

**TAX COMMISSION REVISIONS**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: John L. Valentine**

AN ACT RELATING TO REVENUE AND TAXATION; REQUIRING CERTAIN TAXPAYERS ASSESSED BY THE STATE TAX COMMISSION TO FILE A STATEMENT CONTAINING CERTAIN PROPERTY TAX INFORMATION; REQUIRING THE STATE TAX COMMISSION TO PREPARE A RECORD OF ASSESSMENT FOR AIRLINES, AIR CHARTER SERVICES, AND AIR CONTRACT SERVICES; PROVIDING PENALTIES FOR FAILING TO FILE A PROPERTY TAX STATEMENT WITH THE STATE TAX COMMISSION UNDER CERTAIN CIRCUMSTANCES; AUTHORIZING THE STATE TAX COMMISSION TO WAIVE, REDUCE, OR COMPROMISE A PENALTY UNDER CERTAIN CIRCUMSTANCES; REQUIRING THE STATE TAX COMMISSION TO ASSESS AND LIST CERTAIN PROPERTY USING THE BEST INFORMATION OBTAINABLE BY THE COMMISSION IF A PERSON FAILS TO FILE A PROPERTY TAX STATEMENT UNDER CERTAIN CIRCUMSTANCES; AUTHORIZING THE STATE TAX COMMISSION TO EXTEND THE TIME PERIOD FOR FILING A PROPERTY TAX STATEMENT UNDER CERTAIN CIRCUMSTANCES; ADDRESSING THE CIRCUMSTANCES UNDER WHICH A TAXPAYER MAY CLAIM A REFUND FOR AN OVERPAYMENT OF A SALES AND USE TAX; PROVIDING PROCEDURES FOR CLAIMING THE REFUND; MAKING TECHNICAL CHANGES; AND PROVIDING A COORDINATION CLAUSE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**59-2-202**, as last amended by Chapter 209, Laws of Utah 1996

**59-2-204**, as enacted by Chapter 4, Laws of Utah 1987

**59-2-207**, as enacted by Chapter 4, Laws of Utah 1987

**59-12-110**, as last amended by Chapter 299, Laws of Utah 1998

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

Section 1. Section **59-2-202** is amended to read:

**59-2-202. Statement of taxpayer -- Penalty for failure to file statement or information -- Waiver, reduction, or compromise of penalty -- Extension of time for filing statement -- Assessment without statement -- Appeals.**

(1) (a) A person, or an officer or agent of that person, owning or operating [~~a public utility in this state, or owning or operating a pipeline, power, canal, irrigation, or telephone company in more than one county in this state;~~] property described in Subsection (1)(b) shall, on or before March 1 of each year, [~~furnish to~~] file with the commission a statement:

(i) signed and sworn to by the person, officer, or agent;

(ii) showing in detail all real property[~~,-real or~~] and tangible personal[~~,-owned by~~] property located in the state that the person [in the state, including a statement of mileage] owns or operates;

(iii) containing the number of miles of taxable tangible personal property in each county[~~,-~~];

(A) that the person owns or operates; and

(B) as valued [at 12 o'clock m. of] on January 1 of the year[~~,-with~~] for which the person, officer, or agent is furnishing the statement; and

(iv) containing any other information [required by] the commission requires.

(b) Subsection (1)(a) applies to:

(i) the following property located in the state:

(A) a public utility;

(B) an airline;

(C) an air charter service; or

(D) an air contract service; or

(ii) the following property located in more than one county in the state:

(A) a pipeline company;

(B) a power company;

(C) a canal company;

(D) an irrigation company; or

(E) a telephone company.

(b) (i) The commission may [~~extend the time~~] allow an extension for filing the

statement under Subsection (1)(a)[, except that the extension may] for a time period not [exceed] exceeding 30 days, unless the commission determines that extraordinary circumstances require a longer period of extension.

(ii) The commission shall grant a person, or an officer or agent of that person, an extension for filing the statement under Subsection (1)(a) for a time period not exceeding 15 days if:

(A) a federal regulatory agency requires the taxpayer to file a statement that contains the same information as the statement under Subsection (1)(a); and

(B) the person, or an officer or agent of that person, requests the commission to grant the extension.

(2) The commission shall assess and list the property described in Subsection (1)(b) using the best information obtainable by the commission if a person, or an officer or agent of that person, fails to file the statement required under Subsection (1)(a) on or before the later of:

(a) March 1; or

(b) if the commission allows an extension under Subsection (1)(c) for filing the statement, the day after the last day of the extension period.

~~[(2) A person failing to furnish the statement under Subsection (1)(a) on or before March 1 of each year, or any other information considered by the commission necessary to enable it to determine valuations for assessment purposes or for the apportionment of the assessment, shall be assessed by the]~~

(3) (a) Except as provided in Subsection (3)(c), the commission shall assess a person a penalty [equal to 10% of the estimated tax due, except that the penalty may not be less than \$100.] as provided in Subsection (3)(b), if the person, or an officer or agent of that person, fails to file:

(i) the statement required under Subsection (1)(a) on or before the later of:

(A) March 1; or

(B) if the commission allows an extension under Subsection (1)(c) for filing the statement, the day after the last day of the extension period; or

(ii) any other information the commission determines to be necessary to:

(A) establish valuations for assessment purposes; or

(B) apportion an assessment.

(b) The penalty described in Subsection (3)(a) is an amount equal to the greater of:

(i) 10% of the person's estimated tax liability under this chapter for the current calendar year not to exceed \$50,000; or

(ii) \$100.

(c) (i) Notwithstanding Subsections (3)(a) and (4), the commission may waive, reduce, or compromise a penalty imposed under this section if the commission finds there are reasonable grounds for the waiver, reduction, or compromise.

(ii) If the commission waives, reduces, or compromises a penalty under Subsection (3)(c)(i), the commission shall make a record of the grounds for waiving, reducing, or compromising the penalty.

~~[(3)] (4)~~ The county treasurer shall collect the penalty imposed under Subsection ~~[(2)] (3)~~ [shall be collected according to the procedures and requirements of] as provided in Section 59-2-1308.

~~[(4)] (5)~~ A person subject to a penalty under Subsection ~~[(2)] (3)~~ may appeal the penalty according to procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

Section 2. Section **59-2-204** is amended to read:

**59-2-204. Record of assessment of public utility companies -- Review by county assessor.**

(1) Each year, the commission shall prepare a record of assessment of the following companies:

(a) public utility companies[-];

(b) airlines;

(c) air charter services; and

(d) air contract services.

(2) The record of assessment under Subsection (1) shall include:

(a) the name of ~~[every]~~ each person engaged in ~~[any public utility]~~ business within the state in a company described in Subsection (1);

(b) for each company described in Subsection (1), the total value of all of the company's tangible and intangible properties [of the person]; and

(c) any other information as determined by the commission.

~~[(2) The]~~ (3) At the request of a county assessor, the commission shall provide to the county assessor:

(a) the record of [the] assessment described in Subsection (1); and

(b) the information upon which the assessments and apportionments contained in the record of assessment are made [are available for review upon request by a county assessor].

Section 3. Section **59-2-207** is amended to read:

**59-2-207. Statements for mines -- Penalty for failure to file statement or information -- Assessment without statement -- Penalty -- Waiver, reduction, or compromise of penalty -- Extension of time for filing statement -- Appeals.**

(1) (a) ~~[The owner or operator, as provided in this part, of every mine or mining claim and other valuable mineral deposits, including lands containing coal or hydrocarbons,] A person, or an officer or agent of that person, owning or operating property described in Subsection (1)(b) shall file with the commission, [in] on a form prescribed by the [commissioner] commission, a sworn statement [with the commission] on or before March 1 of each year[. The statement shall set out in detail any information required by the commission.];~~

(i) showing in detail all real property and tangible personal property located in the state that the person owns or operates; and

(ii) containing any other information the commission requires.

(b) Subsection (1)(a) applies to the following property:

(i) a mine;

(ii) a mining claim; or

(iii) a valuable mineral deposit, including lands containing coal or hydrocarbons.

(c) (i) The commission may allow an extension for filing the statement under Subsection (1)(a) for a time period not exceeding 30 days, unless the commission determines that extraordinary circumstances require a longer period of extension.

(ii) The commission shall grant a person, or an officer or agent of that person, an extension for filing the statement under Subsection (1)(a) for a time period not exceeding 15 days if:

(A) a federal regulatory agency requires the taxpayer to file a statement that contains the same information as the statement under Subsection (1)(a); and

(B) the person, or an officer or agent of that person, requests the commission to grant the extension.

(2) [~~if any~~] The commission shall assess and list the property described in Subsection (1)(b) using the best information obtainable by the commission if a person, or an officer or agent of that person, fails to file the statement required under Subsection (1)(a)[~~, the commission shall assess and list the property using the best information obtainable by the commission.~~] on or before the later of:

(a) March 1; or

(b) if the commission allows an extension under Subsection (1)(c) for filing the statement, the day after the last day of the extension period.

(3) (a) [~~Any person who willfully refuses, upon demand, to furnish the statement required under Subsection (1), is subject to the same penalties as provided under Section 59-2-307. Failure to furnish the statement following a renewed demand, after conviction, constitutes a separate offense.~~] Except as provided in Subsection (3)(c), the commission shall assess a person a penalty as provided in Subsection (3)(b), if the person, or an officer or agent of that person, fails to file:

(i) the statement required under Subsection (1)(a) on or before the later of:

(A) March 1; or

(B) if the commission allows an extension under Subsection (1)(c) for filing the statement, the day after the last day of the extension period; or

(ii) any other information the commission determines to be necessary to:

(A) establish valuations for assessment purposes; or

(B) apportion an assessment.

(b) The penalty described in Subsection (3)(a) is an amount equal to the greater of:

(i) 10% of the person's estimated tax liability under this chapter for the current calendar year not to exceed \$50,000; or

(ii) \$100.

(c) (i) Notwithstanding Subsections (3)(a) and (4), the commission may waive, reduce, or compromise a penalty imposed under this section if the commission finds there are reasonable grounds for the waiver, reduction, or compromise.

(ii) If the commission waives, reduces, or compromises a penalty under Subsection (3)(c)(i), the commission shall make a record of the grounds for waiving, reducing, or compromising the penalty.

(4) The county treasurer shall collect the penalty imposed under Subsection (3) as provided in Section 59-2-1308.

(5) A person subject to a penalty under Subsection (3) may appeal the penalty according to the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

Section 4. Section **59-12-110** is amended to read:

**59-12-110. Overpayments, deficiencies, and refunds procedures.**

(1) (a) As soon as practicable after a return is filed, the commission shall examine the return.

(b) If the commission determines that the correct amount of tax to be remitted is greater or less than the amount shown to be due on the return, the commission shall recompute the tax.

(c) If the amount paid exceeds the amount due, the excess, plus interest as provided in Section 59-1-402, shall be credited or refunded to the taxpayer as provided in Subsection (2).

(d) The commission may not credit or refund to the taxpayer interest on an overpayment under Subsection (1)(c) if the commission determines that the overpayment was made for the purpose of investment.

(2) (a) If a taxpayer pays a tax, penalty, or interest more than once or the commission erroneously receives, collects, or computes any tax, penalty, or interest, including an overpayment described in Subsection (1)(c), the commission shall:

(i) credit the amount of tax, penalty, or interest paid by the taxpayer against any amounts of tax, penalties, or interest the taxpayer owes; and

(ii) refund any balance to the taxpayer or the taxpayer's successors, administrators, executors, or assigns.

(b) Except as provided in Subsection (2)(c), a taxpayer shall file a claim with the commission to obtain a refund or credit under this Subsection (2) within three years from the day on which the taxpayer overpaid the tax, penalty, or interest.

(c) Notwithstanding Subsection (2)(b), beginning on July 1, 1998, the commission shall extend the period for a taxpayer to file a claim under Subsection (2)(b) if:

(i) the three-year period under Subsection (2)(b) has not expired; and

(ii) the commission and the taxpayer sign a written agreement:

(A) authorizing the extension; and

(B) providing for the length of the extension.

(d) A taxpayer may file a claim to obtain a refund or credit under this Subsection (2) regardless of whether the taxpayer received or objected to a notice of deficiency or a notice of assessment as provided in Subsection 59-12-114(1).

(e) A taxpayer may obtain a refund under this Subsection (2) of a tax paid under this chapter on a sale or use that is taxable under Section 59-12-103 if:

(i) the sale or use was exempt from sales and use taxes under Section 59-12-104 on the date of purchase; and

(ii) except as provided in Subsection (2)(c), the taxpayer files a claim for a refund with the commission as provided in Subsections (2)(b) through (d).

~~(f)~~ (f) If the commission denies a claim for a refund or credit under this Subsection (2), the taxpayer may request a redetermination of the denial by filing a petition or request for agency action with the commission as provided in Title 63, Chapter 46b, Administrative Procedures Act.

(3) If the commission erroneously determines an amount to be due from a taxpayer, the commission shall authorize the amounts to be cancelled upon its records.

(4) (a) Subject to the provisions of Subsection (4)(b), the commission may impose on a deficiency under this section:

(i) a penalty as provided in Section 59-1-401; and

(ii) interest as provided in Section 59-1-402.

(b) The commission may impose a penalty and interest on the entire deficiency if any part

of the deficiency is due to:

- (i) negligence;
- (ii) intentional disregard of law or rule; or
- (iii) fraud with intent to evade the tax.

(5) (a) Except as provided in Subsection (5)(b), a taxpayer shall pay a tax deficiency, including penalties or interest under this section, within ten days after the commission provides the taxpayer notice and demand of the deficiency, penalty, or interest.

(b) Notwithstanding Subsection (5)(a), a taxpayer may pay a tax deficiency, penalty, or interest within 30 days after the commission provides the taxpayer notice and demand of the deficiency, penalty, or interest if the commission determines:

- (i) that a greater amount was due than was shown on the return; and
- (ii) the tax is not in jeopardy.

(6) (a) Except as provided in Subsections (6)(c) through (f), the commission shall assess the amount of taxes imposed by this chapter, and any penalties and interest, within three years after a taxpayer files a return.

(b) Except as provided in Subsections (6)(c) through (f), if the commission does not make an assessment under Subsection (6)(a) within three years, the commission may not commence a proceeding for the collection of the taxes after the expiration of the three-year period.

(c) Notwithstanding Subsections (6)(a) and (b), the commission may make an assessment or commence a proceeding to collect a tax at any time if a deficiency is due to:

- (i) fraud; or
- (ii) failure to file a return.

(d) Notwithstanding Subsections (6)(a) and (b), beginning on July 1, 1998, the commission may extend the period to make an assessment or to commence a proceeding to collect the tax under this chapter if:

- (i) the three-year period under this Subsection (6) has not expired; and
- (ii) the commission and the taxpayer sign a written agreement:
  - (A) authorizing the extension; and

(B) providing for the length of the extension.

(e) If the commission delays an audit at the request of a taxpayer, the commission may make an assessment as provided in Subsection (6)(f) if:

(i) the taxpayer subsequently refuses to agree to an extension request by the commission; and

(ii) the three-year period under this Subsection (6) expires before the commission completes the audit.

(f) An assessment under Subsection (6)(e) shall be:

(i) for the time period for which the commission could not make an assessment because of the expiration of the three-year period; and

(ii) in an amount equal to the difference between:

(A) the commission's estimate of the amount of taxes the taxpayer would have been assessed for the time period described in Subsection (6)(f)(i); and

(B) the amount of taxes the taxpayer actually paid for the time period described in Subsection (6)(f)(i).

**Section 5. Coordination clause.**

If this bill and S.B. 76, Sales and Use Tax Exemption for Pollution Control Facilities, both pass, it is the intent of the Legislature that Subsection 59-12-110(2)(b) shall read:

"(b) Except as provided in Subsection (2)(c) or Section 19-2-124, a taxpayer shall file a claim with the commission to obtain a refund or credit under this Subsection (2) within three years from the day on which the taxpayer overpaid the tax, penalty, or interest."