

**CREDIT OR REFUND FOR TAX PAID ON CIGARETTE
OR TOBACCO PRODUCT DESTROYED
OR RETURNED TO THE MANUFACTURER**

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: Sheldon L. Killpack

LONG TITLE

General Description:

This bill amends the Cigarettes and Tobacco Products part to create a tax credit or refund.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ allows a credit or refund for a tax paid on certain cigarettes or tobacco products that are destroyed or returned to the manufacturer;
- ▶ provides procedures and requirements for the State Tax Commission to grant the credit or refund;
- ▶ addresses the payment of interest on the credit or refund; and
- ▶ grants rulemaking authority to the State Tax Commission.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2005.

Utah Code Sections Affected:

AMENDS:

59-14-303, as last amended by Chapter 1, Laws of Utah 1993, Second Special Session

ENACTS:

59-14-409, Utah Code Annotated 1953

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

Section 1. Section **59-14-303** is amended to read:

59-14-303. Remittance of tax -- Returns -- Invoice required -- Filing requirements -- Reports -- Exceptions -- Penalties -- Overpayments.

(1) The taxes imposed on all tobacco products shall be remitted to the commission together with quarterly returns as prescribed by [it] the commission. These returns shall be due and payable to the commission quarterly on or before the last day of the month following each calendar quarterly period.

~~[(2) Any tax imposed or remitted on any tobacco product may be allowed and claimed as a credit if any part of the tobacco products are destroyed or returned to the original manufacturer, wholesaler, retailer, or any other person, through rules and forms prescribed by the commission.]~~

~~[(3)]~~ (2) Every manufacturer, wholesaler, retailer, or any other person selling tobacco products to persons other than ultimate consumers shall furnish with each sale an itemized invoice showing the seller's name and address, the name and address of the purchaser, the date of sale, the name and price of the product, and the discount, if any. A notation should be made that the price includes or does not include the tax. Copies of this invoice shall be retained by the seller and the purchaser and shall be available for inspection by the commission or its agent for a period of three years.

~~[(4)]~~ (3) Any person who causes untaxed products, subject to the tax imposed by this chapter, to be brought into the state for use or other consumption, shall file with the commission, on forms prescribed by [it] the commission, a statement showing the quantity and description of the products and pay the tax imposed by this chapter on all those products. This statement shall be filed and the tax paid no later than 15 days from the date of the import of the untaxed products. If any person regularly imports those products, the person may, upon applying to the commission, arrange to file reports on a monthly basis and pay the tax on all products imported during the previous calendar month on or before the 15th day of the following month.

~~[(5)]~~ (4) No report is required from nonresidents or tourists who import any products taxed by this chapter if the products are for their own use or consumption while in this state. No report is required of persons who are liable for the payment of taxes in the manner set forth in this section and Section 59-14-205.

~~[(6)]~~ (5) Any manufacturer, wholesaler, retailer, or any other person subject to this section who fails to pay the tax prescribed by this chapter, or fails to pay the tax on time, or fails to file a return required by this chapter, shall pay, in addition to the tax, a penalty as provided in Section 59-1-401, plus interest at the rate and in the manner prescribed in Section 59-1-402. The minimum penalty shall be \$10 for each offense.

~~[(7)]~~ (6) An overpayment of a tax imposed by this chapter shall accrue interest at the rate and in the manner prescribed in Section 59-1-402.

Section 2. Section **59-14-409** is enacted to read:

59-14-409. Definitions -- Credit or refund for tax paid on cigarette or tobacco product that is destroyed or returned to the manufacturer -- Interest -- Rulemaking authority.

(1) As used in this section, "licensed person" means a person:

(a) licensed by the commission in accordance with Section 59-14-202; and

(b) that is a:

(i) distributor;

(ii) jobber;

(iii) manufacturer;

(iv) retailer;

(v) wholesaler; or

(vi) a person similar to a person described in Subsections (1)(b)(i) through (v) as determined by the commission by rule.

(2) A licensed person may apply to the commission for a credit or refund as provided in Subsection (3) if:

(a) on or after July 1, 2005, the following are removed from retail sale or from storage:

(i) a cigarette; or

(ii) a tobacco product;

(b) before a cigarette or tobacco product is removed from retail sale or from storage in accordance with Subsection (2)(a), the licensed person remits a tax:

(i) to the commission;

(ii) on the:

(A) cigarette; or

(B) tobacco product; and

(iii) in accordance with:

(A) Part 2, Cigarettes; or

(B) Part 3, Tobacco Products; and

(c) the licensed person verifies to the commission that the cigarette or tobacco product described in Subsection (2)(a) has been:

(i) returned to the manufacturer of the cigarette or tobacco product; or

(ii) destroyed.

(3) The amount of the credit or refund described in Subsection (2) is equal to:

(a) for a cigarette removed from retail sale or from storage, the amount of tax the licensed person paid on the cigarette in accordance with Part 2, Cigarettes; or

(b) for a tobacco product removed from retail sale or from storage, the amount of tax the licensed person paid on the tobacco product in accordance with Part 3, Tobacco Products.

(4) (a) The commission shall grant a credit or refund under this section if the commission determines that a licensed person meets the requirements of Subsection (2).

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules establishing procedures and requirements for a licensed person to verify to the commission that a cigarette or tobacco product described in Subsection (2)(a) has been:

(i) returned to the manufacturer of the cigarette or tobacco product; or

(ii) destroyed.

(5) (a) If the commission makes a credit or refund under this section within a 90-day period after the day on which a licensed person submits an application to the commission for the credit or refund, interest may not be added to the amount of credit or refund.

(b) If the commission makes a credit or refund under this section more than 90 days after the day on which a licensed person submits an application to the commission for the credit or refund, interest shall be added to the amount of credit or refund as provided in Section 59-1-402.

(6) (a) The commission may create a form for:

(i) a licensed person to:

(A) submit a claim for a credit or refund; or

(B) verify to the commission that a cigarette or tobacco product has been:

(I) returned to the manufacturer of the cigarette or tobacco product; or

(II) destroyed; or

(ii) processing a claim for a credit or refund for payment.

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules defining a person similar to a person described in Subsections (1)(b)(i) through (v).

Section 3. **Effective date.**

This bill takes effect on July 1, 2005.