

# H.B. 273

## TAX AND CHARGE AMENDMENTS

Representative **Wayne A. Harper** proposes the following amendments:

1. Page 2, Line 28: After ">" delete "repeals language requiring" and insert "requires"
2. Page 2, Line 29: After "Account" insert "as of July 1, 2004"
3. Page 3, Line 65: After line 65 insert:  
"> repeals references to certain tax names;"
4. Page 3, Line 89: After line 89 insert:  
"**17-31-8**, as enacted by Chapter 159, Laws of Utah 2001  
**59-1-302**, as last amended by Chapter 107, Laws of Utah 1994"
5. Page 13, Line 375: After line 375 insert:  
"Section 7. Section **17-31-8**, is amended to read:  
**17-31-8. Tourism tax advisory boards.**  
(1) (a) Except as provided in Subsection (1)(b), any county that collects the following taxes shall operate a tourism tax advisory board:  
(i) the [~~transient room~~] tax allowed under Section 59-12-301; or  
(ii) the [~~tourism, recreation, cultural, and convention facilities~~] tax allowed under Section 59-12-603.  
(b) Notwithstanding Subsection (1)(a), a county is exempt from Subsection (1)(a) if the county has an existing board, council, committee, convention visitor's bureau, or body that substantially conforms with Subsections (2), (3), and (4).  
(2) A tourism tax advisory board created under Subsection (1) shall consist of at least five members.  
(3) A tourism tax advisory board shall be composed of any of the following members that:  
(a) are residents of the county; and  
(b) represent the local:  
(i) hotel and lodging industry;  
(ii) restaurant industry;

- (iii) recreational facilities;
  - (iv) convention facilities;
  - (v) museums;
  - (vi) cultural attractions; or
  - (vii) other tourism-related industries.
- (4) A tourism tax advisory board shall advise the county legislative body on the best use of revenues collected from:
- (a) the ~~[transient room]~~ tax allowed under Section 59-12-301; and
  - (b) the ~~[tourism, recreation, cultural, and convention facilities]~~ tax allowed under Section 59-12-603.
- (5) A member of any county tourism tax advisory board:
- (a) may not receive compensation or benefits for the member's services; and
  - (b) may receive per diem and expenses incurred in the performance of the member's official duties.

Section 8. Section **59-1-302**, is amended to read:

**59-1-302. Penalty for nonpayment of sales, use, withholding, or fuels taxes -- Jeopardy proceedings.**

- (1) The provisions of this section apply to the following taxes in this title:
- (a) ~~[state and local sales and use]~~ a tax under Chapter 12, [Parts 1 and 2] Part 1, Tax Collection;
  - (b) ~~[transient room]~~ a tax under Chapter 12, Part 2, Local Sales and Use Tax Act;
  - (c) a tax under Chapter 12, Part 3, Transient Room Tax;
  - ~~[(e) resort communities]~~ (d) a tax under Chapter 12, Part 4, Resort Communities Tax;
  - ~~[(d) public transit]~~ (e) a tax under Chapter 12, Part 5, Public Transit Tax;
  - ~~[(e) tourism, recreation, cultural, and convention facilities]~~
  - (f) a tax under Chapter 12, Part 6, Tourism, Recreation, Cultural, and Convention Facilities Tax;
  - ~~[(f) motor fuel, clean fuel, special fuel, and aviation fuel taxes under Chapter 13, Parts 2, 3, and 4; and]~~
  - ~~[(g) withholding tax under Chapter 10, Part 4.]~~
  - (g) a tax under Chapter 13, Part 2, Motor Fuel;
  - (h) a tax under Chapter 13, Part 3, Special Fuel;
  - (i) a tax under Chapter 13, Part 4, Aviation Fuel; and
  - (j) a tax under Chapter 10, Part 4, Withholding of Tax.

(2) Any person required to collect, truthfully account for, and pay over any tax listed in Subsection (1) who willfully fails to collect the tax, fails to truthfully account for and pay over the tax, or attempts in any manner to evade or defeat any tax or the payment of the tax, shall be liable for a penalty equal to the total amount of the tax evaded, not collected, not accounted for, or not paid over. This penalty is in addition to other penalties provided by law.

(3) (a) If the commission determines in accordance with Subsection (2) that a person is liable for the penalty, the commission shall notify the taxpayer of the proposed penalty.

(b) The notice of proposed penalty shall:

(i) set forth the basis of the assessment; and

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

(4) 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).

(5) Any person against whom a penalty has been proposed in accordance with Subsections (2) and (3) may contest the proposed penalty by filing a petition for an adjudicative proceeding with the commission.

(6) If the commission determines that the collection of the penalty is in jeopardy, nothing in this section may prevent the immediate collection of the penalty in accordance with the procedures and requirements for emergency proceedings in Title 63, Chapter 46b, Administrative Procedures Act.

(7) (a) In any hearing before the commission and in any judicial review of the hearing, the commission and the court shall consider any inference and evidence that a person has willfully failed to collect, truthfully account for, or pay over any tax listed in Subsection (1).

(b) It is prima facie evidence that a person has willfully failed to collect, truthfully account for, or pay over any of the taxes listed in Subsection (1) if the commission or a court finds that the person charged with the responsibility of collecting, accounting for, or paying over the taxes:

- (i) made a voluntary, conscious, and intentional decision to prefer other creditors over the state government or utilize the tax money for personal purposes;
  - (ii) recklessly disregarded obvious or known risks, which resulted in the failure to collect, account for, or pay over the tax; or
  - (iii) failed to investigate or to correct mismanagement, having notice that the tax was not or is not being collected, accounted for, or paid over as provided by law.
- (c) The commission or court need not find a bad motive or specific intent to defraud the government or deprive it of revenue to establish willfulness under this section.
- (d) If the commission determines that a person is liable for the penalty under Subsection (2), 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.

- 6. Page 47, Line 1432: After ", a" insert "tax rate repeal or"
- 7. Page 47, Line 1443: After "(2)(d)(iii)," insert "the repeal of a tax or"
- 8. Page 47, Line 1445: After "of the" insert "repeal of the tax or the"
- 9. Page 47, Line 1446: After "of" bracket "a" and insert "the repeal of the tax or the"
- 10. Page 48, Line 1462: After ", a" insert "tax rate repeal or"
- 11. Page 48, Line 1465: After "of the" insert "tax rate repeal or"
- 12. Page 56, Line 1715: After line 1715 insert:  
"(4) The Division of Finance shall deposit any revenues in the Remote Sales Restricted Account as of July 1, 2004, into the General Fund."
- 13. Page 108, Line 3314: After "impose a" bracket "transient room"
- 14. Page 108, Line 3315: After "on" insert "charges for"

15. Page 108, Lines 3327- 3328: After "to the" bracket "tourism, recreation, cultural, and convention"
16. Page 108, Line 3331: After "[rents]" insert "charges for the"
17. Page 108, Line 3333: After "[rents]" insert "charges for the"
18. Page 113, Line 3473: After "on" insert "charges for the"
19. Page 113, Line 3476: After "[rents]" insert "charges for the"
20. Page 113, Line 3478: After "[rents]" insert "charges for the"
21. Page 114, Line 3501: After "on" insert "charges for the"
22. Page 114, Line 3509: After "[rents]" insert "charges for the"
23. Page 114, Line 3512: At the beginning of line 3512 insert "charges for the"
24. Page 132, Line 4078: After "on" insert "charges for the"
25. Page 133, Line 4109: After ", and" insert "charges for the"
26. Page 133, Line 4112: After ", and" insert "charges for the"
27. Page 162, Line 5008: After ", a" insert "tax rate repeal or"
28. Page 162, Line 5015: After "Subsection (1)," insert "the repeal of a tax or"
29. Page 162, Line 5017: After "of the" insert "repeal of the tax or the"
30. Page 162, Line 5018: After "date of" delete "a" and insert "the repeal of the tax or the"
31. Page 188, Lines 5801: After "2004" delete the remainder of Line 5801
32. Page 188, Lines 5802-5803: Delete Lines 5802 and 5803 except for the period