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TAX COMMISSION REVISIONS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: John L. Valentine

AN ACT RELATING TO REVENUE AND TAXATION; REQUIRING CERTAIN TAXPAYERS ASSESSED BY THE STATE TAX COMMISSION TO FILE A STATEMENT CONTAINING CERTAIN PROPERTY TAX INFORMATION; REQUIRING THE STATE TAX COMMISSION TO PREPARE A RECORD OF ASSESSMENT FOR AIRLINES, AIR CHARTER SERVICES, AND AIR CONTRACT SERVICES; PROVIDING PENALTIES FOR FAILING TO FILE A PROPERTY TAX STATEMENT WITH THE STATE TAX COMMISSION UNDER CERTAIN CIRCUMSTANCES; AUTHORIZING THE STATE TAX COMMISSION TO EXTEND THE TIME PERIOD FOR FILING A PROPERTY TAX STATEMENT UNDER CERTAIN CIRCUMSTANCES; ADDRESSING THE CIRCUMSTANCES UNDER WHICH A TAXPAYER MAY CLAIM A REFUND FOR AN OVERPAYMENT OF A SALES AND USE TAX; PROVIDING PROCEDURES FOR CLAIMING THE REFUND; AND MAKING TECHNICAL CHANGES.

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

AMENDS:

59-2-202, as last amended by Chapter 209, Laws of Utah 1996

59-2-204, as enacted by Chapter 4, Laws of Utah 1987

59-2-207, as enacted by Chapter 4, Laws of Utah 1987

59-12-110, as last amended by Chapter 299, Laws of Utah 1998

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

Section 1. Section **59-2-202** is amended to read:

59-2-202. Statement of taxpayer -- Penalty for failure to file statement or information -- Assessment without statement -- Appeals.

(1) (a) A person, or an officer or agent of that person, owning or operating [a public utility

28 in this state, or owning or operating a pipeline, power, canal, irrigation, or telephone company in
29 more than one county in this state;] property described in Subsection (1)(b) shall, on or before
30 March 1 of each year, [furnish to] file with the commission a statement:

31 (i) signed and sworn to by the person, officer, or agent;

32 (ii) showing in detail all real property[, real or] and tangible personal[, owned by] property
33 located in the state that the person [in the state, including a statement of mileage] owns or operates;

34 (iii) containing the number of miles of taxable tangible personal property in each county[;];

35 (A) that the person owns or operates; and

36 (B) as valued [at 12 o'clock m. of] on January 1 of the year[, with] for which the person,
37 officer, or agent is furnishing the statement; and

38 (iv) containing any other information [required by] the commission requires.

39 (b) Subsection (1)(a) applies to:

40 (i) the following property located in the state:

41 (A) a public utility;

42 (B) an airline;

43 (C) an air charter service; or

44 (D) an air contract service; or

45 (ii) the following property located in more than one county in the state:

46 (A) a pipeline company;

47 (B) a power company;

48 (C) a canal company;

49 (D) an irrigation company; or

50 (E) a telephone company.

51 [(b)] (c) The commission may [extend the time] allow an extension for filing the statement
52 under Subsection (1)(a)[, except that the extension may] for a time period not [exceed] exceeding
53 30 days.

54 (2) If a person, or an officer or agent of that person, fails to file the statement required
55 under Subsection (1)(a) on or before March 1 of each year, the commission shall assess and list
56 the property using the best information obtainable by the commission.

57 [(2) A person failing to furnish the statement under Subsection (1)(a) on or before March
58 1 of each year, or any other information considered by the commission necessary to enable it to

59 determine valuations for assessment purposes or for the apportionment of the assessment, shall be
60 assessed by the]

61 (3) (a) The commission shall assess a person a penalty [equal to 10% of the estimated tax
62 due, except that the penalty may not be less than \$100.] as provided in Subsection (3)(b), if the
63 person, or an officer or agent of that person, fails to file:

64 (i) the statement required under Subsection (1)(a) on or before March 1 of each year; or

65 (ii) any other information the commission determines to be necessary to:

66 (A) establish valuations for assessment purposes; or

67 (B) apportion an assessment.

68 (b) The penalty described in Subsection (3)(a) is an amount equal to the greater of:

69 (i) 10% of the person's estimated tax liability under this chapter for the current calendar
70 year; or

71 (ii) \$100.

72 [(3)] (4) The county treasurer shall collect the penalty imposed under Subsection [(2)] (3)
73 [shall be collected according to the procedures and requirements of] as provided in Section
74 59-2-1308.

75 [(4)] (5) A person subject to a penalty under Subsection [(2)] (3) may appeal the penalty
76 according to procedures and requirements of Title 63, Chapter 46b, Administrative Procedures
77 Act.

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

79 **59-2-204. Record of assessment of public utility companies -- Review by county**
80 **assessor.**

81 (1) Each year, the commission shall prepare a record of assessment of the following
82 companies:

83 (a) public utility companies[-];

84 (b) airlines;

85 (c) air charter services; and

86 (d) air contract services.

87 (2) The record of assessment under Subsection (1) shall include:

88 (a) the name of [every] each person engaged in [any public utility] business within the state
89 in a company described in Subsection (1);

90 (b) for each company described in Subsection (1), the total value of all of the company's
 91 tangible and intangible properties [of the person]; and

92 (c) any other information as determined by the commission.

93 [~~2~~ The] (3) At the request of a county assessor, the commission shall provide to the
 94 county assessor:

95 (a) the record of [the] assessment described in Subsection (1); and

96 (b) the information upon which the assessments and apportionments contained in the
 97 record of assessment are made [are available for review upon request by a county assessor].

98 Section 3. Section **59-2-207** is amended to read:

99 **59-2-207. Statements for mines -- Penalty for failure to file statement or information**
 100 **-- Assessment without statement -- Penalty -- Appeals.**

101 (1) (a) [~~The owner or operator, as provided in this part, of every mine or mining claim and~~
 102 ~~other valuable mineral deposits, including lands containing coal or hydrocarbons,]~~ A person, or
 103 an officer or agent of that person, owning or operating property described in Subsection (1)(b) shall
 104 file with the commission, [in] on a form prescribed by the [commissioner] commission, a sworn
 105 statement [with the commission] on or before March 1 of each year[. The statement shall set out
 106 in detail any information required by the commission.]:

107 (i) showing in detail all real property and tangible personal property located in the state
 108 that the person owns or operates; and

109 (ii) containing any other information the commission requires.

110 (b) Subsection (1)(a) applies to the following property:

111 (i) a mine;

112 (ii) a mining claim; or

113 (iii) a valuable mineral deposit, including lands containing coal or hydrocarbons.

114 (c) The commission may allow an extension for filing the statement under Subsection
 115 (1)(a) for a time period not exceeding 30 days.

116 (2) If [~~any] a person, or an officer or agent of that person,~~ fails to file the statement
 117 required under Subsection (1) on or before March 1 of each year, the commission shall assess and
 118 list the property using the best information obtainable by the commission.

119 (3) (a) [~~Any person who willfully refuses, upon demand, to furnish the statement required~~
 120 ~~under Subsection (1), is subject to the same penalties as provided under Section 59-2-307. Failure~~

121 to furnish the statement following a renewed demand, after conviction, constitutes a separate
 122 offense:] The commission shall assess a person a penalty as provided in Subsection (3)(b), if the
 123 person, or an officer or agent of that person, fails to file:

124 (i) the statement required under Subsection (1)(a) on or before March 1 of each year; or

125 (ii) any other information the commission determines to be necessary to:

126 (A) establish valuations for assessment purposes; or

127 (B) apportion an assessment.

128 (b) The penalty described in Subsection (3)(a) is an amount equal to the greater of:

129 (i) 10% of the person's estimated tax liability under this chapter for the current calendar
 130 year; or

131 (ii) \$100.

132 (4) The county treasurer shall collect the penalty imposed under Subsection (3) as provided
 133 in Section 59-2-1308.

134 (5) A person subject to a penalty under Subsection (3) may appeal the penalty according
 135 to the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

136 Section 4. Section **59-12-110** is amended to read:

137 **59-12-110. Overpayments, deficiencies, and refunds procedures.**

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

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

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

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

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

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

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

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

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

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

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

161 (A) authorizing the extension; and

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

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

166 (e) A taxpayer may obtain a refund under this Subsection (2) of a tax paid on a sale or use
167 that is taxable under Section 59-12-103 if:

168 (i) the sale or use was exempt from sales and use taxes under Section 59-12-103 on the
169 day on which the taxpayer paid the tax;

170 (ii) the taxpayer paid the full amount of the taxpayer's sales and use tax liability under Title
171 59, Chapter 12, Sales and Use Tax Act, for the sale or use; and

172 (iii) except as provided in Subsection (2)(c), the taxpayer files a claim for a refund with
173 the commission as provided in Subsections (2)(b) through (d).

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

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

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

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

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

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

- 185 (i) negligence;
- 186 (ii) intentional disregard of law or rule; or
- 187 (iii) fraud with intent to evade the tax.

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

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

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

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

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

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

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

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

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

213 (e) If the commission delays an audit at the request of a taxpayer, the commission may

214 make an assessment as provided in Subsection (6)(f) if:
215 (i) the taxpayer subsequently refuses to agree to an extension request by the commission;
216 and
217 (ii) the three-year period under this Subsection (6) expires before the commission
218 completes the audit.
219 (f) An assessment under Subsection (6)(e) shall be:
220 (i) for the time period for which the commission could not make an assessment because
221 of the expiration of the three-year period; and
222 (ii) in an amount equal to the difference between:
223 (A) the commission's estimate of the amount of taxes the taxpayer would have been
224 assessed for the time period described in Subsection (6)(f)(i); and
225 (B) the amount of taxes the taxpayer actually paid for the time period described in
226 Subsection (6)(f)(i).

Legislative Review Note
as of 2-11-99 6:56 AM

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

Office of Legislative Research and General Counsel