

**INDIVIDUAL INCOME TAX - ELECTRONIC
FILING REQUIREMENTS**

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Stephen D. Clark

LONG TITLE

General Description:

This bill modifies the Individual Income Tax Act relating to filing returns.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires an income tax return preparer to file returns required to be filed under the Individual Income Tax Act using 2D technology or by electronic means under certain circumstances;
- ▶ provides exceptions to the requirement to file returns using 2D technology or by electronic means;
- ▶ provides a penalty for failing to file returns using 2D technology or by electronic means;
- ▶ allows the State Tax Commission to waive, reduce, or compromise the penalty under certain circumstances; and
- ▶ grants rulemaking authority to the State Tax Commission.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill has retrospective operation to January 1, 2005.

Utah Code Sections Affected:



28 ENACTS:

29 **59-10-514.1**, Utah Code Annotated 1953



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

32 Section 1. Section **59-10-514.1** is enacted to read:

33 **59-10-514.1. Definitions -- Requirement to file returns using electronic means or**
34 **2D technology -- Exceptions -- Waiver -- Penalty.**

35 (1) As used in this section:

36 (a) "2D technology" means software that produces a two-dimensional bar code;

37 (b) (i) "electronic" means using technology other than 2D technology; and

38 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
39 commission may make rules defining "technology";

40 (c) (i) except as provided in Subsection (1)(c)(ii), "income tax return preparer" means
41 an individual that prepares for compensation a return required to be filed by this chapter;

42 (ii) notwithstanding Subsection (1)(c)(i), "income tax return preparer" does not include
43 an individual who:

44 (A) performs only one or more of the following relating to a return required to be filed
45 by this chapter:

46 (I) types the return;

47 (II) reproduces the return; or

48 (III) performs an action similar to Subsection (1)(c)(ii)(A)(I) or (II) as determined by
49 the commission by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative
50 Rulemaking Act; or

51 (B) prepares a return required to be filed by this chapter:

52 (I) of the individual's employer or an officer or employee of the employer if the
53 individual is regularly and continuously employed by that employer;

54 (II) of any person if that individual is a fiduciary for that person; or

55 (III) for a taxpayer in response to a tax order issued to that taxpayer;

56 (d) "prepare" means to prepare a substantial portion or more of a return required to be
57 filed by this chapter;

58 (e) (i) except as provided in Subsection (1)(e)(ii), "qualifying return" means a return

59 required to be filed by this chapter for any taxable year that begins on or after the January 1
60 described in Subsection (2)(c)(i); and

61 (ii) notwithstanding Subsection (1)(e)(i), "qualifying return" does not include:

62 (A) an amended return; or

63 (B) (I) a return filed for any taxable year that begins before the first day of the current
64 taxable year; and

65 (II) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
66 the commission may make rules defining "current taxable year";

67 (f) (i) "two-dimensional bar code" means a bar code that:

68 (A) reflects information contained in a return required to be filed by this chapter; and

69 (B) is in a format determined by the commission; and

70 (ii) for purposes of Subsection (1)(f)(i)(B), in accordance with Title 63, Chapter 46a,
71 Utah Administrative Rulemaking Act, the commission shall by rule prescribe the format of the
72 bar code.

73 (2) (a) Subject to Subsections (2)(b) and (c) and except as provided in Subsection (3),
74 an income tax return preparer shall file all qualifying returns using 2D technology or by
75 electronic means if the income tax return preparer prepares in any calendar year beginning on
76 or after January 1, 2005, a total of 101 or more returns required to be filed by this chapter.

77 (b) (i) For purposes of Subsection (2)(a), if two or more income tax return preparers are
78 affiliated with the same establishment, the total number of returns required to be filed by this
79 chapter that are prepared in a calendar year beginning on or after January 1, 2005, by all of the
80 income tax return preparers that are affiliated with that establishment shall be included in
81 determining whether an income tax return preparer prepares in a calendar year beginning on or
82 after January 1, 2005, a total of 101 or more returns required to be filed by this chapter.

83 (ii) For purposes of Subsection (2)(b)(i), in accordance with Title 63, Chapter 46a,
84 Utah Administrative Rulemaking Act, the commission may by rule determine the
85 circumstances under which two or more income tax return preparers are affiliated with the
86 same establishment.

87 (c) If an income tax return preparer is required by this Subsection (2) to file all
88 qualifying returns using 2D technology or by electronic means, the income tax return preparer
89 shall file those qualifying returns using 2D technology or by electronic means:

90 (i) beginning on January 1 of the first calendar year immediately following the day on
91 which the income tax return preparer meets the requirements of this Subsection (2); and

92 (ii) for all calendar years after the calendar year described in Subsection (2)(c)(i).

93 (3) Notwithstanding Subsection (2), an income tax return preparer is not required to
94 file a qualifying return using 2D technology or by electronic means if:

95 (a) a schedule required to be attached to the qualifying return cannot be filed using 2D
96 technology or by electronic means;

97 (b) the taxpayer for which the qualifying return is prepared requests in writing that the
98 income tax return preparer not file the qualifying return using 2D technology or by electronic
99 means; or

100 (c) subject to Subsection (4), the commission waives for one or more qualifying returns
101 filed by the income tax return preparer the requirement imposed by this section to file the
102 qualifying returns using 2D technology or by electronic means.

103 (4) (a) For purposes of Subsection (3)(c), the commission may waive for one or more
104 qualifying returns filed by an income tax return preparer the requirement imposed by this
105 section to file the qualifying returns using 2D technology or by electronic means if the income
106 tax return preparer demonstrates to the commission that it would be an undue hardship to file
107 the qualifying returns using 2D technology or by electronic means.

108 (b) For purposes of Subsection (4)(a) and in accordance with Title 63, Chapter 46a,
109 Utah Administrative Rulemaking Act, the commission shall by rule define the circumstances
110 that constitute an undue hardship to file a qualifying return using 2D technology or by
111 electronic means.

112 (5) (a) Subject to Subsections (5)(b) and (c), an income tax return preparer is subject to
113 a penalty of \$50 for each qualifying return that the income tax return preparer:

114 (i) is required by this section to file using 2D technology or by electronic means; and

115 (ii) fails to file using 2D technology or by electronic means.

116 (b) The penalty imposed by this Subsection (5) on an income tax return preparer may
117 not exceed a total of \$1,000 in any calendar year.

118 (c) Upon making a record of its actions, and upon reasonable cause, the commission
119 may waive, reduce, or compromise the penalty imposed by this Subsection (5).

120 **Section 2. Retrospective operation.**

121 This bill has retrospective operation to January 1, 2005.

Legislative Review Note
as of 1-6-05 6:36 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0190

Individual Income Tax-Electronic Filing Requirements

18-Jan-05

7:02 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst