

**REVENUE AND TAXATION - OFFENSES AND
PENALTIES**

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Ron Bigelow

LONG TITLE

General Description:

This bill amends the Revenue and Taxation title and the Utah Criminal Code.

Highlighted Provisions:

This bill:

- ▶ establishes offenses and provides penalties for persons who commit certain acts relating to the preparation or presentation of certain documents that will or could be used in connection with any material matter administered by the State Tax

Commission;

- ▶ provides that the State Tax Commission may seek a court order to enjoin a person from engaging in conduct that is subject to the penalties;

- ▶ grants rulemaking authority to the State Tax Commission; and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

76-8-1101, as last amended by Chapter 177, Laws of Utah 2001

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The period of the underpayment shall run from the due date for the installment to

whichever of the following dates is the earlier:

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

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

(iii) For purposes of this Subsection (3), a payment of estimated tax shall be credited against unpaid required installments in the order in which the installments are required to be paid.

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

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

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

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

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

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

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

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

(i) The notice of proposed penalty shall:

(A) set forth the basis of the assessment; and
(B) be mailed by registered mail, postage prepaid, to the person's last-known address.
(ii) Upon receipt of the notice of proposed penalty, the person against whom the penalty is proposed may:

(A) pay the amount of the proposed penalty at the place and time stated in the notice; or
(B) proceed in accordance with the review procedures of Subsection (5)(b)(iii).
(iii) Any person against whom a penalty has been proposed in accordance with this Subsection (5) may contest the proposed penalty by filing a petition for an adjudicative proceeding with the commission.

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

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

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

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

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

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

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

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

(d) Notwithstanding Subsection (5)(a)(ii), a [vendor] seller that voluntarily collects a tax

under Subsection 59-12-107(1)(b) is not subject to the penalty under Subsection (5)(a)(ii) if:

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

(I) the [vendor] 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 [vendor] seller to collect a tax under Subsection 59-12-103(2)(a) or (b); or

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

(I) the [vendor] 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 [vendor] seller to collect a tax under Subsection 59-12-103(2)(a) or (b); and

(ii) the [vendor's] 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.

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

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

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

(9) (a) A person is subject to the penalty provided in Subsection (9)(c) if that person:

(i) commits an act described in Subsection (9)(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 (9)(a)(i)(A) through (C);

(ii) knows or has reason to believe that the document described in Subsection (9)(a)(i) will be used in connection with any material matter administered by the commission; and

(iii) knows that the document described in Subsection (9)(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 administered by the commission.

(b) The following acts apply to Subsection (9)(a)(i):

(i) preparing any portion of a document described in Subsection (9)(a)(i);

(ii) presenting any portion of a document described in Subsection (9)(a)(i);

(iii) procuring any portion of a document described in Subsection (9)(a)(i);

(iv) advising in the preparation or presentation of any portion of a document described in Subsection (9)(a)(i);

(v) aiding in the preparation or presentation of any portion of a document described in Subsection (9)(a)(i);

(vi) assisting in the preparation or presentation of any portion of a document described in Subsection (9)(a)(i); or

(vii) counseling in the preparation or presentation of any portion of a document described in Subsection (9)(a)(i).

(c) For purposes of Subsection (9)(a), the penalty:

(i) shall be imposed by the commission;

(ii) is \$500 for each document described in Subsection (9)(a)(i) with respect to which the person described in Subsection (9)(a) meets the requirements of Subsection (9)(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 (9).

(e) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

commission may make rules prescribing the documents that are similar to Subsections (9)(a)(i)(A) through (C).

~~[(9)]~~ (10) (a) As provided in Section 76-8-1101, criminal offenses and penalties are as provided in Subsections ~~[(9)]~~ (10)(b) through ~~[(d)]~~ (e).

(b) (i) Any 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 ~~[(9)]~~ (10)(b)(i), the ~~[fine]~~ penalty may not:

(A) be less than \$500; or

(B) exceed \$1,000.

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

(ii) Notwithstanding Section 76-3-301, for purposes of Subsection ~~[(9)]~~ (10)(c)(i), the ~~[fine]~~ penalty may not:

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

(B) exceed \$5,000.

(d) (i) Any person who intentionally or willfully attempts to evade or defeat any tax or the payment of a tax 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 ~~[(9)]~~ (10)(d)(i), the ~~[fine]~~ 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 (10)(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 (10)(e)(i)(A)(I) through (III); and

(B) subject to Subsection (10)(e)(iii), with knowledge that the document described in Subsection (10)(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 (10)(e)(i):

(A) preparing any portion of a document described in Subsection (10)(e)(i)(A);

(B) presenting any portion of a document described in Subsection (10)(e)(i)(A);

(C) procuring any portion of a document described in Subsection (10)(e)(i)(A);

(D) advising in the preparation or presentation of any portion of a document described in Subsection (10)(e)(i)(A);

(E) aiding in the preparation or presentation of any portion of a document described in

Subsection (10)(e)(i)(A);

(F) assisting in the preparation or presentation of any portion of a document described in

Subsection (10)(e)(i)(A); or

(G) counseling in the preparation or presentation of any portion of a document described in Subsection (10)(e)(i)(A).

(iii) This Subsection (10)(e) applies:

(A) regardless of whether the person for which the document described in Subsection (10)(e)(i)(A) is prepared or presented:

(I) knew of the falsity of the document described in Subsection (10)(e)(i)(A); or

(II) consented to the falsity of the document described in Subsection (10)(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 (10)(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 (10)(e).

(vi) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules prescribing the documents that are similar to Subsections (10)(e)(i)(A)(I) through (III).

~~[(e)]~~ (f) The statute of limitations for prosecution for a violation of this Subsection ~~[(9)]~~ (10) 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.

~~[(10)]~~ (11) 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 **76-8-1101** is amended to read:

**76-8-1101. Criminal offenses and penalties relating to revenue and taxation --
Rulemaking authority -- Statute of limitations.**

(1) (a) As provided in Section 59-1-401, criminal offenses and penalties are as provided in Subsections (1)(b) through ~~[(d)]~~ (e).

(b) (i) Any person who is required by Title 59, Revenue and Taxation, or any laws the State Tax Commission administers or regulates to register with or obtain a license or permit from the State Tax 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 (1)(b)(i), the ~~[fine]~~

penalty may not:

(A) be less than \$500; or

(B) exceed \$1,000.

(c) (i) Any person who, with intent to evade any tax or requirement of Title 59, Revenue and Taxation, or any lawful requirement of the State Tax Commission, fails to make, render, sign, or verify any return or to supply any information within the time required by law, or who makes, renders, signs, or verifies any false or fraudulent return or statement, or who supplies any false or fraudulent information, is guilty of a third degree felony.

(ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(c)(i), the [~~fine~~] penalty may not:

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

(B) exceed \$5,000.

(d) (i) Any person who intentionally or willfully attempts to evade or defeat any tax or the payment of a tax 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 (1)(d)(i), the [~~fine~~] 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 (1)(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 (1)(e)(i)(A)(I) through (III); and

(B) subject to Subsection (1)(e)(iii), with knowledge that the document described in Subsection (1)(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 State Tax Commission.

(ii) The following acts apply to Subsection (1)(e)(i):

(A) preparing any portion of a document described in Subsection (1)(e)(i)(A);

(B) presenting any portion of a document described in Subsection (1)(e)(i)(A);

(C) procuring any portion of a document described in Subsection (1)(e)(i)(A);

(D) advising in the preparation or presentation of any portion of a document described in Subsection (1)(e)(i)(A);

(E) aiding in the preparation or presentation of any portion of a document described in Subsection (1)(e)(i)(A);

(F) assisting in the preparation or presentation of any portion of a document described in Subsection (1)(e)(i)(A); or

(G) counseling in the preparation or presentation of any portion of a document described in Subsection (1)(e)(i)(A).

(iii) This Subsection (1)(e) applies:

(A) regardless of whether the person for which the document described in Subsection (1)(e)(i)(A) is prepared or presented:

(I) knew of the falsity of the document described in Subsection (1)(e)(i)(A); or

(II) consented to the falsity of the document described in Subsection (1)(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 (1)(e), the penalty may not:

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

(B) exceed \$25,000.

(v) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the State Tax Commission may make rules prescribing the documents that are similar to Subsections (1)(e)(i)(A)(I) through (III).

(2) The statute of limitations for prosecution for a violation of this section is the later of six years:

- (a) from the date the tax should have been remitted; or
- (b) after the day on which the person commits the criminal offense.