

# S.B. 186

## AMENDMENTS TO STATE TAX COMMISSION PENALTY PROVISIONS

SENATE FLOOR AMENDMENTS

AMENDMENT 1

FEBRUARY 24, 2009 3:11 PM

Senator **Howard A. Stephenson** proposes the following amendments:

1. *Page 2, Line 28:*

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

= **This bill coordinates with S.B. 108, Tax Commission Administration, Collection, and Enforcement Amendments, by providing substantive and technical amendments.**

2. *Page 4, Lines 92 through 97:*

92 (D) Section 19-6-410.5;

**(E) Section 19-6-714;**

93 ~~{(E)}~~ (F) Section 19-6-805;

94 ~~{(F)}~~ (G) Section 40-6-14;

95 ~~{(G)}~~ (H) Section 69-2-5;

96 ~~{(H)}~~ (I) Section 69-2-5.5; or

97 ~~{(I)}~~ (J) Section 69-2-5.6; or

3. *Page 20, Line 602:*

After Line 602 insert:

**Section 4. Coordinating S.B. 186 with S.B. 108 -- Substantive and technical amendments.**

**If this S.B. 186 and S.B. 108, Tax Commission Administration, Collection, and Enforcement Amendments, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel prepare the Utah Code database for publication as follows:**

**(1) modify Subsection 59-1-401(3) as amended in this bill to read:**

" (3) (a) ~~[If a]~~ A person ~~[fails to pay a tax, fee, or charge due, the person]~~ is subject to a penalty ~~[as provided in this Subsection (3).]~~ for failure to pay a tax, fee, or charge if:

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

~~[(A) a] (i) the person files a return ~~[with respect to a nonqualifying obligation]~~ on or before the due date for filing a return described in Subsection (2)(a), but fails to pay the ~~[nonqualifying obligation] tax, fee, or charge~~ due on the return on or before that due date;~~

~~[(B) a] (ii) the person:~~

~~[(F) (A) is subject to a penalty under Subsection (2)(b); and~~

~~[(H) (B) fails to pay ~~[a nonqualifying obligation] the tax, fee, or charge~~ due on a return within a 90-day period after the due date for filing a return described in Subsection (2)(a);~~

**(iii) (A) the person is subject to a penalty under Subsection (2)(b); and**

**(B) the commission estimates an amount of tax due for that person in accordance with Subsection 59-1-1406(2);**

~~[(C)-a]~~ ~~{(iii)}~~ (iv) the person:

~~[(F)]~~ (A) is mailed a notice of deficiency; and

~~[(H)]~~ (B) within a 30-day period after the day on which the notice of deficiency described in Subsection ~~[(3)(b)(i)(C)(F)]~~ (3)(a) ~~{(iii)}~~ (iv) (A) is mailed:

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

~~[(Bb)]~~ (II) fails to pay ~~[a nonqualifying obligation]~~ the tax, fee, or charge due on a return;

~~[(D)-F]~~ ~~{(iv)}~~ (v) (A) the commission:

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

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

~~[(H)-a]~~ (B) the person fails to pay ~~[a nonqualifying obligation]~~ the tax, fee, or charge due on a return within a 30-day period after the date the commission:

~~[(Aa)]~~ (I) issues the order constituting final agency action described in Subsection ~~[(3)(b)(i)(D)(F)(Aa)]~~ (3)(a) ~~{(iv)}~~ (v) (A)(I); or

~~[(Bb)]~~ (II) is considered to have denied the request for reconsideration described in Subsection ~~[(3)(b)(i)(D)(F)(Bb)]~~ (3)(a) ~~{(iv)}~~ (v) (A)(II); or

~~[(E)-a]~~ ~~{(v)}~~ (vi) the person fails to pay ~~[a nonqualifying obligation]~~ the tax, fee, or charge within a 30-day period after the date of a final judicial decision resulting from a timely filed petition for judicial review.

~~[(ii)]~~ (b) For purposes of Subsection ~~[(3)(b)(i)]~~ (3)(a), the penalty is an amount equal to the greater of:

(i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with respect to an unactivated tax, fee, or charge:

(A) \$20; or

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

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

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

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

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

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

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

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

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

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

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

~~[(B) For purposes of Subsection (3)(c)(ii)(A), the penalty is an amount equal to the greater of:]~~  
~~(ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with respect to an activated tax, fee, or charge, beginning on the activation date:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(H)-(Aa) 2% of the unpaid phase I obligation or phase II obligation due on the return if the phase I~~

~~obligation or phase II obligation due on the return is paid no later than five days after the last day of the 30-day period described in Subsection (3)(c)(iv)(A)(II);]~~

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

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

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

~~[(f) the commission:]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(H) (Aa) 2% of the unpaid phase I obligation or phase II obligation due on the return if the phase I obligation or phase II obligation due on the return is paid no later than five days after the last day of the 30-day~~

period described in Subsection (3)(c)(vi)(A);]

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

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

**(2) modify Subsection 59-1-401(5)(b) as amended in this bill to read:**

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

(i) beginning on or after April 30, 2007, and ending on the last day of the taxable year beginning on or after January 1, 2008, but beginning on or before December 31, 2008, an amount equal to 2% of the ~~{unpaid}~~ tax due on the return[-] **, unpaid as of the day on which the return is due as provided by law ; or**

(ii) for a taxable year beginning on or after January 1, 2009, an amount equal to .5% of the ~~{unpaid}~~ tax due on the return **, unpaid as of the day on which the return is due as provided by law . ''; and**

**(3) modify Subsection 59-1-401(7)(a) as amended in this bill to read:**

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

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

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

(iii) ~~{For}~~ **If any portion of an underpayment is due to an** intent to evade ~~[the]~~ a tax, fee, or charge, the penalty is the greater of \$500 per period or 50% of the ~~{tax, fee, or charge due}~~ **entire underpayment** .

(iv) If ~~{the}~~ **any portion of an** underpayment is due to fraud with intent to evade ~~[the]~~ a tax, fee, or charge, the penalty is the greater of \$500 per period or 100% of the **entire** underpayment. **''**