

**CIGARETTE AND TOBACCO TAX AND
LICENSING AMENDMENTS**

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Craig A. Frank

Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill modifies the Cigarette and Tobacco Tax and Licensing Act regarding the payment of cigarette taxes and penalties for nonpayment of cigarette taxes.

Highlighted Provisions:

This bill:

- ▶ provides the procedures and requirements for how a cigarette tax is paid, when the tax is due, and the penalties associated with nonpayment;
- ▶ provides the conditions under which an assessment of the cigarette tax may take place;
- ▶ provides when a consumer may obtain a refund for overpayment and the procedures associated with the refund;
- ▶ provides a time limit within which the State Tax Commission must assess certain taxes;
- ▶ provides that the State Tax Commission may extend the time period within which it must assess a cigarette tax or commence a proceeding to collect a cigarette tax;
- ▶ defines terms; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **59-14-102**, as last amended by Chapter 217, Laws of Utah 2004

33 **59-14-204**, as last amended by Chapter 217, Laws of Utah 2004

34 **59-14-205**, as last amended by Chapter 217, Laws of Utah 2004

35 **59-14-303**, as last amended by Chapter 135, Laws of Utah 2005

36 ENACTS:

37 **59-14-208.5**, Utah Code Annotated 1953

38 **59-14-410**, Utah Code Annotated 1953



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

41 Section 1. Section **59-14-102** is amended to read:

42 **59-14-102. Definitions.**

43 As used in this chapter:

44 (1) "Cigarette" means any roll for smoking made wholly or in part of tobacco,
45 irrespective of size or shape, and whether or not ~~[such]~~ the tobacco is flavored, adulterated, or
46 mixed with any other ingredient, the wrapper or cover of which is made of paper or any other
47 substance or material except tobacco.

48 (2) "Consumer" means a person that is not required:

49 (a) under Section 59-14-201 to obtain a license under Section 59-14-202; or

50 (b) under Section 59-14-301 to obtain a license under Section 59-14-202.

51 ~~[(2)]~~ (3) "Counterfeit cigarette" means:

52 (a) cigarettes that have false manufacturing labels; or

53 (b) packages of cigarettes bearing counterfeit tax stamps.

54 ~~[(3)]~~ (4) "Importer" means any person who imports into the United States, either
55 directly or indirectly, a finished cigarette for sale or distribution.

56 ~~[(4)]~~ (5) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity, or
57 any other person doing business as a distributor or retailer of cigarettes on tribal lands located

58 in the state.

59 [(5)] (6) "Manufacturer" means any person who manufactures, fabricates, assembles,
60 processes, or labels a finished cigarette.

61 [(6)] (7) "Retailer" means any person who sells or distributes cigarettes or intends to
62 sell or distribute cigarettes to a consumer in the state.

63 [(7)] (8) "Stamp" or "stamps" means the indicia required to be placed on a cigarette
64 package that evidences payment of the tax on cigarettes required by Section [59-14-204]
65 59-14-205.

66 [(8)] (9) "Tobacco products" means all products made of, or containing tobacco, except
67 cigarettes.

68 [(9)] (10) "Tribal lands" means land held by the United States in trust for a federally
69 recognized Indian tribe.

70 Section 2. Section **59-14-204** is amended to read:

71 **59-14-204. Tax basis -- Rate -- Future increase -- Restricted account -- Use of**
72 **revenues.**

73 (1) Except for cigarettes described under Subsection 59-14-210(3), there is levied a tax
74 upon the sale, use, storage, or distribution of cigarettes in the state.

75 (2) The rates of the tax levied under Subsection (1) are:

76 (a) 3.475 cents on each cigarette, for all cigarettes weighing not more than three
77 pounds per thousand cigarettes; and

78 (b) 4.075 cents on each cigarette, for all cigarettes weighing in excess of three pounds
79 per thousand cigarettes.

80 (3) [The] Except as otherwise provided under this chapter, the tax levied under
81 Subsection (1) shall be paid by any person who is the manufacturer, jobber, importer,
82 distributor, wholesaler, retailer, user, or consumer.

83 (4) The tax rates specified in this section shall be increased by the commission by the
84 same amount as any future reduction in the federal excise tax on cigarettes.

85 (5) (a) There is created within the General Fund a restricted account known as the

86 "Cigarette Tax Restricted Account."

87 (b) Beginning on July 1, 1998, \$250,000 of the revenues generated by the increase in
88 the cigarette tax under this section enacted during the 1997 Annual General Session shall be
89 annually deposited into the account.

90 (c) The Department of Health shall expend the funds deposited in the account under
91 Subsection (5)(b) for a tobacco prevention and control media campaign targeted towards
92 children.

93 (d) The following revenue generated from the tax increase imposed under Subsection
94 (1) during the 2002 General Session shall be deposited in the Cigarette Tax Restricted
95 Account:

96 (i) 22% of the revenue to be annually appropriated to the Department of Health for
97 tobacco prevention, reduction, cessation, and control programs;

98 (ii) 15% of the revenue to be annually appropriated to the University of Utah Health
99 Sciences Center for the Huntsman Cancer Institute for cancer research; and

100 (iii) 21% of the revenue to be annually appropriated to the University of Utah Health
101 Sciences Center for medical education at the University of Utah School of Medicine.

102 (e) Any balance remaining in the Cigarette Tax Restricted Account at the end of the
103 fiscal year shall be appropriated during the next fiscal year for the purposes set forth in
104 Subsections (5)(d)(i) through (5)(d)(iii) in proportion to the amount of revenue deposited into
105 the account for each purpose.

106 (f) The Legislature shall give particular consideration to appropriating any revenues
107 resulting from the change in tax rates under Subsection (2) adopted during the 2002 Annual
108 General Session and not otherwise appropriated pursuant to Subsection (5)(d) to enhance
109 Medicaid provider reimbursement rates and medical coverage for the uninsured.

110 (g) Any program or entity that receives funding under Subsection (5)(d) shall provide
111 an annual report to the Health and Human Services Interim Committee no later than September
112 1 of each year. The report shall include:

113 (i) the amount funded;

- 114 (ii) the amount expended;
- 115 (iii) a description of the effectiveness of the program; and
- 116 (iv) if the program is a tobacco cessation program, the report required in Section
- 117 63-97-401.

118 Section 3. Section **59-14-205** is amended to read:

119 **59-14-205. Stamping procedure -- Rules -- Exceptions.**

120 (1) ~~[The]~~ In the case of manufacturers, jobbers, importers, distributors, wholesalers,

121 and retailers, the taxes imposed on cigarettes by this chapter shall be paid by affixing stamps in

122 the manner and at the time prescribed in this section.

123 (2) All manufacturers, importers, distributors, wholesalers, and ~~[retail dealers]~~ retailers

124 shall securely affix the stamps to each individual package or container of cigarettes sold in the

125 state, and may not sell or provide cigarette stamps to any other person.

126 (3) Stamps shall be securely affixed to each individual package of cigarettes within 72

127 hours after ~~[any of]~~ the cigarettes are received ~~[by any wholesaler, distributor, or retailer]~~

128 within the state. All cigarettes shall be stamped before sale within the state. ~~[If products~~

129 ~~subject to this chapter are]~~ Cigarettes manufactured within the state ~~[they]~~ shall be stamped by

130 the manufacturer when and as sold.

131 (4) The commission may, where it is practical and reasonable for the enforcement of

132 the collection of taxes, promulgate rules to permit ~~[any of the articles taxable under this~~

133 ~~chapter]~~ cigarettes to remain unstamped ~~[in the hands of the wholesaler or distributor]~~ until the

134 original case or crate is broken, unpacked, or sold.

135 (5) The commission may permit ~~[any manufacturer, wholesaler, or distributor]~~ a person

136 to sell and export cigarettes to a regular dealer in ~~[these articles]~~ cigarettes outside the state[;

137 ~~any of the articles]~~ without affixing ~~[the]~~ stamps. ~~[Where the articles]~~

138 (6) If cigarettes are allowed to remain unstamped ~~[in the hands of the wholesaler or~~

139 ~~distributor]~~ under Subsection (4) or (5), the commission may require the ~~[wholesaler or~~

140 ~~distributor]~~ person holding the unstamped cigarettes to secure a surety bond from a surety

141 company authorized to do business in this state. The bond shall be conditioned to secure the

142 payment of all taxes and penalties provided in this chapter.

143 ~~[(6)]~~ (7) No manufacturer, jobber, importer, distributor, wholesaler, or [retail dealer]
144 retailer may remove, conceal, or obscure a cigarette package:

145 (a) notice described under Subsection 59-14-210(1)(a)(i); or

146 (b) warning label ~~[not]~~ that is placed on the package in compliance with 15 U.S.C.
147 1333 of the Federal Cigarette Labeling and Advertising Act.

148 ~~[(7)]~~ (8) Any person failing to properly affix and cancel stamps to the cigarettes, under
149 this section and rules promulgated by the commission, may be required by the commission to
150 pay as part of the tax, and in addition to any other penalty provided in this chapter, a penalty of
151 \$25 for each offense, to be assessed and collected by the commission as provided in Section
152 59-14-405. Each article, package, or container found not having proper stamps affixed to it
153 shall be ~~[deemed]~~ considered a separate offense. The presence of any package or container in a
154 place of business conducting retail sales shall be prima facie evidence that it is intended for
155 sale and subject to taxes under this chapter.

156 Section 4. Section **59-14-208.5** is enacted to read:

157 **59-14-208.5. Payment of cigarette tax by consumers.**

158 (1) Except as provided in Subsection (4), in the case of consumers, the taxes imposed
159 on cigarettes by this part shall be paid in the manner and at the time prescribed in this section.

160 (2) The payment shall be accompanied by a form prescribed by the commission.

161 (3) The payment shall be paid on or before the last day of the month immediately
162 following the month during which the cigarettes were purchased.

163 (4) A consumer is not required to pay a cigarette tax under this section:

164 (a) on cigarettes that are stamped pursuant to Section 59-14-205; or

165 (b) if the consumer is a tourist who imports cigarettes for the tourist's own use or
166 consumption while in the state.

167 (5) A consumer shall maintain records necessary to determine the amount of tax the
168 consumer is liable to pay under this part for a period of three years following the date the return
169 required by this part was filed.

170 (6) In addition to the tax required by this part, a consumer shall pay a penalty as
171 provided in Section 59-1-401, plus interest at the rate and in the manner prescribed in Section
172 59-1-402, if a consumer subject to this section fails to:

173 (a) pay the tax prescribed by this part;

174 (b) pay the tax on time; or

175 (c) file a return required by this part.

176 (7) An overpayment of a tax imposed by this part shall accrue interest at the rate and in
177 the manner prescribed in Section 59-1-402.

178 Section 5. Section **59-14-303** is amended to read:

179 **59-14-303. Remittance of tax -- Returns -- Invoice required -- Filing requirements**
180 **-- Reports -- Exceptions -- Penalties -- Overpayments.**

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

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

192 (3) (a) ~~[Any person]~~ A consumer who ~~[causes]~~ purchases untaxed products~~[-]~~ subject to
193 the tax imposed by this ~~[chapter, to be brought into the state]~~ part for use or other consumption,
194 shall file with the commission, on forms prescribed by the commission, a statement showing
195 the quantity and description of the products and pay the tax imposed by this ~~[chapter]~~ part on
196 ~~[aH]~~ those products. ~~[This]~~

197 (b) The statement described in Subsection (3)(a) shall be filed and the tax paid ~~[no later~~

198 ~~than 15 days from the date of the import of the untaxed products. If any person regularly~~
199 ~~imports those products, the person may, upon applying to the commission, arrange to file~~
200 ~~reports on a monthly basis and pay the tax on all products imported during the previous~~
201 ~~calendar month on or before the 15th day of the following month] on or before the last day of~~
202 ~~the month immediately following the month during which the tobacco products were~~
203 ~~purchased.~~

204 (c) A consumer shall maintain records necessary to determine the amount of tax the
205 consumer is liable to pay under this part for a period of three years following the date the return
206 required by this part was filed.

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

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

216 (5) In addition to the tax required by this part, a person shall pay a penalty as provided
217 in Section 59-1-401, plus interest at the rate and in the manner prescribed in Section 59-1-402,
218 if a person subject to this section fails to:

219 (a) pay the tax prescribed by this part;

220 (b) pay the tax on time; or

221 (c) file a return required by this part.

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

224 Section 6. Section **59-14-410** is enacted to read:

225 **59-14-410. Action for collection of tax -- Action for refund or credit of tax.**

226 (1) (a) Except as provided in Subsections (2) through (5), the commission shall assess
227 a tax under this chapter within three years after a taxpayer files a return.

228 (b) Except as provided in Subsections (2) through (5), if the commission does not
229 assess a tax under this chapter within the three-year period provided in Subsection (1)(a), the
230 commission may not commence a proceeding to collect the tax.

231 (2) The commission may assess a tax at any time if a taxpayer:

232 (a) files a false or fraudulent return with intent to evade; or

233 (b) does not file a return.

234 (3) The commission may extend the period to make an assessment or to commence a
235 proceeding to collect the tax under this chapter if:

236 (a) the three-year period under Subsection (1) has not expired; and

237 (b) the commission and the taxpayer sign a written agreement:

238 (i) authorizing the extension; and

239 (ii) providing for the length of the extension.

240 (4) If the commission delays an audit at the request of a taxpayer, the commission may
241 make an assessment as provided in Subsection (5) if:

242 (a) the taxpayer subsequently refuses to agree to an extension request by the
243 commission; and

244 (b) the three-year period under Subsection (1) expires before the commission
245 completes the audit.

246 (5) An assessment under Subsection (4) shall be:

247 (a) for the time period for which the commission could not make an assessment
248 because of the expiration of the three-year period; and

249 (b) in an amount equal to the difference between:

250 (i) the commission's estimate of the amount of tax the taxpayer would have been
251 assessed for the time period described in Subsection (5)(a); and

252 (ii) the amount of tax the taxpayer actually paid for the time period described in
253 Subsection (5)(a).

254 (6) (a) Except as provided in Subsection (6)(b), the commission may not make a credit
255 or refund unless the taxpayer files a claim with the commission within three years of the date of
256 overpayment.

257 (b) The commission shall extend the period for a taxpayer to file a claim under
258 Subsection (6)(a) if:

259 (i) the three-year period under Subsection (6)(a) has not expired; and

260 (ii) the commission and the taxpayer sign a written agreement:

261 (A) authorizing the extension; and

262 (B) providing for the length of the extension.

263 Section 7. **Effective date.**

264 If approved by two-thirds of all the members elected to each house, this bill takes effect
265 upon approval by the governor, or the day following the constitutional time limit of Utah
266 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
267 the date of veto override.