

**PROPERTY TAX - CONFIDENTIALITY OF
CERTAIN INFORMATION**

2003 SECOND SPECIAL SESSION

STATE OF UTAH

Sponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill amends provisions of the Revenue and Taxation Code relating to confidentiality of information.

Highlighted Provisions:

This bill:

- provides definitions;
- provides for the confidentiality of commercial information obtained from a property taxpayer or information derived from that commercial information;
- provides exceptions to the confidentiality provisions;
- provides penalties for disclosing commercial information; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:

59-1-403 (Superseded 07/01/04), as last amended by Chapter 253, Laws of Utah 2003
59-1-403 (Effective 07/01/04 Cont. Sup. 05/05), as last amended by Chapter 312,
Laws of Utah 2003



59-1-403 (Contingently Effective 05/02/05), as last amended by Chapter 327, Laws of Utah 2003

ENACTS:

59-1-404, Utah Code Annotated 1953

REPEALS:

59-2-206, as last amended by Chapter 241, Laws of Utah 1991

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

Section 1. Section **59-1-403 (Superseded 07/01/04)** is amended to read:

59-1-403 (Superseded 07/01/04). 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

59 pertinent to the action or proceeding.

60 (2) This section does not prohibit:

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

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

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

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

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

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

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

74 (i) the United States Internal Revenue Service; or

75 (ii) the revenue service of any other state.

76 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and
77 corporate franchise tax, the commission may by rule, made in accordance with Title 63,
78 Chapter 46a, Utah Administrative Rulemaking Act, share information gathered from returns
79 and other written statements with the federal government, any other state, any of the political
80 subdivisions of another state, or any political subdivision of this state, except as limited by
81 Sections 59-12-209 and 59-12-210, if these political subdivisions or the federal government
82 grant substantially similar privileges to this state.

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

88 (d) Notwithstanding Subsection (1), the commission shall provide to the Solid and
89 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).

(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 (c) and Subsection 59-14-212(1)(g).

(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.

(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.

(k) Notwithstanding Subsection (1), the commission shall make the list required by Subsection 59-14-408(3) available for public inspection.

(l) Notwithstanding Subsection (1), the commission shall comply with the reporting requirements of Section 10-1-409.

(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]~~ Except as provided in Section 59-1-404, this part does not apply to the property tax.

Section 2. Section **59-1-403 (Effective 07/01/04 Cont. Sup. 05/05)** is amended to read:

59-1-403 (Effective 07/01/04 Cont. Sup. 05/05). 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).

(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 (c) and Subsection 59-14-212(1)(g).

(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.

(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(51) reported to the commission in accordance with Section 59-12-105.

(k) Notwithstanding Subsection (1), the commission shall make the list required by Subsection 59-14-408(3) available for public inspection.

(l) Notwithstanding Subsection (1), the commission shall comply with the reporting requirements of Section 10-1-409.

(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]~~ Except as provided in Section 59-1-404, this part does not apply to the property tax.

Section 3. Section **59-1-403 (Contingently Effective 05/02/05)** is amended to read:

59-1-403 (Contingently Effective 05/02/05). 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

276 Rulemaking Act, provide for a reciprocal exchange of information with:

277 (i) the United States Internal Revenue Service; or

278 (ii) the revenue service of any other state.

279 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and
280 corporate franchise tax, the commission may by rule, made in accordance with Title 63,
281 Chapter 46a, Utah Administrative Rulemaking Act, share information gathered from returns
282 and other written statements with the federal government, any other state, any of the political
283 subdivisions of another state, or any political subdivision of this state, except as limited by
284 Sections 59-12-209 and 59-12-210, if these political subdivisions or the federal government
285 grant substantially similar privileges to this state.

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

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

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

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

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

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

303 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
304 manufacturer and reported to the commission for the previous calendar year under Section
305 59-14-407; and

306 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the

307 manufacturer for which a tax refund was granted during the previous calendar year under
308 Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

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

312 (h) Notwithstanding Subsection (1), the commission may:

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

315 (A) reported to the commission under Section 59-14-212; or

316 (B) related to a violation under Section 59-14-211; and

317 (ii) upon request provide to any person data reported to the commission under
318 Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).

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

324 (j) Notwithstanding Subsection (1), the commission shall at the request of the
325 Legislature provide to the Legislature the total amount of sales or uses exempt under
326 Subsection 59-12-104(51) reported to the commission in accordance with Section 59-12-105.

327 (k) Notwithstanding Subsection (1), the commission shall make the list required by
328 Subsection 59-14-408(3) available for public inspection.

329 (l) Notwithstanding Subsection (1), the commission shall comply with the reporting
330 requirements of Section 10-1-409.

331 (m) Notwithstanding Subsection (1), the commission shall provide the notice to the
332 commissioner of the Department of Financial Institutions required by Subsection 7-9-56(6).

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

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

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

337 (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]~~ Except as provided in Section 59-1-404, this part does not apply to the property tax.

Section 4. Section **59-1-404** is enacted to read:

59-1-404. Definitions -- Confidentiality of commercial information obtained from a property taxpayer or derived from the commercial information -- Exceptions -- Penalty.

(1) As used in this section, "commercial information" means:

(a) information of a commercial nature obtained from a property taxpayer; or

(b) information derived from the information described in Subsection (1)(a).

(2) Except as provided in Subsections (3) through § ~~(7)~~ (8) § , an individual listed under Subsection 59-1-403(1)(a) may not disclose commercial information.

(3) Notwithstanding Subsection (2), an individual listed under Subsection 59-1-403(1)(a) may disclose the following information:

(a) the assessed value of property;

(b) the amount of tax assessed on property;

(c) the tax rate imposed on property;

(d) a legal description of property;

(e) a physical description of property; or

(f) the square footage of property.

(4) (a) Notwithstanding Subsection (2) and except as provided in Subsection (4)(b), an individual listed under Subsection 59-1-403(1)(a) shall disclose commercial information:

(i) in accordance with judicial order;

(ii) on behalf of the commission in any action or proceeding:

(A) under this title;

(B) under another law under which a property taxpayer is required to disclose commercial information; or

(C) to which the commission is a party; or

(iii) on behalf of any party to any action or proceeding under this title if the commercial information is directly involved in the action or proceeding.

(b) Notwithstanding Subsection (4)(a), a court may require the production of, and may

369 admit in evidence, commercial information that is specifically pertinent to the action or
 370 proceeding.

371 (5) Notwithstanding Subsection (2), this section does not prohibit:

372 (a) a property taxpayer or that property taxpayer's duly authorized representative from
 373 receiving a copy of any commercial information relating to the property taxpayer's own tax;

374 (b) the publication of statistics as long as the statistics are classified to prevent the
 375 identification of:

376 (i) a property taxpayer's commercial information; or

377 (ii) a property taxpayer; and

378 (c) the inspection by the attorney general or other legal representative of the state of the
 379 commercial information of a property taxpayer:

380 (i) that brings action to set aside or review a tax based on the commercial information;

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

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

384 (6) Notwithstanding Subsection (2), the commission may by rule, made in accordance
 385 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, provide for the issuance of
 386 information concerning the identity and other property tax information of a property taxpayer
 387 that has failed to file a property tax return or pay any property tax due.

388 (7) Notwithstanding Subsection (2), in accordance with Title 63, Chapter 46a, Utah
 389 Administrative Rulemaking Act, the commission may by rule establish standards authorizing
 390 an individual listed under Subsection 59-1-403(1)(a) to disclose commercial information:

391 (a) (i) in a published decision; or

392 (ii) in carrying out official duties; and

393 (b) if that individual listed under Subsection 59-1-403(1)(a) consults with the property
 394 taxpayer that provided the commercial information.

394a **§ (8) NOTWITHSTANDING SUBSECTION (2), THE COMMISSION MAY:**

394b **(a) SHARE COMMERCIAL INFORMATION WITH A COUNTY ASSESSOR IN ACCORDANCE**
 394c **WITH THE AUTHORITY PROVIDED IN CHAPTER 2, PROPERTY TAX ACT; OR**

394d **(b) BY RULE, MADE IN ACCORDANCE WITH TITLE 63, CHAPTER 46a, UTAH ADMINISTRATIVE**
 394e **RULEMAKING ACT, SHARE COMMERCIAL INFORMATION GATHERED FROM RETURNS AND OTHER**
 394f **WRITTEN STATEMENTS WITH THE FEDERAL GOVERNMENT, ANY OTHER STATE, ANY OF THE**
 394g **POLITICAL SUBDIVISIONS OF ANOTHER STATE, OR ANY POLITICAL SUBDIVISION OF THIS STATE,**
 394h **IF THESE POLITICAL SUBDIVISIONS OR THE FEDERAL GOVERNMENT GRANT SUBSTANTIALLY**
 394i **SIMILAR PRIVILEGES TO THIS STATE. §**

395 § ~~(8)~~ (9) § (a) Any individual listed under Subsection 59-1-403(1)(a) who violates this
395a section
396 is guilty of a class A misdemeanor.
397 (b) If the individual described in Subsection § ~~(8)~~ (9) § (a) is an officer or employee of the
397a state
398 or a county, the individual shall be dismissed from office and be disqualified from holding
399 public office in this state for a period of five years thereafter.

Section 5. **Repealer.**

This bill repeals:

Section **59-2-206, Confidentiality -- Penalties for disclosure.**Section 6. **Effective date.**

(1) Except as provided in Subsections (2) and (3), if approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

(2) Notwithstanding Subsection (1), the amendments in this bill to Section 59-1-403 (Effective 07/01/04 Cont. Sup. 05/05) take effect on July 1, 2004.

(3) Notwithstanding Subsection (1), the amendments in this bill to Section 59-1-403 (Contingently Effective 05/02/05) take effect as provided in Chapter 327, Section 30, Laws of Utah 2003.

Legislative Review Note
as of 11-14-03 3:07 PM

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

Office of Legislative Research and General Counsel