

CONFIDENTIALITY OF TAX INFORMATION

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Karen Hale

This act modifies the Revenue and Taxation Code to permit disclosure of information in certain circumstances particularly those related to motor fuel and aviation fuel taxation.

This act makes technical changes.

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

AMENDS:

59-1-403, as last amended by Chapters 190 and 229, Laws of Utah 2000

59-14-212, as enacted by Chapter 190, Laws of Utah 2000

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

Section 1. Section **59-1-403** is amended to read:

59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.

(1) ~~(a)~~ ~~[Any tax commissioner, agent, clerk, or other officer or employee of the commission or any representative, agent, clerk, or other officer or employee of any county, city, or town]~~ Except as provided in this section, any of the following may not divulge or make known in any manner any information gained by ~~[him]~~ that person from any return filed with the commission~~[- The officials]~~:

(i) a tax commissioner;

(ii) an agent, clerk, or other officer or employee of the commission; or

(iii) a representative, agent, clerk, or other officer or employee of any county, city, or town.

(b) Except as provided in Subsection (1)(c), an official charged with the custody of ~~[such returns are]~~ a return filed with the commission is not required to produce [any of them] the return or evidence of anything contained in ~~[them]~~ the return in any action or proceeding in any court, except:

~~[(a)]~~ (i) in accordance with judicial order;

~~[(b)]~~ (ii) on behalf of the commission in any action or proceeding under;

(A) this title; or

(B) other law under which persons are required to file returns with the commission;

~~(C)~~ (iii) on behalf of the commission in any action or proceeding to which the commission is a party; or

~~(D)~~ (iv) on behalf of any party to any action or proceeding under this title ~~when~~ if the report or facts shown ~~thereby~~ by the return are directly involved in ~~such~~ the action or proceeding. ~~In any event, the~~

(c) Notwithstanding Subsection (1)(b), a court may require the production of, and may admit in evidence, any portion of ~~reports~~ a return or of the facts shown by ~~them~~ the return, as are specifically pertinent to the action or proceeding.

(2) This section does not prohibit:

(a) a person or ~~his~~ that person's duly authorized representative from receiving a copy of any return or report filed in connection with that person's own tax;

(b) the publication of statistics as long as ~~they~~ the statistics are classified to prevent the identification of particular reports or returns; and

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer:

(i) who brings action to set aside or review ~~the~~ a tax based on ~~such~~ the report or return;

(ii) against whom an action or proceeding is contemplated or has been instituted under this title; or

(iii) against whom the state has an unsatisfied money judgment.

(3) (a) Notwithstanding Subsection (1) and for purposes of administration, the commission may~~;~~ by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, provide for a reciprocal exchange of information with:

(i) the United States Internal Revenue Service; or

(ii) the revenue service of any other state.

(b) Notwithstanding Subsection (1) and for all taxes except individual income tax and corporate franchise tax, the commission may~~;~~ by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, share information gathered from returns and other written

statements with the federal government, any other state, any of ~~[their]~~ the political subdivisions of another state, or any political subdivision of this state, except as limited by Sections 59-12-209 and 59-12-210, if these political subdivisions or the federal government grant substantially similar privileges to this state.

(c) Notwithstanding Subsection (1) and for all taxes except individual income tax and corporate franchise tax, the commission may~~[-]~~ by rule, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, provide for the issuance of information concerning the identity and other information of taxpayers who have failed to file tax returns or to pay any tax due.

(d) Notwithstanding Subsection (1), the commission shall provide to the Solid and Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, as requested by the executive secretary, any records, returns, ~~[and]~~ or other information filed with the commission under ~~[Title 59,]~~ Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5 regarding the environmental assurance program participation fee~~[-, as requested by the executive secretary]~~.

(e) Notwithstanding Subsection (1), at the request of any person the commission shall provide that person sales and purchase volume data reported to the commission on a report, return, or other information filed with the commission under:

(i) Chapter 13, Part 2, Motor Fuel; or

(ii) Chapter 13, Part 4, Aviation Fuel.

~~[(e)]~~ (f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer, as defined in Section 59-22-202, the commission shall report to the manufacturer:

(i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer and reported to the commission for the previous calendar year under Section 59-14-407; and

(ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer for which a tax refund was granted during the previous calendar year under Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

~~[(f)]~~ (g) Notwithstanding Subsection (1), the commission may:

(i) provide to the Division of Consumer Protection within the Department of Commerce and the attorney general data:

(A) reported to the commission under Section 59-14-212; or
(B) related to a violation under Section 59-14-211; and
(ii) upon request provide to any person data reported to the commission under Subsections 59-14-212(1)(a) through (1)(c) and Subsection 59-14-212(1)(g).

(4) (a) Reports and returns shall be preserved for at least three years [~~and then~~].

(b) After the three-year period provided in Subsection (4)(a) the commission may destroy [~~them~~] a report or return.

(5) (a) Any person who violates this section is guilty of a class A misdemeanor.

(b) If the [~~offender~~] person described in Subsection (5)(a) is an officer or employee of the state, [~~he~~] the person shall be dismissed from office and be disqualified from holding public office in this state for a period of five years thereafter.

(6) This part does not apply to the property tax.

Section 2. Section **59-14-212** is amended to read:

59-14-212. Reporting of imported cigarettes -- Penalty.

(1) Except as provided under Subsection (2), any manufacturer, distributor, wholesaler, or retail dealer who under Section 59-14-205 affixes a stamp to an individual package or container of cigarettes imported to the United States shall provide to the commission the following as they pertain to the imported cigarettes:

(a) a copy of the importer's federal import permit;

(b) the customs form showing the tax information required by federal law;

(c) a statement signed under penalty of perjury by the manufacturer or importer that the manufacturer or importer has complied with:

(i) 15 U.S.C. 1333 of the Federal Cigarette Labeling and Advertising Act, regarding warning labels and other package information; and

(ii) 15 U.S.C. 1335a of the Federal Cigarette Labeling and Advertising Act, regarding reporting of added ingredients;

(d) the name of the person from whom the person affixing the stamp received the cigarettes;

(e) the name of the person to whom the person affixing the stamp delivered the cigarettes,

unless the person receiving the cigarettes was the ultimate consumer;

- (f) the quantity of cigarettes in the package or container; and
- (g) the brand and brand style of the cigarettes.

(2) Subsection (1) does not apply to cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. 1555(b) and any implementing regulations unless the cigarettes are brought back into the customs territory for resale within the customs territory.

(3) The information under Subsection (1) shall be provided on a quarterly basis pursuant to rules established by the commission in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(4) A person who fails to comply with the reporting requirement or provides false or misleading information under Subsection (1):

- (a) is guilty of a class B misdemeanor; and
- (b) may be subject to:
 - (i) revocation or suspension of a license issued under Section 59-14-202; and
 - (ii) a civil penalty imposed by the commission in an amount not to exceed the greater of:
 - (A) 500% of the retail value of the cigarettes for which a report was not properly made; or
 - (B) \$5,000.

(5) The information under Subsection (1) may be disclosed by the commission as provided under Subsection 59-1-403(3)~~(f)~~(g).