

**CLASS ACTIONS RELATING TO TAXES OR FEES
ADMINISTERED BY THE STATE TAX
COMMISSION**

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill addresses class actions that relate to a tax or fee administered by the State Tax Commission.

Highlighted Provisions:

This bill:

- ▶ provides a definition;
- ▶ provides limitations on maintaining a class action that relates to a tax or fee administered by the State Tax Commission;
- ▶ establishes requirements for a person to be included as a member of a class in a class action;
- ▶ grants rulemaking authority to the State Tax Commission and requires the State Tax Commission to report to the Revenue and Taxation Interim Committee on the status of the rules;
- ▶ provides limitations on the amount that may be recovered by members of a class; and
- ▶ provides a severability clause.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

ENACTS:

59-1-304, Utah Code Annotated 1953

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

Section 1. Section **59-1-304** is enacted to read:

59-1-304. Definition -- Limitations on maintaining a class action that relates to a tax or fee -- Requirements for a person to be included as a member of a class in a class action -- Rulemaking authority -- Commission report to Revenue and Taxation Interim Committee -- Limitations on recovery by members of a class -- Severability.

(1) As used in this section, "tax or fee" means a tax or fee administered by the commission.

(2) A class action that relates to a tax or fee may not be maintained in any court if a claim sought by a representative party seeking to maintain the class action arises as a result of:

(a) a person collecting a tax or fee from the representative party if the representative party is not required by law to pay the tax or fee; or

(b) any of the following that requires a change in the manner in which a tax or fee is required to be collected or paid:

(i) an administrative rule made by the commission;

(ii) a private letter ruling issued by the commission; or

(iii) a decision issued by:

(A) the commission; or

(B) a court of competent jurisdiction.

(3) (a) A person may be included as a member of a class in a class action relating to a tax or fee only if the person:

(i) exhausts all administrative remedies with the commission; and

(ii) requests in writing to be included as a member of the class.

(b) (i) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules to simplify and expedite the administrative remedies a person shall exhaust as required by Subsection (3)(a).

(ii) The rules required by Subsection (3)(b)(i) may include rules providing for:

(A) expedited filing procedures and forms;

(B) consolidation of hearings procedures as may be reasonably needed to accommodate potential inclusion of similarly situated persons; and

(C) the designation of test or sample cases to avoid multiple hearings.

(iii) The commission shall report to the Revenue and Taxation Interim Committee on the status of the rules required by this Subsection (3)(b) on or before the October 2004 interim meeting.

(4) Subject to Subsection (5), in a class action brought under this section against the state or its political subdivisions in which members of the class are awarded a refund or credit of a tax or fee by a court of competent jurisdiction, the total amount that may be recovered by members of the class may not exceed the difference between:

(a) the sum of:

(i) the amount of the refund or credit awarded to members of the class; and

(ii) interest as provided in Section 59-1-402; and

(b) if awarded in accordance with Subsection (5), the sum of:

(i) reasonable costs; and

(ii) reasonable attorneys' fees.

(5) (a) For purposes of Subsection (4), at the discretion of the court, the court may award:

(i) reasonable costs as determined by the court; and

(ii) reasonable attorneys' fees determined under Subsection (5)(b).

(b) Reasonable attorneys' fees awarded in a class action may not exceed a reasonable hourly rate for work actually performed:

(i) as determined by the court; and

(ii) taking into account all facts and circumstances that the court considers reasonable.

(6) If any provision of this section, or the application of any provision of this section to any person or circumstance is held unconstitutional or invalid by a court of competent jurisdiction,

the remainder of the section shall be given effect without the invalid provision or application.

Section 2. Effective date.

(1) Subject to Subsection (2), 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) This bill applies to an action for which a court of competent jurisdiction has not issued an order as of the effective date of this bill certifying the action as a class action in accordance with Utah Rules of Civil Procedure, Rule 23.