

1 **INDIVIDUAL INCOME TAX - ESTIMATED**
2 **TAX PAYMENTS**

3 2002 FIFTH SPECIAL SESSION
4 STATE OF UTAH

5 **Sponsor: Jackie Biskupski**

6 **This act amends the Revenue and Taxation Code to require certain taxpayers to make**
7 **estimated tax payments to the State Tax Commission under certain circumstances. The act**
8 **provides procedures and requirements for making estimated tax payments to the State Tax**
9 **Commission, and requires that penalties be imposed on a taxpayer that fails to pay or**
10 **underpays an estimated tax payment. This act makes technical changes.**

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

12 AMENDS:

13 **59-1-401**, as last amended by Chapters 104 and 177, Laws of Utah 2001

14 ENACTS:

15 **59-10-1001**, Utah Code Annotated 1953

16 **59-10-1002**, Utah Code Annotated 1953

17 **59-10-1003**, Utah Code Annotated 1953

18 **59-10-1004**, Utah Code Annotated 1953

19 **59-10-1005**, Utah Code Annotated 1953

20 **59-10-1006**, Utah Code Annotated 1953

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

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

23 **59-1-401. Offenses and penalties -- Statute of limitations -- Commission authority**
24 **to waive, reduce, or compromise penalty or interest.**

25 (1) (a) The penalty for failure to file a tax return within the time prescribed by law
26 including extensions is the greater of \$20 or 10% of the unpaid tax due on the return.

27 (b) this Subsection (1) does not apply to amended returns.



28 (2) The penalty for failure to pay tax due shall be the greater of \$20 or 10% of the unpaid
29 tax for:

30 (a) failure to pay any tax, as reported on a timely filed return;

31 (b) failure to pay any tax within 90 days of the due date of the return, if there was a late
32 filed return subject to the penalty provided under Subsection (1)(a);

33 (c) failure to pay any tax within 30 days of the date of mailing any notice of deficiency of
34 tax unless a petition for redetermination or a request for agency action is filed within 30 days of
35 the date of mailing the notice of deficiency;

36 (d) failure to pay any tax within 30 days after the date the commission's order constituting
37 final agency action resulting from a timely filed petition for redetermination or request for agency
38 action is issued or is considered to have been denied under Subsection 63-46b-13(3)(b); and

39 (e) failure to pay any tax within 30 days after the date of a final judicial decision resulting
40 from a timely filed petition for judicial review.

41 (3) (a) (i) Beginning January 1, 1995, in the case of any failure to pay or underpayment of
42 estimated tax or quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and
43 59-9-104, there shall be added a penalty in an amount determined by applying the interest rate
44 provided under Section 59-1-402 plus four percentage points to the amount of the underpayment
45 for the period of the underpayment.

46 (ii) For taxable years beginning on or after January 1, 2003, if a taxpayer fails to pay or
47 underpays an estimated tax payment under Chapter 10, Part 10, Estimated Tax Payment Act, there
48 shall be added a penalty in an amount determined by applying the interest rate provided under
49 Section 59-1-402 plus three percentage points to the amount of the underpayment for the period
50 of the underpayment.

51 (b) (i) For purposes of Subsection (3)(a), the amount of the underpayment shall be the
52 excess of the required installment over the amount, if any, of the installment paid on or before the
53 due date for the installment.

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

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

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

58 (iii) For purposes of this Subsection (3), a payment of estimated tax shall be credited

59 against unpaid required installments in the order in which the installments are required to be paid.

60 (4) (a) In case of an extension of time to file an individual income tax or corporate
61 franchise tax return, if the lesser of 90% of the total tax reported on the tax return or 100% of the
62 prior year's tax is not paid by the due date of the return, not including extensions, a 2% per month
63 penalty shall apply on the unpaid tax during the period of extension.

64 (b) If a return is not filed within the extension time period as provided in Section 59-7-505
65 or 59-10-516, penalties as provided in Subsection (1) and Subsection (2)(b) shall be added in lieu
66 of the penalty assessed under this Subsection (4) as if no extension of time for filing a return had
67 been granted.

68 (5) (a) Additional penalties for underpayments of tax are as provided in Subsections
69 (5)(a)(i) through (iv).

70 (i) Except as provided in Subsection (5)(c), if any underpayment of tax is due to
71 negligence, the penalty is 10% of the underpayment.

72 (ii) Except as provided in Subsection (5)(d), if any underpayment of tax is due to
73 intentional disregard of law or rule, the penalty is 15% of the underpayment.

74 (iii) For intent to evade the tax, the penalty is the greater of \$500 per period or 50% of the
75 tax due.

76 (iv) If the underpayment is due to fraud with intent to evade the tax, the penalty is the
77 greater of \$500 per period or 100% of the underpayment.

78 (b) If the commission determines that a person is liable for a penalty imposed under
79 Subsection (5)(a)(ii), (iii), or (iv), the commission shall notify the taxpayer of the proposed penalty.

80 (i) The notice of proposed penalty shall:

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

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

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

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

86 (B) proceed in accordance with the review procedures of Subsection (5)(b)(iii).

87 (iii) Any person against whom a penalty has been proposed in accordance with this

88 Subsection (5) may contest the proposed penalty by filing a petition for an adjudicative proceeding
89 with the commission.

90 (iv) If the commission determines that a person is liable for a penalty under this Subsection
91 (5), the commission shall assess the penalty and give notice and demand for payment. The notice
92 and demand for payment shall be mailed by registered mail, postage prepaid, to the person's
93 last-known address.

94 (c) Notwithstanding Subsection (5)(a)(i), a vendor that voluntarily collects a tax under
95 Subsection 59-12-107(1)(b) is not subject to the penalty under Subsection (5)(a)(i) if on or after
96 July 1, 2001:

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

99 (A) the vendor meets one or more of the criteria described in Subsection 59-12-107(1)(a);
100 and

101 (B) the commission or a county, city, or town may require the vendor to collect a tax under
102 Subsection 59-12-103(2)(a) or (b); or

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

104 (A) the vendor meets one or more of the criteria described in Subsection 59-12-107(1)(a);
105 and

106 (B) the commission or a county, city, or town may require the vendor to collect a tax under
107 Subsection 59-12-103(2)(a) or (b).

108 (d) Notwithstanding Subsection (5)(a)(ii), a vendor that voluntarily collects a tax under
109 Subsection 59-12-107(1)(b) is not subject to the penalty under Subsection (5)(a)(ii) if:

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

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

114 (II) the commission or a county, city, or town may require the vendor to collect a tax under
115 Subsection 59-12-103(2)(a) or (b); or

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

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

119 (II) the commission or a county, city, or town may require the vendor to collect a tax under
120 Subsection 59-12-103(2)(a) or (b); and

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

124 (6) The penalty for failure to file an information return or a complete supporting schedule
125 is \$50 for each return or schedule up to a maximum of \$1,000.

126 (7) If any taxpayer, in furtherance of a frivolous position, has a prima facie intent to delay
127 or impede administration of the tax law and files a purported return that fails to contain
128 information from which the correctness of reported tax liability can be determined or that clearly
129 indicates that the tax liability shown must be substantially incorrect, the penalty is \$500.

130 (8) For monthly payment of sales and use taxes under Section 59-12-108, in addition to
131 any other penalties for late payment, a vendor may not retain a percentage of sales and use taxes
132 collected as otherwise allowable under Section 59-12-108.

133 (9) (a) As provided in Section 76-8-1101, criminal offenses and penalties are as provided
134 in Subsections (9)(b) through (d).

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

139 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (9)(b)(i), the fine may
140 not:

141 (A) be less than \$500; or

142 (B) exceed \$1,000.

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

148 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (9)(c)(i), the fine may
149 not:

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

151 (B) exceed \$5,000.

152 (d) (i) Any person who intentionally or willfully attempts to evade or defeat any tax or the
153 payment of a tax is, in addition to other penalties provided by law, guilty of a second degree
154 felony.

155 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (9)(d)(i), the fine may
156 not:

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

158 (B) exceed \$25,000.

159 (e) The statute of limitations for prosecution for a violation of this Subsection (9) is the
160 later of six years:

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

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

163 (10) Upon making a record of its actions, and upon reasonable cause shown, the
164 commission may waive, reduce, or compromise any of the penalties or interest imposed under this
165 part.

166 Section 2. Section **59-10-1001** is enacted to read:

167 **Part 10. Estimated Tax Payment Act**

168 **59-10-1001. Title.**

169 This part is known as the "Estimated Tax Payment Act."

170 Section 3. Section **59-10-1002** is enacted to read:

171 **59-10-1002. Definitions.**

172 As used in this part:

173 (1) "Adjusted state tax liability" means the difference between:

174 (a) a taxpayer's tax liability under this chapter for the taxable year; and

175 (b) any credits the taxpayer may claim under this chapter for the taxable year.

176 (2) "Adjusted state tax liability after withholding" means the difference between:

177 (a) the taxpayer's adjusted state tax liability; and

178 (b) the total amount an employer withholds for the taxable year under Part 4.

179 (3) "Calendar year taxpayer" means a taxpayer that:

180 (a) meets the requirements of Subsection 59-10-1003(1); and

181 (b) has a taxable year that:

182 (i) begins on January 1; and

- 183 (ii) is for a 12-month period.
- 184 (4) "Estimated tax payment threshold" means an amount of adjusted state tax liability after
185 withholding that is equal to \$2,000 for a taxpayer that files a return under this chapter, regardless
186 of the taxpayer's filing status.
- 187 (5) "Farmer" is as defined in Section 6654, Internal Revenue Code.
- 188 (6) "Fiscal year taxpayer" means a taxpayer that:
- 189 (a) meets the requirements of Subsection 59-10-1003(1); and
- 190 (b) has a taxable year that:
- 191 (i) begins on a day other than January 1; and
- 192 (ii) is for a 12-month period.
- 193 (7) "Fisherman" is as defined in Section 6654, Internal Revenue Code.
- 194 (8) "Required annual payment" means:
- 195 (a) for a taxpayer other than a farmer or fisherman, an amount equal to the lesser of:
- 196 (i) 90% of the taxpayer's adjusted state tax liability for the taxable year; or
- 197 (ii) 100% of the taxpayer's adjusted state tax liability for the previous taxable year if:
- 198 (A) that taxable year was for a period of 12 months; and
- 199 (B) the taxpayer filed a return under this chapter for that taxable year; or
- 200 (b) for a farmer or fisherman, an amount equal to the lesser of:
- 201 (i) 66-2/3% of the farmer's or fisherman's adjusted state tax liability for the taxable year;
- 202 or
- 203 (ii) 100% of the farmer's or fisherman's adjusted state tax liability for the previous taxable
204 year if:
- 205 (A) that taxable year was for a period of 12 months; and
- 206 (B) the taxpayer filed a return under this chapter for that taxable year.
- 207 (9) "Required annual payment after withholding" means the difference between:
- 208 (a) a taxpayer's required annual payment; and
- 209 (b) the total amount an employer withholds for the taxable year under Part 4.
- 210 (10) "Taxpayer's tax liability under this chapter for the taxable year" means the product
211 of:
- 212 (a) the taxpayer's state taxable income for the taxable year; and
- 213 (b) the tax rate imposed under this chapter for the taxable year on the amount described

214 in Subsection (10)(a).

215 Section 4. Section **59-10-1003** is enacted to read:

216 **59-10-1003. Estimated tax payments -- Required annual payment.**

217 (1) For taxable years beginning on or after January 1, 2003, a taxpayer shall pay to the
218 commission as provided in this part one or more estimated tax payments if on the last day of the
219 taxpayer's taxable year the taxpayer's adjusted state tax liability after withholding for the taxable
220 year will be greater than or equal to the estimated tax payment threshold.

221 (2) (a) For taxable years beginning on or after January 1, 2003, a taxpayer described in
222 Subsection (1) shall make a required annual payment to the commission.

223 (b) The required annual payment under Subsection (2)(a) shall be made by:

224 (i) employer withholding as provided in Part 4;

225 (ii) the taxpayer making to the commission as provided in this part one or more estimated
226 tax payments; or

227 (iii) a combination of Subsections (2)(b)(i) and (ii).

228 Section 5. Section **59-10-1004** is enacted to read:

229 **59-10-1004. Payment schedule for estimated tax payments -- Calendar year**
230 **taxpayers -- Fiscal year taxpayers -- Taxpayers meeting estimated tax payment threshold on**
231 **or after April 1 -- Change in payments if taxpayer's tax liability changes.**

232 (1) A taxpayer required to make estimated tax payments to the commission under this part
233 shall make the estimated tax payments as provided in this section.

234 (2) (a) Except as provided in Subsections (4) through (6), a calendar year taxpayer shall
235 make four estimated tax payments:

236 (i) as provided in this Subsection (2); and

237 (ii) that are each equal to 25% of the required annual payment after withholding.

238 (b) A taxpayer shall make the estimated tax payments described in Subsection (2)(a) on
239 or before:

240 (i) April 15 of the taxable year;

241 (ii) June 15 of the taxable year;

242 (iii) September 15 of the taxable year; and

243 (iv) January 15 of the year after the taxable year.

244 (3) (a) Except as provided in Subsections (5) and (6), a fiscal year taxpayer shall make four

245 estimated tax payments:

246 (i) as provided in this Subsection (3); and

247 (ii) that are each equal to 25% of the required annual payment after withholding.

248 (b) A taxpayer shall make the estimated tax payments described in Subsection (3)(a) on

249 or before the 15th day of the:

250 (i) fourth month of the taxable year;

251 (ii) sixth month of the taxable year;

252 (iii) ninth month of the taxable year; and

253 (iv) first month of the year after the taxable year.

254 (4) (a) Notwithstanding Subsection (2) and except as provided in Subsections (5) and (6),

255 for a taxable year a calendar year taxpayer shall make estimated tax payments as provided in this

256 Subsection (4) if:

257 (i) on March 31 of the taxable year the taxpayer's adjusted state tax liability after
258 withholding for the taxable year will be less than the estimated tax payment threshold on the last
259 day of the taxpayer's taxable year; and

260 (ii) on or after April 1 of the taxable year the taxpayer's adjusted state tax liability after
261 withholding for the taxable year will be greater than or equal to the estimated tax payment
262 threshold on the last day of the taxpayer's taxable year.

263 (b) If, on or after April 1 but on or before May 31 of the taxable year, a taxpayer's adjusted
264 state tax liability after withholding for the taxable year will be greater than or equal to the
265 estimated tax payment threshold on the last day of the taxpayer's taxable year, the taxpayer shall
266 pay:

267 (i) 50% of the required annual payment after withholding on or before June 15 of the
268 taxable year;

269 (ii) 25% of the required annual payment after withholding on or before September 15 of
270 the taxable year; and

271 (iii) 25% of the required annual payment after withholding on or before January 15 of the
272 year after the taxable year.

273 (c) If, on or after June 1 but on or before August 31 of the taxable year, a taxpayer's
274 adjusted state tax liability after withholding for the taxable year will be greater than or equal to the
275 estimated tax payment threshold on the last day of the taxpayer's taxable year, the taxpayer shall

276 pay:

277 (i) 75% of the required annual payment after withholding on or before September 15 of
278 the taxable year; and

279 (ii) 25% of the required annual payment after withholding on or before January 15 of the
280 year after the taxable year.

281 (d) If, on or after September 1 of the taxable year, a taxpayer's adjusted state tax liability
282 after withholding for the taxable year will be greater than or equal to the estimated tax payment
283 threshold on the last day of the taxpayer's taxable year, the taxpayer shall pay 100% of the required
284 annual payment after withholding on or before January 15 of the year after the taxable year.

285 (5) For purposes of Subsections (2) through (4), if after making an estimated tax payment
286 a taxpayer's adjusted state tax liability after withholding changes, the taxpayer shall proportionally
287 increase or decrease the taxpayer's remaining estimated tax payments for the taxable year so that
288 the balance of the required annual payment after withholding is made in equal installments.

289 (6) Notwithstanding Subsections (2) through (4), a farmer or fisherman shall make one
290 estimated tax payment for the taxable year:

291 (a) on or before the 15th day after the last day of the farmer's or fisherman's taxable year;
292 and

293 (b) in an amount equal to the total amount of the required annual payment after
294 withholding.

295 Section 6. Section **59-10-1005** is enacted to read:

296 **59-10-1005. Taxpayers having a taxable year of less than 12 months -- Rulemaking**
297 **authority.**

298 In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
299 commission shall make rules providing for estimated tax payments for a taxpayer having a taxable
300 year of less than 12 months.

301 Section 7. Section **59-10-1006** is enacted to read:

302 **59-10-1006. Penalties -- Exceptions to penalties.**

303 (1) Except as provided in Subsections (2) and (3), a taxpayer shall pay a penalty as
304 provided in Section 59-1-401 if the taxpayer fails to pay or underpays an estimated tax payment
305 under this part.

306 (2) Notwithstanding Subsection (1) and except as provided in Subsection (3), the

307 commission may waive, reduce, or compromise the penalty described in Subsection (1).
308 (3) Notwithstanding Subsections (1) and (2), in accordance with Title 63, Chapter 46a,
309 Utah Administrative Rulemaking Act, the commission shall make rules providing for the following
310 exceptions to the penalty described in Subsection (1):
311 (a) an exception that is consistent with Section 6654(e)(1), Internal Revenue Code;
312 (b) an exception that is consistent with Section 6654(e)(2), Internal Revenue Code;
313 (c) an exception for a taxpayer's failure to pay the final estimated tax payment for a taxable
314 year that is consistent with Section 6654(h), Internal Revenue Code;
315 (d) an exception for a farmer's or fisherman's failure to pay the estimated tax payment
316 required by Subsection 59-10-1004(6) that is consistent with Section 6654(i), Internal Revenue
317 Code;
318 (e) an exception that is consistent with Section 6658(a), Internal Revenue Code; and
319 (f) an exception for the first year that a taxpayer is required to file a return under this
320 chapter if the individual:
321 (i) files the return under this chapter on or before the due date provided for under this
322 chapter for filing the return; and
323 (ii) pays in full the amount of tax due for the taxable year.

Legislative Review Note
as of 7-8-02 2:03 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel