

**PENALTIES RELATING TO TAXES, FEES,
OR CHARGES**

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Howard A. Stephenson

House Sponsor: _____

LONG TITLE

General Description:

This bill amends the State Tax Commission chapter relating to penalties.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies penalty provisions that apply to taxes, fees, or charges with respect to the

failure to:

- file a return; or
- pay a tax, fee, or charge due;
- ▶ enacts uncodified language requiring the Utah Tax Review Commission to conduct a study on penalties relating to taxes, fees, or charges; 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



28 **Uncodified Material Affected:**
29 ENACTS UNCODIFIED MATERIAL



30
31 *Be it enacted by the Legislature of the state of Utah:*

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

33 **59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute**
34 **of limitations -- Commission authority to waive, reduce, or compromise penalty or**
35 **interest.**

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

38 (1) As used in this section:

39 (a) "Qualifying tax or fee" means:

40 (i) a fee under Section 19-6-808;

41 (ii) a tax under Chapter 10, Part 1, Determination and Reporting of Tax Liability and
42 Information;

43 (iii) a tax under Chapter 10, Part 2, Trusts and Estates; or

44 (iv) a tax under Chapter 12, Sales and Use Tax Act.

45 (b) "System activation date" means the earlier of:

46 (i) the day on which the sales and use tax phase of the commission's GenTax system is
47 activated; or

48 (ii) May 1, 2008.

49 (2) (a) The due date for filing a return is:

50 (i) if the person filing the return is not allowed by law an extension of time for filing
51 the return, the day on which the return is due as provided by law; or

52 (ii) if the person filing the return is allowed by law an extension of time for filing the
53 return, the last day of that extension of time.

54 (b) (i) For a penalty imposed on or after July 1, 1994, but before the system activation
55 date, a penalty in the amount described in Subsection (2)(b)(ii) is imposed if:

56 (A) a person is required to file a return with respect to a tax, fee, or charge; and

57 (B) the person described in Subsection (2)(b)(i)(A) files the return after the due date
58 described in Subsection (2)(a).

59 (ii) For purposes of Subsection (2)(b)(i), the penalty is an amount equal to the greater
60 of:

61 (A) \$20; or

62 (B) 10% of the unpaid tax, fee, or charge due on the return.

63 (c) (i) For a penalty imposed on or after the system activation date, a penalty in the
64 amount described in Subsection (2)(c)(ii) is imposed if:

65 (A) a person is required to file a return with respect to a tax, fee, or charge other than a
66 qualifying tax or fee; and

67 (B) the person described in Subsection (2)(c)(i)(A) files the return after the due date
68 described in Subsection (2)(a).

69 (ii) For purposes of Subsection (2)(c)(i), the penalty is an amount equal to the greater
70 of:

71 (A) \$20; or

72 (B) 10% of the unpaid tax, fee, or charge due on the return.

73 (d) (i) For a penalty imposed on or after the system activation date, a penalty in the
74 amount described in Subsection (2)(d)(ii) is imposed if:

75 (A) a person is required to file a return with respect to a qualifying tax or fee; and

76 (B) the person described in Subsection (2)(d)(i)(A) files the return after the due date
77 described in Subsection (2)(a).

78 (ii) For purposes of Subsection (2)(d)(i), the penalty is an amount equal to the greater
79 of:

80 (A) \$20; or

81 (B) (I) 2% of the unpaid qualifying tax or fee due on the return if the return is filed no
82 later than five days after the due date described in Subsection (2)(a);

83 (II) 5% of the unpaid qualifying tax or fee due on the return if the return is filed more
84 than five days after the due date but no later than 15 days after the due date described in
85 Subsection (2)(a); or

86 (III) 10% of the unpaid qualifying tax or fee due on the return if the return is filed more
87 than 15 days after the due date described in Subsection (2)(a).

88 ~~[(b)]~~ (e) This Subsection [(†)] (2) does not apply to an amended [returns] return.

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

90 unpaid tax for:]

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

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

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

97 [~~(d) failure to pay any tax within 30 days after the date the commission's order~~
98 ~~constituting final agency action resulting from a timely filed petition for redetermination or~~
99 ~~request for agency action is issued or is considered to have been denied under Subsection~~
100 ~~63-46b-13(3)(b); and]~~

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

103 (3) (a) If a person fails to pay a tax, fee, or charge due, the person is subject to a penalty
104 as provided in this Subsection (3).

105 (b) (i) For a penalty imposed on or after July 1, 1994, but before the system activation
106 date, a penalty in the amount described in Subsection (3)(b)(ii) is imposed if:

107 (A) a person files a return with respect to a tax, fee, or charge on or before the due date
108 for filing a return described in Subsection (2)(a), but fails to pay the tax, fee, or charge due on
109 the return on or before that due date;

110 (B) a person:

111 (I) is subject to a penalty under Subsection (2)(b); and

112 (II) fails to pay a tax, fee, or charge due on a return within a 90-day period after the due
113 date for filing a return described in Subsection (2)(a);

114 (C) a person:

115 (I) is mailed a notice of deficiency; and

116 (II) within a 30-day period after the day on which the notice of deficiency described in
117 Subsection (3)(b)(i)(C)(I) is mailed;

118 (Aa) does not file a petition for redetermination or a request for agency action; and

119 (Bb) fails to pay a tax, fee, or charge due on a return;

120 (D) (I) the commission;

121 (Aa) issues an order constituting final agency action resulting from a timely filed
122 petition for redetermination or a timely filed request for agency action; or

123 (Bb) is considered to have denied a request for reconsideration under Subsection
124 63-46b-13(3)(b) resulting from a timely filed petition for redetermination or a timely filed
125 request for agency action; and

126 (II) a person fails to pay a tax, fee, or charge due on a return within a 30-day period
127 after the date the commission:

128 (Aa) issues the order constituting final agency action described in Subsection
129 (3)(b)(i)(D)(I)(Aa); or

130 (Bb) is considered to have denied the request for reconsideration described in
131 Subsection (3)(b)(i)(D)(I)(Bb); or

132 (E) a person fails to pay a tax, fee, or charge within a 30-day period after the date of a
133 final judicial decision resulting from a timely filed petition for judicial review.

134 (ii) For purposes of Subsection (3)(b)(i), the penalty is an amount equal to the greater
135 of:

136 (A) \$20; or

137 (B) 10% of the unpaid tax, fee, or charge due on the return.

138 (c) (i) For a penalty imposed on or after the system activation date, a penalty in the
139 amount described in Subsection (3)(c)(ii) is imposed if:

140 (A) a person files a return with respect to a tax, fee, or charge other than a qualifying
141 tax or fee on or before the due date for filing a return described in Subsection (2)(a), but fails to
142 pay the tax, fee, or charge due on the return on or before that due date;

143 (B) with respect to a tax, fee, or charge other than a qualifying tax or fee, a person:

144 (I) is subject to a penalty under Subsection (2)(c); and

145 (II) fails to pay the tax, fee, or charge due on a return within a 90-day period after the
146 due date for filing a return described in Subsection (2)(a);

147 (C) with respect to a tax, fee, or charge other than a qualifying tax or fee, a person:

148 (I) is mailed a notice of deficiency; and

149 (II) within a 30-day period after the day on which the notice of deficiency described in
150 Subsection (3)(c)(i)(C)(I) is mailed;

151 (Aa) does not file a petition for redetermination or a request for agency action; and

152 (Bb) fails to pay the tax, fee, or charge due on a return;
153 (D) with respect to a tax, fee, or charge other than a qualifying tax or fee:
154 (I) the commission:
155 (Aa) issues an order constituting final agency action resulting from a timely filed
156 petition for redetermination or a timely filed request for agency action; or
157 (Bb) is considered to have denied a request for reconsideration under Subsection
158 63-46b-13(3)(b) resulting from a timely filed petition for redetermination or a timely filed
159 request for agency action; and
160 (II) a person fails to pay the tax, fee, or charge due on a return within a 30-day period
161 after the date the commission:
162 (Aa) issues the order constituting final agency action described in Subsection
163 (3)(c)(i)(D)(I)(Aa); or
164 (Bb) is considered to have denied the request for reconsideration described in
165 Subsection (3)(c)(i)(D)(I)(Bb); or
166 (E) with respect to a tax, fee, or charge other than a qualifying tax or fee, a person fails
167 to pay the tax, fee, or charge within a 30-day period after the date of a final judicial decision
168 resulting from a timely filed petition for judicial review.
169 (ii) For purposes of Subsection (3)(c)(i), the penalty is an amount equal to the greater
170 of:
171 (A) \$20; or
172 (B) 10% of the unpaid tax, fee, or charge due on the return.
173 (d) (i) For a penalty imposed on or after the system activation date, with respect to a
174 qualifying tax or fee, a penalty is imposed as provided in this Subsection (3)(d).
175 (ii) (A) A person is subject to a penalty as provided in Subsection (3)(d)(ii)(B) if the
176 person files a return with respect to a qualifying tax or fee on or before the due date for filing a
177 return described in Subsection (2)(a), but fails to pay the qualifying tax or fee due on the return
178 on or before that due date.
179 (B) For purposes of Subsection (3)(d)(ii)(A), the penalty is an amount equal to the
180 greater of:
181 (I) \$20; or
182 (II) (Aa) 2% of the unpaid qualifying tax or fee due on the return if the qualifying tax

183 or fee due on the return is paid no later than five days after the due date for filing a return
184 described in Subsection (2)(a);

185 (Bb) 5% of the unpaid qualifying tax or fee due on the return if the qualifying tax or fee
186 due on the return is paid more than five days after the due date for filing a return described in
187 Subsection (2)(a) but no later than 15 days after that due date; or

188 (Cc) 10% of the unpaid qualifying tax or fee due on the return if the qualifying tax or
189 fee due on the return is paid more than 15 days after the due date for filing a return described in
190 Subsection (2)(a).

191 (iii) (A) A person is subject to a penalty as provided in Subsection (3)(d)(iii)(B) if the
192 person:

193 (I) is subject to a penalty under Subsection (2)(d); and

194 (II) fails to pay a qualifying tax or fee due on a return within a 90-day period after the
195 due date for filing a return described in Subsection (2)(a).

196 (B) For purposes of Subsection (3)(d)(iii)(A), the penalty is an amount equal to the
197 greater of:

198 (I) \$20; or

199 (II) (Aa) 2% of the unpaid qualifying tax or fee due on the return if the qualifying tax
200 or fee due on the return is paid no later than five days after the last day of the 90-day period
201 described in Subsection (3)(d)(iii)(A)(II);

202 (Bb) 5% of the unpaid qualifying tax or fee due on the return if the qualifying tax or fee
203 due on the return is paid more than five days after the last day of the 90-day period described in
204 Subsection (3)(d)(iii)(A)(II) but no later than 15 days after the last day of the 90-day period
205 described in Subsection (3)(d)(iii)(A)(II); or

206 (Cc) 10% of the unpaid qualifying tax or fee due on the return if the qualifying tax or
207 fee due on the return is paid more than 15 days after the last day of the 90-day period described
208 in Subsection (3)(d)(iii)(A)(II).

209 (iv) (A) A person is subject to a penalty as provided in Subsection (3)(d)(iv)(B) if the
210 person:

211 (I) is mailed a notice of deficiency; and

212 (II) within a 30-day period after the day on which the notice of deficiency described in
213 Subsection (3)(d)(iv)(A)(I) is mailed;

214 (Aa) does not file a petition for redetermination or a request for agency action; and
215 (Bb) fails to pay a qualifying tax or fee due on a return.

216 (B) For purposes of Subsection (3)(d)(iv)(A), the penalty is an amount equal to the
217 greater of:

218 (I) \$20; or

219 (II) (Aa) 2% of the unpaid qualifying tax or fee due on the return if the qualifying tax
220 or fee due on the return is paid no later than five days after the last day of the 30-day period
221 described in Subsection (3)(d)(iv)(A)(II);

222 (Bb) 5% of the unpaid qualifying tax or fee due on the return if the qualifying tax or fee
223 due on the return is paid more than five days after the last day of the 30-day period described in
224 Subsection (3)(d)(iv)(A)(II) but no later than 15 days after the last day of the 30-day period
225 described in Subsection (3)(d)(iv)(A)(II); or

226 (Cc) 10% of the unpaid qualifying tax or fee due on the return if the qualifying tax or
227 fee due on the return is paid more than 15 days after the last day of the 30-day period described
228 in Subsection (3)(d)(iv)(A)(II).

229 (v) (A) A person is subject to a penalty as provided in Subsection (3)(d)(v)(B) if:

230 (I) the commission:

231 (Aa) issues an order constituting final agency action resulting from a timely filed
232 petition for redetermination or a timely filed request for agency action; or

233 (Bb) is considered to have denied a request for reconsideration under Subsection
234 63-46b-13(3)(b) resulting from a timely filed petition for redetermination or a timely filed
235 request for agency action; and

236 (II) the person fails to pay a qualifying tax or fee due on a return within a 30-day period
237 after the date the commission:

238 (Aa) issues the order constituting final agency action described in Subsection
239 (3)(d)(v)(A)(I)(Aa); or

240 (Bb) is considered to have denied the request for reconsideration described in
241 Subsection (3)(d)(v)(A)(I)(Bb).

242 (B) For purposes of Subsection (3)(d)(v)(A), the penalty is an amount equal to the
243 greater of:

244 (I) \$20; or

245 (II) (Aa) 2% of the unpaid qualifying tax or fee due on the return if the qualifying tax
246 or fee due on the return is paid no later than five days after the last day of the 30-day period
247 described in Subsection (3)(d)(v)(A)(II);

248 (Bb) 5% of the unpaid qualifying tax or fee due on the return if the qualifying tax or fee
249 due on the return is paid more than five days after the last day of the 30-day period described in
250 Subsection (3)(d)(v)(A)(II) but no later than 15 days after the last day of the 30-day period
251 described in Subsection (3)(d)(v)(A)(II); or

252 (III) 10% of the unpaid qualifying tax or fee due on the return if the qualifying tax or
253 fee due on the return is paid more than 15 days after the last day of the 30-day period described
254 in Subsection (3)(d)(v)(A)(II).

255 (vi) (A) A person is subject to a penalty as provided in Subsection (3)(d)(vi)(B) if the
256 person fails to pay a qualifying tax or fee within a 30-day period after the date of a final judicial
257 decision resulting from a timely filed petition for judicial review.

258 (B) For purposes of Subsection (3)(d)(vi)(A), the penalty is an amount equal to the
259 greater of:

260 (I) \$20; or

261 (II) (Aa) 2% of the unpaid qualifying tax or fee due on the return if the qualifying tax
262 or fee due on the return is paid no later than five days after the last day of the 30-day period
263 described in Subsection (3)(d)(vi)(A);

264 (Bb) 5% of the unpaid qualifying tax or fee due on the return if the qualifying tax or fee
265 due on the return is paid more than five days after the last day of the 30-day period described in
266 Subsection (3)(d)(vi)(A) but no later than 15 days after the last day of the 30-day period
267 described in Subsection (3)(d)(vi)(A); or

268 (III) 10% of the unpaid qualifying tax or fee due on the return if the qualifying tax or
269 fee due on the return is paid more than 15 days after the last day of the 30-day period described
270 in Subsection (3)(d)(vi)(A).

271 ~~(3)~~ (4) (a) Beginning January 1, 1995, in the case of any underpayment of estimated
272 tax or quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104,
273 there shall be added a penalty in an amount determined by applying the interest rate provided
274 under Section 59-1-402 plus four percentage points to the amount of the underpayment for the
275 period of the underpayment.

276 (b) (i) For purposes of Subsection ~~[(3)]~~ (4)(a), the amount of the underpayment shall be
277 the excess of the required installment over the amount, if any, of the installment paid on or
278 before the due date for the installment.

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

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

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

284 (iii) For purposes of this Subsection ~~[(3)]~~ (4), a payment of estimated tax shall be
285 credited against unpaid required installments in the order in which the installments are required
286 to be paid.

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

291 ~~[(b) If a return is not filed within the extension time period as provided in Section
292 59-7-505 or 59-10-516, penalties as provided in Subsection (1) and Subsection (2)(b) shall be
293 added in lieu of the penalty assessed under this Subsection (4) as if no extension of time for
294 filing a return had been granted.]~~

295 (5) (a) Notwithstanding Subsection (2) and except as provided in Subsection (6), a
296 person allowed by law an extension of time for filing a corporate franchise or income tax return
297 under Chapter 7, Corporate Franchise and Income Taxes, or an individual income tax return
298 under Chapter 10, Individual Income Tax Act, is subject to a penalty in the amount described in
299 Subsection (5)(b) if, on or before the day on which the return is due as provided by law, not
300 including the extension of time, the person fails to pay the lesser of:

301 (i) 90% of the total tax reported on the return for the current taxable year; or

302 (ii) 100% of the total tax reported on the return for the taxable year immediately
303 preceding the current taxable year.

304 (b) For purposes of Subsection (5)(a), the penalty per month during the period of the
305 extension of time for filing the return is an amount equal to 1% of the unpaid tax due on the
306 return.

307 (6) (a) If a person does not file a return within an extension of time allowed by Section
308 59-7-505 or 59-10-516:

309 (i) the person is not subject to a penalty in the amount described in Subsection (5)(b);

310 and

311 (ii) is subject to a penalty in the amount described in Subsection (6)(b).

312 (b) For purposes of Subsection (6)(a), the penalty is an amount equal to:

313 (i) for a penalty imposed on or after July 1, 1994, but before the system activation date,
314 the sum of the penalties described in:

315 (A) Subsection (2)(b)(ii); and

316 (B) Subsection (3)(b)(ii);

317 (ii) for a penalty imposed on or after the system activation date, with respect to a return
318 filed under Chapter 7, Corporate Franchise and Income Taxes, the sum of the penalties
319 described in:

320 (A) Subsection (2)(c)(ii); and

321 (B) Subsection (3)(c)(ii); or

322 (iii) for a penalty imposed on or after the system activation date, with respect to a
323 return filed under Chapter 10, Part 1, Determination and Reporting of Tax Liability and
324 Information, or Part 2, Trusts and Estates, the sum of the penalties described in:

325 (A) Subsection (2)(d)(ii); and

326 (B) Subsection (3)(d)(iii)(B).

327 ~~[(5)]~~ (7) (a) Additional penalties for underpayments of tax are as provided in
328 [Subsections (5)(a)(i) through (iv)] this Subsection (7)(a).

329 (i) Except as provided in Subsection ~~[(5)]~~ (7)(c), if any underpayment of tax is due to
330 negligence, the penalty is 10% of the underpayment.

331 (ii) Except as provided in Subsection ~~[(5)]~~ (7)(d), if any underpayment of tax is due to
332 intentional disregard of law or rule, the penalty is 15% of the underpayment.

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

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

337 (b) If the commission determines that a person is liable for a penalty imposed under

338 Subsection ~~[(5)] (7)~~(a)(ii), (iii), or (iv), the commission shall notify the taxpayer of the
339 proposed penalty.

340 (i) The notice of proposed penalty shall:

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

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

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

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

346 or

347 (B) proceed in accordance with the review procedures of Subsection ~~[(5)] (7)~~(b)(iii).

348 (iii) Any person against whom a penalty has been proposed in accordance with this
349 Subsection ~~[(5)] (7)~~ may contest the proposed penalty by filing a petition for an adjudicative
350 proceeding with the commission.

351 (iv) (A) If the commission determines that a person is liable for a penalty under this
352 Subsection ~~[(5)] (7)~~, the commission shall assess the penalty and give notice and demand for
353 payment.

354 (B) The notice and demand for payment described in Subsection (7)(b)(iv)(A) shall be
355 mailed by registered mail, postage prepaid, to the person's last-known address.

356 (c) ~~[Notwithstanding Subsection (5)(a)(i), a]~~ A seller that voluntarily collects a tax
357 under Subsection 59-12-107(1)(b) is not subject to the penalty under Subsection ~~[(5)] (7)~~(a)(i)
358 if on or after July 1, 2001:

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

361 (A) the seller meets one or more of the criteria described in Subsection
362 59-12-107(1)(a); and

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

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

366 (A) the seller meets one or more of the criteria described in Subsection
367 59-12-107(1)(a); and

368 (B) the commission or a county, city, or town may require the seller to collect a tax

369 under Subsection 59-12-103(2)(a) or (b).

370 (d) [~~Notwithstanding Subsection (5)(a)(ii), a~~] A seller that voluntarily collects a tax
371 under Subsection 59-12-107(1)(b) is not subject to the penalty under Subsection [~~(5)~~] (7)(a)(ii)
372 if:

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

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

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

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

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

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

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

387 [~~(6)~~] (8) Except as provided in Section 59-12-105, the penalty for failure to file an
388 information return, information report, or a complete supporting schedule is \$50 for each
389 information return, information report, or supporting schedule up to a maximum of \$1,000.

390 [~~(7)~~] (9) If any taxpayer, in furtherance of a frivolous position, has a prima facie intent
391 to delay or impede administration of the tax law and files a purported return that fails to
392 contain information from which the correctness of reported tax liability can be determined or
393 that clearly indicates that the tax liability shown must be substantially incorrect, the penalty is
394 \$500.

395 [~~(8)~~] (10) (a) A seller that fails to remit a tax, fee, or charge monthly as required by
396 Subsection 59-12-108(1)(a)(i):

397 (i) is subject to [~~the penalties~~] a penalty described in Subsection [~~(1)~~] (2); and

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

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

402 (i) is subject to ~~the penalties~~ a penalty described in Subsection ~~(1)~~ (2); and

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

405 ~~(9)~~ (11) (a) A person is subject to the penalty provided in Subsection ~~(9)~~ (11)(c) if
406 that person:

407 (i) commits an act described in Subsection ~~(9)~~ (11)(b) with respect to one or more of
408 the following documents:

409 (A) a return;

410 (B) an affidavit;

411 (C) a claim; or

412 (D) a document similar to Subsections ~~(9)~~ (11)(a)(i)(A) through (C);

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

416 (iii) knows that the document described in Subsection ~~(9)~~ (11)(a)(i), if used in
417 connection with any material matter administered by the commission, would result in an
418 understatement of another person's liability for a tax, fee, or charge administered by the
419 commission.

420 (b) The following acts apply to Subsection ~~(9)~~ (11)(a)(i):

421 (i) preparing any portion of a document described in Subsection ~~(9)~~ (11)(a)(i);

422 (ii) presenting any portion of a document described in Subsection ~~(9)~~ (11)(a)(i);

423 (iii) procuring any portion of a document described in Subsection ~~(9)~~ (11)(a)(i);

424 (iv) advising in the preparation or presentation of any portion of a document described
425 in Subsection ~~(9)~~ (11)(a)(i);

426 (v) aiding in the preparation or presentation of any portion of a document described in
427 Subsection ~~(9)~~ (11)(a)(i);

428 (vi) assisting in the preparation or presentation of any portion of a document described
429 in Subsection ~~(9)~~ (11)(a)(i); or

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

431 described in Subsection [~~(9)~~] (11)(a)(i).

432 (c) For purposes of Subsection [~~(9)~~] (11)(a), the penalty:

433 (i) shall be imposed by the commission;

434 (ii) is \$500 for each document described in Subsection [~~(9)~~] (11)(a)(i) with respect to
435 which the person described in Subsection [~~(9)~~] (11)(a) meets the requirements of Subsection
436 [~~(9)~~] (11)(a); and

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

438 (d) The commission may seek a court order to enjoin a person from engaging in
439 conduct that is subject to a penalty under this Subsection [~~(9)~~] (11).

440 (e) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
441 commission may make rules prescribing the documents that are similar to Subsections [~~(9)~~]
442 (11)(a)(i)(A) through (C).

443 [~~(10)~~] (12) (a) As provided in Section 76-8-1101, criminal offenses and penalties are as
444 provided in Subsections [~~(10)~~] (12)(b) through (e).

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

449 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection [~~(10)~~] (12)(b)(i), the
450 penalty may not:

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

452 (B) exceed \$1,000.

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

458 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection [~~(10)~~] (12)(c)(i), the
459 penalty may not:

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

461 (B) exceed \$5,000.

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

465 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection [~~(10)~~] (12)(d)(i), the
466 penalty may not:

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

468 (B) exceed \$25,000.

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

470 (A) described in Subsection [~~(10)~~] (12)(e)(ii) with respect to one or more of the
471 following documents:

472 (I) a return;

473 (II) an affidavit;

474 (III) a claim; or

475 (IV) a document similar to Subsections [~~(10)~~] (12)(e)(i)(A)(I) through (III); and

476 (B) subject to Subsection [~~(10)~~] (12)(e)(iii), with knowledge that the document
477 described in Subsection [~~(10)~~] (12)(e)(i)(A):

478 (I) is false or fraudulent as to any material matter; and

479 (II) could be used in connection with any material matter administered by the
480 commission.

481 (ii) The following acts apply to Subsection [~~(10)~~] (12)(e)(i):

482 (A) preparing any portion of a document described in Subsection [~~(10)~~] (12)(e)(i)(A);

483 (B) presenting any portion of a document described in Subsection [~~(10)~~] (12)(e)(i)(A);

484 (C) procuring any portion of a document described in Subsection [~~(10)~~] (12)(e)(i)(A);

485 (D) advising in the preparation or presentation of any portion of a document described
486 in Subsection [~~(10)~~] (12)(e)(i)(A);

487 (E) aiding in the preparation or presentation of any portion of a document described in
488 Subsection [~~(10)~~] (12)(e)(i)(A);

489 (F) assisting in the preparation or presentation of any portion of a document described
490 in Subsection [~~(10)~~] (12)(e)(i)(A); or

491 (G) counseling in the preparation or presentation of any portion of a document
492 described in Subsection [~~(10)~~] (12)(e)(i)(A).

493 (iii) This Subsection [~~(10)~~] (12)(e) applies:

494 (A) regardless of whether the person for which the document described in Subsection
495 [~~(10)~~] (12)(e)(i)(A) is prepared or presented:

496 (I) knew of the falsity of the document described in Subsection [~~(10)~~] (12)(e)(i)(A); or

497 (II) consented to the falsity of the document described in Subsection [~~(10)~~]
498 (12)(e)(i)(A); and

499 (B) in addition to any other penalty provided by law.

500 (iv) Notwithstanding Section 76-3-301, for purposes of this Subsection [~~(10)~~] (12)(e),
501 the penalty may not:

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

503 (B) exceed \$25,000.

504 (v) The commission may seek a court order to enjoin a person from engaging in
505 conduct that is subject to a penalty under this Subsection [~~(10)~~] (12)(e).

506 (vi) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
507 the commission may make rules prescribing the documents that are similar to Subsections
508 [~~(10)~~] (12)(e)(i)(A)(I) through (III).

509 (f) The statute of limitations for prosecution for a violation of this Subsection [~~(10)~~]
510 (12) is the later of six years:

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

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

513 [~~(11)~~] (13) Upon making a record of its actions, and upon reasonable cause shown, the
514 commission may waive, reduce, or compromise any of the penalties or interest imposed under
515 this part.

516 **Section 2. Utah Tax Review Commission study.**

517 (1) During the 2007 interim, the Utah Tax Review Commission shall study penalties
518 relating to taxes, fees, and charges.

519 (2) The Utah Tax Review Commission shall make recommendations to the Revenue
520 and Taxation Interim Committee on or before the November interim meeting as to whether any
521 penalty provisions relating to a tax, fee, or charge should be modified or repealed.

Legislative Review Note
as of 1-24-07 4:02 PM

Office of Legislative Research and General Counsel

S.B. 74 - Penalties Relating to Taxes, Fees, or Charges

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

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.

1/29/2007, 8:02:23 AM, Lead Analyst: Wilko, A.

Office of the Legislative Fiscal Analyst