

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

3 1998 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Wayne A. Harper**

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

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

15 AMENDS:

16 **59-5-114**, as last amended by Chapter 330, Laws of Utah 1997

17 **59-5-214**, as last amended by Chapter 330, Laws of Utah 1997

18 **59-7-522**, as last amended by Chapter 1, Laws of Utah 1993, Second Special Session

19 **59-9-106**, as enacted by Chapter 330, Laws of Utah 1997

20 **59-10-529**, as last amended by Chapter 232, Laws of Utah 1997

21 **59-11-113**, as last amended by Chapter 330, Laws of Utah 1997

22 **59-12-110**, as last amended by Chapter 328, Laws of Utah 1997

23 **59-13-210**, as last amended by Chapter 53, Laws of Utah 1994

24 **59-13-313**, as last amended by Chapter 271, Laws of Utah 1997

25 **59-13-318**, as last amended by Chapter 53, Laws of Utah 1994

26 **59-15-103**, as last amended by Chapter 1, Laws of Utah 1993, Second Special Session

27 **59-16-102**, as enacted by Chapter 330, Laws of Utah 1997

1 **59-23-6**, as enacted by Chapter 179, Laws of Utah 1997

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

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

4 **59-5-114. Limitation of actions.**

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

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

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

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

17 (i) fraud; or

18 (ii) failure to file a return.

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

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

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

24 (A) authorizing the extension; and

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

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

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

29 and

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

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

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

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

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

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

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

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

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

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

16 (A) authorizing the extension; and

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

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

19 **59-5-214. Limitation of actions.**

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

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

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

31 (c) Notwithstanding Subsections (1)(a) and (b), the commission may make an assessment

1 or commence a proceeding to collect a tax at any time if a deficiency is due to:

2 (i) fraud; or

3 (ii) failure to file a return.

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

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

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

9 (A) authorizing the extension; and

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

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

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

14 and

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

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

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

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

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

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

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

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

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

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

1 (A) authorizing the extension; and

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

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

4 **59-7-522. Overpayments.**

5 (1) Where there has been an overpayment of any tax imposed by this chapter, the amount
6 of such overpayment and interest calculated at the rate and in the manner prescribed in Section
7 59-1-402 shall be credited against any tax then due from the taxpayer under this chapter, and any
8 balance shall be refunded immediately to the taxpayer.

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

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

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

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

18 (A) authorizing the extension; and

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

20 [~~(b)~~] (3) If the claim for credit or refund relates to an overpayment attributable to a net loss
21 carryback adjustment as provided in Section 59-7-110, in lieu of the three-year period provided
22 for in Subsection (2)(a), the period shall be that period which ends with the expiration of the 15th
23 day of the 40th month following the end of the taxable year of the net loss which results in the
24 carryback.

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

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

31 [~~(3)~~] (6) Except as provided in Subsections [~~(2)(b)~~] (3) and [~~(2)(c)~~] (4), if on appeal a court

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

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

8 **59-9-106. Assessment of taxes -- Action for collection of tax -- Limit for refund or**
9 **credit of tax.**

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

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

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

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

20 (b) does not file a return.

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

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

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

26 (i) authorizing the extension; and

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

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

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

31 and

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

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

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

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

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

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

11 [~~3~~ The] (6) (a) Except as provided in Subsection (6)(b), the commission may not make
 12 a credit or refund unless the taxpayer files a claim with the commission within three years of the
 13 date of overpayment.

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

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

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

18 (A) authorizing the extension; and

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

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

21 **59-10-529. Overpayment of tax -- Credits -- Refunds.**

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

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

25 (b) against:

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

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

1 (c) as bail, to ensure the appearance of the taxpayer before the appropriate authority to
2 resolve an outstanding warrant against the taxpayer for which bail is due, if a court of competent
3 jurisdiction has not approved an alternative form of payment. This bail may be applied to any fine
4 or forfeiture which is due and related to a warrant which is outstanding on or after February 16,
5 1984, and in accordance with Subsections (3) and (4).

6 (2) (a) Subsection (1)(b)(ii) may be exercised only if the Office of Recovery Services has
7 mailed written notice to the taxpayer's last-known address or the address on file under Section
8 62A-11-304.4, stating:

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

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

13 (iii) that the taxpayer may contest the amount of past-due child support specified in the
14 notice by filing a written request for an adjudicative proceeding with the office within 15 days of
15 the notice being sent.

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

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

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

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

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

31 (4) (a) The commission shall deliver the overpayment applied as bail to the court that

1 issued the warrant of arrest. The clerk of the court is authorized to endorse the check or
2 commission warrant of payment on behalf of the payees and deposit the monies in the court
3 treasury.

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

11 (c) If the taxpayer fails to respond to the notice described in Subsection (3), or to resolve
12 the warrant within 40 days after the mailing under that subsection, the overpayment applied as bail
13 is forfeited and notice of the forfeiture shall be mailed to the taxpayer at the current address on file
14 with the commission. The court may then issue another warrant or allow the original warrant to
15 remain in force if:

16 (i) the taxpayer has not complied with an order of the court;

17 (ii) the taxpayer has failed to appear and respond to a criminal charge for which a personal
18 appearance is required; or

19 (iii) the taxpayer has paid partial but not full bail in a case for which a personal appearance
20 is not required.

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

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

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

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

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

31 (b) ~~[In]~~ Except as provided in Subsection (7)(d), in other instances where a refund or credit

1 of tax which has not been deducted and withheld from income is due, [no] a credit or refund may
2 not be allowed or made after three years from the time the tax was paid, unless, before the
3 expiration of the period, a claim is filed by the taxpayer or his legal representative.

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

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

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

8 (A) authorizing the extension; and

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

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

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

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

14 (A) authorizing the extension; and

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

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

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

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

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

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

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

31 (14) (a) If a taxpayer is required to report a change or correction in federal taxable income

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

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

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

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

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

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

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

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

25 (19) Where an overpayment relates to adjustments to net income referred to in Subsection
26 59-10-536(3)(c), credit may be allowed or a refund paid any time before the expiration of the
27 period within which a deficiency may be assessed.

28 (20) An overpayment of a tax imposed by this chapter shall accrue interest at the rate and
29 in the manner prescribed in Section 59-1-402.

30 Section 6. Section **59-11-113** is amended to read:

31 **59-11-113. Administration by commission -- Action for collection of tax -- Limit for**

1 **refund or credit of tax -- Appeal.**

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

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

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

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

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

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

19 (b) does not file a return.

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

23 (a) the three-year period under Subsection (3) has not expired; and

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

25 (i) authorizing the extension; and

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

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

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

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

1 the audit.

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

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

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

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

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

10 [~~5~~] (8) A taxpayer shall:

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

13 (i) the change is made because:

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

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

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

17 (b) if the taxpayer is required to notify the commission of a change as provided in

18 Subsection [~~5~~] (8)(a)(i), file a copy of:

19 (i) the amended federal return; and

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

21 [~~6~~] (9) (a) The commission may assess a deficiency in state estate taxes as a result of a
22 change in a taxpayer's net income under Subsection [~~5~~] (8):

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

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

27 (b) The amount of a deficiency assessed under Subsection [~~6~~] (9)(a) may not exceed the
28 amount of the increase in Utah tax attributable to the change in the taxpayer's net income under
29 Subsection [~~5~~] (8)(a).

30 [~~7~~—The] (10) (a) Except as provided in Subsection (10)(b), the commission may not
31 make a credit or refund unless the taxpayer files a claim with the commission within three years

1 of the date of overpayment.

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

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

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

6 (A) authorizing the extension; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (A) authorizing the extension; and

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

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

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

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

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

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

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

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

21 (i) negligence;

22 (ii) intentional disregard of law or rule; or

23 (iii) fraud with intent to evade the tax.

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

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

30 (i) that a greater amount was due than was shown on the return; and

31 (ii) the tax is not in jeopardy.

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

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

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

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

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

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

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

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

- 24 (i) the taxpayer subsequently refuses to agree to an extension request by the commission;
25 and
- 26 (ii) the three-year period under this Subsection (6) expires before the commission
27 completes the audit.

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

- 29 (i) for the time period for which the commission could not make an assessment because
30 of the expiration of the three-year period; and
- 31 (ii) in an amount equal to the difference between:

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

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

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

6 **59-13-210. Rules to be adopted by commission -- Examination of monthly reports**
7 **-- Estimations of amount due -- Judicial review -- Overpayments -- Interest -- Assessment**
8 **and refund procedures.**

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

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

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

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

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

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

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

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

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

3 (i) fraud; or

4 (ii) failure to file a return.

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

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

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

10 (A) authorizing the extension; and

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

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

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

15 and

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

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

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

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

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

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

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

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

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

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

1 (A) authorizing the extension; and

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

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

4 **59-13-313. Commission to enforce the laws -- Estimations of tax -- Penalties -- Notice**
5 **of determinations -- Information sharing with other states -- Assessment procedures.**

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

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

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

12 (2) (a) If the commission has reason to question the report filed or the amount of special
13 fuel tax paid to the state by any user or supplier, it may compute and determine the amount to be
14 paid based upon the best information available to it.

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

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

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

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

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

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

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

6 (i) fraud; or

7 (ii) failure to file a return.

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

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

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

13 (A) authorizing the extension; and

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

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

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

18 and

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

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

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

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

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

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

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

30 **59-13-318. Errors in payments -- Refunds.**

31 (1) (a) If the commission, through error, collects or receives any special fuel tax, penalty,

1 or interest imposed by this part, the amount of tax, penalty, or interest, upon written application,
2 shall be refunded to the person paying it. The application shall state the specific grounds on which
3 it is founded and whether the sums were paid voluntarily or under protest. [A]

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

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

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

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

10 (A) authorizing the extension; and

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

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

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

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

20 (3) Interest shall be applied to refunds given under this section as prescribed in Section
21 59-1-402.

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

23 **59-15-103. Overpayment and deficiency.**

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

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

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

30 (d) If the commission determines that any amount, penalty, or interest has been paid more
31 than once or has been erroneously collected or computed, the commission shall identify the

1 amount collected in excess of what was legally due, and from whom it was collected or by whom
2 it was paid. [The]

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

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

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

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

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

13 (A) authorizing the extension; and

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

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

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

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

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

29 (i) fraud; or

30 (ii) failure to file a return.

31 (d) Notwithstanding Subsections (3)(a) and (b), beginning on July 1, 1998, the commission

1 may extend the period to make an assessment or to commence a proceeding to collect the tax under
 2 this chapter if:

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

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

5 (A) authorizing the extension; and

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

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

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

10 and

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

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

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

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

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

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

21 ~~[(3)]~~ (4) In the case of a false or fraudulent return, payment with intent to evade tax, or
 22 failure to file a return, the taxes may be assessed or a proceeding for the collection of the taxes may
 23 be commenced at any time.

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

25 **59-16-102. Action for collection of tax -- Limit for refund or credit of tax.**

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

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

31 (2) ~~[The]~~ Notwithstanding Subsection (1), the commission may assess a tax at any time

1 if a taxpayer:

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

3 (b) does not file a return.

4 (3) Notwithstanding Subsection (1), beginning on July 1, 1998, the commission may

5 extend the period to make an assessment or to commence a proceeding to collect the tax under this

6 chapter if:

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

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

9 (i) authorizing the extension; and

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

11 (4) If the commission delays an audit at the request of a taxpayer, the commission may

12 make an assessment as provided in Subsection (5) if:

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

14 and

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

16 the audit.

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

18 (a) for the time period for which the commission could not make an assessment because

19 of the expiration of the three-year period; and

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

21 (i) the commission's estimate of the amount of taxes the taxpayer would have been

22 assessed for the time period described in Subsection (5)(a); and

23 (ii) the amount of taxes the taxpayer actually paid for the time period described in

24 Subsection (5)(a).

25 ~~[(3) The]~~ (6) (a) Except as provided in Subsection (6)(b), the commission may not make

26 a credit or refund unless the taxpayer files a claim with the commission within three years of the

27 date of overpayment.

28 (b) Notwithstanding Subsection (6)(a), beginning on July 1, 1998, the commission shall

29 extend the period for a taxpayer to file a claim under Subsection (6)(a) if:

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

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

1 (A) authorizing the extension; and

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

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

4 **59-23-6. Action for collection of royalty -- Action for refund or credit of royalty.**

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

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

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

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

14 (b) does not file a return.

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

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

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

20 (i) authorizing the extension; and

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

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

24 (a) the royalty payer subsequently refuses to agree to an extension request by the
25 commission; and

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

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

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

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

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

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

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

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

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

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

12 (A) authorizing the extension; and

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

14 Section 14. **Effective date.**

15 This act takes effect on July 1, 1998.

Legislative Review Note
as of 2-16-98 3:11 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel