

1 **AMENDMENTS RELATED TO A TAX, FEE,**
2 **OR CHARGE ADMINISTERED BY THE STATE**

3 **TAX COMMISSION**

4 2010 GENERAL SESSION

5 STATE OF UTAH

6 **Chief Sponsor: Todd E. Kiser**

7 Senate Sponsor: J. Stuart Adams

8
9 **LONG TITLE**

10 **Committee Note:**

11 The Revenue and Taxation Interim Committee recommended this bill.

12 **General Description:**

13 This bill amends the General Taxation Policies chapter to address the taxes, fees, and
14 charges administered by the State Tax Commission and the calculation of interest
15 related to a tax, fee, or charge administered by the State Tax Commission.

16 **Highlighted Provisions:**

17 This bill:

18 ▶ addresses definitions including defining the taxes, fees, and charges administered by
19 the State Tax Commission;

20 ▶ addresses the calculation of interest related to a tax, fee, or charge administered by
21 the State Tax Commission, including:

22 • providing that under certain circumstances interest is allowed after a 45-day
23 period if a return or amended return is filed electronically; and

24 • providing that under certain circumstances interest is allowed after a 90-day
25 period if a return or amended return is not filed electronically; and

26 ▶ makes technical and conforming changes.

27 **Monies Appropriated in this Bill:**



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **59-1-401**, as last amended by Laws of Utah 2009, Chapters 31, 203, 212, and 336

34 **59-1-402**, as last amended by Laws of Utah 2005, Chapter 264

35 **59-1-1402**, as enacted by Laws of Utah 2009, Chapter 212



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

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

39 **59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute**
40 **of limitations -- Commission authority to waive, reduce, or compromise penalty or**
41 **interest.**

42 (1) As used in this section:

43 (a) "Activated tax, fee, or charge" means a tax, fee, or charge with respect to which the
44 commission:

45 (i) has implemented the commission's GenTax system; and

46 (ii) at least 30 days before implementing the commission's GenTax system as described
47 in Subsection (1)(a)(i), has provided notice in a conspicuous place on the commission's website
48 stating:

49 (A) the date the commission will implement the GenTax system with respect to the tax,
50 fee, or charge; and

51 (B) that, at the time the commission implements the GenTax system with respect to the
52 tax, fee, or charge:

53 (I) a person that files a return after the due date as described in Subsection (2)~~(b)~~(a) is
54 subject to the penalty described in Subsection (2)(c)(ii); and

55 (II) a person that fails to pay the tax, fee, or charge as described in Subsection (3)(a) is
56 subject to the penalty described in Subsection (3)(b)(ii).

57 (b) "Activation date for a tax, fee, or charge" means with respect to a tax, fee, or
58 charge, the later of:

- 59 (i) the date on which the commission implements the commission's GenTax system
 60 with respect to the tax, fee, or charge; or
- 61 (ii) 30 days after the date the commission provides the notice described in Subsection
 62 (1)(a)(ii) with respect to the tax, fee, or charge.
- 63 (c) (i) [~~Tax~~] Except as provided in Subsection (1)(c)(ii), "tax, fee, or charge" means:
 64 [~~(i)~~] (A) a tax, fee, or charge the commission administers under:
 65 [~~(A)~~] (I) this title;
 66 [~~(B)~~] (II) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
 67 [~~(C)~~] (III) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
 68 [~~(D)~~] (IV) Section 19-6-410.5;
 69 [~~(E)~~] (V) Section 19-6-714;
 70 [~~(F)~~] (VI) Section 19-6-805;
 71 (VII) Section 34A-2-202;
 72 [~~(G)~~] (VIII) Section 40-6-14;
 73 [~~(H)~~] (IX) Section 69-2-5;
 74 [~~(I)~~] (X) Section 69-2-5.5; or
 75 [~~(J)~~] (XI) Section 69-2-5.6; or
 76 [~~(k)~~] (B) another amount that by statute is subject to a penalty imposed under this
 77 section.
- 78 (ii) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:
 79 (A) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;
 80 (B) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
 81 (C) Chapter 2, Property Tax Act, except for Section 59-2-1309;
 82 (D) Chapter 3, Tax Equivalent Property Act;
 83 (E) Chapter 4, Privilege Tax; or
 84 (F) Chapter 13, Part 5, Interstate Agreements.
- 85 (d) "Unactivated tax, fee, or charge" means a tax, fee, or charge except for an activated
 86 tax, fee, or charge.
- 87 (2) (a) The due date for filing a return is:
- 88 (i) if the person filing the return is not allowed by law an extension of time for filing
 89 the return, the day on which the return is due as provided by law; or

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

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

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

94 (b) A penalty in the amount described in Subsection (2)(c) is imposed if a person files a
95 return after the due date described in Subsection (2)(a).

96 (c) For purposes of Subsection (2)(b), the penalty is an amount equal to the greater of:

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

99 (A) \$20; or

100 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or

101 (ii) if the return described in Subsection (2)(b) is filed with respect to an activated tax,
102 fee, or charge, beginning on the activation date for the tax, fee, or charge:

103 (A) \$20; or

104 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the return is
105 filed no later than five days after the due date described in Subsection (2)(a);

106 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the return is filed
107 more than five days after the due date but no later than 15 days after the due date described in
108 Subsection (2)(a); or

109 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the return is
110 filed more than 15 days after the due date described in Subsection (2)(a).

111 (d) This Subsection (2) does not apply to:

112 (i) an amended return; or

113 (ii) a return with no tax due.

114 (3) (a) A person is subject to a penalty for failure to pay a tax, fee, or charge if:

115 (i) the person files a return on or before the due date for filing a return described in
116 Subsection (2)(a), but fails to pay the tax, fee, or charge due on the return on or before that due
117 date;

118 (ii) the person:

119 (A) is subject to a penalty under Subsection (2)(b); and

120 (B) fails to pay the tax, fee, or charge due on a return within a 90-day period after the

121 due date for filing a return described in Subsection (2)(a);
122 (iii) (A) the person is subject to a penalty under Subsection (2)(b); and
123 (B) the commission estimates an amount of tax due for that person in accordance with
124 Subsection 59-1-1406(2);
125 (iv) the person:
126 (A) is mailed a notice of deficiency; and
127 (B) within a 30-day period after the day on which the notice of deficiency described in
128 Subsection (3)(a)(iv)(A) is mailed:
129 (I) does not file a petition for redetermination or a request for agency action; and
130 (II) fails to pay the tax, fee, or charge due on a return;
131 (v) (A) the commission:
132 (I) issues an order constituting final agency action resulting from a timely filed petition
133 for redetermination or a timely filed request for agency action; or
134 (II) is considered to have denied a request for reconsideration under Subsection
135 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed
136 request for agency action; and
137 (B) the person fails to pay the tax, fee, or charge due on a return within a 30-day period
138 after the date the commission:
139 (I) issues the order constituting final agency action described in Subsection
140 (3)(a)(v)(A)(I); or
141 (II) is considered to have denied the request for reconsideration described in
142 Subsection (3)(a)(v)(A)(II); or
143 (vi) the person fails to pay the tax, fee, or charge within a 30-day period after the date
144 of a final judicial decision resulting from a timely filed petition for judicial review.
145 (b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:
146 (i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with
147 respect to an unactivated tax, fee, or charge:
148 (A) \$20; or
149 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or
150 (ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with
151 respect to an activated tax, fee, or charge, beginning on the activation date:

152 (A) \$20; or

153 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the activated
154 tax, fee, or charge due on the return is paid no later than five days after the due date for filing a
155 return described in Subsection (2)(a);

156 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the activated tax,
157 fee, or charge due on the return is paid more than five days after the due date for filing a return
158 described in Subsection (2)(a) but no later than 15 days after that due date; or

159 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the activated
160 tax, fee, or charge due on the return is paid more than 15 days after the due date for filing a
161 return described in Subsection (2)(a).

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

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

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

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

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

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

178 (5) (a) Notwithstanding Subsection (2) and except as provided in Subsection (6), a
179 person allowed by law an extension of time for filing a corporate franchise or income tax return
180 under Chapter 7, Corporate Franchise and Income Taxes, or an individual income tax return
181 under Chapter 10, Individual Income Tax Act, is subject to a penalty in the amount described in
182 Subsection (5)(b) if, on or before the day on which the return is due as provided by law, not

183 including the extension of time, the person fails to pay:

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

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

188 (b) For purposes of Subsection (5)(a), the penalty per month during the period of the
189 extension of time for filing the return is an amount equal to 2% of the tax due on the return,
190 unpaid as of the day on which the return is due as provided by law.

191 (6) If a person does not file a return within an extension of time allowed by Section
192 59-7-505 or 59-10-516, the person:

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

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

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

196 (A) \$20; or

197 (B) 10% of the tax due on the return, unpaid as of the day on which the return is due as
198 provided by law, not including the extension of time; and

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

200 (A) \$20; or

201 (B) 10% of the unpaid tax due on the return, unpaid as of the day on which the return is
202 due as provided by law, not including the extension of time.

203 (7) (a) Additional penalties for an underpayment of a tax, fee, or charge are as provided
204 in this Subsection (7)(a).

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

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

211 (iii) If any portion of an underpayment is due to an intent to evade a tax, fee, or charge,
212 the penalty is the greater of \$500 per period or 50% of the entire underpayment.

213 (iv) If any portion of an underpayment is due to fraud with intent to evade a tax, fee, or

214 charge, the penalty is the greater of \$500 per period or 100% of the entire underpayment.

215 (b) If the commission determines that a person is liable for a penalty imposed under
216 Subsection (7)(a)(ii), (iii), or (iv), the commission shall notify the person of the proposed
217 penalty.

218 (i) The notice of proposed penalty shall:

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

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

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

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

224 or

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

226 (iii) A person against whom a penalty is proposed in accordance with this Subsection
227 (7) may contest the proposed penalty by filing a petition for an adjudicative proceeding with
228 the commission.

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

232 (B) The commission shall mail the notice and demand for payment described in
233 Subsection (7)(b)(iv)(A):

234 (I) to the person's last-known address; and

235 (II) in accordance with Section 59-1-1404.

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

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

240 (A) the seller meets one or more of the criteria described in Subsection
241 59-12-107(1)(a); and

242 (B) the commission or a county, city, or town may require the seller to collect a tax
243 under Subsections 59-12-103(2)(a) through (d); or

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

245 (A) the seller meets one or more of the criteria described in Subsection
246 59-12-107(1)(a); and

247 (B) the commission or a county, city, or town may require the seller to collect a tax
248 under Subsections 59-12-103(2)(a) through (d).

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

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

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

255 (II) the commission or a county, city, or town may require the seller to collect a tax
256 under Subsections 59-12-103(2)(a) through (d); or

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

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

260 (II) the commission or a county, city, or town may require the seller to collect a tax
261 under Subsections 59-12-103(2)(a) through (d); and

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

265 (8) The penalty for failure to file an information return, information report, or a
266 complete supporting schedule is \$50 for each information return, information report, or
267 supporting schedule up to a maximum of \$1,000.

268 (9) If a person, in furtherance of a frivolous position, has a prima facie intent to delay
269 or impede administration of a law relating to a tax, fee, or charge and files a purported return
270 that fails to contain information from which the correctness of reported tax, fee, or charge
271 liability can be determined or that clearly indicates that the tax, fee, or charge liability shown is
272 substantially incorrect, the penalty is \$500.

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

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

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

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

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

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

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

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

286 (A) a return;

287 (B) an affidavit;

288 (C) a claim; or

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

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

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

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

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

297 (ii) presenting any portion of a document described in Subsection (11)(a)(i);

298 (iii) procuring any portion of a document described in Subsection (11)(a)(i);

299 (iv) advising in the preparation or presentation of any portion of a document described
300 in Subsection (11)(a)(i);

301 (v) aiding in the preparation or presentation of any portion of a document described in
302 Subsection (11)(a)(i);

303 (vi) assisting in the preparation or presentation of any portion of a document described
304 in Subsection (11)(a)(i); or

305 (vii) counseling in the preparation or presentation of any portion of a document
306 described in Subsection (11)(a)(i).

- 307 (c) For purposes of Subsection (11)(a), the penalty:
- 308 (i) shall be imposed by the commission;
- 309 (ii) is \$500 for each document described in Subsection (11)(a)(i) with respect to which
- 310 the person described in Subsection (11)(a) meets the requirements of Subsection (11)(a); and
- 311 (iii) is in addition to any other penalty provided by law.
- 312 (d) The commission may seek a court order to enjoin a person from engaging in
- 313 conduct that is subject to a penalty under this Subsection (11).
- 314 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 315 commission may make rules prescribing the documents that are similar to Subsections
- 316 (11)(a)(i)(A) through (C).
- 317 (12) (a) As provided in Section 76-8-1101, criminal offenses and penalties are as
- 318 provided in Subsections (12)(b) through (e).
- 319 (b) (i) A person who is required by this title or any laws the commission administers or
- 320 regulates to register with or obtain a license or permit from the commission, who operates
- 321 without having registered or secured a license or permit, or who operates when the registration,
- 322 license, or permit is expired or not current, is guilty of a class B misdemeanor.
- 323 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(b)(i), the
- 324 penalty may not:
- 325 (A) be less than \$500; or
- 326 (B) exceed \$1,000.
- 327 (c) (i) A person who, with intent to evade a tax, fee, or charge or requirement of this
- 328 title or any lawful requirement of the commission, fails to make, render, sign, or verify a return
- 329 or to supply information within the time required by law, or who makes, renders, signs, or
- 330 verifies a false or fraudulent return or statement, or who supplies false or fraudulent
- 331 information, is guilty of a third degree felony.
- 332 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(c)(i), the
- 333 penalty may not:
- 334 (A) be less than \$1,000; or
- 335 (B) exceed \$5,000.
- 336 (d) (i) A person who intentionally or willfully attempts to evade or defeat a tax, fee, or
- 337 charge or the payment of a tax, fee, or charge is, in addition to other penalties provided by law,

338 guilty of a second degree felony.

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

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

342 (B) exceed \$25,000.

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

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

346 (I) a return;

347 (II) an affidavit;

348 (III) a claim; or

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

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

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

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

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

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

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

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

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

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

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

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

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

368 (A) regardless of whether the person for which the document described in Subsection

369 (12)(e)(i)(A) is prepared or presented:

- 370 (I) knew of the falsity of the document described in Subsection (12)(e)(i)(A); or
371 (II) consented to the falsity of the document described in Subsection (12)(e)(i)(A); and
372 (B) in addition to any other penalty provided by law.

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

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

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

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

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

- 384 (i) from the date the tax should have been remitted; or
385 (ii) after the day on which the person commits the criminal offense.

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

389 Section 2. Section **59-1-402** is amended to read:

390 **59-1-402. Interest.**

391 [~~(1) Notwithstanding Subsections (2) and (3), the rate of interest applicable to certain~~
392 ~~installment sales for the purposes of the corporate franchise tax shall be determined pursuant to~~
393 ~~Section 453A, Internal Revenue Code, as provided in Section 59-7-112.]~~

394 (1) As used in this section:

395 (a) "Final judicial decision" means a final ruling by a court of this state or the United
396 States for which the time for any further review or proceeding has expired.

397 (b) "Retroactive application of a judicial decision" means the application of a final
398 judicial decision that:

399 (i) invalidates a state or federal taxation statute; and

- 400 (ii) requires the state to provide a refund for an overpayment that was made:
401 (A) prior to the final judicial decision; or
402 (B) during the 180-day period after the final judicial decision.
403 (c) (i) Except as provided in Subsection (1)(c)(ii), "tax, fee, or charge" means:
404 (A) a tax, fee, or charge the commission administers under:
405 (I) this title;
406 (II) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
407 (III) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
408 (IV) Section 19-6-410.5;
409 (V) Section 19-6-714;
410 (VI) Section 19-6-805;
411 (VII) Section 34A-2-202;
412 (VIII) Section 40-6-14;
413 (IX) Section 69-2-5;
414 (X) Section 69-2-5.5; or
415 (XI) Section 69-2-5.6; or
416 (B) another amount that by statute is subject to interest imposed under this section.
417 (ii) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:
418 (A) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;
419 (B) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
420 (C) Chapter 2, Property Tax Act, except for Section 59-2-1309;
421 (D) Chapter 3, Tax Equivalent Property Act;
422 (E) Chapter 4, Privilege Tax; or
423 (F) Chapter 13, Part 5, Interstate Agreements.
424 (2) Except as otherwise provided for by law, the interest rate for a calendar year for ~~[all~~
425 ~~taxes and fees]~~ a tax, fee, or charge administered by the commission shall be calculated based
426 on the federal short-term rate determined by the Secretary of the Treasury under Section 6621,
427 Internal Revenue Code, ~~[and]~~ in effect for the preceding fourth calendar quarter.
428 (3) The interest rate calculation shall be as follows:
429 (a) except as provided in Subsection ~~[(6)]~~ (7), in the case of ~~[overpayments and~~
430 ~~refunds]~~ an overpayment or refund, simple interest shall be calculated at the rate of two

431 percentage points above the federal short-term rate; or

432 (b) in the case of [~~underpayments, deficiencies, and delinquencies~~] an underpayment,
433 deficiency, or delinquency, simple interest shall be calculated at the rate of two percentage
434 points above the federal short-term rate.

435 (4) Notwithstanding Subsection (2) or (3), the interest rate applicable to certain
436 installment sales for purposes of a tax under Chapter 7, Corporate Franchise and Income Taxes,
437 shall be determined in accordance with Section 453A, Internal Revenue Code, as provided in
438 Section 59-7-112.

439 [~~(4)~~] (5) (a) Except as provided in Subsection [(4)(c), if any overpayment of tax or fee
440 administered by the commission] (5)(c), interest may not be allowed on an overpayment of a
441 tax, fee, or charge if the overpayment of the tax, fee, or charge is refunded within [90]:

442 (i) 45 days after the last date prescribed for filing the return [of such tax or fee, no
443 interest shall be allowed on the overpayment.] with respect to the tax, fee, or charge if the
444 return is filed electronically; or

445 (ii) 90 days after the last date prescribed for filing the return with respect to the tax, fee,
446 or charge if the return is not filed electronically.

447 (b) Except as provided in Subsection [~~(4)~~] (5)(c), if the return is filed after the last date
448 prescribed for filing the return, [no] interest [shall] may not be allowed on the overpayment if
449 the overpayment is refunded within [90]:

450 (i) 45 days after the date the return is filed[-] if the return is filed electronically; or

451 (ii) 90 days after the date the return is filed if the return is not filed electronically.

452 (c) (i) [~~Notwithstanding Subsection (4)(a) or (b), in~~] In the case of an amended return,
453 interest on an overpayment shall be allowed:

454 (A) for a time period:

455 (I) that begins on the later of:

456 (Aa) the date the original return was filed; or

457 (Bb) the due date for filing the original return not including any extensions for filing
458 the original return; and

459 (II) that ends on the date the commission receives the amended return; and

460 (B) if the commission does not make a refund of an overpayment under this Subsection
461 [~~(4)~~] (5)(c) [within a 90-day]:

462 (I) if the amended return is filed electronically, within a 45-day period after the date the
 463 commission receives the amended return, for a time period:

464 ~~[(F)]~~ (Aa) that begins ~~[91]~~ 46 days after the commission receives the amended return;
 465 and

466 ~~[(H)]~~ (Bb) subject to Subsection ~~[(4)]~~ (5)(c)(ii), that ends on the date that the
 467 commission completes processing the refund of the overpayment~~[-]; or~~

468 (II) if the amended return is not filed electronically, within a 90-day period after the
 469 date the commission receives the amended return, for a time period:

470 (Aa) that begins 91 days after the commission receives the amended return; and

471 (Bb) subject to Subsection (5)(c)(ii), that ends on the date that the commission
 472 completes processing the refund of the overpayment.

473 (ii) For purposes of Subsection ~~[(4)(c)(i)(B)(H)]~~ (5)(c)(i)(B)(I)(Bb) or
 474 (5)(c)(i)(B)(II)(Bb), interest shall be calculated forward from the preparation date of the refund
 475 document to allow for processing.

476 ~~[(5)]~~ (6) Interest on any underpayment, deficiency, or delinquency of ~~[any tax or fee~~
 477 administered by the commission] a tax, fee, or charge shall be computed from the time the
 478 original return is due, excluding any filing or payment extensions, to the date the payment is
 479 received.

480 ~~[(6)(a) Notwithstanding Subsection (3)(a), interest on refunds]~~

481 (7) Interest on a refund relating to a tax, fee, or charge may not be paid on any
 482 overpayment that arises from a statute that is determined to be invalid under state or federal
 483 law or declared unconstitutional under the constitution of the United States or Utah if the basis
 484 for the refund is the retroactive application of a judicial decision upholding the claim of
 485 unconstitutionality or the invalidation of a statute.

486 ~~[(b) For purposes of this Subsection (6):]~~

487 ~~[(i) "final judicial decision" means a final ruling by a court of this state or the United~~
 488 ~~States for which the time for any further review or proceeding has expired; and]~~

489 ~~[(ii) "retroactive application of a judicial decision" means the application of a final~~
 490 ~~judicial decision that:]~~

491 ~~[(A) invalidates a state or federal taxation statute; and]~~

492 ~~[(B) requires the state to provide refunds for overpayments that were made:]~~

493 ~~[(f) prior to the final judicial decision; or]~~
494 ~~[(H) during the 180-day period after the final judicial decision.]~~
495 ~~[(7) This section does not apply to:]~~
496 ~~[(a) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;]~~
497 ~~[(b) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;]~~
498 ~~[(c) Chapter 2, Property Tax Act, except for Section 59-2-1309;]~~
499 ~~[(d) Chapter 3, Tax Equivalent Property Act;]~~
500 ~~[(e) Chapter 4, Privilege Tax; or]~~
501 ~~[(f) Chapter 13, Part 5, Interstate Agreements.]~~
502 Section 3. Section **59-1-1402** is amended to read:
503 **59-1-1402. Definitions.**
504 As used in this part:
505 (1) "Administrative cost" means a fee imposed to cover:
506 (a) the cost of filing;
507 (b) the cost of administering a garnishment; or
508 (c) a cost similar to Subsection (1)(a) or (b) as determined by the commission by rule
509 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
510 (2) "Books and records" means the following made available in printed or electronic
511 format:
512 (a) an account;
513 (b) a book;
514 (c) an invoice;
515 (d) a memorandum;
516 (e) a paper;
517 (f) a record; or
518 (g) an item similar to Subsections (2)(a) through (f) as determined by the commission
519 by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
520 (3) "Deficiency" means:
521 (a) the amount by which a tax, fee, or charge exceeds the difference between:
522 (i) the sum of:
523 (A) the amount shown as the tax, fee, or charge by a person on the person's return; and

524 (B) any amount previously assessed, or collected without assessment, as a deficiency;
525 and

526 (ii) any amount previously abated, credited, refunded, or otherwise repaid with respect
527 to that tax, fee, or charge; or

528 (b) if a person does not show an amount as a tax, fee, or charge on the person's return,
529 or if a person does not make a return, the amount by which the tax, fee, or charge exceeds:

530 (i) the amount previously assessed, or collected without assessment, as a deficiency;
531 and

532 (ii) any amount previously abated, credited, refunded, or otherwise repaid with respect
533 to that tax, fee, or charge.

534 (4) "Garnishment" means any legal or equitable procedure through which one or more
535 of the following are required to be withheld for payment of an amount a person owes:

536 (a) an asset of the person held by another person; or

537 (b) the earnings of the person.

538 (5) "Liability" means the following that a person is required to remit to the
539 commission:

540 (a) a tax, fee, or charge;

541 (b) an addition to a tax, fee, or charge;

542 (c) an administrative cost;

543 (d) interest that accrues in accordance with Section 59-1-402; or

544 (e) a penalty that accrues in accordance with Section 59-1-401.

545 (6) (a) Subject to Subsection (6)(b), "mathematical error" is as defined in Section
546 6213(g)(2), Internal Revenue Code.

547 (b) The reference to Section 6213(g)(2), Internal Revenue Code, in Subsection (6)(a)
548 means:

549 (i) the reference to Section 6213(g)(2), Internal Revenue Code, in effect for the taxable
550 year; or

551 (ii) a corresponding or comparable provision of the Internal Revenue Code as
552 amended, redesignated, or reenacted.

553 (7) (a) Except as provided in Subsection (7)(b), "tax, fee, or charge" means:

554 (i) a tax, fee, or charge the commission administers under:

555 ~~(i)~~ (A) this title;

556 ~~(ii)~~ (B) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

557 ~~(iii)~~ (C) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

558 ~~(iv)~~ (D) Section 19-6-410.5;

559 ~~(v)~~ (E) Section 19-6-714;

560 ~~(vi)~~ (F) Section 19-6-805;

561 (G) Section 34A-2-202;

562 (H) Section 40-6-14;

563 ~~(vii)~~ (I) Section 69-2-5;

564 ~~(viii)~~ (J) Section 69-2-5.5; or

565 ~~(ix)~~ (K) Section 69-2-5.6[-]; or

566 (ii) another amount that by statute is administered by the commission.

567 (b) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:

568 (i) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;

569 (ii) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;

570 ~~(i)~~ (iii) Chapter 2, Property Tax Act;

571 ~~(ii)~~ (iv) Chapter 3, Tax Equivalent Property Act; ~~[or]~~

572 ~~(iii)~~ (v) Chapter 4, Privilege Tax[-]; or

573 (vi) Chapter 13, Part 5, Interstate Agreements.

574 (8) "Transferee" means:

575 (a) a devisee;

576 (b) a distributee;

577 (c) a donee;

578 (d) an heir;

579 (e) a legatee; or

580 (f) a person similar to Subsections (8)(a) through (e) as determined by the commission

581 by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Legislative Review Note
as of 11-20-09 6:32 AM

Office of Legislative Research and General Counsel

Fiscal Note**H.B. 49 - Amendments Related to a Tax, Fee, or Charge Administered by the
State Tax Commission**

2010 General Session

State of Utah

State Impact

Depending upon the number of refund claims filed by compact disc, enactment of this bill may decrease revenue to the Education Fund by up to \$1,000.

| | <u>FY 2010 Approp.</u> | <u>FY 2011 Approp.</u> | <u>FY 2012 Approp.</u> | <u>FY 2010 Revenue</u> | <u>FY 2011 Revenue</u> | <u>FY 2012 Revenue</u> |
|----------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| Education Fund | \$0 | \$0 | \$0 | \$0 | (\$1,000) | (\$1,000) |
| Total | \$0 | \$0 | \$0 | \$0 | (\$1,000) | (\$1,000) |

Individual, Business and/or Local Impact

Individuals and businesses filing electronic returns will receive interest on refunds owed to them if the refund is paid after 45 days. Local governments are unaffected.