

TAX PENALTY AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Howard A. Stephenson

House Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill amends the Revenue and Taxation title relating to penalties and tax return filing requirements.

Highlighted Provisions:

This bill:

- ▶ amends the penalty provisions for a failure to file a tax return to exempt the return from a penalty if no tax is due on the tax return;

- ▶ amends the mailing requirements for a notice of an assessed penalty and demand for payment; and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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



28 **59-1-401. Offenses and penalties -- Rulemaking authority -- Statute of limitations**
29 **-- Commission authority to waive, reduce, or compromise penalty or interest.**

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

32 (b) This Subsection (1) does not apply to:

33 (i) an amended [~~returns.~~] return; or

34 (ii) a return with no tax due.

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

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

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

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

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

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

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

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

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

59 (A) the original due date of the tax return, without extensions, for the taxable year; or
60 (B) with respect to any portion of the underpayment, the date on which that portion is
61 paid.

62 (iii) For purposes of this Subsection (3), a payment of estimated tax shall be credited
63 against unpaid required installments in the order in which the installments are required to be
64 paid.

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

69 (b) If a return is not filed within the extension time period as provided in Section
70 59-7-505 or 59-10-516, penalties as provided in Subsection (1) and Subsection (2)(b) shall be
71 added in lieu of the penalty assessed under this Subsection (4) as if no extension of time for
72 filing a return had been granted.

73 (5) (a) Additional penalties for underpayments of tax are as provided in [~~Subsections~~
74 ~~(5)(a)(i) through (iv)~~] this Subsection (5)(a).

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

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

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

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

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

86 (i) The notice of proposed penalty shall:

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

88 (B) be mailed by [~~registered~~] certified mail, postage prepaid, to the person's last-known
89 address.

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

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

93 or

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

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

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

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

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

107 (A) the seller meets one or more of the criteria described in Subsection

108 59-12-107(1)(a); and

109 (B) the commission or a county, city, or town may require the seller to collect a tax
110 under Subsection 59-12-103(2)(a) or (b); or

111 (ii) the commission issues a final unappealable administrative order determining that:

112 (A) the seller meets one or more of the criteria described in Subsection

113 59-12-107(1)(a); and

114 (B) the commission or a county, city, or town may require the seller to collect a tax
115 under Subsection 59-12-103(2)(a) or (b).

116 (d) Notwithstanding Subsection (5)(a)(ii), a seller that voluntarily collects a tax under
117 Subsection 59-12-107(1)(b) is not subject to the penalty under Subsection (5)(a)(ii) if:

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

120 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a);

121 and

122 (II) the commission or a county, city, or town may require the seller to collect a tax
123 under Subsection 59-12-103(2)(a) or (b); or

124 (B) the commission issues a final unappealable administrative order determining that:

125 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a);

126 and

127 (II) the commission or a county, city, or town may require the seller to collect a tax
128 under Subsection 59-12-103(2)(a) or (b); and

129 (ii) the seller's intentional disregard of law or rule is warranted by existing law or by a
130 nonfrivolous argument for the extension, modification, or reversal of existing law or the
131 establishment of new law.

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

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

139 (8) (a) A seller that fails to remit a tax, fee, or charge monthly as required by Subsection
140 59-12-108(1)(a)(i):

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

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

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

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

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

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

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

152 (A) a return;

153 (B) an affidavit;

154 (C) a claim; or

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

156 (ii) knows or has reason to believe that the document described in Subsection (9)(a)(i)

157 will be used in connection with any material matter administered by the commission; and

158 (iii) knows that the document described in Subsection (9)(a)(i), if used in connection

159 with any material matter administered by the commission, would result in an understatement of

160 another person's liability for a tax, fee, or charge administered by the commission.

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

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

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

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

165 (iv) advising in the preparation or presentation of any portion of a document described

166 in Subsection (9)(a)(i);

167 (v) aiding in the preparation or presentation of any portion of a document described in

168 Subsection (9)(a)(i);

169 (vi) assisting in the preparation or presentation of any portion of a document described

170 in Subsection (9)(a)(i); or

171 (vii) counseling in the preparation or presentation of any portion of a document

172 described in Subsection (9)(a)(i).

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

174 (i) shall be imposed by the commission;

175 (ii) is \$500 for each document described in Subsection (9)(a)(i) with respect to which

176 the person described in Subsection (9)(a) meets the requirements of Subsection (9)(a); and

177 (iii) is in addition to any other penalty provided by law.

178 (d) The commission may seek a court order to enjoin a person from engaging in

179 conduct that is subject to a penalty under this Subsection (9).

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

181 commission may make rules prescribing the documents that are similar to Subsections

182 (9)(a)(i)(A) through (C).

183 (10) (a) As provided in Section 76-8-1101, criminal offenses and penalties are as
184 provided in Subsections (10)(b) through (e).

185 (b) (i) Any person who is required by this title or any laws the commission administers
186 or regulates to register with or obtain a license or permit from the commission, who operates
187 without having registered or secured a license or permit, or who operates when the registration,
188 license, or permit is expired or not current, is guilty of a class B misdemeanor.

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

191 (A) be less than \$500; or

192 (B) exceed \$1,000.

193 (c) (i) Any person who, with intent to evade any tax or requirement of this title or any
194 lawful requirement of the commission, fails to make, render, sign, or verify any return or to
195 supply any information within the time required by law, or who makes, renders, signs, or
196 verifies any false or fraudulent return or statement, or who supplies any false or fraudulent
197 information, is guilty of a third degree felony.

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

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

201 (B) exceed \$5,000.

202 (d) (i) Any person who intentionally or willfully attempts to evade or defeat any tax or
203 the payment of a tax is, in addition to other penalties provided by law, guilty of a second degree
204 felony.

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

207 (A) be less than \$1,500; or

208 (B) exceed \$25,000.

209 (e) (i) A person is guilty of a second degree felony if that person commits an act:

210 (A) described in Subsection (10)(e)(ii) with respect to one or more of the following
211 documents:

212 (I) a return;

213 (II) an affidavit;

214 (III) a claim; or
215 (IV) a document similar to Subsections (10)(e)(i)(A)(I) through (III); and
216 (B) subject to Subsection (10)(e)(iii), with knowledge that the document described in
217 Subsection (10)(e)(i)(A):
218 (I) is false or fraudulent as to any material matter; and
219 (II) could be used in connection with any material matter administered by the
220 commission.
221 (ii) The following acts apply to Subsection (10)(e)(i):
222 (A) preparing any portion of a document described in Subsection (10)(e)(i)(A);
223 (B) presenting any portion of a document described in Subsection (10)(e)(i)(A);
224 (C) procuring any portion of a document described in Subsection (10)(e)(i)(A);
225 (D) advising in the preparation or presentation of any portion of a document described
226 in Subsection (10)(e)(i)(A);
227 (E) aiding in the preparation or presentation of any portion of a document described in
228 Subsection (10)(e)(i)(A);
229 (F) assisting in the preparation or presentation of any portion of a document described
230 in Subsection (10)(e)(i)(A); or
231 (G) counseling in the preparation or presentation of any portion of a document
232 described in Subsection (10)(e)(i)(A).
233 (iii) This Subsection (10)(e) applies:
234 (A) regardless of whether the person for which the document described in Subsection
235 (10)(e)(i)(A) is prepared or presented:
236 (I) knew of the falsity of the document described in Subsection (10)(e)(i)(A); or
237 (II) consented to the falsity of the document described in Subsection (10)(e)(i)(A); and
238 (B) in addition to any other penalty provided by law.
239 (iv) Notwithstanding Section 76-3-301, for purposes of this Subsection (10)(e), the
240 penalty may not:
241 (A) be less than \$1,500; or
242 (B) exceed \$25,000.
243 (v) The commission may seek a court order to enjoin a person from engaging in
244 conduct that is subject to a penalty under this Subsection (10)(e).

245 (vi) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
246 the commission may make rules prescribing the documents that are similar to Subsections
247 (10)(e)(i)(A)(I) through (III).

248 (f) The statute of limitations for prosecution for a violation of this Subsection (10) is
249 the later of six years:

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

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

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

Legislative Review Note
as of 11-15-06 3:20 PM

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-19-06 8:34 AM

The Revenue and Taxation Interim Committee recommended this bill.

S.B. 5 - Tax Penalty Amendments

Fiscal Note

2007 General Session
State of Utah

State Impact

Enactment of this bill would have no impact on current revenues.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

12/22/2006, 10:29:51 AM, Lead Analyst: Wilko, A.

Office of the Legislative Fiscal Analyst