

Representative Eric K. Hutchings proposes the following substitute bill:

**CREDIT OR REFUND FOR TAX PAID ON CIGARETTE
OR TOBACCO PRODUCT DESTROYED
OR RETURNED TO THE MANUFACTURER**

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Eric K. Hutchings

LONG TITLE

General Description:

This bill amends the Cigarettes and Tobacco Products part to create a tax credit or refund.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ allows a credit or refund for a tax paid on certain cigarettes or tobacco products that are destroyed or returned to the manufacturer;
- ▶ provides procedures and requirements for the State Tax Commission to grant the credit or refund;
- ▶ addresses the payment of interest on the credit or refund; and
- ▶ grants rulemaking authority to the State Tax Commission.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill ~~H→~~ [~~has retrospective operation to January~~] takes effect on July ~~←H~~ 1, 2005.

Utah Code Sections Affected:



26 AMENDS:

27 **59-14-303**, as last amended by Chapter 1, Laws of Utah 1993, Second Special Session

28 ENACTS:

29 **59-14-409**, Utah Code Annotated 1953

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

32 Section 1. Section **59-14-303** is amended to read:

33 **59-14-303. Remittance of tax -- Returns -- Credits -- Invoice required -- Filing**
34 **requirements -- Reports -- Exceptions -- Penalties -- Overpayments.**

35 (1) The taxes imposed on all tobacco products shall be remitted to the commission
36 together with quarterly returns as prescribed by [it] the commission. These returns shall be due
37 and payable to the commission quarterly on or before the last day of the month following each
38 calendar quarterly period.

39 [~~2~~] ~~Any tax imposed or remitted on any tobacco product may be allowed and claimed~~
40 ~~as a credit if any part of the tobacco products are destroyed or returned to the original~~
41 ~~manufacturer, wholesaler, retailer, or any other person, through rules and forms prescribed by~~
42 ~~the commission.]~~

43 [~~3~~] (2) Every manufacturer, wholesaler, retailer, or any other person selling tobacco
44 products to persons other than ultimate consumers shall furnish with each sale an itemized
45 invoice showing the seller's name and address, the name and address of the purchaser, the date
46 of sale, the name and price of the product, and the discount, if any. A notation should be made
47 that the price includes or does not include the tax. Copies of this invoice shall be retained by
48 the seller and the purchaser and shall be available for inspection by the commission or its agent
49 for a period of three years.

50 [~~4~~] (3) Any person who causes untaxed products, subject to the tax imposed by this
51 chapter, to be brought into the state for use or other consumption, shall file with the
52 commission, on forms prescribed by [it] the commission, a statement showing the quantity and
53 description of the products and pay the tax imposed by this chapter on all those products. This
54 statement shall be filed and the tax paid no later than 15 days from the date of the import of the
55 untaxed products. If any person regularly imports those products, the person may, upon
56 applying to the commission, arrange to file reports on a monthly basis and pay the tax on all

57 products imported during the previous calendar month on or before the 15th day of the
58 following month.

59 ~~[(5)]~~ (4) No report is required from nonresidents or tourists who import any products
60 taxed by this chapter if the products are for their own use or consumption while in this state.
61 No report is required of persons who are liable for the payment of taxes in the manner set forth
62 in this section and Section 59-14-205.

63 ~~[(6)]~~ (5) Any manufacturer, wholesaler, retailer, or any other person subject to this
64 section who fails to pay the tax prescribed by this chapter, or fails to pay the tax on time, or
65 fails to file a return required by this chapter, shall pay, in addition to the tax, a penalty as
66 provided in Section 59-1-401, plus interest at the rate and in the manner prescribed in Section
67 59-1-402. The minimum penalty shall be \$10 for each offense.

68 ~~[(7)]~~ (6) An overpayment of a tax imposed by this chapter shall accrue interest at the
69 rate and in the manner prescribed in Section 59-1-402.

70 Section 2. Section **59-14-409** is enacted to read:

71 **59-14-409. Definitions -- Credit or refund for tax paid on cigarette or tobacco**
72 **product that is destroyed or returned to the manufacturer -- Interest.**

73 (1) As used in this section, "licensed person" means a person:

74 (a) licensed by the commission in accordance with Section 59-14-202; and

75 (b) that is a:

76 (i) distributor;

77 (ii) jobber;

78 (iii) manufacturer;

79 (iv) retailer;

80 (v) wholesaler; or

81 (vi) a person similar to a person described in Subsections (1)(b)(i) through (v) as
82 determined by the commission by rule.

83 (2) A licensed person may apply to the commission for a credit or refund as provided
84 in Subsection (3) if:

85 (a) on or after ~~H~~→ [January] July ←~~H~~ 1, 2005, the following are removed from retail sale
85a or from

86 storage:

87 (i) a cigarette; or

88 (ii) a tobacco product;
89 (b) before a cigarette or tobacco product is removed from retail sale or from storage in
90 accordance with Subsection (2)(a), the licensed person remits a tax:

91 (i) to the commission;

92 (ii) on the:

93 (A) cigarette; or

94 (B) tobacco product; and

95 (iii) in accordance with:

96 (A) Part 2, Cigarettes; or

97 (B) Part 3, Tobacco Products; and

98 (c) the licensed person verifies to the commission that the cigarette or tobacco product
99 described in Subsection (2)(a) has been:

100 (i) returned to the manufacturer of the cigarette or tobacco product; or

101 (ii) destroyed.

102 (3) The amount of the credit or refund described in Subsection (2) is equal to:

103 (a) for a cigarette removed from retail sale or from storage, the amount of tax the
104 licensed person paid on the cigarette in accordance with Part 2, Cigarettes; or

105 (b) for a tobacco product removed from retail sale or from storage, the amount of tax
106 the licensed person paid on the tobacco product in accordance with Part 3, Tobacco Products.

107 (4) (a) The commission shall grant a credit or refund under this section if the
108 commission determines that a licensed person meets the requirements of Subsection (2).

109 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
110 commission may make rules establishing procedures and requirements for a licensed person to
111 verify to the commission that a cigarette or tobacco product described in Subsection (2)(a) has
112 been:

113 (i) returned to the manufacturer of the cigarette or tobacco product; or

114 (ii) destroyed.

115 (5) (a) If the commission makes a credit or refund under this section within a 90-day
116 period after the day on which a licensed person submits an application to the commission for
117 the credit or refund, interest may not be added to the amount of credit or refund.

118 (b) If the commission makes a credit or refund under this section more than 90 days

119 after the day on which a licensed person submits an application to the commission for the
120 credit or refund, interest shall be added to the amount of credit or refund as provided in Section
121 59-1-402.

122 (6) (a) The commission may create a form for:

123 (i) a licensed person to:

124 (A) submit a claim for a credit or refund; or

125 (B) verify to the commission that a cigarette or tobacco product has been:

126 (I) returned to the manufacturer of the cigarette or tobacco product; or

127 (II) destroyed; or

128 (ii) processing a claim for a credit or refund for payment.

129 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

130 commission may make rules defining a person similar to a person described in Subsections

131 (1)(b)(i) through (v).

132 Section 3. ~~H~~→ ~~[Retrospective operation]~~ Effective date ←~~H~~ .

133 This bill ~~H~~→ ~~[has retrospective operation to January]~~ takes effect on July ←~~H~~ 1, 2005.

Fiscal Note**Credit or Refund for Tax Paid on Cigarette or Tobacco Product Destroyed
or Returned to the Manufacturer***15-Feb-05***Bill Number HB0247S01***3:14 PM*

AMENDED BILL**State Impact**

Passage of this bill would codify the pre FY 2005 Tax Commission practice.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst