

## 2nd Sub. H.B. 39 TUITION TAX CREDITS

Representative **John Dougall** proposes the following amendments:

1. *Page 2, Lines 36 through 40:*

36 Utah Code Sections Affected:

AMENDS:

13-2-1, as last amended by Chapter 222, Laws of Utah 2002

59-1-401, as last amended by Chapters 67 and 255, Laws of Utah 2004

37 ENACTS:

38 53A-11-102.3, Utah Code Annotated 1953

39 53A-17a-152, Utah Code Annotated 1953

40 59-10-136, Utah Code Annotated 1953

= 59-10-137, Utah Code Annotated 1953

2. *Page 2, Line 42:*

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

= Section 1. Section 13-2-1 is amended to read:

**13-2-1. Consumer protection division established -- Functions.**

(1) There is established within the Department of Commerce the Division of Consumer Protection.

(2) The division shall administer and enforce the following:

(a) Chapter 5, Unfair Practices Act;

(b) Chapter 10a, Music Licensing Practices Act;

(c) Chapter 11, Utah Consumer Sales Practices Act;

(d) Chapter 15, Business Opportunity Disclosure Act;

(e) Chapter 20, New Motor Vehicles Warranties Act;

(f) Chapter 21, Credit Services Organizations Act;

(g) Chapter 22, Charitable Solicitations Act;

(h) Chapter 23, Health Spa Services Protection Act;

(i) Chapter 25a, Telephone and Facsimile Solicitation Act;

(j) Chapter 26, Telephone Fraud Prevention Act;

(k) Chapter 28, Prize Notices Regulation Act;

(l) Chapter 30, Utah Personal Introduction Services Protection Act; ~~{and}~~

(m) Chapter 34, Utah Postsecondary Proprietary School Act ~~{-}~~ ; and

(n) Section 59-10-137, the requirements for private school registration certificates.

3. Page 3, Lines 59 through 61  
House Committee Amendments  
2-21-2005:

59           (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
60   board shall make rules establishing criteria and procedures for the distribution of funds  
61   appropriated under Subsection (1).

**Section 3. Section 59-1-401 is amended to read:**

**59-1-401. Offenses and penalties -- Rulemaking authority -- Statute of limitations --  
Commission authority to waive, reduce, or compromise penalty or interest.**

(1) (a) The penalty for failure to file a tax return within the time prescribed by law including extensions is the greater of \$20 or 10% of the unpaid tax due on the return.

(b) This Subsection (1) does not apply to amended returns.

(2) The penalty for failure to pay tax due shall be the greater of \$20 or 10% of the unpaid tax for:

(a) failure to pay any tax, as reported on a timely filed return;

(b) failure to pay any tax within 90 days of the due date of the return, if there was a late filed return subject to the penalty provided under Subsection (1)(a);

(c) failure to pay any tax within 30 days of the date of mailing any notice of deficiency of tax unless a petition for redetermination or a request for agency action is filed within 30 days of the date of mailing the notice of deficiency;

(d) failure to pay any tax within 30 days after the date the commission's order constituting final agency action resulting from a timely filed petition for redetermination or request for agency action is issued or is considered to have been denied under Subsection 63-46b-13(3)(b); and

(e) failure to pay any tax within 30 days after the date of a final judicial decision resulting from a timely filed petition for judicial review.

(3) (a) Beginning January 1, 1995, in the case of any underpayment of estimated tax or quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104, there shall be added a penalty in an amount determined by applying the interest rate provided under Section 59-1-402 plus four percentage points to the amount of the underpayment for the period of the underpayment.

(b) (i) For purposes of Subsection (3)(a), the amount of the underpayment shall be the excess of the required installment over the amount, if any, of the installment paid on or before the due date for the installment.

(ii) The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier:

(A) the original due date of the tax return, without extensions, for the taxable year; or

(B) with respect to any portion of the underpayment, the date on which that portion is paid.

(iii) For purposes of this Subsection (3), a payment of estimated tax shall be credited against

unpaid required installments in the order in which the installments are required to be paid.

(4) (a) In case of an extension of time to file an individual income tax or corporate franchise tax return, if the lesser of 90% of the total tax reported on the tax return or 100% of the prior year's tax is not paid by the due date of the return, not including extensions, a 2% per month penalty shall apply on the unpaid tax during the period of extension.

(b) If a return is not filed within the extension time period as provided in Section 59-7-505 or 59-10-516, penalties as provided in Subsection (1) and Subsection (2)(b) shall be added in lieu of the penalty assessed under this Subsection (4) as if no extension of time for filing a return had been granted.

(5) (a) Additional penalties for underpayments of tax are as provided in Subsections (5)(a)(i) through (iv).

(i) Except as provided in Subsection (5)(c), if any underpayment of tax is due to negligence, the penalty is 10% of the underpayment.

(ii) Except as provided in Subsection (5)(d), if any underpayment of tax is due to intentional disregard of law or rule, the penalty is 15% of the underpayment.

(iii) For intent to evade the tax, the penalty is the greater of \$500 per period or 50% of the tax due.

(iv) If the underpayment is due to fraud with intent to evade the tax, the penalty is the greater of \$500 per period or 100% of the underpayment.

(b) If the commission determines that a person is liable for a penalty imposed under Subsection (5)(a)(ii), (iii), or (iv), the commission shall notify the taxpayer of the proposed penalty.

(i) The notice of proposed penalty shall:

(A) set forth the basis of the assessment; and

(B) be mailed by registered mail, postage prepaid, to the person's last-known address.

(ii) Upon receipt of the notice of proposed penalty, the person against whom the penalty is proposed may:

(A) pay the amount of the proposed penalty at the place and time stated in the notice; or

(B) proceed in accordance with the review procedures of Subsection (5)(b)(iii).

(iii) Any person against whom a penalty has been proposed in accordance with this Subsection (5) may contest the proposed penalty by filing a petition for an adjudicative proceeding with the commission.

(iv) If the commission determines that a person is liable for a penalty under this Subsection (5), the commission shall assess the penalty and give notice and demand for payment. The notice and demand for payment shall be mailed by registered mail, postage prepaid, to the person's last-known address.

(c) Notwithstanding Subsection (5)(a)(i), a seller that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not subject to the penalty under Subsection (5)(a)(i) if on or after July 1, 2001:

(i) a court of competent jurisdiction issues a final unappealable judgment or order determining that:

- (A) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a); and
- (B) the commission or a county, city, or town may require the seller to collect a tax under Subsection 59-12-103(2)(a) or (b); or
- (ii) the commission issues a final unappealable administrative order determining that:
  - (A) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a); and
  - (B) the commission or a county, city, or town may require the seller to collect a tax under Subsection 59-12-103(2)(a) or (b).
- (d) Notwithstanding Subsection (5)(a)(ii), a seller that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not subject to the penalty under Subsection (5)(a)(ii) if:
  - (i) (A) a court of competent jurisdiction issues a final unappealable judgment or order determining that:
    - (I) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a); and
    - (II) the commission or a county, city, or town may require the seller to collect a tax under Subsection 59-12-103(2)(a) or (b); or
  - (B) the commission issues a final unappealable administrative order determining that:
    - (I) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a); and
    - (II) the commission or a county, city, or town may require the seller to collect a tax under Subsection 59-12-103(2)(a) or (b); and
  - (ii) the seller's intentional disregard of law or rule is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

**(e)(i) In cases not amounting to another violation under this section, penalties for unlawfully claiming a tax credit are as provided in this Subsection (5)(e).**

**(ii) If the unlawful claim of a tax credit is due to negligence, the penalty is 10% of the amount of the tax credit unlawfully claimed.**

**(iii) If the unlawful claim of a tax credit is due to intentional disregard of law or rule, the penalty is 15% of the amount of the tax credit unlawfully claimed.**

**(iv) If the unlawful claim of a tax credit is due to intent to unlawfully claim a tax credit, the penalty is the greater of \$500 per taxable year or 50% of the amount of the tax credit unlawfully claimed.**

**(v) If the unlawful claim of a tax credit is due to fraud with intent to unlawfully claim a tax credit, the penalty is the greater of \$500 per taxable year or 100% of the amount of the tax credit unlawfully claimed.**

**(vi) If the commission determines that a person is liable for a penalty imposed under Subsection (5)(e)(ii), (iii), (iv), or (v), the commission shall notify the taxpayer of the proposed penalty using the procedures described under Subsection (5)(b).**

- (6) Except as provided in Section 59-12-105, the penalty for failure to file an information return, information report, or a complete supporting schedule is \$50 for each information return, information report, or supporting schedule up to a maximum of \$1,000.

(7) If any taxpayer, in furtherance of a frivolous position, has a prima facie intent to delay or impede administration of the tax law and files a purported return that fails to contain information from which the correctness of reported tax liability can be determined or that clearly indicates that the tax liability shown must be substantially incorrect, the penalty is \$500.

(8) (a) A seller that fails to remit a tax, fee, or charge monthly as required by Subsection 59-12-108(1)(a)(i):

(i) is subject to the penalties described in Subsection (1); and

(ii) may not retain the percentage of sales and use taxes that would otherwise be allowable under Subsection 59-12-108(2).

(b) A seller that fails to remit a tax, fee, or charge by electronic funds transfer as required by Subsection 59-12-108(1)(a)(ii)(A)(II):

(i) is subject to the penalties described in Subsection (1); and

(ii) may not retain the percentage of sales and use taxes that would otherwise be allowable under Subsection 59-12-108(2).

(9) (a) A person is subject to the penalty provided in Subsection (9)(c) if that person:

(i) commits an act described in Subsection (9)(b) with respect to one or more of the following documents:

(A) a return;

(B) an affidavit;

(C) a claim; or

(D) a document similar to Subsections (9)(a)(i)(A) through (C);

(ii) knows or has reason to believe that the document described in Subsection (9)(a)(i) will be used in connection with any material matter administered by the commission; and

(iii) knows that the document described in Subsection (9)(a)(i), if used in connection with any material matter administered by the commission, would result in an understatement of another person's liability for a tax, fee, or charge administered by the commission.

(b) The following acts apply to Subsection (9)(a)(i):

(i) preparing any portion of a document described in Subsection (9)(a)(i);

(ii) presenting any portion of a document described in Subsection (9)(a)(i);

(iii) procuring any portion of a document described in Subsection (9)(a)(i);

(iv) advising in the preparation or presentation of any portion of a document described in Subsection (9)(a)(i);

(v) aiding in the preparation or presentation of any portion of a document described in Subsection (9)(a)(i);

(vi) assisting in the preparation or presentation of any portion of a document described in Subsection (9)(a)(i); or

(vii) counseling in the preparation or presentation of any portion of a document described in Subsection (9)(a)(i).

(c) For purposes of Subsection (9)(a), the penalty:

- (i) shall be imposed by the commission;
- (ii) is \$500 for each document described in Subsection (9)(a)(i) with respect to which the person described in Subsection (9)(a) meets the requirements of Subsection (9)(a); and
- (iii) is in addition to any other penalty provided by law.
- (d) The commission may seek a court order to enjoin a person from engaging in conduct that is subject to a penalty under this Subsection (9).
- (e) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules prescribing the documents that are similar to Subsections (9)(a)(i)(A) through (C).
- (10) (a) As provided in Section 76-8-1101, criminal offenses and penalties are as provided in Subsections (10)(b) through ~~{(e)}~~ (f) .
- (b) (i) Any person who is required by this title or any laws the commission administers or regulates to register with or obtain a license or permit from the commission, who operates without having registered or secured a license or permit, or who operates when the registration, license, or permit is expired or not current, is guilty of a class B misdemeanor.
- (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (10)(b)(i), the penalty may not:
  - (A) be less than \$500; or
  - (B) exceed \$1,000.
- (c) (i) Any person who, with intent to evade any tax or requirement of this title or any lawful requirement of the commission, fails to make, render, sign, or verify any return or to supply any information within the time required by law, or who makes, renders, signs, or verifies any false or fraudulent return or statement, or who supplies any false or fraudulent information, is guilty of a third degree felony.
- (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (10)(c)(i), the penalty may not:
  - (A) be less than \$1,000; or
  - (B) exceed \$5,000.
- (d) (i) Any person who intentionally or willfully attempts to evade or defeat any tax or the payment of a tax is, in addition to other penalties provided by law, guilty of a second degree felony.
- (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (10)(d)(i), the penalty may not:
  - (A) be less than \$1,500; or
  - (B) exceed \$25,000.
- (e) (i) A person is guilty of a second degree felony if that person commits an act:
  - (A) described in Subsection (10)(e)(ii) with respect to one or more of the following documents:
    - (I) a return;
    - (II) an affidavit;

- (III) a claim; or
- (IV) a document similar to Subsections (10)(e)(i)(A)(I) through (III); and
- (B) subject to Subsection (10)(e)(iii), with knowledge that the document described in Subsection (10)(e)(i)(A):
  - (I) is false or fraudulent as to any material matter; and
  - (II) could be used in connection with any material matter administered by the commission.
- (ii) The following acts apply to Subsection (10)(e)(i):
  - (A) preparing any portion of a document described in Subsection (10)(e)(i)(A);
  - (B) presenting any portion of a document described in Subsection (10)(e)(i)(A);
  - (C) procuring any portion of a document described in Subsection (10)(e)(i)(A);
  - (D) advising in the preparation or presentation of any portion of a document described in Subsection (10)(e)(i)(A);
  - (E) aiding in the preparation or presentation of any portion of a document described in Subsection (10)(e)(i)(A);
  - (F) assisting in the preparation or presentation of any portion of a document described in Subsection (10)(e)(i)(A); or
  - (G) counseling in the preparation or presentation of any portion of a document described in Subsection (10)(e)(i)(A).
- (iii) This Subsection (10)(e) applies:
  - (A) regardless of whether the person for which the document described in Subsection (10)(e)(i)(A) is prepared or presented:
    - (I) knew of the falsity of the document described in Subsection (10)(e)(i)(A); or
    - (II) consented to the falsity of the document described in Subsection (10)(e)(i)(A); and
    - (B) in addition to any other penalty provided by law.
  - (iv) Notwithstanding Section 76-3-301, for purposes of this Subsection (10)(e), the penalty may not:
    - (A) be less than \$1,500; or
    - (B) exceed \$25,000.
  - (v) The commission may seek a court order to enjoin a person from engaging in conduct that is subject to a penalty under this Subsection (10)(e).
  - (vi) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules prescribing the documents that are similar to Subsections (10)(e)(i)(A)(I) through (III).

**(f)(i) In cases not amounting to another criminal violation under this section, a person who intentionally or willfully makes an unlawful claim of a tax credit is guilty of a third degree felony.**

**(ii) Notwithstanding Section 76-3-301, for purposes of Subsection (10)(f)(i), the penalty may not:**

**(A) be less than \$1,000; or**

**(B) exceed \$5,000.**

~~(f)~~ **(g)** The statute of limitations for prosecution for a violation of this Subsection (10)



is the later of six years:

(i) from the date the tax should have been remitted; or

(ii) after the day on which the person commits the criminal offense.

(11) Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.

4. *Page 3, Lines 82 through 84:*

82           (H) (I) annually assesses the achievement of each student in grade three or higher by  
administering a  
83 norm-referenced test scored by an independent party that provides a comparison of the student's  
84 performance to other students on a national basis;

5. *Page 4, Lines 88 through 91:*

88           (I) provides to parents the relevant credentials of teachers who will be teaching their  
89 children; ~~{and}~~  
90           (J) provides, upon request to any person, a statement indicating which, if any,  
91 organizations have accredited the private school ; and  
(K) holds a current registration certificate issued by the Division of Consumer Protection under Section  
59-10-137 .

6. *Page 4, Lines 106i through 106j*  
*House Committee Amendments*  
*2-21-2005:*

106i           (f)(i) "Tuition expenses" means amounts charged for attending a private school minus  
106j any amounts paid for with scholarship or grant monies ~~{received from the state}~~ .

7. *Page 5, Lines 128 through 129:*

128           (b) For the purposes of this section, ~~{tuition expenses shall be considered to be incurred~~  
129 ~~when the qualifying student receives the private school education}~~ "tuition expenses incurred"  
means tuition expenses for private school education received by a qualifying student during the taxable  
year, but not paid for by the taxpayer as of the end of the taxable year .

8. *Page 6, Line 180d through Page 7, Line 181*  
*House Committee Amendments*  
*2-21-2005:*

180d           (b) may not be carried forward or carried back. ←~~H~~ .  
(6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission  
shall make rules specifying the manner in which a private school and a taxpayer shall submit



information to the commission regarding:

(a) school identification;

(b) taxpayer identification;

(c) qualifying student identification;

(d) the qualifying student's grade;

(e) the number of days the qualifying student was enrolled in the private school;

(f) the amount of tuition paid or incurred; and

(g) the date the tuition was paid or incurred.

= Section 5. Section 59-10-137 is enacted to read:

= 59-10-137. Private school registration certificate -- Requirements -- Renewals -- Investigations.

(1) As used in this section, division" means the Division of Consumer Protection in the Department of Commerce.

(2) The division shall issue a private school registration certificate to an applicant that meets the requirements of this section.

(3) An applicant for a registration certificate or renewal of a registration certificate as a private school shall:

(a) pay an:

(i) initial application fee of \$100; or

(ii) annual renewal fee of \$100;

(b) submit an application on a form approved by the division that shall include:

(i) the applicant's name, address, and telephone number;

(ii) the legal nature of the applicants organization;

(iii) the names and residence addresses of the officers and directors of the applicant; and

(iv) (A) the name and address of a registered agent in Utah for service of process; and

(B) consent to service of process; and

(c) certify to the division that the applicant meets the definition of a private school under Section 59-10-136.

(4) A registration certificate issued under this section expires annually on the earlier of February 1, May 1, August 1, or November 1 following the completion of 12 months after the date of initial issuance.

(5) (a) The division may investigate or audit an applicant or registrant under this section to verify that the applicant or registrant meets the definition of a private school under Section 59-10-136.

(b) An applicant or registrant under this section shall make available to the division for inspection during normal business hours all records relevant to the efforts of the applicant or registrant to meet the definition of a private school under Section 59-10-136.

(6) In accordance with Title 13, Chapter 2, Division of Consumer Protection, and Title 63, Chapter 46b, Administrative Procedures Act, the division may deny, revoke, or suspend a registration certificate issued under this section if the applicant or registrant fails to meet:

(a) any of the requirements of this section; or

(b) the definition of a private school under Section 59-10-136.

**Renumber remaining sections accordingly.**