

**CIGARETTE TAX STAMP AND CONTRABAND  
AMENDMENTS**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: D. Edgar Allen**

**This act modifies provisions related to the Tax Code. The act amends confidentiality restrictions. The act prohibits a person licensed to sell cigarettes in the state from selling cigarettes of a tobacco product manufacturer who is not in compliance with escrow requirements. The act changes tobacco escrow reporting requirements from an annual to quarterly reports and imposes penalties for failure to file reports. The act amends the definition of contraband cigarette. The act makes technical amendments.**

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

AMENDS:

**59-1-403**, as last amended by Chapters 262, 270 and 314, Laws of Utah 2001

**59-14-210**, as enacted by Chapter 190, Laws of Utah 2000

**59-14-213**, as enacted by Chapter 190, Laws of Utah 2000

**59-14-407**, as last amended by Chapter 229, Laws of Utah 2000

REPEALS:

**59-14-207**, as amended by Statewide Initiative B, Nov. 7, 2000, 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) Except as provided in this section, any of the following may not divulge or make known in any manner any information gained by that person from any return filed with the commission:

(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 a return

filed with the commission is not required to produce the return or evidence of anything contained in the return in any action or proceeding in any court, except:

- (i) in accordance with judicial order;
  - (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;
  - (iii) on behalf of the commission in any action or proceeding to which the commission is a party; or
  - (iv) on behalf of any party to any action or proceeding under this title if the report or facts shown by the return are directly involved in the action or proceeding.
- (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may admit in evidence, any portion of a return or of the facts shown by the return, as are specifically pertinent to the action or proceeding.
- (2) This section does not prohibit:
- (a) a person or 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 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 a tax based on 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 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, or other information filed with the commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5 regarding the environmental assurance program participation fee.

(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.

(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).

(g) Notwithstanding Subsection (1), the commission shall notify manufacturers, distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

~~[(g)]~~ (h) 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).

~~[(h)]~~ (i) Notwithstanding Subsection (1), the commission shall, at the request of a committee of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning and Budget, provide to the committee or office the total amount of revenues collected by the commission under Chapter 24, Radioactive Waste Tax Act, for the time period specified by the committee or office.

~~[(i)]~~ (j) Notwithstanding Subsection (1), the commission shall at the request of the Legislature provide to the Legislature the total amount of sales or uses exempt under Subsection 59-12-104(52) reported to the commission in accordance with Section 59-12-105.

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

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

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

(b) If the person described in Subsection (5)(a) is an officer or employee of the state, 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 **59-14-210** is amended to read:

**59-14-210. Prohibited sales of cigarettes.**

(1) Except as provided in Subsection [~~(2)~~] (3), a person licensed under Section 59-14-202 may not barter, sell, exchange, or offer for sale cigarettes:

(a) in a package which:

(i) bears a statement, label, stamp, sticker, or other notice that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including the following and similar notices:

(A) "For Export Only";

(B) "U.S. Tax-Exempt"; and

(C) "For Use Outside the U.S."; or

(ii) does not comply with federal law, including 15 U.S.C. 1333 of the Federal Cigarette Labeling and Advertising Act, regarding warning labels and other package information;

(b) imported to the United States in violation of 26 U.S.C. 5754;

(c) the licensee knows or has reason to know were not manufactured for sale, distribution, or use in the United States;

(d) for which a list of added ingredients has not been submitted to the federal Department of Health and Human Services pursuant to 15 U.S.C. 1335a of the Federal Cigarette Labeling and Advertising Act; or

(e) known by the licensee to be otherwise in violation of other related federal law.

(2) A person licensed under Section 59-14-202 may not barter, sell, exchange, or offer for sale cigarettes of a tobacco product manufacturer that is prohibited from selling cigarettes to consumers within the state under Subsection 59-22-203(3)(c).

[~~(2)~~] (3) 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.

Section 3. Section **59-14-213** is amended to read:

**59-14-213. Contraband goods.**

(1) Any cigarettes in violation of ~~[Section]~~ any state or federal law, including Sections 59-14-203, 59-14-205, 59-14-211 or [not properly reported under] Subsection 59-14-212(1) are contraband goods and may be seized without a warrant by the commission, its employees, or any peace officer of the state or its political subdivisions.

(2) Any ~~[seized]~~ goods seized pursuant to Subsection (1) shall be delivered to the commission and destroyed.

Section 4. Section **59-14-407** is amended to read:

**59-14-407. Reporting of manufacturer name.**

(1) As used in this section:

(a) "Cigarette" has the same meaning as defined in Section 59-22-202.

(b) "Tobacco product manufacturer" has the same meaning as defined in Section 59-22-202.

(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 manufactured by a tobacco product manufacturer required to place funds into escrow under Section 59-22-203 shall report ~~[annually]~~ quarterly to the commission:

(a) the quantity of cigarettes in the package or container; and

(b) the name of the manufacturer of the cigarettes.

(3) Any manufacturer, distributor, wholesaler, retail dealer, or other person who is required to pay the tax levied under Part 3, Tobacco Products, on a tobacco product defined as a cigarette under Section 59-22-202 and manufactured by a tobacco product manufacturer required to place funds into escrow under Section 59-22-203 shall report ~~[annually]~~ quarterly to the commission:

(a) the quantity of cigarettes upon which the tax is levied; and

(b) the name of the manufacturer of each cigarette.

(4) (a) The reports under Subsections (2) and (3) shall be made no later than ~~[January 31 for the preceding calendar year]~~ quarterly on or before the last day of the month following each calendar quarterly period pursuant to rules established by the commission in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(b) A person required to file a report under this section is subject to the penalties under

Section 59-1-401 for failing to file a report in a timely manner, or for supplying false or fraudulent information.

Section 5. **Repealer.**

This act repeals:

Section **59-14-207, Unstamped cigarettes -- Contraband goods -- Seizure.**