

**TAX ASSESSMENTS, PROCEEDINGS, AND
CREDIT OR REFUND CLAIMS**

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Wayne A. Harper

AN ACT RELATING TO REVENUE AND TAXATION; PROVIDING UNIFORM PROCEDURES FOR MAKING AN ASSESSMENT OF A TAX AND COMMENCING A PROCEEDING TO COLLECT A TAX; PROVIDING UNIFORM PROCEDURES FOR EXTENDING THE TIME PERIOD FOR ASSESSING A TAX, COMMENCING A PROCEEDING TO COLLECT A TAX, AND CLAIMING A CREDIT OR REFUND; ALLOWING THE STATE TAX COMMISSION TO ESTIMATE AND ASSESS A TAX PURSUANT TO AN AUDIT UNDER CERTAIN CIRCUMSTANCES; MAKING TECHNICAL CHANGES; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

- 59-5-114**, as last amended by Chapter 330, Laws of Utah 1997
- 59-5-214**, as last amended by Chapter 330, Laws of Utah 1997
- 59-7-522**, as last amended by Chapter 1, Laws of Utah 1993, Second Special Session
- 59-9-106**, as enacted by Chapter 330, Laws of Utah 1997
- 59-10-529**, as last amended by Chapter 232, Laws of Utah 1997
- 59-11-113**, as last amended by Chapter 330, Laws of Utah 1997
- 59-12-110**, as last amended by Chapter 328, Laws of Utah 1997
- 59-13-210**, as last amended by Chapter 53, Laws of Utah 1994
- 59-13-313**, as last amended by Chapter 271, Laws of Utah 1997
- 59-13-318**, as last amended by Chapter 53, Laws of Utah 1994
- 59-15-103**, as last amended by Chapter 1, Laws of Utah 1993, Second Special Session
- 59-16-102**, as enacted by Chapter 330, Laws of Utah 1997
- 59-23-6**, as enacted by Chapter 179, Laws of Utah 1997

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

Section 1. Section **59-5-114** is amended to read:

59-5-114. Limitation of actions.

~~[(1) An action for the recovery of any severance tax due and unpaid or to foreclose the lien for the payment of the tax as provided in Section 59-5-108 may be brought by the commission in any court of competent jurisdiction at any time within six years after the cause of action has accrued.]~~

(1) (a) Except as provided in Subsections (1)(c) through (f), the commission shall assess the amount of taxes imposed under this part, and any penalties and interest, within six years after a taxpayer files a return.

(b) Except as provided in Subsections (1)(c) through (f), if the commission does not make an assessment under Subsection (1)(a) within six years, the commission may not commence a proceeding for the collection of the taxes after the expiration of the six-year period.

(c) Notwithstanding Subsections (1)(a) and (b), the commission may make an assessment or commence a proceeding to collect a tax at any time if a deficiency is due to:

(i) fraud; or

(ii) failure to file a return.

(d) Notwithstanding Subsections (1)(a) and (b), beginning on July 1, 1998, the commission may extend the period to make an assessment or to commence a proceeding to collect the tax under this part if:

(i) the six-year period under this Subsection (1) has not expired; and

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

(A) authorizing the extension; and

(B) providing for the length of the extension.

(e) If the commission delays an audit at the request of a taxpayer, the commission may make an assessment as provided in Subsection (1)(f) if:

(i) the taxpayer subsequently refuses to agree to an extension request by the commission;

and

(ii) the six-year period under this Subsection (1) expires before the commission completes

the audit.

(f) An assessment under Subsection (1)(e) shall be:

(i) for the time period for which the commission could not make an assessment because of the expiration of the six-year period; and

(ii) in an amount equal to the difference between:

(A) the commission's estimate of the amount of taxes the taxpayer would have been assessed for the time period described in Subsection (1)(f)(i); and

(B) the amount of taxes the taxpayer actually paid for the time period described in Subsection (1)(f)(i).

(2) ~~[The]~~ (a) Except as provided in Subsection (2)(b), the commission may not make a credit or refund unless the taxpayer files a claim with the commission within six years of the date of overpayment.

(b) Notwithstanding Subsection (2)(a), beginning on July 1, 1998, the commission shall extend the period for a taxpayer to file a claim under Subsection (2)(a) if:

(i) the six-year period under Subsection (2)(a) has not expired; and

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

(A) authorizing the extension; and

(B) providing for the length of the extension.

Section 2. Section **59-5-214** is amended to read:

59-5-214. Limitation of actions.

~~[(1) An action for the recovery of any severance tax imposed under this chapter upon the business of mining or extracting metalliferous minerals due and unpaid, or to foreclose the lien upon the mine or mining claim from which the mineral is extracted for the payment of the tax as provided in Section 59-5-208, may be brought by the commission in any court of competent jurisdiction at any time within three years after the cause of action has accrued.]~~

(1) (a) Except as provided in Subsections (1)(c) through (f), the commission shall assess the amount of taxes imposed under this part, and any penalties and interest, within three years after a taxpayer files a return.

(b) Except as provided in Subsections (1)(c) through (f), if the commission does not make an assessment under Subsection (1)(a) within three years, the commission may not commence a proceeding for the collection of the taxes after the expiration of the three-year period.

(c) Notwithstanding Subsections (1)(a) and (b), the commission may make an assessment or commence a proceeding to collect a tax at any time if a deficiency is due to:

(i) fraud; or

(ii) failure to file a return.

(d) Notwithstanding Subsections (1)(a) and (b), beginning on July 1, 1998, the commission may extend the period to make an assessment or to commence a proceeding to collect the tax under this part if:

(i) the three-year period under this Subsection (1) has not expired; and

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

(A) authorizing the extension; and

(B) providing for the length of the extension.

(e) If the commission delays an audit at the request of a taxpayer, the commission may make an assessment as provided in Subsection (1)(f) if:

(i) the taxpayer subsequently refuses to agree to an extension request by the commission;

and

(ii) the three-year period under this Subsection (1) expires before the commission completes the audit.

(f) An assessment under Subsection (1)(e) shall be:

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

(ii) in an amount equal to the difference between:

(A) the commission's estimate of the amount of taxes the taxpayer would have been assessed for the time period described in Subsection (1)(f)(i); and

(B) the amount of taxes the taxpayer actually paid for the time period described in Subsection (1)(f)(i).

(2) [The] (a) Except as provided in Subsection (2)(b), the commission may not make a credit or refund unless the taxpayer files a claim with the commission within three years of the date of overpayment.

(b) Notwithstanding Subsection (2)(a), beginning on July 1, 1998, the commission shall extend the period for a taxpayer to file a claim under Subsection (2)(a) if:

(i) the three-year period under Subsection (2)(a) has not expired; and

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

(A) authorizing the extension; and

(B) providing for the length of the extension.

Section 3. Section **59-7-522** is amended to read:

59-7-522. Overpayments.

(1) Where there has been an overpayment of any tax imposed by this chapter, the amount of such overpayment and interest calculated at the rate and in the manner prescribed in Section 59-1-402 shall be credited against any tax then due from the taxpayer under this chapter, and any balance shall be refunded immediately to the taxpayer.

(2) (a) [~~A credit or refund may not be allowed or made after three years from the time the tax was paid, unless before the expiration of such period a claim is filed with the commission by the taxpayer.~~] Except as provided in Subsection (2)(b), the commission may not make a credit or refund unless the taxpayer files a claim with the commission within three years from the date of overpayment.

(b) Notwithstanding Subsection (2)(a), beginning on July 1, 1998, the commission shall extend the period for a taxpayer to file a claim under Subsection (2)(a) if:

(i) the three-year period under Subsection (2)(a) has not expired; and

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

(A) authorizing the extension; and

(B) providing for the length of the extension.

[~~(b)~~] (3) If the claim for credit or refund relates to an overpayment attributable to a net loss carryback adjustment as provided in Section 59-7-110, in lieu of the three-year period provided for

in Subsection (2)(a), the period shall be that period which ends with the expiration of the 15th day of the 40th month following the end of the taxable year of the net loss which results in the carryback.

~~[(c)]~~ (4) Where an overpayment relates to adjustments to federal taxable income referred to in Section 59-7-519, credit may be allowed or a refund paid any time before the expiration of the period within which a deficiency may be assessed.

~~[(d)]~~ (5) The amount of the credit or refund may not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or if no claim was filed, then during the two years immediately preceding the allowance of the credit or refund.

~~[(3)]~~ (6) Except as provided in Subsections ~~[(2)(b)]~~ (3) and ~~[(2)(c)]~~ (4), if on appeal a court finds that there is no deficiency and further finds that the taxpayer has made an overpayment of tax in respect of the taxable year in respect to which the commission determined the deficiency, the court shall have jurisdiction to determine the amount of the overpayment and that amount shall, when the court's decision has become final, be credited or refunded to the taxpayer. A credit or refund may not be made of any portion of the tax paid more than three years before the filing of the claim or the filing of the appeal or petition, whichever is earlier.

Section 4. Section **59-9-106** is amended to read:

59-9-106. Assessment of taxes -- Action for collection of tax -- Limit for refund or credit of tax.

(1) (a) Except as provided in ~~[Subsection]~~ Subsections (2) through (5), the commission shall assess a tax under this chapter, and any penalties and interest, within three years after a taxpayer files a return.

(b) ~~[If]~~ Except as provided in Subsections (2) through (5), if the commission does not ~~[assess a tax]~~ make an assessment under this chapter within the three-year period provided in Subsection (1)(a), the commission may not ~~[file an action]~~ commence a proceeding to collect the tax after the expiration of the three-year period.

(2) ~~[The]~~ Notwithstanding Subsection (1), the commission may ~~[assess a tax]~~ make an assessment or commence a proceeding to collect a tax at any time if a taxpayer:

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

(b) does not file a return.

(3) Notwithstanding Subsection (1), beginning on July 1, 1998, the commission may extend the period to make an assessment or to commence a proceeding to collect the tax under this chapter if:

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

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

(i) authorizing the extension; and

(ii) providing for the length of the extension.

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

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

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

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

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

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

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

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

~~[(3) The]~~ (6) (a) Except as provided in Subsection (6)(b), the commission may not make a credit or refund unless the taxpayer files a claim with the commission within three years of the date of overpayment.

(b) Notwithstanding Subsection (6)(a), beginning on July 1, 1998, the commission shall extend the period for a taxpayer to file a claim under Subsection (6)(a) if:

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

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

(A) authorizing the extension; and

(B) providing for the length of the extension.

Section 5. Section **59-10-529** is amended to read:

59-10-529. Overpayment of tax -- Credits -- Refunds.

(1) In cases where there has been an overpayment of any tax imposed by this chapter, the amount of overpayment is credited as follows:

(a) against any income tax then due from the taxpayer;

(b) against:

(i) the amount of any judgment against the taxpayer, including one ordering the payment of a fine or of restitution to a victim under Section 76-3-201, obtained through due process of law by any entity of state government; or

(ii) any child support obligation which is delinquent, as determined by the Office of Recovery Services in the Department of Human Services and after notice and an opportunity for an adjudicative proceeding, as provided in Subsection (2);

(c) as bail, to ensure the appearance of the taxpayer before the appropriate authority to resolve an outstanding warrant against the taxpayer for which bail is due, if a court of competent jurisdiction has not approved an alternative form of payment. This bail may be applied to any fine or forfeiture which is due and related to a warrant which is outstanding on or after February 16, 1984, and in accordance with Subsections (3) and (4).

(2) (a) Subsection (1)(b)(ii) may be exercised only if the Office of Recovery Services has mailed written notice to the taxpayer's last-known address or the address on file under Section 62A-11-304.4, stating:

(i) the amount of child support that is past-due as of the date of the notice or other specified date;

(ii) that any overpayment shall be applied to reduce the amount of past-due child support specified in the notice; and

(iii) that the taxpayer may contest the amount of past-due child support specified in the

notice by filing a written request for an adjudicative proceeding with the office within 15 days of the notice being sent.

(b) If an overpayment of tax is credited against a past-due child support obligation in accordance with Subsection (1)(b)(ii) in noncash assistance cases, the Office of Recovery Services shall inform the obligee parent in advance if it will first use any portion of the overpayment to satisfy unreimbursed cash assistance or foster care maintenance payments which have been provided to that family.

(c) The Department of Human Services shall establish rules to implement this subsection, including procedures, in accordance with the other provisions of this section, to ensure prompt reimbursement to the taxpayer of any amount of an overpayment of taxes which was credited against a child support obligation in error, and to ensure prompt distribution of properly credited funds to the obligee parent.

(3) Subsection (1)(c) may be exercised only if:

(a) a court has issued a warrant for the arrest of the taxpayer for failure to post bail, appear, or otherwise satisfy the terms of a citation, summons, or court order; and

(b) a notice of intent to apply the overpayment as bail on the issued warrant has been mailed to the person's current address on file with the commission.

(4) (a) The commission shall deliver the overpayment applied as bail to the court that issued the warrant of arrest. The clerk of the court is authorized to endorse the check or commission warrant of payment on behalf of the payees and deposit the monies in the court treasury.

(b) The court receiving the overpayment applied as bail shall order withdrawal of the warrant for arrest of the taxpayer if the case is one for which a personal appearance of the taxpayer is not required and if the dollar amount of the overpayment represents the full dollar amount of bail. In all other cases, the court receiving the overpayment applied as bail is not required to order the withdrawal of the warrant of arrest of the taxpayer during the 40-day period, and the taxpayer may be arrested on the warrant. However, the bail amount shall be reduced by the amount of tax overpayment received by the court.

(c) If the taxpayer fails to respond to the notice described in Subsection (3), or to resolve the

warrant within 40 days after the mailing under that subsection, the overpayment applied as bail is forfeited and notice of the forfeiture shall be mailed to the taxpayer at the current address on file with the commission. The court may then issue another warrant or allow the original warrant to remain in force if:

- (i) the taxpayer has not complied with an order of the court;
- (ii) the taxpayer has failed to appear and respond to a criminal charge for which a personal appearance is required; or
- (iii) the taxpayer has paid partial but not full bail in a case for which a personal appearance is not required.

(5) If the alleged violations named in the warrant are later resolved in favor of the taxpayer, the bail amount shall be remitted to the taxpayer.

(6) Any balance shall be refunded immediately to the taxpayer.

(7) (a) If a refund or credit is due because the amount of tax deducted and withheld from wages exceeds the actual tax due, ~~[no]~~ a refund or credit may not be made or allowed unless the taxpayer or his legal representative files with the commission a tax return claiming the refund or credit:

(i) within three years from the due date of the return, plus the period of any extension of time for filing the return provided for in Subsection (7)(c); or

(ii) within two years from the date the tax was paid, whichever period is later.

(b) ~~[In]~~ Except as provided in Subsection (7)(d), in other instances where a refund or credit of tax which has not been deducted and withheld from income is due, [no] a credit or refund may not be allowed or made after three years from the time the tax was paid, unless, before the expiration of the period, a claim is filed by the taxpayer or his legal representative.

(c) Beginning on July 1, 1998, the commission shall extend the period for a taxpayer to file a claim under Subsection (7)(a)(i) if:

(i) the time period for filing a claim under Subsection (7)(a) has not expired; and

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

(A) authorizing the extension; and

(B) providing for the length of the extension.

(d) Notwithstanding Subsection (7)(b), beginning on July 1, 1998, the commission shall extend the period for a taxpayer to file a claim under Subsection (7)(b) if:

(i) the three-year period under Subsection (7)(b) has not expired; and

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

(A) authorizing the extension; and

(B) providing for the length of the extension.

(8) The fine and bail forfeiture provisions of this section apply to all warrants and fines issued in cases charging the taxpayer with a felony, a misdemeanor, or an infraction described in this section which are outstanding on or after February 16, 1984.

(9) If the amount allowable as a credit for tax withheld from the taxpayer exceeds the tax to which the credit relates, the excess is considered an overpayment.

(10) A claim for credit or refund of an overpayment which is attributable to the application to the taxpayer of a net operating loss carryback shall be filed within three years from the time the return was due for the taxable year of the loss.

(11) If there has been an overpayment of the tax which is required to be deducted and withheld under Section 59-10-402, a refund shall be made to the employer only to the extent that the amount of overpayment was not deducted and withheld by the employer.

(12) If there is no tax liability for a period in which an amount is paid as income tax, the amount is an overpayment.

(13) If an income tax is assessed or collected after the expiration of the applicable period of limitation, that amount is an overpayment.

(14) (a) If a taxpayer is required to report a change or correction in federal taxable income reported on his federal income tax return, or to report a change or correction which is treated in the same manner as if it were an overpayment for federal income tax purposes, or to file an amended return with the commission, a claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the date the notice of the change, correction, or amended return was required to be filed with the commission.

(b) If the report or amended return is not filed within 90 days, interest on any resulting refund or credit ceases to accrue after the 90-day period.

(c) The amount of the credit or refund may not exceed the amount of the reduction in tax attributable to the federal change, correction, or items amended on the taxpayer's amended federal income tax return.

(d) Except as specifically provided, this section does not affect the amount or the time within which a claim for credit or refund may be filed.

(15) No credit or refund may be allowed or made if the overpayment is less than \$1.

(16) The amount of the credit or refund may not exceed the tax paid during the three years immediately preceding the filing of the claim, or if no claim is filed, then during the three years immediately preceding the allowance of the credit or refund.

(17) In the case of an overpayment of tax by the employer under the withholding provisions of this chapter, a refund or credit shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld from wages under the provisions of this chapter.

(18) If a taxpayer who is entitled to a refund under this chapter dies, the commission may make payment to the duly appointed executor or administrator of the taxpayer's estate. If there is no executor or administrator, payment may be made to those persons who establish entitlement to inherit the property of the decedent in the proportions set out in Title 75, Uniform Probate Code.

(19) Where an overpayment relates to adjustments to net income referred to in Subsection 59-10-536(3)(c), credit may be allowed or a refund paid any time before the expiration of the period within which a deficiency may be assessed.

(20) 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 6. Section **59-11-113** is amended to read:

59-11-113. Administration by commission -- Action for collection of tax -- Limit for refund or credit of tax -- Appeal.

(1) The commission is charged with the administration and enforcement of this chapter and may promulgate rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to

effectuate the purposes of this chapter.

(2) The commission shall collect the tax provided for under this chapter, including applicable interest and penalties, and shall represent this state in all matters pertaining to collection, either before courts or otherwise. The commission may institute proceedings for the collection of this tax, and any interest and penalties on the tax, in the district court of any county in which any portion of the property is situated. For this purpose the commission may call to its assistance the attorney general and the various county attorneys throughout the state.

(3) (a) Except as provided in ~~[Subsection]~~ Subsections (4) through (7), the commission shall assess a tax under this chapter within three years after a taxpayer files a return.

(b) ~~[If]~~ Except as provided in Subsections (4) through (7), if the commission does not assess a tax under this chapter within the three-year period provided in Subsection (3)(a), the commission may not file an action to collect the tax.

(4) ~~[The]~~ Notwithstanding Subsection (3), the commission may assess a tax at any time if a taxpayer:

- (a) files a false or fraudulent return with intent to evade; or
- (b) does not file a return.

(5) Notwithstanding Subsection (3), beginning on July 1, 1998, the commission may extend the period to make an assessment or to commence a proceeding to collect the tax under this chapter if:

- (a) the three-year period under Subsection (3) has not expired; and
- (b) the commission and the taxpayer sign a written agreement:
 - (i) authorizing the extension; and
 - (ii) providing for the length of the extension.

(6) If the commission delays an audit at the request of a taxpayer, the commission may make an assessment as provided in Subsection (7) if:

- (a) the taxpayer subsequently refuses to agree to an extension request by the commission;

and

- (b) the three-year period under Subsection (3) expires before the commission completes the

audit.

(7) An assessment under Subsection (6) shall be:

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

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

(i) the commission's estimate of the amount of taxes the taxpayer would have been assessed for the time period described in Subsection (7)(a); and

(ii) the amount of taxes the taxpayer actually paid for the time period described in Subsection (7)(a).

~~[(5)]~~ (8) A taxpayer shall:

(a) notify the commission within 90 days after a final determination of a change made in a taxpayer's net income on the taxpayer's federal estate tax return if:

(i) the change is made because:

(A) the taxpayer filed an amended federal return; or

(B) of an action by the federal government; and

(ii) the change affects the taxpayer's state tax liability; and

(b) if the taxpayer is required to notify the commission of a change as provided in Subsection ~~[(5)]~~ (8)(a)(i), file a copy of:

(i) the amended federal return; and

(ii) an amended state return which conforms to the changes on the federal return.

~~[(6)]~~ (9) (a) The commission may assess a deficiency in state estate taxes as a result of a change in a taxpayer's net income under Subsection ~~[(5)]~~ (8):

(i) within three years after a taxpayer files an amended return under Subsection ~~[(5)]~~ (8)(b) if the taxpayer files an amended return; or

(ii) within six years after the change if a taxpayer does not file an amended return under Subsection ~~[(5)]~~ (8)(b).

(b) The amount of a deficiency assessed under Subsection ~~[(6)]~~ (9)(a) may not exceed the amount of the increase in Utah tax attributable to the change in the taxpayer's net income under

Subsection [~~(5)~~] (8)(a).

~~[(7) The] (10) (a)~~ Except as provided in Subsection (10)(b), the commission may not make a credit or refund unless the taxpayer files a claim with the commission within three years of the date of overpayment.

(b) Notwithstanding Subsection (10)(a), beginning on July 1, 1998, the commission shall extend the period for a taxpayer to file a claim under Subsection (10)(a) if:

(i) the three-year period under Subsection (10)(a) has not expired; and

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

(A) authorizing the extension; and

(B) providing for the length of the extension.

~~[(8)] (11)~~ Any party to a proceeding before the district court concerning the tax imposed by this chapter, including the commission, may appeal from the order, judgment, or decree entered by the district court.

Section 7. Section **59-12-110** is amended to read:

59-12-110. Overpayments, deficiencies, and refunds procedures.

(1) (a) As soon as practicable after a return is filed, the commission shall examine the return.

(b) If the commission determines that the correct amount of tax to be remitted is greater or less than the amount shown to be due on the return, the commission shall recompute the tax.

(c) If the amount paid exceeds the amount due, the excess, plus interest as provided in Section 59-1-402, shall be credited or refunded to the taxpayer as provided in Subsection (2).

(d) The commission may not credit or refund to the taxpayer interest on an overpayment under Subsection (1)(c) if the commission determines that the overpayment was made for the purpose of investment.

(2) (a) If a taxpayer pays a tax, penalty, or interest more than once or the commission erroneously receives, collects, or computes any tax, penalty, or interest, including an overpayment described in Subsection (1)(c), the commission shall:

(i) credit the amount of tax, penalty, or interest paid by the taxpayer against any amounts of tax, penalties, or interest the taxpayer owes; and

(ii) refund any balance to the taxpayer or the taxpayer's successors, administrators, executors, or assigns.

(b) ~~[A]~~ Except as provided in Subsection (2)(c), a taxpayer shall file a claim with the commission to obtain a refund or credit under this Subsection (2) within three years from the day on which the taxpayer overpaid the tax, penalty, or interest.

(c) Notwithstanding Subsection (2)(b), beginning on July 1, 1998, the commission shall extend the period for a taxpayer to file a claim under Subsection (2)(b) if:

(i) the three-year period under Subsection (2)(b) has not expired; and

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

(A) authorizing the extension; and

(B) providing for the length of the extension.

~~[(c)]~~ (d) A taxpayer may file a claim to obtain a refund or credit under this Subsection (2) regardless of whether the taxpayer received or objected to a notice of deficiency or a notice of assessment as provided in Subsection 59-12-114(1).

~~[(d)]~~ (e) If the commission denies a claim for a refund or credit under this Subsection (2), the taxpayer may request a redetermination of the denial by filing a petition or request for agency action with the commission as provided in Title 63, Chapter 46b, Administrative Procedures Act.

(3) If the commission erroneously determines an amount to be due from a taxpayer, the commission shall authorize the amounts to be cancelled upon its records.

(4) (a) Subject to the provisions of Subsection (4)(b), the commission may impose on a deficiency under this section:

(i) a penalty as provided in Section 59-1-401; and

(ii) interest as provided in Section 59-1-402.

(b) The commission may impose a penalty and interest on the entire deficiency if any part of the deficiency is due to:

(i) negligence;

(ii) intentional disregard of law or rule; or

(iii) fraud with intent to evade the tax.

(5) (a) Except as provided in Subsection (5)(b), a taxpayer shall pay a tax deficiency, including penalties or interest under this section, within ten days after the commission provides the taxpayer notice and demand of the deficiency, penalty, or interest.

(b) Notwithstanding Subsection (5)(a), a taxpayer may pay a tax deficiency, penalty, or interest within 30 days after the commission provides the taxpayer notice and demand of the deficiency, penalty, or interest if the commission determines:

- (i) that a greater amount was due than was shown on the return; and
- (ii) the tax is not in jeopardy.

(6) (a) Except as provided in ~~[Subsection]~~ Subsections (6)(b)(c) through (f), the commission shall assess the amount of taxes imposed by this chapter, and any penalties and interest, within three years after a taxpayer files a return.

(b) Except as provided in Subsections (6)(c) through (f), if the commission does not make an assessment under Subsection (6)(a) within three years, the commission may not commence a proceeding for the collection of the taxes after the expiration of the three-year period.

~~[(b)] (c)~~ Notwithstanding ~~[Subsection]~~ Subsections (6)(a) and (b), the commission may make an assessment or commence a proceeding to collect a tax at any time if a deficiency is due to:

- (i) fraud; or
- (ii) failure to file a return.

~~[(c) If the commission does not make an assessment under Subsection (6)(a) within three years, the commission may not commence a proceeding for the collection of the taxes after the expiration of the three-year period.]~~

(d) Notwithstanding Subsections (6)(a) and (b), beginning on July 1, 1998, the commission may extend the period to make an assessment or to commence a proceeding to collect the tax under this chapter if:

- (i) the three-year period under this Subsection (6) has not expired; and
- (ii) the commission and the taxpayer sign a written agreement:
 - (A) authorizing the extension; and
 - (B) providing for the length of the extension.

(e) If the commission delays an audit at the request of a taxpayer, the commission may make an assessment as provided in Subsection (6)(f) if:

(i) the taxpayer subsequently refuses to agree to an extension request by the commission;
and

(ii) the three-year period under this Subsection (6) expires before the commission completes the audit.

(f) An assessment under Subsection (6)(e) shall be:

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

(ii) in an amount equal to the difference between:

(A) the commission's estimate of the amount of taxes the taxpayer would have been assessed for the time period described in Subsection (6)(f)(i); and

(B) the amount of taxes the taxpayer actually paid for the time period described in Subsection (6)(f)(i).

Section 8. Section **59-13-210** is amended to read:

59-13-210. Rules to be adopted by commission -- Examination of monthly reports -- Estimations of amount due -- Judicial review -- Overpayments -- Interest -- Assessment and refund procedures.

(1) The commission may promulgate rules to administer and enforce this part.

(2) The commission may examine the monthly reports of sales, recompute the tax due on them, or, if no monthly report is filed, estimate the amount of tax due. The estimate may be based upon information either in its possession or that comes into its possession, and is prima facie correct for purposes of this part.

(3) If the amount determined due is greater than the amount paid, the difference, together with penalty and interest, as provided under Sections 59-1-401 and 59-1-402, shall be due and payable 30 days after notice by the commission. Any distributor aggrieved by the tax adjustment may petition for redetermination, hearing, and review by the commission. A taxpayer who is dissatisfied with a final decision received from the commission may seek judicial review.

(4) If the commission finds an overpayment has been made, the amount of overpayment shall be credited or refunded to the person who made the overpayment, or the person's successors, administrators, executors, or assigns.

(5) Interest at the rate and in the manner prescribed in Section 59-1-402 shall be added to any delinquency or refund determined by the commission.

~~[(6) A proceeding to assess the tax may not begin more than three years after the filing of any report; but in case of fraud, proceedings to assess the tax may begin at any time. A]~~

(6) (a) Except as provided in Subsections (6)(c) through (f), the commission shall assess the amount of taxes imposed under this part, and any penalties and interest, within three years after a taxpayer files a return.

(b) Except as provided in Subsections (6)(c) through (f), if the commission does not make an assessment under Subsection (6)(a) within three years, the commission may not commence a proceeding for the collection of the taxes after the expiration of the three-year period.

(c) Notwithstanding Subsections (6)(a) and (b), the commission may make an assessment or commence a proceeding to collect a tax at any time if a deficiency is due to:

(i) fraud; or

(ii) failure to file a return.

(d) Notwithstanding Subsections (6)(a) and (b), beginning on July 1, 1998, the commission may extend the period to make an assessment or to commence a proceeding to collect the tax under this part if:

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

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

(A) authorizing the extension; and

(B) providing for the length of the extension.

(e) If the commission delays an audit at the request of a taxpayer, the commission may make an assessment as provided in Subsection (6)(f) if:

(i) the taxpayer subsequently refuses to agree to an extension request by the commission;
and

(ii) the three-year period under this Subsection (6) expires before the commission completes the audit.

(f) An assessment under Subsection (6)(e) shall be:

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

(ii) in an amount equal to the difference between:

(A) the commission's estimate of the amount of taxes the taxpayer would have been assessed for the time period described in Subsection (6)(f)(i); and

(B) the amount of taxes the taxpayer actually paid for the time period described in Subsection (6)(f)(i).

(7) (a) Except as provided in Subsection (7)(b), a refund may not be made unless a claim has been filed within three years of the date of overpayment.

(b) Notwithstanding Subsection (7)(a), beginning on July 1, 1998, the commission shall extend the period for a taxpayer to file a claim under Subsection (7)(a) if:

(i) the three-year period under Subsection (7)(a) has not expired; and

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

(A) authorizing the extension; and

(B) providing for the length of the extension.

Section 9. Section **59-13-313** is amended to read:

59-13-313. Commission to enforce the laws -- Estimations of tax -- Penalties -- Notice of determinations -- Information sharing with other states -- Assessment procedures.

(1) (a) The commission is charged with the enforcement of this part and may prescribe rules relating to administration and enforcement of this part.

(b) The commission may coordinate with state and federal agencies in the enforcement of this part.

(c) Enforcement procedures may include checking diesel fuel dye compliance of storage facilities and tanks of vehicles, in a manner consistent with state and federal law.

(2) (a) If the commission has reason to question the report filed or the amount of special fuel

tax paid to the state by any user or supplier, it may compute and determine the amount to be paid based upon the best information available to it.

(b) Any added amount of special fuel tax determined to be due under this section shall have added to it a penalty as provided under Section 59-1-401, and shall bear interest at the rate and in the manner prescribed in Section 59-1-402.

(c) The commission shall give to the user or supplier written notice of its determination. The notice may be served personally or by mail when addressed to the user or supplier at the user or supplier's last-known address as it appears in the records of the commission.

(3) The commission may, upon the duly received request of the officials to whom the enforcement of the special fuel laws of any other state are entrusted, forward to those officials any information which the commission may have in its possession relative to the delivery, removal, production, manufacture, refining, compounding, receipt, sale, use, transportation, or shipment of special fuel by any person.

~~[(4) A proceeding to assess the tax under this part may not begin more than three years after the filing of any report, except in the case of fraud a proceeding to assess the tax may begin at any time.]~~

(4) (a) Except as provided in Subsections (4)(c) through (f), the commission shall assess the amount of taxes imposed under this part, and any penalties and interest, within three years after a taxpayer files a return.

(b) Except as provided in Subsections (4)(c) through (f), if the commission does not make an assessment under Subsection (4)(a) within three years, the commission may not commence a proceeding for the collection of the taxes after the expiration of the three-year period.

(c) Notwithstanding Subsections (4)(a) and (b), the commission may make an assessment or commence a proceeding to collect a tax at any time if a deficiency is due to:

(i) fraud; or

(ii) failure to file a return.

(d) Notwithstanding Subsections (4)(a) and (b), beginning on July 1, 1998, the commission may extend the period to make an assessment or to commence a proceeding to collect the tax under

this part if:

(i) the three-year period under this Subsection (4) has not expired; and

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

(A) authorizing the extension; and

(B) providing for the length of the extension.

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

(i) the taxpayer subsequently refuses to agree to an extension request by the commission;

and

(ii) the three-year period under this Subsection (4) expires before the commission completes the audit.

(f) An assessment under Subsection (4)(e) shall be:

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

(ii) in an amount equal to the difference between:

(A) the commission's estimate of the amount of taxes the taxpayer would have been assessed for the time period described in Subsection (4)(f)(i); and

(B) the amount of taxes the taxpayer actually paid for the time period described in Subsection (4)(f)(i).

Section 10. Section **59-13-318** is amended to read:

59-13-318. Errors in payments -- Refunds.

(1) (a) If the commission, through error, collects or receives any special fuel tax, penalty, or interest imposed by this part, the amount of tax, penalty, or interest, upon written application, shall be refunded to the person paying it. The application shall state the specific grounds on which it is founded and whether the sums were paid voluntarily or under protest. [A]

(b) Except as provided in Subsection (1)(c), a refund may not be made unless a claim has been filed within three years of the date of the overpayment.

(c) Notwithstanding Subsection (1)(b), beginning on July 1, 1998, the commission shall

extend the period for a taxpayer to file a claim under Subsection (1)(b) if:

(i) the three-year period under Subsection (1)(b) has not expired; and

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

(A) authorizing the extension; and

(B) providing for the length of the extension.

(d) A refund may not be made to successors or assigns in business of the person making the payment but shall be made to an estate or heir of the person if written application is made within the time limit, accompanied by proper authority from a probate court.

(e) Refunds to which taxpayers are entitled under this chapter shall be paid from the Transportation Fund.

(2) Any user who has paid taxes on purchases in the state which exceed the amount due based on the special fuel reported to be used in the state shall receive a refund of taxes overpaid in a timely manner.

(3) Interest shall be applied to refunds given under this section as prescribed in Section 59-1-402.

Section 11. Section **59-15-103** is amended to read:

59-15-103. Overpayment and deficiency.

(1) (a) The commission shall examine the return as soon as practical after the return is filed.

(b) If it appears that the amount of taxes remitted is greater or less than the amount shown in the return to be due, the tax shall be recomputed. [Hf]

(c) Subject to the provisions of Subsection (1)(f), if the amount paid exceeds the amount due, the excess shall be credited or refunded to the person paying the tax.

(d) If the commission determines that any amount, penalty, or interest has been paid more than once or has been erroneously collected or computed, the commission shall identify the amount collected in excess of what was legally due, and from whom it was collected or by whom it was paid. [The]

(e) Subject to the provisions of Subsection (1)(f), the amount under Subsection (1)(d) shall be credited on any amounts then due from the person to the state.

(f) The balance shall be refunded with interest at the rate and in the manner prescribed by Section 59-1-402, to the person, successor, administrator, executor, or assigns, but [no] except as provided in Subsection (1)(g), a credit or refund is not allowed unless a claim for the credit or refund is filed with the commission within three years from the date of overpayment.

(g) Notwithstanding Subsection (1)(f), beginning on July 1, 1998, the commission shall extend the period for a taxpayer to file a claim under Subsection (1)(f) if:

(i) the three-year period under Subsection (1)(f) has not expired; and

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

(A) authorizing the extension; and

(B) providing for the length of the extension.

~~(2) If any amount has been erroneously determined due from any person, the commission shall authorize the cancellation of the amounts upon its records. [The amount of taxes imposed by this chapter shall be assessed within three years after the return was filed and if not so assessed, no proceeding for the collection of the taxes may be commenced after the expiration of that period. The three-year limitation does not apply if the deficiency is based upon fraud with intent to evade or a failure to file a return.]~~

(3) (a) Except as provided in Subsections (3)(c) through (f), the commission shall assess the amount of taxes imposed under this chapter, and any penalties and interest, within three years after a taxpayer files a return.

(b) Except as provided in Subsections (3)(c) through (f), if the commission does not make an assessment under Subsection (3)(a) within three years, the commission may not commence a proceeding for the collection of the taxes after the expiration of the three-year period.

(c) Notwithstanding Subsections (3)(a) and (b), the commission may make an assessment or commence a proceeding to collect a tax at any time if a deficiency is due to:

(i) fraud; or

(ii) failure to file a return.

(d) Notwithstanding Subsections (3)(a) and (b), beginning on July 1, 1998, the commission may extend the period to make an assessment or to commence a proceeding to collect the tax under

this chapter if:

(i) the three-year period under this Subsection (3) has not expired; and

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

(A) authorizing the extension; and

(B) providing for the length of the extension.

(e) If the commission delays an audit at the request of a taxpayer, the commission may make an assessment as provided in Subsection (3)(f) if:

(i) the taxpayer subsequently refuses to agree to an extension request by the commission;

and

(ii) the three-year period under this Subsection (3) expires before the commission completes the audit.

(f) An assessment under Subsection (3)(e) shall be:

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

(ii) in an amount equal to the difference between:

(A) the commission's estimate of the amount of taxes the taxpayer would have been assessed for the time period described in Subsection (3)(f)(i); and

(B) the amount of taxes the taxpayer actually paid for the time period described in Subsection (3)(f)(i).

~~[(3)]~~ (4) In the case of a false or fraudulent return, payment with intent to evade tax, or failure to file a return, the taxes may be assessed or a proceeding for the collection of the taxes may be commenced at any time.

Section 12. Section **59-16-102** is amended to read:

59-16-102. Action for collection of tax -- Limit for refund or credit of tax.

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

(b) ~~[If]~~ Except as provided in Subsections (2) through (5), if the commission does not assess a tax under this chapter within the three-year period provided in Subsection (1)(a), the commission

may not file an action to collect the tax.

(2) [The] Notwithstanding Subsection (1), the commission may assess a tax at any time if a taxpayer:

- (a) files a false or fraudulent return with intent to evade; or
- (b) does not file a return.

(3) Notwithstanding Subsection (1), beginning on July 1, 1998, the commission may extend the period to make an assessment or to commence a proceeding to collect the tax under this chapter if:

- (a) the three-year period under Subsection (1) has not expired; and
- (b) the commission and the taxpayer sign a written agreement:
 - (i) authorizing the extension; and
 - (ii) providing for the length of the extension.

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

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

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

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

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

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

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

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

[~~(3)~~The] (6) (a) Except as provided in Subsection (6)(b), the commission may not make a credit or refund unless the taxpayer files a claim with the commission within three years of the date

of overpayment.

(b) Notwithstanding Subsection (6)(a), beginning on July 1, 1998, the commission shall extend the period for a taxpayer to file a claim under Subsection (6)(a) if:

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

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

(A) authorizing the extension; and

(B) providing for the length of the extension.

Section 13. Section **59-23-6** is amended to read:

59-23-6. Action for collection of royalty -- Action for refund or credit of royalty.

(1) (a) Except as provided in [Subsection] Subsections (2) through (5), the commission shall assess a brine shrimp royalty under this chapter within three years after a royalty payer files a return.

(b) [Hf] Except as provided in Subsections (2) through (5), if the commission does not assess a royalty under this chapter within the three-year period provided in Subsection (1)(a), the commission may not [~~file an action~~] commence a proceeding to collect the royalty.

(2) [~~The~~] Notwithstanding Subsection (1), the commission may assess a royalty at any time if a royalty payer:

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

(b) does not file a return.

(3) Notwithstanding Subsection (1), beginning on July 1, 1998, the commission may extend the period to make an assessment or to commence a proceeding to collect the royalty under this chapter if:

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

(b) the commission and the royalty payer sign a written agreement:

(i) authorizing the extension; and

(ii) providing for the length of the extension.

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

(a) the royalty payer subsequently refuses to agree to an extension request by the

commission; and

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

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

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

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

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

(ii) the amount of royalty the royalty payer actually paid for the time period described in Subsection (5)(a).

~~[(3) The]~~ (6) (a) Except as provided in Subsection (6)(b), the commission may not make a credit or refund unless the royalty payer files a claim with the commission within three years of the date of overpayment.

(b) Notwithstanding Subsection (6)(a), beginning on July 1, 1998, the commission shall extend the period for a royalty payer to file a claim under Subsection (6)(a) if:

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

(ii) the commission and the royalty payer sign a written agreement:

(A) authorizing the extension; and

(B) providing for the length of the extension.

Section 14. **Effective date.**

This act takes effect on July 1, 1998.