

**Senator Howard A. Stephenson** proposes the following substitute bill:

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

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Howard A. Stephenson**

House Sponsor: John Dougall

Cosponsor: Curtis S. Bramble

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**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



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **59-1-401**, as last amended by Chapters 67 and 255, Laws of Utah 2004

29 **Uncodified Material Affected:**

30 ENACTS UNCODIFIED MATERIAL

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

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

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

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

39 (1) As used in this section:

40 (a) (i) "Nonqualifying obligation" means a charge, fee, payment, or tax administered by  
41 the commission.

42 (ii) "Nonqualifying obligation" does not include:

43 (A) beginning on the phase I activation date, a phase I obligation; or

44 (B) beginning on the phase II activation date, a phase II obligation.

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

46 (i) the day on which the commission's GenTax system is activated to administer all  
47 phase I obligations; or

48 (ii) May 1, 2008.

49 (c) "Phase I obligation" means:

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

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

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

54 (iv) a tax under Chapter 10, Part 12, Single Rate Individual Income Tax Act; or

55 (v) a tax under Chapter 12, Sales and Use Tax Act.

56 (d) "Phase II activation date" means the earlier of:

57 (i) the day on which the commission's GenTax system is activated to administer all  
58 phase II obligations; or

59 (ii) May 4, 2009.

60 (e) (i) "Phase II obligation" means:

61 (A) a tax under Chapter 7, Corporate Franchise and Income Taxes; or

62 (B) a payment under Chapter 10, Part 4, Withholding of Tax.

63 (ii) "Phase II obligation" does not include a payment of estimated tax under Section  
64 59-7-504.

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

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

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

70 (b) (i) A penalty in the amount described in Subsection (2)(b)(ii) is imposed if:

71 (A) a person is required to file a return with respect to a nonqualifying obligation; and

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

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

76 (A) \$20; or

77 (B) 10% of the unpaid nonqualifying obligation due on the return.

78 (c) (i) A penalty in the amount described in Subsection (2)(c)(ii) is imposed if a person:

79 (A) (I) is required to file a return:

80 (Aa) on or after the phase I activation date; and

81 (Bb) with respect to a phase I obligation; and

82 (II) files the return after the due date described in Subsection (2)(a); or

83 (B) (I) is required to file a return:

84 (Aa) on or after the phase II activation date; and

85 (Bb) with respect to a phase II obligation; and

86 (II) files the return after the due date described in Subsection (2)(a).

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

88 of:

89 (A) \$20; or

90 (B) (I) 2% of the unpaid phase I obligation or phase II obligation due on the return if  
91 the return is filed no later than five days after the due date described in Subsection (2)(a);

92 (II) 5% of the unpaid phase I obligation or phase II obligation due on the return if the  
93 return is filed more than five days after the due date but no later than 15 days after the due date  
94 described in Subsection (2)(a); or

95 (III) 10% of the unpaid phase I obligation or phase II obligation due on the return if the  
96 return is filed more than 15 days after the due date described in Subsection (2)(a).

97 ~~[(b)]~~ (d) This Subsection ~~[(1)]~~ (2) does not apply to an amended [returns] return.

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

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

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

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

106 ~~[(d) failure to pay any tax within 30 days after the date the commission's order~~  
107 ~~constituting final agency action resulting from a timely filed petition for redetermination or~~  
108 ~~request for agency action is issued or is considered to have been denied under Subsection~~  
109 ~~63-46b-13(3)(b); and]~~

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

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

114 (b) (i) A penalty in the amount described in Subsection (3)(b)(ii) is imposed if:

115 (A) a person files a return with respect to a nonqualifying obligation on or before the  
116 due date for filing a return described in Subsection (2)(a), but fails to pay the nonqualifying  
117 obligation due on the return on or before that due date;

118 (B) a person:

119 (I) is subject to a penalty under Subsection (2)(b); and  
120 (II) fails to pay a nonqualifying obligation due on a return within a 90-day period after  
121 the due date for filing a return described in Subsection (2)(a);  
122 (C) a person:  
123 (I) is mailed a notice of deficiency; and  
124 (II) within a 30-day period after the day on which the notice of deficiency described in  
125 Subsection (3)(b)(i)(C)(I) is mailed:  
126 (Aa) does not file a petition for redetermination or a request for agency action; and  
127 (Bb) fails to pay a nonqualifying obligation due on a return;  
128 (D) (I) the commission:  
129 (Aa) issues an order constituting final agency action resulting from a timely filed  
130 petition for redetermination or a timely filed request for agency action; or  
131 (Bb) is considered to have denied a request for reconsideration under Subsection  
132 63-46b-13(3)(b) resulting from a timely filed petition for redetermination or a timely filed  
133 request for agency action; and  
134 (II) a person fails to pay a nonqualifying obligation due on a return within a 30-day  
135 period after the date the commission:  
136 (Aa) issues the order constituting final agency action described in Subsection  
137 (3)(b)(i)(D)(I)(Aa); or  
138 (Bb) is considered to have denied the request for reconsideration described in  
139 Subsection (3)(b)(i)(D)(I)(Bb); or  
140 (E) a person fails to pay a nonqualifying obligation within a 30-day period after the  
141 date of a final judicial decision resulting from a timely filed petition for judicial review.  
142 (ii) For purposes of Subsection (3)(b)(i), the penalty is an amount equal to the greater  
143 of:  
144 (A) \$20; or  
145 (B) 10% of the unpaid nonqualifying obligation due on the return.  
146 (c) (i) This Subsection (3)(c) applies to a penalty:  
147 (A) imposed on or after the phase I activation date with respect to a phase I obligation;  
148 or  
149 (B) imposed on or after the phase II activation date with respect to a phase II

150 obligation.

151 (ii) (A) The penalty described in Subsection (3)(c)(ii)(B) applies if a person:

152 (I) with respect to a phase I obligation:

153 (Aa) files a return on or before the due date for filing a return described in Subsection

154 (2)(a); and

155 (Bb) fails to pay the phase I obligation due on the return on or before the due date

156 described in Subsection (2)(a); or

157 (II) with respect to a phase II obligation:

158 (Aa) files a return on or before the due date for filing a return described in Subsection

159 (2)(a); and

160 (Bb) fails to pay the phase II obligation due on the return on or before the due date

161 described in Subsection (2)(a).

162 (B) For purposes of Subsection (3)(c)(ii)(A), the penalty is an amount equal to the

163 greater of:

164 (I) \$20; or

165 (II) (Aa) 2% of the unpaid phase I obligation or phase II obligation due on the return if

166 the phase I obligation or phase II obligation due on the return is paid no later than five days

167 after the due date for filing a return described in Subsection (2)(a);

168 (Bb) 5% of the unpaid phase I obligation or phase II obligation due on the return if the

169 phase I obligation or phase II obligation due on the return is paid more than five days after the

170 due date for filing a return described in Subsection (2)(a) but no later than 15 days after that

171 due date; or

172 (Cc) 10% of the unpaid phase I obligation or phase II obligation due on the return if the

173 phase I obligation or phase II obligation due on the return is paid more than 15 days after the

174 due date for filing a return described in Subsection (2)(a).

175 (iii) (A) A person is subject to a penalty as provided in Subsection (3)(c)(iii)(B) if the

176 person:

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

178 (II) fails to pay a phase I obligation or phase II obligation due on a return within a

179 90-day period after the due date for filing a return described in Subsection (2)(a).

180 (B) For purposes of Subsection (3)(c)(iii)(A), the penalty is an amount equal to the

181 greater of:

182 (I) \$20; or

183 (II) (Aa) 2% of the unpaid phase I obligation or phase II obligation due on the return if  
184 the phase I obligation or phase II obligation due on the return is paid no later than five days  
185 after the last day of the 90-day period described in Subsection (3)(c)(iii)(A)(II);

186 (Bb) 5% of the unpaid phase I obligation or phase II obligation due on the return if the  
187 phase I obligation or phase II obligation due on the return is paid more than five days after the  
188 last day of the 90-day period described in Subsection (3)(c)(iii)(A)(II) but no later than 15 days  
189 after the last day of the 90-day period described in Subsection (3)(c)(iii)(A)(II); or

190 (Cc) 10% of the unpaid phase I obligation or phase II obligation due on the return if the  
191 phase I obligation or phase II obligation due on the return is paid more than 15 days after the  
192 last day of the 90-day period described in Subsection (3)(c)(iii)(A)(II).

193 (iv) (A) A person is subject to a penalty as provided in Subsection (3)(c)(iv)(B) if the  
194 person:

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

196 (II) within a 30-day period after the day on which the notice of deficiency described in  
197 Subsection (3)(c)(iv)(A)(I) is mailed:

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

199 (Bb) fails to pay a phase I obligation or phase II obligation due on a return.

200 (B) For purposes of Subsection (3)(c)(iv)(A), the penalty is an amount equal to the

201 greater of:

202 (I) \$20; or

203 (II) (Aa) 2% of the unpaid phase I obligation or phase II obligation due on the return if  
204 the phase I obligation or phase II obligation due on the return is paid no later than five days  
205 after the last day of the 30-day period described in Subsection (3)(c)(iv)(A)(II);

206 (Bb) 5% of the unpaid phase I obligation or phase II obligation due on the return if the  
207 phase I obligation or phase II obligation due on the return is paid more than five days after the  
208 last day of the 30-day period described in Subsection (3)(c)(iv)(A)(II) but no later than 15 days  
209 after the last day of the 30-day period described in Subsection (3)(c)(iv)(A)(II); or

210 (Cc) 10% of the unpaid phase I obligation or phase II obligation due on the return if the  
211 phase I obligation or phase II obligation due on the return is paid more than 15 days after the

212 last day of the 30-day period described in Subsection (3)(c)(iv)(A)(II).  
213 (v) (A) A person is subject to a penalty as provided in Subsection (3)(c)(v)(B) if:  
214 (I) the commission:  
215 (Aa) issues an order constituting final agency action resulting from a timely filed  
216 petition for redetermination or a timely filed request for agency action; or  
217 (Bb) is considered to have denied a request for reconsideration under Subsection  
218 63-46b-13(3)(b) resulting from a timely filed petition for redetermination or a timely filed  
219 request for agency action; and  
220 (II) the person fails to pay a phase I obligation or phase II obligation due on a return  
221 within a 30-day period after the date the commission:  
222 (Aa) issues the order constituting final agency action described in Subsection  
223 (3)(c)(v)(A)(I)(Aa); or  
224 (Bb) is considered to have denied the request for reconsideration described in  
225 Subsection (3)(c)(v)(A)(I)(Bb).  
226 (B) For purposes of Subsection (3)(c)(v)(A), the penalty is an amount equal to the  
227 greater of:  
228 (I) \$20; or  
229 (II) (Aa) 2% of the unpaid phase I obligation or phase II obligation due on the return if  
230 the phase I obligation or phase II obligation due on the return is paid no later than five days  
231 after the last day of the 30-day period described in Subsection (3)(c)(v)(A)(II);  
232 (Bb) 5% of the unpaid phase I obligation or phase II obligation due on the return if the  
233 phase I obligation or phase II obligation due on the return is paid more than five days after the  
234 last day of the 30-day period described in Subsection (3)(c)(v)(A)(II) but no later than 15 days  
235 after the last day of the 30-day period described in Subsection (3)(c)(v)(A)(II); or  
236 (Cc) 10% of the unpaid phase I obligation or phase II obligation due on the return if the  
237 phase I obligation or phase II obligation due on the return is paid more than 15 days after the  
238 last day of the 30-day period described in Subsection (3)(c)(v)(A)(II).  
239 (vi) (A) A person is subject to a penalty as provided in Subsection (3)(c)(vi)(B) if  
240 within a 30-day period after the date of a final judicial decision resulting from a timely filed  
241 petition for judicial review, the person fails to pay a phase I obligation or phase II obligation.  
242 (B) For purposes of Subsection (3)(c)(vi)(A), the penalty is an amount equal to the



243 greater of:

244 (I) \$20; or

245 (II) (Aa) 2% of the unpaid phase I obligation or phase II obligation due on the return if  
246 the phase I obligation or phase II obligation due on the return is paid no later than five days  
247 after the last day of the 30-day period described in Subsection (3)(c)(vi)(A);

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

252 (Cc) 10% of the unpaid phase I obligation or phase II obligation due on the return if the  
253 phase I obligation or phase II obligation due on the return is paid more than 15 days after the  
254 last day of the 30-day period described in Subsection (3)(c)(vi)(A).

255 ~~[(3)]~~ (4) (a) Beginning January 1, 1995, in the case of any underpayment of estimated  
256 tax or quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104,  
257 there shall be added a penalty in an amount determined by applying the interest rate provided  
258 under Section 59-1-402 plus four percentage points to the amount of the underpayment for the  
259 period of the underpayment.

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

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

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

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

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

271 ~~[(4) (a) In case of an extension of time to file an individual income tax or corporate~~  
272 ~~franchise tax return, if the lesser of 90% of the total tax reported on the tax return or 100% of~~  
273 ~~the prior year's tax is not paid by the due date of the return, not including extensions, a 2% per~~

274 ~~month penalty shall apply on the unpaid tax during the period of extension.]~~

275 ~~[(b) If a return is not filed within the extension time period as provided in Section~~  
276 ~~59-7-505 or 59-10-516, penalties as provided in Subsection (1) and Subsection (2)(b) shall be~~  
277 ~~added in lieu of the penalty assessed under this Subsection (4) as if no extension of time for~~  
278 ~~filing a return had been granted.]~~

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

285 (i) 90% of the total tax reported on the return for the current taxable year; or  
286 (ii) 100% of the total tax liability for the taxable year immediately preceding the  
287 current taxable year.

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

291 (6) (a) If a person does not file a return within an extension of time allowed by Section  
292 59-7-505 or 59-10-516:

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

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

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

297 (i) for a penalty imposed with respect to a nonqualifying obligation, the sum of the  
298 penalties prescribed in:

299 (A) Subsection (2)(b)(ii) for filing a return after the due date as described in Subsection  
300 (2)(b)(i); and

301 (B) Subsection (3)(b)(ii) for the failure to pay described in Subsection (3)(b)(i)(B);

302 (ii) for a penalty imposed on or after the phase I activation date, with respect to a return  
303 filed under Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information,  
304 Part 2, Trusts and Estates, or Part 12, Single Rate Individual Income Tax Act, the sum of the

305 penalties prescribed in:

306 (A) Subsection (2)(c)(ii) for filing a return after the due date as described in Subsection  
307 (2)(c)(i); and

308 (B) Subsection (3)(c)(iii)(B) for the failure to pay described in Subsection  
309 (3)(c)(iii)(A); or

310 (iii) for a penalty imposed on or after the phase II activation date, with respect to a  
311 corporate franchise or income tax return filed under Chapter 7, Corporate Franchise and  
312 Income Taxes, the sum of the penalties prescribed in:

313 (A) Subsection (2)(c)(ii) for filing a return after the due date as described in Subsection  
314 (2)(c)(i); and

315 (B) Subsection (3)(c)(iii)(B) for the failure to pay described in Subsection  
316 (3)(c)(iii)(A).

317 [~~(5)~~] (7) (a) Additional penalties for underpayments of tax are as provided in  
318 [Subsections (5)(a)(i) through (iv)] this Subsection (7)(a).

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

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

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

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

327 (b) If the commission determines that a person is liable for a penalty imposed under  
328 Subsection [~~(5)~~] (7)(a)(ii), (iii), or (iv), the commission shall notify the taxpayer of the  
329 proposed penalty.

330 (i) The notice of proposed penalty shall:

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

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

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

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

336 or

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

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

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

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

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

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

351 (A) the seller meets one or more of the criteria described in Subsection  
352 59-12-107(1)(a); and

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

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

356 (A) the seller meets one or more of the criteria described in Subsection  
357 59-12-107(1)(a); and

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

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

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

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

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

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

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

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

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

377 [~~(6)~~] (8) Except as provided in Section 59-12-105, the penalty for failure to file an  
378 information return, information report, or a complete supporting schedule is \$50 for each  
379 information return, information report, or supporting schedule up to a maximum of \$1,000.

380 [~~(7)~~] (9) If any taxpayer, in furtherance of a frivolous position, has a prima facie intent  
381 to delay or impede administration of the tax law and files a purported return that fails to  
382 contain information from which the correctness of reported tax liability can be determined or  
383 that clearly indicates that the tax liability shown must be substantially incorrect, the penalty is  
384 \$500.

385 [~~(8)~~] (10) (a) A seller that fails to remit a tax, fee, or charge monthly as required by  
386 Subsection 59-12-108(1)(a)(i):

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

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

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

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

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

395 [~~(9)~~] (11) (a) A person is subject to the penalty provided in Subsection [~~(9)~~] (11)(c) if  
396 that person:

397 (i) commits an act described in Subsection [~~(9)~~] (11)(b) with respect to one or more of

398 the following documents:

399 (A) a return;

400 (B) an affidavit;

401 (C) a claim; or

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

403 (ii) knows or has reason to believe that the document described in Subsection [~~(9)~~]

404 (11)(a)(i) will be used in connection with any material matter administered by the commission;

405 and

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

410 (b) The following acts apply to Subsection [~~(9)~~] (11)(a)(i):

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

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

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

414 (iv) advising in the preparation or presentation of any portion of a document described  
415 in Subsection [~~(9)~~] (11)(a)(i);

416 (v) aiding in the preparation or presentation of any portion of a document described in  
417 Subsection [~~(9)~~] (11)(a)(i);

418 (vi) assisting in the preparation or presentation of any portion of a document described  
419 in Subsection [~~(9)~~] (11)(a)(i); or

420 (vii) counseling in the preparation or presentation of any portion of a document  
421 described in Subsection [~~(9)~~] (11)(a)(i).

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

423 (i) shall be imposed by the commission;

424 (ii) is \$500 for each document described in Subsection [~~(9)~~] (11)(a)(i) with respect to  
425 which the person described in Subsection [~~(9)~~] (11)(a) meets the requirements of Subsection  
426 [~~(9)~~] (11)(a); and

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

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

429 conduct that is subject to a penalty under this Subsection [~~(9)~~] (11).

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

433 [~~(10)~~] (12) (a) As provided in Section 76-8-1101, criminal offenses and penalties are as  
434 provided in Subsections [~~(10)~~] (12)(b) through (e).

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

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

- 441 (A) be less than \$500; or
- 442 (B) exceed \$1,000.

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

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

- 450 (A) be less than \$1,000; or
- 451 (B) exceed \$5,000.

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

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

- 457 (A) be less than \$1,500; or
- 458 (B) exceed \$25,000.

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

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

462 (I) a return;

463 (II) an affidavit;

464 (III) a claim; or

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

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

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

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

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

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

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

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

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

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

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

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

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

484 (A) regardless of whether the person for which the document described in Subsection  
485 [~~(10)~~] (12)(e)(i)(A) is prepared or presented:

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

487 (II) consented to the falsity of the document described in Subsection [~~(10)~~]

488 (12)(e)(i)(A); and

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

490 (iv) Notwithstanding Section 76-3-301, for purposes of this Subsection [~~(10)~~] (12)(e),



491 the penalty may not:

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

493 (B) exceed \$25,000.

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

496 (vi) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,  
497 the commission may make rules prescribing the documents that are similar to Subsections  
498 [~~(10)~~] (12)(e)(i)(A)(I) through (III).

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

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

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

503 [~~(11)~~] (13) Upon making a record of its actions, and upon reasonable cause shown, the  
504 commission may waive, reduce, or compromise any of the penalties or interest imposed under  
505 this part.

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

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

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

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**S.B. 74 1st Sub. (Green) - Penalties Relating to Taxes, Fees, or Charges**

**Fiscal Note**

2007 General Session

State of Utah

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**State Impact**

Enactment of this bill could reduce revenue received from penalties assessed on taxes by approximately \$2.2 million. However, based on the timing provisions of the bill, the revenue impact will not occur until FY 2010.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Some individuals and business could see a reduction in penalties assessed beginning in FY 2010.

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