

## **Part 3**

### **Miscellaneous Provisions**

#### **59-1-301 Payment under protest -- Action to recover.**

In all cases of levy of taxes, licenses, or other demands for public revenue which is deemed unlawful by the party whose property is taxed, or from whom the tax or license is demanded or enforced, that party may pay under protest the tax or license, or any part deemed unlawful, to the officers designated and authorized by law to collect the tax or license; and then the party so paying or a legal representative may bring an action in the tax division of the appropriate district court against the officer to whom the tax or license was paid, or against the state, county, municipality, or other taxing entity on whose behalf it was collected, to recover the tax or license or any portion of the tax or license paid under protest.

Enacted by Chapter 3, 1988 General Session

#### **59-1-302 Penalty for nonpayment of certain taxes -- Jeopardy proceedings.**

(1) This section applies to the following:

- (a) a tax under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- (b) a tax under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- (c) a tax under Chapter 10, Part 4, Withholding of Tax;
- (d) a tax under Chapter 12, Sales and Use Tax Act;
- (e) a tax under Chapter 13, Part 2, Motor Fuel;
- (f) a tax under Chapter 13, Part 3, Special Fuel; and
- (g) a tax under Chapter 13, Part 4, Aviation Fuel.

(2)

- (a) A person required to collect, truthfully account for, and pay over a 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 the tax or the payment of the tax, is liable for a penalty equal to the total amount of the tax evaded, not collected, not accounted for, or not paid over.
- (b) The penalty described in Subsection (2)(a) 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 mail a notice of the proposed penalty to the person.
- (b) The notice of proposed penalty shall:
  - (i) set forth the basis of the assessment; and
  - (ii) be mailed:
    - (A) in accordance with Section 59-1-1404; and
    - (B) 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) A person against whom a penalty is 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, this section does not prevent the immediate collection of the penalty in accordance with the procedures and requirements for an emergency proceeding under Title 63G, Chapter 4, Administrative Procedures Act.
- (7)
- (a) In a hearing before the commission and in a 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 a 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 a tax 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 that resulted in the failure to collect, truthfully 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 is not required to find a bad motive or specific intent to defraud the government or deprive the government 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 in accordance with Section 59-1-1411.

Amended by Chapter 212, 2009 General Session

**59-1-303 Authorization for commission to apply overpayment of any tax or fee against taxpayer's liability for any tax or fee.**

- (1) For purposes of this section:
- (a) "Overpayment" means an amount equal to the sum of:
    - (i) the amount by which a tax or fee a taxpayer paid exceeds the taxpayer's liability for the tax or fee; and
    - (ii) interest accruing to the amount described in Subsection (1)(a)(i).
  - (b) "Tax or fee" means any tax or fee administered by the commission.
- (2) The commission may apply an overpayment of any tax or fee against a taxpayer's liability for any tax or fee.
- (3) If the commission applies an overpayment of a tax or fee against a taxpayer's liability for a tax or fee, the commission shall notify the taxpayer in writing.

Enacted by Chapter 183, 1999 General Session

**59-1-304 Definition -- Limitations on maintaining a class action that relates to a tax or fee -- Requirements for a person to be included as a member of a class in a class action -- Rulemaking authority -- Limitations on recovery by members of a class -- Severability.**

- (1) As used in this section, "tax or fee" means a tax or fee administered by the commission.
- (2) A class action that relates to a tax or fee may not be maintained in any court if a claim sought by a representative party seeking to maintain the class action arises as a result of:
- (a) a person collecting a tax or fee from the representative party if the representative party is not required by law to pay the tax or fee; or

- (b) any of the following that requires a change in the manner in which a tax or fee is required to be collected or paid:
  - (i) an administrative rule made by the commission;
  - (ii) a private letter ruling issued by the commission; or
  - (iii) a decision issued by:
    - (A) the commission; or
    - (B) a court of competent jurisdiction.
- (3)
  - (a) A person may be included as a member of a class in a class action relating to a tax or fee only if the person:
    - (i) exhausts all administrative remedies with the commission; and
    - (ii) requests in writing to be included as a member of the class.
  - (b)
    - (i) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules to simplify and expedite the administrative remedies a person shall exhaust as required by Subsection (3)(a).
    - (ii) The rules required by Subsection (3)(b)(i) may include rules providing for:
      - (A) expedited filing procedures and forms;
      - (B) consolidation of hearings procedures as may be reasonably needed to accommodate potential inclusion of similarly situated persons; and
      - (C) the designation of test or sample cases to avoid multiple hearings.
- (4) Subject to Subsection (5), in a class action brought under this section against the state or its political subdivisions in which members of the class are awarded a refund or credit of a tax or fee by a court of competent jurisdiction, the total amount that may be recovered by members of the class may not exceed the difference between:
  - (a) the sum of:
    - (i) the amount of the refund or credit awarded to members of the class; and
    - (ii) interest as provided in Section 59-1-402; and
  - (b) if awarded in accordance with Subsection (5), the sum of:
    - (i) reasonable costs; and
    - (ii) reasonable attorney fees.
- (5)
  - (a) For purposes of Subsection (4), at the discretion of the court, the court may award:
    - (i) reasonable costs as determined by the court; and
    - (ii) reasonable attorney fees determined under Subsection (5)(b).
  - (b) Reasonable attorney fees awarded in a class action may not exceed a reasonable hourly rate for work actually performed:
    - (i) as determined by the court; and
    - (ii) taking into account all facts and circumstances that the court considers reasonable.
- (6) If any provision of this section, or the application of any provision of this section to any person or circumstance is held unconstitutional or invalid by a court of competent jurisdiction, the remainder of the section shall be given effect without the invalid provision or application.

Amended by Chapter 135, 2016 General Session

**59-1-305 Convenience fee to cover the costs of electronic payments.**

- (1) As used in this section:
  - (a) "Electronic payment" has the same meaning as defined in Section 41-1a-1221.

- (b) "Electronic payment fee" has the same meaning as defined in Section 41-1a-1221.
- (2) The commission may collect a convenience electronic payment fee established in accordance with the procedures and requirements of Section 63J-1-504 to cover the costs of electronic payments of taxes and fees administered by the commission.
- (3) Notwithstanding any other provisions of this title, the commission shall use a fee imposed under this section as a dedicated credit to cover the costs of electronic payments.

Amended by Chapter 183, 2009 General Session

***Superseded 1/1/2026***

**59-1-306 Definition -- State Tax Commission Administrative Charge Account -- Amount of administrative charge -- Deposit of revenue into the restricted account -- Interest deposited into General Fund -- Expenditure of money deposited into the restricted account.**

- (1) As used in this section, "qualifying tax, fee, or charge" means a tax, fee, or charge the commission administers under:
  - (a) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
  - (b) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
  - (c) Section 19-6-714;
  - (d) Section 19-6-805;
  - (e) Chapter 12, Sales and Use Tax Act, other than a tax under Chapter 12, Part 1, Tax Collection, or Chapter 12, Part 18, Additional State Sales and Use Tax Act;
  - (f) Section 59-27-105;
  - (g) Chapter 31, Cannabinoid Licensing and Tax Act;
  - (h) Chapter 32, Local Impact Mitigation Tax Act;
  - (i) Section 63H-1-205;
  - (j) Title 63N, Chapter 3, Part 6, Housing and Transit Reinvestment Zone Act; or
  - (k) Title 69, Chapter 2, Part 4, Prepaid Wireless Telecommunications Service Charges.
- (2) There is created a restricted account within the General Fund known as the "State Tax Commission Administrative Charge Account."
- (3) Subject to the other provisions of this section, the restricted account shall consist of administrative charges the commission retains and deposits in accordance with this section.
- (4) For purposes of this section, the administrative charge is a percentage of revenue the commission collects from each qualifying tax, fee, or charge of not to exceed the lesser of:
  - (a) 1.5%; or
  - (b) an equal percentage of revenue the commission collects from each qualifying tax, fee, or charge sufficient to cover the cost to the commission of administering the qualifying taxes, fees, or charges.
- (5) The commission shall deposit an administrative charge into the restricted account.
- (6) Interest earned on the restricted account shall be deposited into the General Fund.
- (7) The commission shall expend money appropriated by the Legislature to the commission from the restricted account to administer qualifying taxes, fees, or charges or to offset general operational expenses.

Amended by Chapter 339, 2025 General Session

Amended by Chapter 357, 2025 General Session

***Effective 1/1/2026***

**59-1-306 Definition -- State Tax Commission Administrative Charge Account -- Amount of administrative charge -- Deposit of revenue into the restricted account -- Interest deposited into General Fund -- Expenditure of money deposited into the restricted account.**

- (1) As used in this section, "qualifying tax, fee, or charge" means a tax, fee, or charge the commission administers under:
  - (a) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
  - (b) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
  - (c) Section 19-6-714;
  - (d) Section 19-6-805;
  - (e) Chapter 12, Sales and Use Tax Act, other than a tax under Chapter 12, Part 1, Tax Collection, or Chapter 12, Part 18, Additional State Sales and Use Tax Act;
  - (f) Section 59-27-105;
  - (g) Chapter 31, Cannabinoid Licensing and Tax Act;
  - (h) Chapter 32, Local Impact Mitigation Tax Act;
  - (i) Chapter 33, Wind or Solar Electric Generation Facility Capacity Tax;
  - (j) Section 63H-1-205;
  - (k) Title 63N, Chapter 3, Part 6, Housing and Transit Reinvestment Zone Act; or
  - (l) Title 69, Chapter 2, Part 4, Prepaid Wireless Telecommunications Service Charges; or
  - (m) Title 79, Chapter 6, Part 11, Energy Project Assessment.
- (2) There is created a restricted account within the General Fund known as the "State Tax Commission Administrative Charge Account."
- (3) Subject to the other provisions of this section, the restricted account shall consist of administrative charges the commission retains and deposits in accordance with this section.
- (4) For purposes of this section, the administrative charge is a percentage of revenue the commission collects from each qualifying tax, fee, or charge of not to exceed the lesser of:
  - (a) 1.5%; or
  - (b) an equal percentage of revenue the commission collects from each qualifying tax, fee, or charge sufficient to cover the cost to the commission of administering the qualifying taxes, fees, or charges.
- (5) The commission shall deposit an administrative charge into the restricted account.
- (6) Interest earned on the restricted account shall be deposited into the General Fund.
- (7) The commission shall expend money appropriated by the Legislature to the commission from the restricted account to administer qualifying taxes, fees, or charges or to offset general operational expenses.

Amended by Chapter 258, 2025 General Session