

1 **AMENDMENTS TO STATE TAX COMMISSION**

2 **PENALTY PROVISIONS**

3 2009 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Howard A. Stephenson**

6 House Sponsor: Wayne A. Harper

7
8 **LONG TITLE**

9 **General Description:**

10 This bill amends the Penalties, Interest, and Confidentiality of Information part relating
11 to penalties imposed by the State Tax Commission.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ addresses penalties relating to a tax, fee, or charge:
 - 16 • before the activation of the State Tax Commission's GenTax system; and
 - 17 • after the activation of the State Tax Commission's GenTax system;
- 18 ▶ addresses the due date for filing a return if the person filing the return is allowed an
19 extension of time for filing the return;
 - 20 ▶ reduces a penalty from 2% to .5% for failure to pay certain income taxes with
21 respect to which an extension of time is allowed for filing a return;
 - 22 ▶ addresses the taxes, fees, or charges to which certain penalties apply; and
 - 23 ▶ makes technical changes.

24 **Monies Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 This bill provides an immediate effective date.



28 This bill has retrospective operation to January 1, 2009.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **59-1-401**, as last amended by Laws of Utah 2008, Chapter 382

32 **76-8-1101**, as last amended by Laws of Utah 2008, Chapter 382



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

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

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

39 (1) As used in this section:

40 [~~(a) (i) "Nonqualifying obligation" means a charge, fee, payment, or tax administered~~
41 ~~by 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 payment under Chapter 6, Mineral Production Tax Withholding;]~~
62 ~~[(B) a tax under Chapter 7, Corporate Franchise and Income Taxes;]~~
63 ~~[(C) a payment under Chapter 10, Part 4, Withholding of Tax; or]~~
64 ~~[(D) a tax paid on a return filed in accordance with Section 59-10-507.]~~
65 ~~[(ii) "Phase II obligation" does not include a payment of estimated tax under Section~~
66 ~~59-7-504.]~~
67 (a) "Activated tax, fee, or charge" means a tax, fee, or charge with respect to which the
68 commission:
69 (i) has implemented the commission's GenTax system; and
70 (ii) at least 30 days before implementing the commission's GenTax system as described
71 in Subsection (1)(a)(i), has provided notice in a conspicuous place on the commission's website
72 stating:
73 (A) the date the commission will implement the GenTax system with respect to the tax,
74 fee, or charge; and
75 (B) that, at the time the commission implements the GenTax system with respect to the
76 tax, fee, or charge:
77 (I) a person that files a return after the due date as described in Subsection (2)(b) is
78 subject to the penalty described in Subsection (2)(c)(ii); and
79 (II) a person that fails to pay the tax, fee, or charge as described in Subsection (3)(a) is
80 subject to the penalty described in Subsection (3)(b)(ii).
81 (b) "Activation date for a tax, fee, or charge" means with respect to a tax, fee, or
82 charge, the later of:
83 (i) the date on which the commission implements the commission's GenTax system
84 with respect to the tax, fee, or charge; or
85 (ii) 30 days after the date the commission provides the notice described in Subsection
86 (1)(a)(ii) with respect to the tax, fee, or charge.
87 (c) "Tax, fee, or charge" means:
88 (i) a tax, fee, or charge the commission administers under:
89 (A) this title;

- 90 (B) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 91 (C) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 92 (D) Section 19-6-410.5;
- 93 (E) Section 19-6-805;
- 94 (F) Section 40-6-14;
- 95 (G) Section 69-2-5;
- 96 (H) Section 69-2-5.5; or
- 97 (I) Section 69-2-5.6; or
- 98 (ii) another amount that by statute is subject to a penalty imposed under this section.
- 99 (d) "Unactivated tax, fee, or charge" means a tax, fee, or charge except for an activated

100 tax, fee, or charge.

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

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

104 (ii) if the person filing the return is allowed by law an extension of time for filing the
105 return, the earlier of:

106 (A) the date the person files the return; or

107 (B) the last day of that extension of time as allowed by law.

108 (b) ~~[(†)]~~ A penalty in the amount described in Subsection (2)~~[(b)(†)]~~[(c)] is imposed if~~[:~~

109 ~~(A) a person is required to file a return with respect to a nonqualifying obligation; and (B) the]~~

110 a person [described in Subsection (2)(b)(i)(A)] files [the] a return after the due date described
111 in Subsection (2)(a).

112 ~~[(†)]~~ (c) For purposes of Subsection (2)(b)~~[(†)]~~, the penalty is an amount equal to the
113 greater of:

114 (i) if the return described in Subsection (2)(b) is filed with respect to an unactivated
115 tax, fee, or charge:

116 (A) \$20; or

117 (B) 10% of the unpaid ~~[nonqualifying obligation]~~ unactivated tax, fee, or charge due on
118 the return[-]; or

119 ~~[(c) (i) A penalty in the amount described in Subsection (2)(c)(ii) is imposed if a~~
120 ~~person:]~~

121 ~~[(A) (I) is required to file a return:]~~
 122 ~~[(Aa) on or after the phase I activation date; and]~~
 123 ~~[(Bb) with respect to a phase I obligation; and]~~
 124 ~~[(H) files the return after the due date described in Subsection (2)(a); or]~~
 125 ~~[(B) (I) is required to file a return:]~~
 126 ~~[(Aa) on or after the phase II activation date; and]~~
 127 ~~[(Bb) with respect to a phase II obligation; and]~~
 128 ~~[(H) files the return after the due date described in Subsection (2)(a).]~~
 129 ~~[(ii) For purposes of Subsection (2)(c)(i), the penalty is an amount equal to the greater~~
 130 ~~of:]~~
 131 (ii) if the return described in Subsection (2)(b) is filed with respect to an activated tax,
 132 fee, or charge, beginning on the activation date for the tax, fee, or charge:
 133 (A) \$20; or
 134 (B) (I) 2% of the unpaid [~~phase I obligation or phase II obligation~~] activated tax, fee, or
 135 charge due on the return if the return is filed no later than five days after the due date described
 136 in Subsection (2)(a);
 137 (II) 5% of the unpaid [~~phase I obligation or phase II obligation~~] activated tax, fee, or
 138 charge due on the return if the return is filed more than five days after the due date but no later
 139 than 15 days after the due date described in Subsection (2)(a); or
 140 (III) 10% of the unpaid [~~phase I obligation or phase II obligation~~] activated tax, fee, or
 141 charge due on the return if the return is filed more than 15 days after the due date described in
 142 Subsection (2)(a).
 143 (d) This Subsection (2) does not apply to:
 144 (i) an amended return; or
 145 (ii) a return with no tax due.
 146 (3) (a) [~~If a~~] A person [~~fails to pay a tax, fee, or charge due, the person~~] is subject to a
 147 penalty [~~as provided in this Subsection (3).]~~ for failure to pay a tax, fee, or charge if:
 148 [~~(b) (i) A penalty in the amount described in Subsection (3)(b)(ii) is imposed if:~~
 149 [~~(A) a~~] (i) the person files a return [~~with respect to a nonqualifying obligation~~] on or
 150 before the due date for filing a return described in Subsection (2)(a), but fails to pay the
 151 [~~nonqualifying obligation~~] tax, fee, or charge due on the return on or before that due date;

152 ~~[(B)-a]~~ (ii) the person:
153 ~~[(F)]~~ (A) is subject to a penalty under Subsection (2)(b); and
154 ~~[(H)]~~ (B) fails to pay ~~[a nonqualifying obligation]~~ the tax, fee, or charge due on a return
155 within a 90-day period after the due date for filing a return described in Subsection (2)(a);
156 ~~[(C)-a]~~ (iii) the person:
157 ~~[(F)]~~ (A) is mailed a notice of deficiency; and
158 ~~[(H)]~~ (B) within a 30-day period after the day on which the notice of deficiency
159 described in Subsection ~~[(3)(b)(i)(C)(F)]~~ (3)(a)(iii)(A) is mailed:
160 ~~[(Aa)]~~ (I) does not file a petition for redetermination or a request for agency action; and
161 ~~[(Bb)]~~ (II) fails to pay ~~[a nonqualifying obligation]~~ the tax, fee, or charge due on a
162 return;
163 ~~[(D)-(F)]~~ (iv) (A) the commission:
164 ~~[(Aa)]~~ (I) issues an order constituting final agency action resulting from a timely filed
165 petition for redetermination or a timely filed request for agency action; or
166 ~~[(Bb)]~~ (II) is considered to have denied a request for reconsideration under Subsection
167 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed
168 request for agency action; and
169 ~~[(H)-a]~~ (B) the person fails to pay ~~[a nonqualifying obligation]~~ the tax, fee, or charge
170 due on a return within a 30-day period after the date the commission:
171 ~~[(Aa)]~~ (I) issues the order constituting final agency action described in Subsection
172 ~~[(3)(b)(i)(D)(F)(Aa)]~~ (3)(a)(iv)(A)(I); or
173 ~~[(Bb)]~~ (II) is considered to have denied the request for reconsideration described in
174 Subsection ~~[(3)(b)(i)(D)(F)(Bb)]~~ (3)(a)(iv)(A)(II); or
175 ~~[(E)-a]~~ (v) the person fails to pay ~~[a nonqualifying obligation]~~ the tax, fee, or charge
176 within a 30-day period after the date of a final judicial decision resulting from a timely filed
177 petition for judicial review.
178 ~~[(ii)]~~ (b) For purposes of Subsection ~~[(3)(b)(i)]~~ (3)(a), the penalty is an amount equal to
179 the greater of:
180 (i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with
181 respect to an unactivated tax, fee, or charge:
182 (A) \$20; or

183 (B) 10% of the unpaid [~~nonqualifying obligation~~] unactivated tax, fee, or charge due on
 184 the return[-]; or

185 [~~(c) (i) This Subsection (3)(c) applies to a penalty:~~]

186 [~~(A) imposed on or after the phase I activation date with respect to a phase I obligation;~~
 187 ~~or~~]

188 [~~(B) imposed on or after the phase II activation date with respect to a phase II~~
 189 ~~obligation.~~]

190 [~~(ii) (A) The penalty described in Subsection (3)(c)(ii)(B) applies if a person:~~]

191 [~~(f) with respect to a phase I obligation:~~]

192 [~~(Aa) files a return on or before the due date for filing a return described in Subsection~~
 193 ~~(2)(a); and~~]

194 [~~(Bb) fails to pay the phase I obligation due on the return on or before the due date~~
 195 ~~described in Subsection (2)(a); or~~]

196 [~~(H) with respect to a phase II obligation:~~]

197 [~~(Aa) files a return on or before the due date for filing a return described in Subsection~~
 198 ~~(2)(a); and~~]

199 [~~(Bb) fails to pay the phase II obligation due on the return on or before the due date~~
 200 ~~described in Subsection (2)(a).~~]

201 [~~(B) For purposes of Subsection (3)(c)(ii)(A), the penalty is an amount equal to the~~
 202 ~~greater of:~~]

203 (ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with
 204 respect to an activated tax, fee, or charge, beginning on the activation date:

205 [~~(f)] (A) \$20; or~~

206 [~~(H) (Aa)] (B) (I) 2% of the unpaid [~~phase I obligation or phase II obligation~~] activated
 207 tax, fee, or charge due on the return if the [~~phase I obligation or phase II obligation~~] activated
 208 tax, fee, or charge due on the return is paid no later than five days after the due date for filing a
 209 return described in Subsection (2)(a);~~

210 [~~(Bb)] (II) 5% of the unpaid [~~phase I obligation or phase II obligation~~] activated tax,
 211 fee, or charge due on the return if the [~~phase I obligation or phase II obligation~~] activated tax,
 212 fee, or charge due on the return is paid more than five days after the due date for filing a return
 213 described in Subsection (2)(a) but no later than 15 days after that due date; or~~

214 ~~[(Ce)] (III) 10% of the unpaid [phase I obligation or phase II obligation] activated tax,~~
215 ~~fee, or charge due on the return if the [phase I obligation or phase II obligation] activated tax,~~
216 ~~fee, or charge due on the return is paid more than 15 days after the due date for filing a return~~
217 ~~described in Subsection (2)(a).~~

218 ~~[(iii) (A) A person is subject to a penalty as provided in Subsection (3)(c)(iii)(B) if the~~
219 ~~person:]~~

220 ~~[(I) is subject to a penalty under Subsection (2)(c); and]~~

221 ~~[(II) fails to pay a phase I obligation or phase II obligation due on a return within a~~
222 ~~90-day period after the due date for filing a return described in Subsection (2)(a).]~~

223 ~~[(B) For purposes of Subsection (3)(c)(iii)(A), the penalty is an amount equal to the~~
224 ~~greater of:]~~

225 ~~[(I) \$20; or]~~

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

229 ~~[(Bb) 5% of the unpaid phase I obligation or phase II obligation due on the return if the~~
230 ~~phase I obligation or phase II obligation due on the return is paid more than five days after the~~
231 ~~last day of the 90-day period described in Subsection (3)(c)(iii)(A)(II) but no later than 15 days~~
232 ~~after the last day of the 90-day period described in Subsection (3)(c)(iii)(A)(II); or]~~

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

236 ~~[(iv) (A) A person is subject to a penalty as provided in Subsection (3)(c)(iv)(B) if the~~
237 ~~person:]~~

238 ~~[(I) is mailed a notice of deficiency; and]~~

239 ~~[(II) within a 30-day period after the day on which the notice of deficiency described in~~
240 ~~Subsection (3)(c)(iv)(A)(I) is mailed:]~~

241 ~~[(Aa) does not file a petition for redetermination or a request for agency action; and]~~

242 ~~[(Bb) fails to pay a phase I obligation or phase II obligation due on a return.]~~

243 ~~[(B) For purposes of Subsection (3)(c)(iv)(A), the penalty is an amount equal to the~~
244 ~~greater of:]~~

245 ~~[(F) \$20; or]~~

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

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

253 ~~[(Cc) 10% of the unpaid phase I obligation or phase II obligation due on the return if~~
 254 ~~the phase I obligation or phase II obligation due on the return is paid more than 15 days after~~
 255 ~~the last day of the 30-day period described in Subsection (3)(c)(iv)(A)(H);]~~

256 ~~[(v) (A) A person is subject to a penalty as provided in Subsection (3)(c)(v)(B) if:]~~

257 ~~[(F) the commission:]~~

258 ~~[(Aa) issues an order constituting final agency action resulting from a timely filed~~
 259 ~~petition for redetermination or a timely filed request for agency action; or]~~

260 ~~[(Bb) is considered to have denied a request for reconsideration under Subsection~~
 261 ~~63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed~~
 262 ~~request for agency action; and]~~

263 ~~[(H) the person fails to pay a phase I obligation or phase II obligation due on a return~~
 264 ~~within a 30-day period after the date the commission:]~~

265 ~~[(Aa) issues the order constituting final agency action described in Subsection~~
 266 ~~(3)(c)(v)(A)(F)(Aa); or]~~

267 ~~[(Bb) is considered to have denied the request for reconsideration described in~~
 268 ~~Subsection (3)(c)(v)(A)(F)(Bb).]~~

269 ~~[(B) For purposes of Subsection (3)(c)(v)(A), the penalty is an amount equal to the~~
 270 ~~greater of:]~~

271 ~~[(F) \$20; or]~~

272 ~~[(H) (Aa) 2% of the unpaid phase I obligation or phase II obligation due on the return if~~
 273 ~~the phase I obligation or phase II obligation due on the return is paid no later than five days~~
 274 ~~after the last day of the 30-day period described in Subsection (3)(c)(v)(A)(H);]~~

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

276 phase I obligation or phase II obligation due on the return is paid more than five days after the
277 last day of the 30-day period described in Subsection (3)(c)(v)(A)(H) but no later than 15 days
278 after the last day of the 30-day period described in Subsection (3)(c)(v)(A)(H); or]

279 [~~(Cc) 10% of the unpaid phase I obligation or phase II obligation due on the return if~~
280 ~~the phase I obligation or phase II obligation due on the return is paid more than 15 days after~~
281 ~~the last day of the 30-day period described in Subsection (3)(c)(v)(A)(H).]~~

282 [~~(vi) (A) A person is subject to a penalty as provided in Subsection (3)(c)(vi)(B) if~~
283 ~~within a 30-day period after the date of a final judicial decision resulting from a timely filed~~
284 ~~petition for judicial review, the person fails to pay a phase I obligation or phase II obligation.]~~

285 [~~(B) For purposes of Subsection (3)(c)(vi)(A), the penalty is an amount equal to the~~
286 ~~greater of:]~~

287 [~~(F) \$20; or]~~

288 [~~(H) (Aa) 2% of the unpaid phase I obligation or phase II obligation due on the return if~~
289 ~~the phase I obligation or phase II obligation due on the return is paid no later than five days~~
290 ~~after the last day of the 30-day period described in Subsection (3)(c)(vi)(A).]~~

291 [~~(Bb) 5% of the unpaid phase I obligation or phase II obligation due on the return if the~~
292 ~~phase I obligation or phase II obligation due on the return is paid more than five days after the~~
293 ~~last day of the 30-day period described in Subsection (3)(c)(vi)(A) but no later than 15 days~~
294 ~~after the last day of the 30-day period described in Subsection (3)(c)(vi)(A); or]~~

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

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

303 (b) (i) For purposes of Subsection (4)(a), the amount of the underpayment shall be the
304 excess of the required installment over the amount, if any, of the installment paid on or before
305 the due date for the installment.

306 (ii) The period of the underpayment shall run from the due date for the installment to

307 whichever of the following dates is the earlier:

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

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

311 (iii) For purposes of this Subsection (4), a payment of estimated tax shall be credited
312 against unpaid required installments in the order in which the installments are required to be
313 paid.

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

320 (i) for a person filing a corporate franchise or income tax return under Chapter 7,
321 Corporate Franchise and Income Taxes, the payment required by Subsection 59-7-507(1)(b); or

322 (ii) for a person filing an individual income tax return under Chapter 10, Individual
323 Income Tax Act, the payment required by Subsection 59-10-516(2).

324 (b) For purposes of Subsection (5)(a), the penalty per month during the period of the
325 extension of time for filing the return is:

326 (i) beginning on or after April 30, 2007, and ending on the last day of the taxable year
327 beginning on or after January 1, 2008, but beginning on or before December 31, 2008, an
328 amount equal to 2% of the unpaid tax due on the return[-]; or

329 (ii) for a taxable year beginning on or after January 1, 2009, an amount equal to .5% of
330 the unpaid tax due on the return.

331 (6) If a person does not file a return within an extension of time allowed by Section
332 59-7-505 or 59-10-516, the person:

333 (a) is not subject to a penalty in the amount described in Subsection (5)(b); and

334 (b) is subject to a penalty in an amount equal to the sum of:

335 (i) a late file penalty in an amount equal to the greater of:

336 (A) \$20; or

337 (B) 10% of the unpaid tax due on the return; and

338 (ii) a late pay penalty in an amount equal to the greater of:

339 (A) \$20; or

340 (B) 10% of the unpaid tax due on the return.

341 (7) (a) Additional penalties for [~~underpayments of tax~~] an underpayment of a tax, fee,
342 or charge are as provided in this Subsection (7)(a).

343 (i) Except as provided in Subsection (7)(c), if any underpayment of a tax, fee, or charge
344 is due to negligence, the penalty is 10% of the underpayment.

345 (ii) Except as provided in Subsection (7)(d), if any underpayment of a tax, fee, or
346 charge is due to intentional disregard of law or rule, the penalty is 15% of the underpayment.

347 (iii) For intent to evade [~~the~~] a tax, fee, or charge, the penalty is the greater of \$500 per
348 period or 50% of the tax, fee, or charge due.

349 (iv) If the underpayment is due to fraud with intent to evade [~~the~~] a tax, fee, or charge,
350 the penalty is the greater of \$500 per period or 100% of the underpayment.

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

354 (i) The notice of proposed penalty shall:

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

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

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

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

360 or

361 (B) proceed in accordance with the review procedures of Subsection (7)(b)(iii).

362 (iii) Any person against whom a penalty has been proposed in accordance with this
363 Subsection (7) may contest the proposed penalty by filing a petition for an adjudicative
364 proceeding with the commission.

365 (iv) (A) If the commission determines that a person is liable for a penalty under this
366 Subsection (7), the commission shall assess the penalty and give notice and demand for
367 payment.

368 (B) The notice and demand for payment described in Subsection (7)(b)(iv)(A) shall be

369 mailed by certified mail, postage prepaid, to the person's last-known address.

370 (c) A seller that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not
371 subject to the penalty under Subsection (7)(a)(i) if on or after July 1, 2001:

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

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

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

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

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

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

383 (d) A seller that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not
384 subject to the penalty under Subsection (7)(a)(ii) if:

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

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

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

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

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

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

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

399 (8) Except as provided in Section 59-12-105, the penalty for failure to file an

400 information return, information report, or a complete supporting schedule is \$50 for each
401 information return, information report, or supporting schedule up to a maximum of \$1,000.

402 (9) If any ~~[taxpayer]~~ person, in furtherance of a frivolous position, has a prima facie
403 intent to delay or impede administration of ~~[the tax]~~ a law relating to a tax, fee, or charge and
404 files a purported return that fails to contain information from which the correctness of reported
405 tax, fee, or charge liability can be determined or that clearly indicates that the tax, fee, or
406 charge liability shown ~~[must be]~~ is substantially incorrect, the penalty is \$500.

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

409 (i) is subject to a penalty described in Subsection (2); and

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

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

414 (i) is subject to a penalty described in Subsection (2); and

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

417 (11) (a) A person is subject to the penalty provided in Subsection (11)(c) if that person:

418 (i) commits an act described in Subsection (11)(b) with respect to one or more of the
419 following documents:

420 (A) a return;

421 (B) an affidavit;

422 (C) a claim; or

423 (D) a document similar to Subsections (11)(a)(i)(A) through (C);

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

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

429 (b) The following acts apply to Subsection (11)(a)(i):

430 (i) preparing any portion of a document described in Subsection (11)(a)(i);

- 431 (ii) presenting any portion of a document described in Subsection (11)(a)(i);
- 432 (iii) procuring any portion of a document described in Subsection (11)(a)(i);
- 433 (iv) advising in the preparation or presentation of any portion of a document described
- 434 in Subsection (11)(a)(i);
- 435 (v) aiding in the preparation or presentation of any portion of a document described in
- 436 Subsection (11)(a)(i);
- 437 (vi) assisting in the preparation or presentation of any portion of a document described
- 438 in Subsection (11)(a)(i); or
- 439 (vii) counseling in the preparation or presentation of any portion of a document
- 440 described in Subsection (11)(a)(i).
- 441 (c) For purposes of Subsection (11)(a), the penalty:
- 442 (i) shall be imposed by the commission;
- 443 (ii) is \$500 for each document described in Subsection (11)(a)(i) with respect to which
- 444 the person described in Subsection (11)(a) meets the requirements of Subsection (11)(a); and
- 445 (iii) is in addition to any other penalty provided by law.
- 446 (d) The commission may seek a court order to enjoin a person from engaging in
- 447 conduct that is subject to a penalty under this Subsection (11).
- 448 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 449 commission may make rules prescribing the documents that are similar to Subsections
- 450 (11)(a)(i)(A) through (C).
- 451 (12) (a) As provided in Section 76-8-1101, criminal offenses and penalties are as
- 452 provided in Subsections (12)(b) through (e).
- 453 (b) (i) Any person who is required by this title or any laws the commission administers
- 454 or regulates to register with or obtain a license or permit from the commission, who operates
- 455 without having registered or secured a license or permit, or who operates when the registration,
- 456 license, or permit is expired or not current, is guilty of a class B misdemeanor.
- 457 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(b)(i), the
- 458 penalty may not:
- 459 (A) be less than \$500; or
- 460 (B) exceed \$1,000.
- 461 (c) (i) Any person who, with intent to evade any tax, fee, or charge or requirement of

462 this title or any lawful requirement of the commission, fails to make, render, sign, or verify any
463 return or to supply any information within the time required by law, or who makes, renders,
464 signs, or verifies any false or fraudulent return or statement, or who supplies any false or
465 fraudulent information, is guilty of a third degree felony.

466 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(c)(i), the
467 penalty may not:

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

469 (B) exceed \$5,000.

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

473 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(d)(i), the
474 penalty may not:

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

476 (B) exceed \$25,000.

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

478 (A) described in Subsection (12)(e)(ii) with respect to one or more of the following
479 documents:

480 (I) a return;

481 (II) an affidavit;

482 (III) a claim; or

483 (IV) a document similar to Subsections (12)(e)(i)(A)(I) through (III); and

484 (B) subject to Subsection (12)(e)(iii), with knowledge that the document described in
485 Subsection (12)(e)(i)(A):

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

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

489 (ii) The following acts apply to Subsection (12)(e)(i):

490 (A) preparing any portion of a document described in Subsection (12)(e)(i)(A);

491 (B) presenting any portion of a document described in Subsection (12)(e)(i)(A);

492 (C) procuring any portion of a document described in Subsection (12)(e)(i)(A);

493 (D) advising in the preparation or presentation of any portion of a document described
494 in Subsection (12)(e)(i)(A);

495 (E) aiding in the preparation or presentation of any portion of a document described in
496 Subsection (12)(e)(i)(A);

497 (F) assisting in the preparation or presentation of any portion of a document described
498 in Subsection (12)(e)(i)(A); or

499 (G) counseling in the preparation or presentation of any portion of a document
500 described in Subsection (12)(e)(i)(A).

501 (iii) This Subsection (12)(e) applies:

502 (A) regardless of whether the person for which the document described in Subsection
503 (12)(e)(i)(A) is prepared or presented:

504 (I) knew of the falsity of the document described in Subsection (12)(e)(i)(A); or

505 (II) consented to the falsity of the document described in Subsection (12)(e)(i)(A); and

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

507 (iv) Notwithstanding Section 76-3-301, for purposes of this Subsection (12)(e), the
508 penalty may not:

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

510 (B) exceed \$25,000.

511 (v) The commission may seek a court order to enjoin a person from engaging in
512 conduct that is subject to a penalty under this Subsection (12)(e).

513 (vi) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
514 the commission may make rules prescribing the documents that are similar to Subsections
515 (12)(e)(i)(A)(I) through (III).

516 (f) The statute of limitations for prosecution for a violation of this Subsection (12) is
517 the later of six years:

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

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

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

523 Section 2. Section **76-8-1101** is amended to read:

524 **76-8-1101. Criminal offenses and penalties relating to revenue and taxation --**
525 **Rulemaking authority -- Statute of limitations.**

526 (1) (a) As provided in Section 59-1-401, criminal offenses and penalties are as
527 provided in Subsections (1)(b) through (e).

528 (b) (i) Any person who is required by Title 59, Revenue and Taxation, or any laws the
529 State Tax Commission administers or regulates to register with or obtain a license or permit
530 from the State Tax Commission, who operates without having registered or secured a license or
531 permit, or who operates when the registration, license, or permit is expired or not current, is
532 guilty of a class B misdemeanor.

533 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(b)(i), the
534 penalty may not:

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

536 (B) exceed \$1,000.

537 (c) (i) Any person who, with intent to evade any tax, fee, or charge as defined in
538 Section 59-1-401 or requirement of Title 59, Revenue and Taxation, or any lawful requirement
539 of the State Tax Commission, fails to make, render, sign, or verify any return or to supply any
540 information within the time required by law, or who makes, renders, signs, or verifies any false
541 or fraudulent return or statement, or who supplies any false or fraudulent information, is guilty
542 of a third degree felony.

543 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(c)(i), the penalty
544 may not:

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

546 (B) exceed \$5,000.

547 (d) (i) Any person who intentionally or willfully attempts to evade or defeat any tax,
548 fee, or charge as defined in Section 59-1-401 or the payment of a tax, fee, or charge as defined
549 in Section 59-1-401 is, in addition to other penalties provided by law, guilty of a second degree
550 felony.

551 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(d)(i), the penalty
552 may not:

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

554 (B) exceed \$25,000.

555 (e) (i) A person is guilty of a second degree felony if that person commits an act:
556 (A) described in Subsection (1)(e)(ii) with respect to one or more of the following
557 documents:
558 (I) a return;
559 (II) an affidavit;
560 (III) a claim; or
561 (IV) a document similar to Subsections (1)(e)(i)(A)(I) through (III); and
562 (B) subject to Subsection (1)(e)(iii), with knowledge that the document described in
563 Subsection (1)(e)(i)(A):
564 (I) is false or fraudulent as to any material matter; and
565 (II) could be used in connection with any material matter administered by the State Tax
566 Commission.
567 (ii) The following acts apply to Subsection (1)(e)(i):
568 (A) preparing any portion of a document described in Subsection (1)(e)(i)(A);
569 (B) presenting any portion of a document described in Subsection (1)(e)(i)(A);
570 (C) procuring any portion of a document described in Subsection (1)(e)(i)(A);
571 (D) advising in the preparation or presentation of any portion of a document described
572 in Subsection (1)(e)(i)(A);
573 (E) aiding in the preparation or presentation of any portion of a document described in
574 Subsection (1)(e)(i)(A);
575 (F) assisting in the preparation or presentation of any portion of a document described
576 in Subsection (1)(e)(i)(A); or
577 (G) counseling in the preparation or presentation of any portion of a document
578 described in Subsection (1)(e)(i)(A).
579 (iii) This Subsection (1)(e) applies:
580 (A) regardless of whether the person for which the document described in Subsection
581 (1)(e)(i)(A) is prepared or presented:
582 (I) knew of the falsity of the document described in Subsection (1)(e)(i)(A); or
583 (II) consented to the falsity of the document described in Subsection (1)(e)(i)(A); and
584 (B) in addition to any other penalty provided by law.
585 (iv) Notwithstanding Section 76-3-301, for purposes of this Subsection (1)(e), the

586 penalty may not:

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

588 (B) exceed \$25,000.

589 (v) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
590 State Tax Commission may make rules prescribing the documents that are similar to
591 Subsections (1)(e)(i)(A)(I) through (III).

592 (2) The statute of limitations for prosecution for a violation of this section is the later
593 of six years:

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

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

596 Section 3. **Effective date -- Retrospective operation.**

597 This bill:

598 (1) if approved by two-thirds of all the members elected to each house, takes effect
599 upon approval by the governor, or the day following the constitutional time limit of Utah
600 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
601 the date of veto override; and

602 (2) has retrospective operation to January 1, 2009.

Legislative Review Note

as of 2-12-09 11:55 AM

Office of Legislative Research and General Counsel

S.B. 186 - Amendments to State Tax Commission Penalty Provisions

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill could decrease revenue to the Education Fund by \$1,525,000 in FY 2009, \$2,970,000 in FY 2010, and \$3,146,000 in FY 2011.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
Education Fund	\$0	\$0	\$0	(\$3,146,000)	(\$3,146,000)	(\$3,146,000)
Education Fund, One-Time	\$0	\$0	\$0	\$1,621,000	\$176,000	\$0
Total	\$0	\$0	\$0	(\$1,525,000)	(\$2,970,000)	(\$3,146,000)

Individual, Business and/or Local Impact

Individuals and businesses that do not file returns on time could experience a decrease in penalties paid by \$1,525,000 in FY 2009, \$2,970,000 in FY 2010, and \$3,146,000 in FY 2011. Local entities are likely unaffected.