

59-10-405.5 Definitions -- Withholding tax license requirements -- Penalty -- Application process and requirements -- Fee not required -- Bonds.

(1) As used in this section:

(a) "applicant" means a person that:

- (i) is required by this section to obtain a license; and
- (ii) submits an application:
 - (A) to the commission; and
 - (B) for a license under this section;

(b) "application" means an application for a license under this section;

(c) "fiduciary of the applicant" means a person that:

- (i) is required to collect, truthfully account for, and pay over an amount under this part for an applicant; and
- (ii)
 - (A) is a corporate officer of the applicant described in Subsection (1)(c)(i);
 - (B) is a director of the applicant described in Subsection (1)(c)(i);
 - (C) is an employee of the applicant described in Subsection (1)(c)(i);
 - (D) is a partner of the applicant described in Subsection (1)(c)(i);
 - (E) is a trustee of the applicant described in Subsection (1)(c)(i); or
 - (F) has a relationship to the applicant described in Subsection (1)(c)(i) that is similar to a relationship described in Subsections (1)(c)(ii)(A) through (E) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(d) "fiduciary of the licensee" means a person that:

- (i) is required to collect, truthfully account for, and pay over an amount under this part for a licensee; and
- (ii)
 - (A) is a corporate officer of the licensee described in Subsection (1)(d)(i);
 - (B) is a director of the licensee described in Subsection (1)(d)(i);
 - (C) is an employee of the licensee described in Subsection (1)(d)(i);
 - (D) is a partner of the licensee described in Subsection (1)(d)(i);
 - (E) is a trustee of the licensee described in Subsection (1)(d)(i); or
 - (F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to a relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(e) "license" means a license under this section; and

(f) "licensee" means a person that is licensed under this section by the commission.

(2) The following persons are guilty of a criminal violation as provided in Section 59-1-401:

(a) a person that:

- (i) is required to withhold, report, or remit any amounts under this part; and
- (ii) engages in business within the state before obtaining a license under this section;

(b) a person that:

- (i) pays wages under this part; and
- (ii) engages in business within the state before obtaining a license under this section.

(3) The license described in Subsection (2):

(a) shall be granted and issued:

- (i) by the commission in accordance with this section;
- (ii) without a license fee; and

- (iii) if:
 - (A) an applicant:
 - (I) states the applicant's name and address in the application; and
 - (II) provides other information in the application that the commission may require; and
 - (B) the person meets the requirements of this section to be granted a license as determined by the commission;
- (b) may not be assigned to another person; and
- (c) is valid:
 - (i) only for the person named on the license; and
 - (ii) until:
 - (A) the person described in Subsection (3)(c)(i):
 - (I) ceases to do business; or
 - (II) changes that person's business address; or
 - (B) the commission revokes the license.
- (4) The commission shall review an application and determine whether:
 - (a) the applicant meets the requirements of this section to be issued a license; and
 - (b) a bond is required to be posted with the commission in accordance with Subsections (5) and (6) before the applicant may be issued a license.
- (5)
 - (a) An applicant shall post a bond with the commission before the commission may issue the applicant a license if:
 - (i) a license under this section was revoked for a delinquency under this part for:
 - (A) the applicant;
 - (B) a fiduciary of the applicant; or
 - (C) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over an amount under this part;
 - (ii) there is a delinquency in withholding, reporting, or remitting any amount under this part for:
 - (A) an applicant;
 - (B) a fiduciary of the applicant; or
 - (C) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over an amount under this part.
 - (b) If the commission determines it is necessary to ensure compliance with this part, the commission may require a licensee to:
 - (i) for a licensee that has not posted a bond under this section with the commission, post a bond with the commission in accordance with Subsection (6); or
 - (ii) for a licensee that has posted a bond under this section with the commission, increase the amount of the bond posted with the commission.
- (6)
 - (a) A bond required by Subsection (5) shall be:
 - (i) executed by:
 - (A) for an applicant, the applicant as principal, with a corporate surety; or
 - (B) for a licensee, the licensee as principal, with a corporate surety; and
 - (ii) payable to the commission conditioned upon the faithful performance of all of the requirements of this part including:
 - (A) the withholding or remitting of any amount under this part;
 - (B) the payment of any:
 - (I) penalty as provided in Section 59-1-401; or
 - (II) interest as provided in Section 59-1-402; or

- (C) any other obligation of the:
 - (I) applicant under this part; or
 - (II) licensee under this part.
 - (b) Except as provided in Subsection (6)(d), the commission shall calculate the amount of a bond required by Subsection (5) on the basis of:
 - (i) commission estimates of:
 - (A) for an applicant, any amounts the applicant withholds, reports, or remits under this part; or
 - (B) for a licensee, any amounts the licensee withholds, reports, or remits under this part; and
 - (ii) any amount of a delinquency described in Subsection (6)(c).
 - (c) Except as provided in Subsection (6)(d), for purposes of Subsection (6)(b)(ii):
 - (i) for an applicant, the amount of the delinquency is the sum of:
 - (A) the amount of any delinquency that served as a basis for revoking the license under this section of:
 - (I) the applicant;
 - (II) a fiduciary of the applicant; or
 - (III) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over an amount under this part; or
 - (B) the amount that any of the following owe under this part:
 - (I) the applicant;
 - (II) a fiduciary of the applicant; and
 - (III) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over an amount under this part; or
 - (ii) for a licensee, the amount of the delinquency is the sum of:
 - (A) the amount of any delinquency that served as a basis for revoking the license under this section of:
 - (I) the licensee;
 - (II) a fiduciary of the licensee; or
 - (III) a person for which the licensee or the fiduciary of the licensee is required to collect, truthfully account for, and pay over an amount under this part; or
 - (B) the amount that any of the following owe under this part:
 - (I) the licensee;
 - (II) a fiduciary of the licensee; and
 - (III) a person for which the licensee or the fiduciary of the licensee is required to collect, truthfully account for, and pay over an amount under this part.
 - (d) Notwithstanding Subsection (6)(b) or (c), a bond required by Subsection (5) may not:
 - (i) be less than \$25,000; or
 - (ii) exceed \$500,000.
- (7)
- (a) The commission shall revoke a license under this section if:
 - (i) a licensee violates any provision of this part; and
 - (ii) before the commission revokes the license the commission provides the licensee:
 - (A) reasonable notice; and
 - (B) a hearing.
 - (b) If the commission revokes a licensee's license in accordance with Subsection (7)(a), the commission may not issue another license to that licensee until that licensee complies with the requirements of this part, including:
 - (i) paying any:
 - (A) amounts due under this part;

- (B) penalty as provided in Section 59-1-401; or
- (C) interest as provided in Section 59-1-402; and
- (ii) posting a bond in accordance with Subsections (5) and (6).

Amended by Chapter 382, 2008 General Session