

Part 7

Termination and Jeopardy Assessments Procedure

59-1-701 Grounds for termination and jeopardy assessment -- Notice -- Collection -- Reopening period -- Bond.

- (1) If the commission finds that a taxpayer intends quickly to depart from this state or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act (including in the case of a taxpayer selling or otherwise distributing all or a part of its assets in liquidation or otherwise) tending to prejudice or to render wholly or partially ineffectual proceedings to collect any tax or penalty in lieu of tax for the current or the preceding taxable period, unless such proceedings be brought without delay, the commission may declare the taxable period for such taxpayer immediately terminated whether or not the time otherwise allowed by law for filing returns and paying the liability has expired. The commission shall immediately make a determination of tax for the current taxable period or for the preceding period, or both, and notwithstanding any other provision of law, the tax shall become immediately due and payable. The commission shall immediately assess the amount of the tax so determined (together with all interest, penalties, additional amounts, and additions to the tax provided by law) for the current taxable period or such preceding taxable period, or both, and shall give the notice of determination and assessment to the taxpayer, together with a demand for immediate payment of the tax.
- (2) In the case of a current taxable period, the commission shall determine the tax for the period beginning on the first day of the current taxable period and ending on the date of the determination under Subsection (1) as though the period were a taxable period of the taxpayer. The commission shall take into account any prior determination made under this subsection with respect to such current taxable period. Any amounts collected as a result of any assessments under this subsection shall be treated as a partial payment of tax for the taxable period.
- (3) Notwithstanding the termination of the taxable period of the taxpayer as provided in Subsection (1), the commission may reopen such taxable period each time the taxpayer is found by the commission to have incurred additional liabilities, within the current taxable period, since the termination of such period. A taxable period so terminated by the commission may be reopened by the taxpayer if he files a true and accurate return, as required under Title 59, Chapter 2, Property Tax Act, Chapter 7, Corporate Franchise and Income Taxes, Chapter 10, Individual Income Tax Act, or Chapter 12, Sales and Use Tax Act, for the taxable period, together with such other information as the commission may by rule prescribe.
- (4) Payment of taxes may not be enforced by any proceedings under Subsection (1) prior to the expiration of the time otherwise allowed for paying such taxes if the taxpayer furnishes, under rules prescribed by the commission, a bond to ensure the timely making of returns with respect to, and payment of, the taxes, penalties, or interest for prior periods.

Renumbered and Amended by Chapter 3, 1987 General Session

59-1-702 Jeopardy assessment -- Notice -- Amount.

- (1) If the commission believes that the assessment or collection of any tax or penalty in lieu of tax will be jeopardized by delay, it shall, notwithstanding the assessment provisions of Title 59, Chapter 2, Property Tax Act, Chapter 7, Corporate Franchise and Income Taxes, Chapter 10, Individual Income Tax Act, or Chapter 12, Sales and Use Tax Act, immediately assess such tax

- or penalty in lieu of tax (together with all interest, penalties, and additions to tax provided for by law), and notice and demand shall be made by the commission for the payment thereof.
- (2) If the jeopardy assessment is made before any notice of the tax deficiency to which the jeopardy assessment relates has been mailed under Title 59, Chapter 2, Property Tax Act, Chapter 7, Corporate Franchise and Income Taxes, Chapter 10, Individual Income Tax Act, or Chapter 12, Sales and Use Tax Act, then the commission shall mail a notice under this section within 60 days after the making of the assessment.
 - (3) The jeopardy assessment may be made of a deficiency greater or less than that set forth in the notice of deficiency, which has been mailed to the taxpayer, and whether or not the taxpayer has filed a petition with the commission. The commission may, at any time before rendering its decision, abate such assessment, or any unpaid portion thereof, to the extent that it believes the assessment to be excessive in amount. The commission has jurisdiction to redetermine the entire amount of the deficiency and of all amounts assessed.
 - (4) If the jeopardy assessment is made after the commission has rendered a decision on a taxpayer's petition for redetermination, the assessment may be made only in respect to the amount of the deficiency determined by the commission in its decision.

Renumbered and Amended by Chapter 3, 1987 General Session

59-1-703 Collection procedure -- Review -- Bond for stay -- Sale of seized property.

- (1)
 - (a) If an amount that is due and payable under Sections 59-1-701 and 59-1-702 is not paid, the commission shall collect that amount in accordance with Part 14, Assessment, Collections, and Refunds Act.
 - (b)
 - (i) For purposes of collecting an amount described in Subsection (1)(a), the commission may issue a warrant.
 - (ii) The commission may direct the warrant described in Subsection (1)(b)(i) to an authorized representative of the commission.
 - (iii) In executing the warrant described in Subsection (1)(b)(i), the authorized representative described in Subsection (1)(b)(ii):
 - (A) has all of the powers conferred by law upon a sheriff; and
 - (B) may not collect a fee or other compensation for executing the warrant other than the actual expenses paid to execute the warrant.
- (2)
 - (a) The appropriateness of a termination or jeopardy assessment shall be reviewable under procedures prescribed by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
 - (b) The amount of a termination or jeopardy assessment is reviewable only in the manner prescribed in Chapter 1, Part 5, Petitions for Redetermination of Deficiencies, and Part 6, Judicial Review.
- (3) In a proceeding brought to enforce payment of a liability made due and payable under this section, Section 59-1-701, or 59-1-702, the finding of the commission, whether made after notice to the taxpayer or not, is presumptive evidence of jeopardy.
- (4)
 - (a) After a petition is filed with the commission and when the amount that the commission determines to be assessable becomes final, any unpaid portion that is stayed by bond shall be collected as part of the tax upon notice and demand from the commission.

- (b) A portion remaining after the commission collects the amount determined to be assessable under Subsection (4)(a) shall be abated.
 - (c) If the amount the commission collects in accordance with Subsection (4)(a) exceeds the amount that should have been assessed, the excess shall be credited or refunded to the taxpayer.
 - (d) If the amount the commission determines to be assessable in accordance with Subsection (4)(a) is greater than the amount actually assessed, the difference shall be assessed, and collected as part of the tax, upon notice and demand by the commission.
- (5)
- (a) The commission may abate a jeopardy assessment if the commission finds that jeopardy does not exist.
 - (b) An abatement described in Subsection (5)(a) may not be made after a decision of the commission in respect of the deficiency is rendered or, if no petition is filed with the commission, after the expiration of the period for filing a petition.
 - (c) The period of limitation on making an assessment or levy or a proceeding for collection, in respect of a deficiency, shall be determined as if the commission had not abated the jeopardy assessment under Subsection (5)(a).
 - (d) The running of the period of limitation on making an assessment or levy or a proceeding for collection shall be suspended from the date of a jeopardy assessment until the expiration of the 10th day after the jeopardy assessment is abated under this Subsection (5).
- (6)
- (a) The collection of all or a part of a jeopardy assessment may be stayed by posting a bond with the commission in the amount and under conditions established by the commission.
 - (b) A taxpayer may waive a stay described in Subsection (6)(a) at any time in respect of all or part of the amount covered by the bond.
 - (c) If, as a result of a waiver described in Subsection (6)(b), any part of the amount covered by the bond is paid, the commission shall proportionately reduce the bond at the request of the taxpayer that waives the stay in accordance with Subsection (6)(b).
 - (d) If any portion of a jeopardy assessment is abated, or if a notice of deficiency is mailed to a taxpayer in a lesser amount, the bond shall, at the request of the taxpayer, be proportionately reduced.
- (7)
- (a) If a bond is posted before a taxpayer files a petition for redetermination of a deficiency under Section 59-1-501, the bond shall contain a condition that the amount of the deficiency assessment, the collection of which is stayed by the bond, shall be paid on notice and demand at any time after the expiration of the stay, together with interest on the deficiency assessment, beginning on the date of the jeopardy notice and demand and ending on the date of notice and demand under this Subsection (7)(a).
 - (b) A bond described in Subsection (7)(a) shall be conditioned upon the payment of that part of the assessment, collection of which is stayed by the bond, that is:
 - (i) not abated by a decision of the commission; and
 - (ii) final.
 - (c) If the commission determines that the amount of a deficiency assessed is greater than the amount that should have been assessed, the bond shall be proportionately reduced:
 - (i) at the time the decision of the commission is rendered; and
 - (ii) at the request of the taxpayer that posts the bond.
- (8)

- (a) If a jeopardy assessment is made under this section, property seized for the collection of a tax may not be sold until:
 - (i) the commission issues a notice of deficiency; and
 - (ii) the time for filing a petition for redetermination expires.
- (b) Except as provided in Subsection (8)(c), if a taxpayer files a petition for redetermination, regardless of whether the taxpayer files the petition for redetermination before or after the commission makes the jeopardy assessment, the property described in Subsection (8)(a) may not be sold until the commission's decision on the petition is final.
- (c) For purposes of Subsection (8)(b), the property described in Subsection (8)(a) may be sold if:
 - (i) the taxpayer consents to the sale;
 - (ii) the commission determines that the expenses of conservation and maintenance of the property would greatly reduce the net proceeds of the sale; or
 - (iii) the property is perishable.

Amended by Chapter 212, 2009 General Session

59-1-704 Restraint of collection restricted.

- (1) Except as otherwise provided in Chapter 1, Part 5, Petitions for Redetermination of Deficiencies, Part 6, Judicial Review, and Part 7, Termination and Jeopardy Assessments Procedure and Chapter 2, Property Tax Act, Chapter 6, Mineral Production Tax Withholding, Chapter 7, Corporate Franchise and Income Taxes, Chapter 10, Individual Income Tax Act, and Chapter 12, Sales and Use Tax Act and the rules promulgated thereunder, no suit for the purpose of restraining the assessment or collection of any tax, penalty, or interest imposed under Chapter 1, General Taxation Policies, Chapter 2, Property Tax Act, Chapter 6, Mineral Production Tax Withholding, Chapter 7, Corporate Franchise and Income Taxes, Chapter 10, Individual Income Tax Act, or Chapter 12, Sales and Use Tax Act may be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.
- (2) No suit may be maintained in any court for the purpose of restraining the assessment or collection of the amount of the state tax liability of a transferee or of a fiduciary of property of a taxpayer.

Amended by Chapter 9, 2001 General Session

59-1-705 Payment and collection of penalties, interest, and other liabilities.

The penalties, interest, and other liabilities imposed by the provisions of Title 59, Revenue and Taxation, shall be paid by the taxpayer upon notice and demand by the commission, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in Title 59, Revenue and Taxation, to "tax" includes penalties, interest, and other liabilities.

Renumbered and Amended by Chapter 3, 1987 General Session

59-1-707 Writ of mandate requiring taxpayer to file return.

- (1)
 - (a) If a taxpayer fails to file any return required pursuant to Title 59, Revenue and Taxation, within 60 days of the time prescribed, the commission may petition for a writ of mandate to compel the taxpayer to file the return. The petition may be filed, in the discretion of the commission,

in the Tax Division of the Third Judicial District or in the district court for the county in which the taxpayer resides or has his principal place of business. In the case of a nonresident taxpayer the petition shall be filed in the Third District Court.

- (b) The court shall grant a hearing on the petition for a writ of mandate within 20 days after the filing of the petition or as soon thereafter as the court may determine, having regard for the rights of the parties and the necessity of a speedy determination of the petition.
 - (c) Upon a finding of failure to file a return within 60 days of the time prescribed pursuant to Title 59, Revenue and Taxation, the court shall issue a writ of mandate requiring the taxpayer to file a return. The order of the court shall include an award of attorneys' fees, court costs, witness fees, and all other costs in favor of the prevailing party.
- (2) Nothing in this section shall limit the remedies otherwise available to the commission under Title 59, Revenue and Taxation, or other laws of this state.

Renumbered and Amended by Chapter 3, 1987 General Session