

WASTE TAX AND FEE AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: David Ure

This act modifies the Environmental Quality Code and the Revenue and Taxation Code to increase fees on radioactive waste and hazardous waste, modify taxes paid by radioactive waste facilities, and impose taxes on hazardous waste facilities and nonhazardous solid waste facilities. This act increases a regulatory fee on radioactive waste received at a radioactive waste facility and increases a regulatory fee on hazardous waste received at a hazardous waste facility for treatment and disposal. This act eliminates a tax imposed on radioactive waste and imposes a tax on radioactive waste facilities. This act imposes a tax on hazardous waste facilities and nonhazardous solid waste facilities based on gross receipts derived from the treatment or disposal of hazardous waste and nonhazardous solid waste. This act amends the definition of gross receipts as it relates to radioactive waste.

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

AMENDS:

19-3-106, as last amended by Chapter 314, Laws of Utah 2001

19-6-118, as last amended by Chapter 380, Laws of Utah 1997

59-24-101, as enacted by Chapter 314, Laws of Utah 2001

59-24-102, as enacted by Chapter 314, Laws of Utah 2001

59-24-103, as enacted by Chapter 314, Laws of Utah 2001

59-24-105, as enacted by Chapter 314, Laws of Utah 2001

ENACTS:

59-24-103.5, Utah Code Annotated 1953

59-25-101, Utah Code Annotated 1953

59-25-102, Utah Code Annotated 1953

59-25-103, Utah Code Annotated 1953

59-25-104, Utah Code Annotated 1953

59-25-105, Utah Code Annotated 1953

59-25-106, Utah Code Annotated 1953

59-25-107, Utah Code Annotated 1953

59-25-108, Utah Code Annotated 1953

59-25-109, Utah Code Annotated 1953

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

Section 1. Section **19-3-106** is amended to read:

19-3-106. Fee for commercial radioactive waste disposal or treatment.

(1) (a) An owner or operator of a commercial radioactive waste treatment or disposal facility that receives radioactive waste shall collect a fee from the generator of the waste as provided in Subsection (1)(b).

(b) (i) On and after July 1, 1994 through June 30, 2001, the fee is \$2.50 per ton, or fraction of a ton, of radioactive waste, other than byproduct material, received at the facility for disposal or treatment.

(ii) On and after July 1, 2001 through June 30, 2003, the fee is equal to the sum of the following amounts:

(A) 10 cents per cubic foot, or fraction of a cubic foot, of radioactive waste, other than byproduct material, received at the facility for disposal or treatment; and

(B) \$1 per curie, or fraction of a curie, of radioactive waste, other than byproduct material, received at the facility for disposal or treatment.

(iii) On and after July 1, 2003, the fee is equal to the sum of the following amounts:

(A) 15 cents per cubic foot, or fraction of a cubic foot, of radioactive waste, other than byproduct material, received at the facility for disposal or treatment; and

(B) \$1 per curie, or fraction of a curie, of radioactive waste, other than byproduct material, received at the facility for disposal or treatment.

(2) (a) The owner or operator shall remit the fees imposed under this section to the department on or before the 15th day of the month following the month in which the fee accrued.

(b) The department shall deposit all fees received under this section into the

Environmental Quality Restricted Account created in Section 19-1-108.

(c) The owner or operator shall submit to the department with the payment of the fee under this Subsection (2) a completed form as prescribed by the department that provides information the department requires to verify the amount of waste received and the fee amount for which the owner or operator is liable.

(3) The Legislature shall appropriate to the department funds to cover the cost of radioactive waste disposal supervision.

Section 2. Section **19-6-118** is amended to read:

19-6-118. Hazardous waste and treated hazardous waste disposal fees.

(1) (a) An owner or operator of any commercial hazardous waste or mixed waste disposal or treatment facility that primarily receives hazardous or mixed wastes generated by off-site sources not owned, controlled, or operated by the facility or site owner or operator, and that is subject to the requirements of Section 19-6-108, shall collect the fee under Subsection (2) from the generator.

(b) The owner or operator of each cement kiln, aggregate kiln, boiler, blender, or industrial furnace that receives for burning hazardous waste generated by off-site sources not owned, controlled, or operated by the owner or operator is subject to the fee under Subsection (2).

(2) (a) The owner or operator of each facility under Subsection (1) shall collect from the generators of hazardous waste and mixed waste a fee of \$28 per ton or fraction of a ton on all hazardous waste and mixed waste received at the facility or site for disposal, treatment, or both.

(b) When hazardous waste or mixed waste is received at a facility for treatment or disposal and the fee required under this subsection is paid for that treatment or disposal, any subsequent treatment or disposal of the waste is not subject to additional fees under this Subsection (2).

(c) (i) [~~Hazardous~~] On and after July 1, 1997 through June 30, 2003, hazardous waste received at a land disposal facility is subject to a fee of \$14 per ton or fraction of a ton, rather than the \$28 fee under Subsection (2)(a), if the waste is treated so that it:

[(i)] (A) meets the state treatment standards required for land disposal at the facility; or
[(ii)] (B) is no longer a hazardous waste at the time of disposal at that facility.

(ii) On and after July 1, 2003, hazardous waste received at a land disposal facility for treatment and disposal is subject to the \$28 fee imposed under Subsection (2)(a).

(d) (i) The department shall allocate at least 10% of the fees received from a facility under this section to the county in which the facility is located.

(ii) The county may use fees allocated under Subsection (2)(c) to carry out its hazardous waste monitoring and response programs.

(e) The department shall deposit the state portion of the fees received under this section into the restricted account created in Section 19-1-108.

(3) (a) The owner or operator shall pay the fees imposed under Subsection (1) to the department on or before the 15th day of the month following the month in which the fee accrued.

(b) With the monthly fee, the owner or operator shall submit a completed form, as prescribed by the department, specifying information required by the department to verify the amount of waste received and the fee amount for which the owner or operator is liable.

(4) The department shall oversee and monitor hazardous waste treatment, disposal, and incineration facilities, including federal government facilities located within the state. The department may determine facility oversight priorities.

(5) (a) The department, in preparing its budget for the governor and the Legislature, shall separately indicate the amount necessary to administer the hazardous waste program established by this part.

(b) The Legislature shall appropriate the costs of administering this program.

(6) The Office of Legislative Fiscal Analyst shall monitor the fees collected under this part.

Section 3. Section **59-24-101** is amended to read:

59-24-101. Title.

This chapter is known as the "Radioactive Waste Facility Tax Act."

Section 4. Section **59-24-102** is amended to read:

59-24-102. Definitions.

As used in this chapter:

- (1) (a) "Alternate feed material" means a natural or native material:
 - (i) mined for the extraction of its constituents or other matter from which source material may be extracted in a licensed uranium or thorium mill; and
 - (ii) may be reprocessed for its source material content.
- (b) "Alternate feed material" does not include:
 - (i) material containing hazardous waste listed under 40 C.F.R. Part 261, Subpart D;
 - (ii) natural or unprocessed ore; or
 - (iii) naturally occurring radioactive materials containing greater than 15 picocuries per gram of radium-226.
- (2) "Byproduct material" is as defined in 42 U.S.C. Sec. 2014(e)(2).
- (3) "Class A low-level radioactive waste" means radioactive waste that is classified as class A waste under 10 C.F.R. 61.55.
- (4) "Containerized class A waste" means class A low-level radioactive waste that is placed in the portion of a radioactive waste facility that is licensed to receive containerized class A waste.
- (5) (a) "Gross receipts" means all consideration an owner or operator of a radioactive waste facility receives for the disposal of radioactive waste in the state, without any deduction or expense paid or accrued related to the disposal of the radioactive waste.
 - (b) "Gross receipts" do not include fees collected under Section 19-3-106 or any other taxes collected for a state or federal governmental entity.
- (6) (a) "Processed class A waste" means waste that:
 - (i) is class A low-level radioactive waste; and
 - (ii) has been concentrated by a processor.
- (b) "Processed class A waste" does not include containerized class A waste.
- (7) "Radioactive waste" means:
 - (a) alternate feed material;

- (b) byproduct material;
 - (c) containerized class A waste;
 - (d) processed class A waste; or
 - (e) uncontainerized, unprocessed class A waste.
- (8) "Radioactive waste facility" or "facility" means:

- (a) a facility licensed under Section 19-3-105; or
- (b) a uranium mill licensed under 10 C.F.R. Part 40, Domestic Licensing of Source

Material.

(9) (a) "Uncontainerized, unprocessed class A waste" means class A low-level radioactive waste that:

- (i) is neither containerized class A waste, nor processed class A waste; and
- (ii) must be disposed of under rules of the Nuclear Regulatory Commission in a licensed low-level radioactive waste disposal facility.

(b) "Uncontainerized, unprocessed class A waste" does not include alternate feed material.

Section 5. Section **59-24-103** is amended to read:

59-24-103. Tax imposed on radioactive waste.

(1) Beginning on April 1, 2001 through June 30, 2003, there is imposed a tax on radioactive waste received at a radioactive waste facility, as provided in this chapter.

(2) The tax is equal to the sum of the following amounts:

- (a) 12% of the gross receipts received from the disposal of containerized class A waste;
- (b) 10% of the gross receipts received from the disposal of processed class A waste;
- (c) 5% of the gross receipts received from the disposal of uncontainerized, unprocessed class A waste;

(d) 10 cents per cubic foot of alternate feed material received at a radioactive waste facility for disposal or reprocessing; and

(e) 10 cents per cubic foot of byproduct material received at a radioactive waste facility for disposal.

(3) For purposes of the tax imposed by this section, a fraction of a cubic foot is considered to be a full cubic foot.

(4) The tax imposed by this section applies to:

(a) gross receipts received:

- (i) pursuant to a contract entered into on or after April 30, 2001;
- (ii) pursuant to a contract substantially modified on or after April 30, 2001;
- (iii) pursuant to a contract renewed or extended on or after April 30, 2001;
- (iv) not pursuant to a contract; or

(v) for the disposal of containerized class A waste; and

(b) alternate feed material or byproduct material received:

- (i) pursuant to a contract entered into on or after April 30, 2001;
- (ii) pursuant to a contract substantially modified on or after April 30, 2001;
- (iii) pursuant to a contract renewed or extended on or after April 30, 2001; or
- (iv) not pursuant to a contract.

(5) The tax imposed by this section does not apply to radioactive waste containing material classified as hazardous waste under 40 C.F.R. Part 261.

Section 6. Section **59-24-103.5** is enacted to read:

59-24-103.5. Radioactive waste disposal, processing, and recycling facility tax.

(1) On and after July 1, 2003, there is imposed a tax on a radioactive waste facility, or a processing or recycling facility, as provided in this chapter.

(2) The tax is equal to the sum of the following amounts:

(a) 12% of the gross receipts of a radioactive waste facility derived from the disposal of containerized class A waste;

(b) 10% of the gross receipts of a radioactive waste facility derived from the disposal of processed class A waste;

(c) 5% of the gross receipts of a radioactive waste facility derived from the disposal of uncontainerized, unprocessed class A waste from a governmental entity or an agent of a governmental entity;

(i) pursuant to a contract entered into on or after April 30, 2001;

(ii) pursuant to a contract substantially modified on or after April 30, 2001;

(iii) pursuant to a contract renewed or extended on or after April 30, 2001; or

(iv) not pursuant to a contract;

(d) 5% of the gross receipts of a radioactive waste facility derived from the disposal of uncontainerized, unprocessed class A waste received by the facility from an entity other than a governmental entity or an agent of a governmental entity;

(e) 5% of the gross receipts of a radioactive waste facility derived from the disposal of mixed waste received from an entity other than a governmental entity or an agent of a governmental entity;

(f) 10 cents per cubic foot of alternate feed material received at a radioactive waste facility for disposal or reprocessing; and

(g) 10 cents per cubic foot of byproduct material received at a radioactive waste facility for disposal.

(3) For purposes of the tax imposed by this section, a fraction of a cubic foot is considered to be a full cubic foot.

(4) Except as provided in Subsection (2)(e), the tax imposed by this section does not apply to radioactive waste containing material classified as hazardous waste under 40 C.F.R. Part 261.

Section 7. Section **59-24-105** is amended to read:

59-24-105. Deposit of tax revenue.

The commission shall deposit the tax revenue collected under this chapter into the [~~General~~] Uniform School Fund.

Section 8. Section **59-25-101** is enacted to read:

**CHAPTER 25. HAZARDOUS WASTE FACILITY AND NONHAZARDOUS
SOLID WASTE FACILITY TAX ACT**

59-25-101. Title.

This chapter is known as the "Hazardous Waste Facility and Nonhazardous Solid Waste

Facility Tax Act."

Section 9. Section **59-25-102** is enacted to read:

59-25-102. Definitions.

As used in this chapter:

(1) "Construction waste or demolition waste" is as defined in Section 19-6-102.

(2) "Disposal" is as defined in Section 19-6-102.

(3) "Hazardous waste" is as defined in Section 19-6-102.

(4) "Hazardous waste facility" means a hazardous waste treatment and disposal facility, as defined in Section 19-6-202, that receives, for profit, hazardous waste for treatment or disposal.

(5) "Household waste" is as defined in Section 19-6-102.

(6) "Municipal solid waste" means household waste, nonhazardous commercial solid waste, and nonhazardous sludge.

(7) "Nonhazardous solid waste" is solid waste, as defined in Section 19-6-102, except that it does not include:

(a) hazardous waste;

(b) municipal solid waste; or

(c) construction waste or demolition waste.

(8) "Nonhazardous solid waste facility" means a commercial nonhazardous solid waste treatment or disposal facility as defined in Section 19-6-102.

(9) "Solid waste" is as defined in Section 19-6-102.

(10) "Treatment" is as defined in Section 19-6-102.

Section 10. Section **59-25-103** is enacted to read:

59-25-103. Hazardous waste facility and nonhazardous solid waste facility tax.

(1) On and after July 1, 2003, there is imposed a tax on a hazardous waste facility and a nonhazardous solid waste facility as provided in this chapter.

(2) The tax is equal to the sum of the following amounts:

(a) 3% of the gross receipts of a hazardous waste facility derived from the treatment or

disposal of hazardous waste; and

(b) 3% of the gross receipts of a hazardous waste facility or nonhazardous solid waste facility derived from the treatment or disposal of nonhazardous solid waste.

(3) If hazardous waste or nonhazardous solid waste is received at a hazardous waste facility or nonhazardous solid waste is received at a nonhazardous solid waste facility and the tax imposed by this chapter is paid for the treatment of the waste, any subsequent treatment or disposal of the waste is not subject to additional taxes under this chapter.

Section 11. Section **59-25-104** is enacted to read:

59-25-104. Payment of tax.

(1) The tax imposed by Section 59-25-103 shall be paid by the owner or operator of the hazardous waste facility or nonhazardous solid waste facility that receives the hazardous waste or nonhazardous solid waste for treatment or disposal.

(2) The payment shall be accompanied by the form prescribed by the commission.

(3) The payment shall be paid quarterly on or before the last day of the month next succeeding each calendar quarterly period.

Section 12. Section **59-25-105** is enacted to read:

59-25-105. Deposit of tax revenue.

The commission shall deposit the tax revenue collected under this chapter into the Uniform School Fund.

Section 13. Section **59-25-106** is enacted to read:

59-25-106. Records.

(1) An owner or operator of a hazardous waste facility or nonhazardous solid waste facility shall maintain records, statements, books, or accounts necessary to determine the amount of tax for which the owner or operator is liable under this chapter.

(2) The commission may require an owner or operator of a hazardous waste facility or nonhazardous solid waste facility, by notice served upon the person, or by rule, to make or keep the records, statements, books, or accounts the commission considers sufficient to show the amount of tax for which the owner or operator is liable under this chapter.

(3) After notice by the commission, the owner or operator of a hazardous waste facility or nonhazardous solid waste facility shall open the records, statements, books, or accounts specified in Subsection (2) for examination by the commission or its duly authorized agent.

Section 14. Section **59-25-107** is enacted to read:

59-25-107. Action for collection of tax -- Action for refund or credit of tax.

(1) Except as provided in Subsections (2) through (5):

(a) the commission shall assess a tax under this chapter within three years after a taxpayer files a return; and

(b) if the commission does not assess a tax under this chapter within the three-year period provided in Subsection (1)(a), the commission may not commence a proceeding to collect the tax.

(2) The commission may assess a tax at any time if a taxpayer:

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

(b) does not file a return.

(3) The commission may extend the period to make an assessment or to commence a proceeding to collect the tax under this chapter if:

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

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

(i) authorizing the extension; and

(ii) providing for the length of the extension.

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

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

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

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

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

of the expiration of the three-year period; and

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

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

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

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

(b) The commission shall extend the period for a taxpayer to file a claim under Subsection (6)(a) if:

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

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

(A) authorizing the extension; and

(B) providing for the length of the extension.

Section 15. Section **59-25-108** is enacted to read:

59-25-108. Rulemaking authority.

The commission may make rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to implement and enforce this chapter.

Section 16. Section **59-25-109** is enacted to read:

59-25-109. Penalties and interest.

An owner or operator of a hazardous waste facility or nonhazardous solid waste facility who fails to comply with this chapter is subject to penalties and interest as provided in Sections 59-1-401 and 59-1-402.