taxes, or an individual income tax return~~
209 ~~under Chapter 10, Individual Income Tax Act, is subject to a penalty in the amount described in~~
210 ~~Subsection (5)(b) if, on or before the day on which the return is due as provided by law, not~~
211 ~~including the extension of time, the person fails to pay:]~~

212 [~~(i) for a person filing a corporate franchise or income tax return under Chapter 7,~~
213 ~~Corporate Franchise and Income Taxes, the payment required by Subsection 59-7-507(1)(b);~~

or]

~~[(ii) for a person filing an individual income tax return under Chapter 10, Individual Income Tax Act, the payment required by Subsection 59-10-516(2).]~~

~~[(b) For purposes of Subsection (5)(a), the penalty per month during the period of the extension of time for filing the return is an amount equal to 2% of the tax due on the return, unpaid as of the day on which the return is due as provided by law.]~~

~~[(6)] (5)~~ If a person does not file a return within an extension of time allowed by Section 59-7-505 or 59-10-516, the person~~[-(a) is not subject to a penalty in the amount described in Subsection (5)(b); and (b)-]~~ is subject to a penalty in an amount equal to the sum of:

~~[(i)] (a)~~ a late file penalty in an amount equal to the greater of:

~~[(A)] (i)~~ \$20; or

~~[(B)] (ii)~~ 10% of the tax due on the return, unpaid as of the day on which the return is due as provided by law, not including the extension of time; and

~~[(ii)] (b)~~ a late pay penalty in an amount equal to the greater of:

~~[(A)] (i)~~ \$20; or

~~[(B)] (ii)~~ 10% of the unpaid tax due on the return, unpaid as of the day on which the return is due as provided by law, not including the extension of time.

~~[(7)] (6)~~ (a) Additional penalties for an underpayment of a tax, fee, or charge are as provided in this Subsection ~~[(7)] (6)~~(a).

(i) Except as provided in Subsection ~~[(7)] (6)~~(c), if any portion of an underpayment of a tax, fee, or charge is due to negligence, the penalty is 10% of the portion of the underpayment that is due to negligence.

(ii) Except as provided in Subsection ~~[(7)] (6)~~(d), if any portion of an underpayment of a tax, fee, or charge is due to intentional disregard of law or rule, the penalty is 15% of the entire underpayment.

(iii) If any portion of an underpayment is due to an intent to evade a tax, fee, or charge, the penalty is the greater of \$500 per period or 50% of the entire underpayment.

(iv) If any portion of an underpayment is due to fraud with intent to evade a tax, fee, or charge, the penalty is the greater of \$500 per period or 100% of the entire underpayment.

(b) If the commission determines that a person is liable for a penalty imposed under

245 Subsection [~~(7)~~] (6)(a)(ii), (iii), or (iv), the commission shall notify the person of the proposed
246 penalty.

247 (i) The notice of proposed penalty shall:

248 (A) set forth the basis of the assessment; and

249 (B) be mailed by certified mail, postage prepaid, to the person's last-known address.

250 (ii) Upon receipt of the notice of proposed penalty, the person against whom the
251 penalty is proposed may:

252 (A) pay the amount of the proposed penalty at the place and time stated in the notice;

253 or

254 (B) proceed in accordance with the review procedures of Subsection [~~(7)~~] (6)(b)(iii).

255 (iii) A person against whom a penalty is proposed in accordance with this Subsection
256 [~~(7)~~] (6) may contest the proposed penalty by filing a petition for an adjudicative proceeding
257 with the commission.

258 (iv) (A) If the commission determines that a person is liable for a penalty under this
259 Subsection [~~(7)~~] (6), the commission shall assess the penalty and give notice and demand for
260 payment.

261 (B) The commission shall mail the notice and demand for payment described in
262 Subsection [~~(7)~~] (6)(b)(iv)(A):

263 (I) to the person's last-known address; and

264 (II) in accordance with Section 59-1-1404.

265 (c) A seller that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not
266 subject to the penalty under Subsection [~~(7)~~] (6)(a)(i) if on or after July 1, 2001:

267 (i) a court of competent jurisdiction issues a final unappealable judgment or order
268 determining that:

269 (A) the seller meets one or more of the criteria described in Subsection
270 59-12-107(1)(a); and

271 (B) the commission or a county, city, or town may require the seller to collect a tax
272 under Subsections 59-12-103(2)(a) through (d); or

273 (ii) the commission issues a final unappealable administrative order determining that:

274 (A) the seller meets one or more of the criteria described in Subsection
275 59-12-107(1)(a); and

(B) the commission or a county, city, or town may require the seller to collect a tax under Subsections 59-12-103(2)(a) through (d).

(d) A seller that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not subject to the penalty under Subsection ~~[(7)]~~ (6)(a)(ii) if:

(i) (A) a court of competent jurisdiction issues a final unappealable judgment or order determining that:

(I) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a); and

(II) the commission or a county, city, or town may require the seller to collect a tax under Subsections 59-12-103(2)(a) through (d); or

(B) the commission issues a final unappealable administrative order determining that:

(I) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a); and

(II) the commission or a county, city, or town may require the seller to collect a tax under Subsections 59-12-103(2)(a) through (d); and

(ii) the seller's intentional disregard of law or rule is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

~~[(8)]~~ (7) The penalty for failure to file an information return, information report, or a complete supporting schedule is \$50 for each information return, information report, or supporting schedule up to a maximum of \$1,000.

~~[(9)]~~ (8) If a person, in furtherance of a frivolous position, has a prima facie intent to delay or impede administration of a law relating to a tax, fee, or charge and files a purported return that fails to contain information from which the correctness of reported tax, fee, or charge liability can be determined or that clearly indicates that the tax, fee, or charge liability shown is substantially incorrect, the penalty is \$500.

~~[(10)]~~ (9) (a) A seller that fails to remit a tax, fee, or charge monthly as required by Subsection 59-12-108(1)(a):

(i) is subject to a penalty described in Subsection (2); and

(ii) may not retain the percentage of sales and use taxes that would otherwise be allowable under Subsection 59-12-108(2).

(b) A seller that fails to remit a tax, fee, or charge by electronic funds transfer as required by Subsection 59-12-108(1)(a)(ii)(B):

- (i) is subject to a penalty described in Subsection (2); and
- (ii) may not retain the percentage of sales and use taxes that would otherwise be allowable under Subsection 59-12-108(2).

~~[(11)]~~ (10) (a) A person is subject to the penalty provided in Subsection ~~[(11)]~~ (10)(c) if that person:

(i) commits an act described in Subsection ~~[(11)]~~ (10)(b) with respect to one or more of the following documents:

(A) a return;

(B) an affidavit;

(C) a claim; or

(D) a document similar to Subsections ~~[(11)]~~ (10)(a)(i)(A) through (C);

(ii) knows or has reason to believe that the document described in Subsection ~~[(11)]~~ (10)(a)(i) will be used in connection with any material matter administered by the commission; and

(iii) knows that the document described in Subsection ~~[(11)]~~ (10)(a)(i), if used in connection with any material matter administered by the commission, would result in an understatement of another person's liability for a tax, fee, or charge.

(b) The following acts apply to Subsection ~~[(11)]~~ (10)(a)(i):

(i) preparing any portion of a document described in Subsection ~~[(11)]~~ (10)(a)(i);

(ii) presenting any portion of a document described in Subsection ~~[(11)]~~ (10)(a)(i);

(iii) procuring any portion of a document described in Subsection ~~[(11)]~~ (10)(a)(i);

(iv) advising in the preparation or presentation of any portion of a document described in Subsection ~~[(11)]~~ (10)(a)(i);

(v) aiding in the preparation or presentation of any portion of a document described in Subsection ~~[(11)]~~ (10)(a)(i);

(vi) assisting in the preparation or presentation of any portion of a document described in Subsection ~~[(11)]~~ (10)(a)(i); or

(vii) counseling in the preparation or presentation of any portion of a document described in Subsection ~~[(11)]~~ (10)(a)(i).

(c) For purposes of Subsection ~~[(11)]~~ (10)(a), the penalty:
(i) shall be imposed by the commission;
(ii) is \$500 for each document described in Subsection ~~[(11)]~~ (10)(a)(i) with respect to which the person described in Subsection ~~[(11)]~~ (10)(a) meets the requirements of Subsection ~~[(11)]~~ (10)(a); and
(iii) is in addition to any other penalty provided by law.

(d) The commission may seek a court order to enjoin a person from engaging in conduct that is subject to a penalty under this Subsection ~~[(11)]~~ (10).

(e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules prescribing the documents that are similar to Subsections ~~[(11)]~~ (10)(a)(i)(A) through (C).

~~[(12)]~~ (11) (a) As provided in Section 76-8-1101, criminal offenses and penalties are as provided in Subsections ~~[(12)]~~ (11)(b) through (e).

(b) (i) A person who is required by this title or any laws the commission administers or regulates to register with or obtain a license or permit from the commission, who operates without having registered or secured a license or permit, or who operates when the registration, license, or permit is expired or not current, is guilty of a class B misdemeanor.

(ii) Notwithstanding Section 76-3-301, for purposes of Subsection ~~[(12)]~~ (11)(b)(i), the penalty may not:

(A) be less than \$500; or

(B) exceed \$1,000.

(c) (i) A person who, with intent to evade a tax, fee, or charge or requirement of this title or any lawful requirement of the commission, fails to make, render, sign, or verify a return or to supply information within the time required by law, or who makes, renders, signs, or verifies a false or fraudulent return or statement, or who supplies false or fraudulent information, is guilty of a third degree felony.

(ii) Notwithstanding Section 76-3-301, for purposes of Subsection ~~[(12)]~~ (11)(c)(i), the penalty may not:

(A) be less than \$1,000; or

(B) exceed \$5,000.

(d) (i) A person who intentionally or willfully attempts to evade or defeat a tax, fee, or

charge or the payment of a tax, fee, or charge is, in addition to other penalties provided by law, guilty of a second degree felony.

(ii) Notwithstanding Section 76-3-301, for purposes of Subsection ~~[(12)]~~ (11)(d)(i), the penalty may not:

(A) be less than \$1,500; or

(B) exceed \$25,000.

(e) (i) A person is guilty of a second degree felony if that person commits an act:

(A) described in Subsection ~~[(12)]~~ (11)(e)(ii) with respect to one or more of the following documents:

(I) a return;

(II) an affidavit;

(III) a claim; or

(IV) a document similar to Subsections ~~[(12)]~~ (11)(e)(i)(A)(I) through (III); and

(B) subject to Subsection ~~[(12)]~~ (11)(e)(iii), with knowledge that the document described in Subsection ~~[(12)]~~ (11)(e)(i)(A):

(I) is false or fraudulent as to any material matter; and

(II) could be used in connection with any material matter administered by the commission.

(ii) The following acts apply to Subsection ~~[(12)]~~ (11)(e)(i):

(A) preparing any portion of a document described in Subsection ~~[(12)]~~ (11)(e)(i)(A);

(B) presenting any portion of a document described in Subsection ~~[(12)]~~ (11)(e)(i)(A);

(C) procuring any portion of a document described in Subsection ~~[(12)]~~ (11)(e)(i)(A);

(D) advising in the preparation or presentation of any portion of a document described in Subsection ~~[(12)]~~ (11)(e)(i)(A);

(E) aiding in the preparation or presentation of any portion of a document described in Subsection ~~[(12)]~~ (11)(e)(i)(A);

(F) assisting in the preparation or presentation of any portion of a document described in Subsection ~~[(12)]~~ (11)(e)(i)(A); or

(G) counseling in the preparation or presentation of any portion of a document described in Subsection ~~[(12)]~~ (11)(e)(i)(A).

(iii) This Subsection ~~[(12)]~~ (11)(e) applies:

(A) regardless of whether the person for which the document described in Subsection ~~[(12)]~~ (11)(e)(i)(A) is prepared or presented:

(I) knew of the falsity of the document described in Subsection ~~[(12)]~~ (11)(e)(i)(A); or

(II) consented to the falsity of the document described in Subsection ~~[(12)]~~ (11)(e)(i)(A); and

(B) in addition to any other penalty provided by law.

(iv) Notwithstanding Section 76-3-301, for purposes of this Subsection ~~[(12)]~~ (11)(e), the penalty may not:

(A) be less than \$1,500; or

(B) exceed \$25,000.

(v) The commission may seek a court order to enjoin a person from engaging in conduct that is subject to a penalty under this Subsection ~~[(12)]~~ (11)(e).

(vi) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules prescribing the documents that are similar to Subsections ~~[(12)]~~ (11)(e)(i)(A)(I) through (III).

(f) The statute of limitations for prosecution for a violation of this Subsection ~~[(12)]~~ (11) is the later of six years:

(i) from the date the tax should have been remitted; or

(ii) after the day on which the person commits the criminal offense.

~~[(13)]~~ (12) Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.

Section 2. Section **59-1-1408** is amended to read:

59-1-1408. Assessments.

(1) Except as provided in Subsections (2) through (4), an assessment is made on the date a liability is posted to the records of the commission.

(2) Except as provided in Subsection (4), for purposes of a liability for which the commission mails a notice of deficiency to a person in accordance with Section 59-1-1405, an assessment is made:

(a) if a person has not filed a petition for redetermination of a deficiency under Section 59-1-501, on the date:

431 (i) (A) 30 days after the day on which the commission mails the notice of deficiency to
432 the person; or

433 (B) 90 days after the day on which the commission mails the notice of deficiency to the
434 person if the notice is addressed to a person outside the United States or the District of
435 Columbia; or

436 (ii) the person in writing:

437 (A) agrees with the commission on the existence and amount of the liability; and

438 (B) consents to the assessment of the liability; or

439 (b) if a person files a petition for redetermination of a deficiency under Section
440 59-1-501, on the date the liability resulting from a final commission decision is posted to the
441 records of the commission.

442 (3) Except as provided in Subsection (4), for purposes of a notice of proposed penalty
443 under Section 59-1-302 or Subsection 59-1-401[~~(7)~~] (6), an assessment is made:

444 (a) if a person has not filed a petition for redetermination of a deficiency under Section
445 59-1-501, on the date:

446 (i) (A) 30 days after the day on which the commission mails the notice of proposed
447 penalty to the person; or

448 (B) 90 days after the day on which the commission mails the notice of proposed
449 penalty to the person if the notice is addressed to a person outside the United States or the
450 District of Columbia; or

451 (ii) the person in writing:

452 (A) agrees with the commission on the existence and amount of the liability; and

453 (B) consents to the assessment of the liability; or

454 (b) if a person files a petition for redetermination of a deficiency under Section
455 59-1-501, on the date the liability resulting from a final commission decision is posted to the
456 records of the commission.

457 (4) In the case of interest under Section 59-1-402 that accrues to a tax, fee, or charge,
458 an assessment is considered to have been made on the date the tax, fee, or charge is assessed.

459 (5) The commission may at any time within the time period prescribed for assessment
460 under Section 59-1-1410, increase or decrease an assessment if the commission ascertains that
461 the assessment is imperfect or incomplete in a material respect.

Section 3. Section **59-7-507** is amended to read:

59-7-507. Payment of tax.

(1) (a) If quarterly estimated payments are not made as provided in Section 59-7-504, the amount of tax imposed by this chapter shall be paid no later than the original due date of the return.

(b) If an extension of time is necessary for filing a return, as provided in Subsection 59-7-505(3) or Section 59-7-803, payment must be made no later than the original due date of the return in an amount equal to the ~~[lesser of: (i) The]~~ greater of:

~~[(A)]~~ (i) 90% of the total tax ~~[reported on the return]~~ liability for the current taxable year; or

~~[(B)]~~ (ii) 100% of the minimum tax described in Section 59-7-104~~[-or]~~.

~~[(ii) 100% of the total tax liability for the taxable year immediately preceding the current taxable year.]~~

(c) If payment is not made as provided in Subsection (1)(b), the commission shall add ~~[an extension]~~ a penalty as provided in ~~[Section]~~ Subsection 59-1-401(3)(b)(iii), until the tax is paid ~~[during the period of extension]~~ in full.

(2) (a) 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 of that amount, for a period not to exceed six months from the date prescribed for the payment of the tax.

(b) For purposes of Subsection (2)(a), 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.

Section 4. Section **59-10-516** is amended to read:

59-10-516. Filing extension -- Payment of tax -- Penalty -- Foreign residency.

(1) (a) The commission shall allow a taxpayer an extension of time for filing returns.

(b) The extension under Subsection (1)(a) may not exceed six months.

(2) (a) Except as provided in Subsection (2)(b), the commission may not impose on a taxpayer during the extension period prescribed under Subsection (1) a penalty under ~~[Section]~~ Subsection 59-1-401(3)(b)(iii) if the taxpayer pays~~[-]~~ 90% of the total tax liability for the current taxable year on or before the 15th day of the fourth month following the close of the taxpayer's taxable year~~[-the lesser of:]~~.

~~[(i) 90% of the total tax reported on the return for the current taxable year; or]~~

493 ~~[(ii) 100% of the total tax liability for the taxable year immediately preceding the~~
494 ~~current taxable year.]~~

495 (b) If a taxpayer fails to meet the requirements of Subsection (2)(a), the commission
496 may apply to the total balance due a penalty as provided in Section 59-1-401.

497 (3) If any federal income tax return filing is lawfully delayed pending a determination
498 of qualification for federal tax exemption due to residency outside of the United States, a
499 taxpayer shall file a return within 30 days after that determination is made.

500 Section 5. Section **59-10-1501** is enacted to read:

501 **Part 15. Estimated Tax Payments Act**

502 **59-10-1501. Title.**

503 This part is known as the "Estimated Tax Payments Act."

504 Section 6. Section **59-10-1502** is enacted to read:

505 **59-10-1502. Definitions.**

506 As used in this part:

507 (1) "Adjusted state tax liability after withholding" means the difference between:

508 (a) the difference between:

509 (i) the product of:

510 (A) an applicable taxpayer's state taxable income for a taxable year; and

511 (B) the tax rate imposed on the applicable taxpayer's state taxable income under this
512 chapter; and

513 (ii) the sum of:

514 (A) the nonrefundable tax credits and refundable tax credits that the taxpayer claims as
515 allowed for that taxable year on the applicable taxpayer's return filed under this chapter for the
516 taxable year except for a credit described in Subsection (1)(b); and

517 (B) any adjustments the commission makes in accordance with Subsection
518 59-10-1505(2); and

519 (b) a credit the applicable taxpayer claims on a return as allowed for amounts paid or
520 withheld under:

521 (i) Chapter 6, Mineral Production Tax Withholding, for the taxable year; or

522 (ii) this chapter for the taxable year.

523 (2) "Adjusted state tax liability before withholding" means the difference between:

- 524 (a) the product of:
525 (i) an applicable taxpayer's state taxable income for a taxable year; and
526 (ii) the tax rate imposed on the applicable taxpayer's state taxable income under this
527 chapter; and
528 (b) the sum of:
529 (i) the nonrefundable tax credits and refundable tax credits that the taxpayer claims as
530 allowed for that taxable year on the applicable taxpayer's return filed under this chapter for the
531 taxable year except for a credit described in Subsection (1)(b); and
532 (ii) any adjustments the commission makes in accordance with Subsection
533 59-10-1505(2).
534 (3) "Applicable taxpayer" means a calendar year taxpayer or a fiscal year taxpayer.
535 (4) "Calendar year taxpayer" means the following that has a taxable year that begins on
536 January 1 and is for a 12-month period:
537 (a) an individual;
538 (b) an estate;
539 (c) a trust; or
540 (d) an S corporation as defined in Section 59-10-1402.
541 (5) "Electronic" is as defined in Section 59-10-514.1.
542 (6) "Farmer" is as defined in Section 6654, Internal Revenue Code.
543 (7) "Fiscal year taxpayer" means the following that has a taxable year that begins on a
544 day other than January 1 and is for a 12-month period:
545 (a) an individual;
546 (b) an estate;
547 (c) a trust; or
548 (d) an S corporation as defined in Section 59-10-1402.
549 (8) "Fisherman" is as defined in Section 6654, Internal Revenue Code.
550 (9) "Pass-through entity" is as defined in Section 59-10-1402.
551 (10) "Required annual payment" means:
552 (a) for an applicable taxpayer except for a farmer or fisherman, an amount equal to the
553 lesser of:
554 (i) 90% of the applicable taxpayer's adjusted state tax liability before withholding for

the current taxable year; or

(ii) 100% of the applicable taxpayer's adjusted state tax liability before withholding for the previous taxable year, if that taxable year was for a 12-month period and the taxpayer filed a return under this chapter for the taxable year; and

(b) for a farmer or fisherman, an amount as defined by the commission in accordance with Section 59-10-1505.

(11) "Required annual payment after withholding" means the difference between:

(a) an applicable taxpayer's required annual payment; and

(b) a credit the applicable taxpayer claims on a return as allowed for amounts paid or withheld under:

(i) Chapter 6, Mineral Production Tax Withholding, for the taxable year; or

(ii) this chapter for the taxable year.

Section 7. Section **59-10-1503** is enacted to read:

59-10-1503. Required annual payment -- Estimated tax payments.

(1) For a taxable year beginning on or after January 1, 2011, an applicable taxpayer required to file a return under this chapter for the taxable year shall pay to the commission the required annual payment if on the last day of the applicable taxpayer's taxable year the applicable taxpayer's adjusted state tax liability after withholding for the taxable year will be \$1,000 or more, regardless of the applicable taxpayer's filing status.

(2) The applicable taxpayer shall make the required annual payment described in Subsection (1) by:

(a) deduction and withholding under:

(i) Chapter 6, Mineral Production Tax Withholding; or

(ii) this chapter;

(b) the applicable taxpayer making one or more estimated tax payments to the commission as provided in this part; or

(c) a combination of Subsections (2)(a) and (b).

(3) (a) If an applicable taxpayer makes an estimated tax payment to the commission, the estimated tax payment shall be made in accordance with this Subsection (3) and Subsection (4).

(b) Subject to Subsection (3)(f), if, on or before the last day of the third month of the

taxable year, the applicable taxpayer's adjusted state tax liability after withholding will be \$1,000 or more on the last day of the applicable taxpayer's taxable year, the applicable taxpayer shall pay:

(i) 25% of the required annual payment after withholding on or before the 15th day of the fourth month of the taxable year;

(ii) 25% of the required annual payment after withholding on or before the 15th day of the sixth month of the taxable year;

(iii) 25% of the required annual payment after withholding on or before the 15th day of the ninth month of the taxable year; and

(iv) 25% of the required annual payment after withholding on or before the 15th day of the first month of the year after the taxable year.

(c) Subject to Subsection (3)(f), if, on or after the first day of the fourth month of the taxable year but on or before the last day of the fifth month of the taxable year, an applicable taxpayer's adjusted state tax liability after withholding will be \$1,000 or more on the last day of the applicable taxpayer's taxable year, the applicable taxpayer shall pay:

(i) 50% of the required annual payment after withholding on or before the 15th day of the sixth month of the taxable year;

(ii) 25% of the required annual payment after withholding on or before the 15th day of the ninth month of the taxable year; and

(iii) 25% of the required annual payment after withholding on or before the 15th day of the first month of the year after the taxable year.

(d) Subject to Subsection (3)(f), if, on or after the first day of the sixth month but on or before the last day of the eighth month of the taxable year, an applicable taxpayer's adjusted state tax liability after withholding will be \$1,000 or more on the last day of the applicable taxpayer's taxable year, the applicable taxpayer shall pay:

(i) 75% of the required annual payment after withholding on or before the 15th day of the ninth month of the taxable year; and

(ii) 25% of the required annual payment after withholding on or before the 15th day of the first month of the year after the taxable year.

(e) Subject to Subsection (3)(f), if, on or after the first day of the ninth month of the taxable year, an applicable taxpayer's adjusted state tax liability after withholding will be

\$1,000 or more on the last day of the applicable taxpayer's taxable year, the applicable taxpayer shall pay 100% of the required annual payment after withholding on or before the 15th day of the first month of the year after the taxable year.

(f) (i) Except as provided in Subsection (3)(f)(ii), if, after making an estimated tax payment, an applicable taxpayer's adjusted state tax liability after withholding changes, the applicable taxpayer shall proportionally increase or decrease the applicable taxpayer's remaining estimated tax payments for the taxable year so that the balance of the required annual payment after withholding is made in equal installments.

(ii) If a taxpayer files an amended return for a taxable year after the original due date for filing the return, not including extensions, the applicable taxpayer is not required to:

(A) recalculate the applicable taxpayer's adjusted state tax liability for the taxable year for purposes of this part; or

(B) proportionally increase or decrease the applicable taxpayer's estimated tax payments for the taxable year under Subsection (3)(f)(i).

(4) (a) An applicable taxpayer that makes an estimated tax payment under this section shall make the estimated tax payment by electronic means.

(b) Notwithstanding Subsection (4)(a), the commission may waive the requirement of Subsection (4)(a) if the applicable taxpayer demonstrates to the commission that the requirement of Subsection (4)(a) would cause an undue hardship.

Section 8. Section **59-10-1504** is enacted to read:

59-10-1504. Penalties -- Commission authority to waive, reduce, or compromise penalty.

(1) Subject to Subsection 59-10-1505(1)(c) and except as provided in Subsection (2), an applicable taxpayer shall pay a penalty as provided in Section 59-1-401 if the applicable taxpayer fails to pay or underpays an estimated tax payment in accordance with this part.

(2) Subject to Subsection 59-10-1505(1)(c), in accordance with the procedures and requirements of Section 59-1-401, the commission may waive, reduce, or compromise the penalty described in Subsection (1).

Section 9. Section **59-10-1505** is enacted to read:

59-10-1505. Rulemaking authority -- Taxpayer with a taxable year of less than 12 months -- Farmer or fisherman -- Nonresident alien -- Exceptions to penalty --

Calculation of adjusted state tax liability.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules:

(a) providing for estimated tax payments for a taxpayer with a taxable year of less than 12 months;

(b) establishing the required annual payment and providing for estimated tax payments:

(i) for a:

(A) farmer or fisherman; or

(B) nonresident alien described in Section 6654(j), Internal Revenue Code; and

(ii) consistent with Section 6654, Internal Revenue Code; and

(c) providing for the following exceptions to the penalty described in Section 59-10-1504:

(i) an exception consistent with Section 6654(e)(2), Internal Revenue Code, for an applicable taxpayer that filed a return under this chapter for the prior taxable year;

(ii) an exception consistent with Section 6654(e)(3), Internal Revenue Code;

(iii) an exception for an applicable taxpayer's failure to pay the final estimated tax payment for a taxable year consistent with Section 6654(h), Internal Revenue Code; and

(iv) an exception consistent with Section 6658(a), Internal Revenue Code.

(2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

(i) except as provided in Subsection (2)(b), allowing for an adjustment to the calculation of adjusted state tax liability after withholding and adjusted state tax liability before withholding for purposes of this part, by adding or subtracting an amount that is added or subtracted on a return filed under this chapter; and

(ii) defining the circumstances that constitute an undue hardship to make an estimated tax payment by electronic means described in Section 59-10-1503.

(b) The commission may not make a rule under Subsection (2)(a)(i) that adjusts the calculation of adjusted state tax liability after withholding or adjusted state tax liability before withholding to include:

(i) a nonrefundable tax credit or refundable tax credit that is added or subtracted on a return filed under this chapter;

679 (ii) a contribution made in accordance with Part 13, Individual Income Tax
680 Contribution Act; or
681 (iii) an amount of use tax liability under Chapter 12, Sales and Use Tax Act, reported
682 on a return filed under this chapter.

683 Section 10. Section **59-10-1506** is enacted to read:

684 **59-10-1506. Commission to summarize requirements of this part on the**
685 **commission's website.**

686 On or before December 1, 2010, the commission shall provide a summary of the
687 requirements of this part in a conspicuous place on the commission's website.

688 Section 11. **Effective date.**

689 (1) Except as provided in Subsection (2), this bill takes effect for a taxable year
690 beginning on or after January 1, 2011.

691 (2) The following sections take effect on May 11, 2010:

692 (a) Section 59-10-1505; and

693 (b) Section 59-10-1506.

Legislative Review Note
as of 1-14-10 4:24 PM

Office of Legislative Research and General Counsel

S.B. 92 - Amendments to Revenue and Taxation Title**Fiscal Note**

2010 General Session

State of Utah

State Impact

Enactment of this bill increases one-time revenue to the Education Fund by \$110,596,400 in FY 2011 and decreases revenue to the Education Fund on an ongoing basis by \$6,992,000 in FY 2011 and \$6,514,100 in FY 2012. The Tax Commission requires \$330,000 in FY 2011 for one-time programming costs and \$30,000 ongoing for processing and compliance.

	FY 2010 <u>Approp.</u>	FY 2011 <u>Approp.</u>	FY 2012 <u>Approp.</u>	FY 2010 <u>Revenue</u>	FY 2011 <u>Revenue</u>	FY 2012 <u>Revenue</u>
Education Fund	\$0	\$30,000	\$30,000	\$0	(\$6,992,000)	(\$6,514,100)
Education Fund, One-Time	\$0	\$330,000	\$0	\$0	\$110,596,400	\$0
Total	\$0	\$360,000	\$30,000	\$0	\$103,604,400	(\$6,514,100)

Individual, Business and/or Local Impact

Individuals with an expected end of year tax payment of over \$1,000 will be required to file quarterly payments; certain qualifying individuals and businesses will experience a decrease in tax penalties of \$6,514,100 in FY 2012. Local governments are unaffected.