

Senator Curtis S. Bramble proposes the following substitute bill:

AMENDMENTS TO REVENUE AND TAXATION

TITLE

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill amends the Revenue and Taxation title to address penalties, the payment of taxes, and estimated tax payments under the Individual Income Tax Act.

Highlighted Provisions:

This bill:

- ▶ modifies penalties related to a tax under Title 59, Chapter 7, Corporate Franchise and Income Taxes, or Title 59, Chapter 10, Individual Income Tax Act;
- ▶ provides that a person is not required to recalculate a tax for purposes of making an installment payment under certain circumstances;
- ▶ addresses the amount of income tax required to be paid to avoid a penalty if a person makes estimated tax payments and receives an extension of time to file a return;
- ▶ enacts estimated tax payment requirements under Title 59, Chapter 10, Individual Income Tax Act, including:
 - defining terms;
 - establishing a required annual payment;
 - establishing procedures and requirements for making an estimated tax payment;



- providing a penalty for failure to pay or underpaying an estimated tax payment;
- authorizing the State Tax Commission to waive, reduce, or compromise the penalty for failure to pay or underpaying an estimated tax payment;
- granting rulemaking authority to the State Tax Commission under certain circumstances; and
- requiring the State Tax Commission to summarize the estimated tax payment provisions in a conspicuous place on the State Tax Commission's website; and
 - making technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:**AMENDS:**

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

59-1-1408, as enacted by Laws of Utah 2009, Chapter 212

59-5-107, as last amended by Laws of Utah 2003, Chapter 274

59-5-207, as last amended by Laws of Utah 1995, Chapter 228

59-7-504, as last amended by Laws of Utah 1995, Chapter 311

59-7-507, as last amended by Laws of Utah 2007, Chapter 269

59-9-104, as last amended by Laws of Utah 1995, Chapter 205

59-10-516, as last amended by Laws of Utah 2007, Chapter 269

ENACTS:

59-10-1501, Utah Code Annotated 1953

59-10-1502, Utah Code Annotated 1953

59-10-1503, Utah Code Annotated 1953

59-10-1504, Utah Code Annotated 1953

59-10-1505, Utah Code Annotated 1953

59-10-1506, Utah Code Annotated 1953

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

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

(i) the date on which the commission implements the commission's GenTax system with respect to the tax, fee, or charge; or

(ii) 30 days after the date the commission provides the notice described in Subsection (1)(a)(ii) with respect to the tax, fee, or charge.

(c) "Tax, fee, or charge" means:

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

(A) this title;

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

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

(D) Section 19-6-410.5;

(E) Section 19-6-714;

(F) Section 19-6-805;

(G) Section 40-6-14;

(H) Section 69-2-5;

(I) Section 69-2-5.5; or

(J) Section 69-2-5.6; or

(ii) another amount that by statute is subject to a penalty imposed under this section.

(d) "Unactivated tax, fee, or charge" means a tax, fee, or charge except for an activated tax, fee, or charge.

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

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

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

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

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

(b) A penalty in the amount described in Subsection (2)(c) is imposed if:

(i) a person files a return after the due date described in Subsection (2)(a)[-]; or

(ii) (A) a person fails to file a return; and

(B) the commission estimates a tax, fee, or charge due in accordance with Section 59-1-1406.

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

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

(A) \$20; or

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

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

(A) \$20; or

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

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

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

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

125 (i) an amended return; or

126 (ii) a return with no tax due.

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

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

131 (ii) the person:

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

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

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

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

138 (iv) the person:

139 (A) is mailed a notice of deficiency; and

140 (B) within a 30-day period after the day on which the notice of deficiency described in
141 Subsection (3)(a)(iv)(A) is mailed:

142 (I) does not file a petition for redetermination or a request for agency action; and

143 (II) fails to pay the tax, fee, or charge due on a return;

144 (v) (A) the commission:

145 (I) issues an order constituting final agency action resulting from a timely filed petition
146 for redetermination or a timely filed request for agency action; or

147 (II) is considered to have denied a request for reconsideration under Subsection
148 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed
149 request for agency action; and

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

(I) issues the order constituting final agency action described in Subsection (3)(a)(v)(A)(I); or

(II) is considered to have denied the request for reconsideration described in Subsection (3)(a)(v)(A)(II); or

(vi) the person fails to pay 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.

(b) For purposes of Subsection (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 unactivated tax, fee, or charge due on the return; ~~or~~

(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 except for a tax imposed under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act, beginning on the activation date:

(A) \$20; or

(B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the 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);

(II) 5% of the unpaid activated tax, fee, or charge due on the return if the 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

(III) 10% of the unpaid activated tax, fee, or charge due on the return if the 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); or

(iii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with respect to a tax imposed under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act:

(A) \$20 if the tax due on the return is paid in full after the original due date for filing

the return under Section 59-7-505 or 59-10-514, without extensions; or

(B) the lesser of:

(I) 25% of the unpaid tax due on the return; or

(II) 0.5% of the unpaid tax per month for the number of months, as determined in accordance with Subsection (3)(c), that the unpaid tax due on the return is not paid in full.

(c) For purposes of determining the penalty under Subsection (3)(b)(iii)(B)(II), the number of months shall be calculated by:

(i) determining the number of months the unpaid tax due on the return is not paid in full, beginning with the original due date for filing the return under Section 59-7-505 or 59-10-514, without extensions, and ending on the date the unpaid tax is paid in full; and

(ii) including any fraction of a month as a full month.

(4) (a) ~~[Beginning January 1, 1995, in]~~ In the case of any underpayment of estimated tax or quarterly installments required by ~~[Sections]~~ Section 59-5-107, 59-5-207, 59-7-504, ~~[and] 59-9-104, or 59-10-1503,~~ there shall be added a penalty in an amount determined by applying the interest rate provided under ~~[Section]~~ Subsection 59-1-402(2) plus ~~[four]~~ three percentage points to the amount of the underpayment for the period of the underpayment.

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

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

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

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

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

~~[(5)(a) Notwithstanding Subsection (2) and except as provided in Subsection (6), a person allowed by law an extension of time for filing a corporate franchise or income tax return under Chapter 7, Corporate Franchise and Income Taxes, or an individual income tax return under Chapter 10, Individual Income Tax Act, is subject to a penalty in the amount described in~~

Subsection (5)(b) if, on or before the day on which the return is due as provided by law, not including the extension of time, the person fails to pay:]

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

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

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

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

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

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

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

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

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

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

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

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

[~~(7)~~] (5) (a) Additional penalties for an underpayment of a tax, fee, or charge are as provided in this Subsection [~~(7)~~] (5)(a).

(i) Except as provided in Subsection [~~(7)~~] (5)(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)~~] (5)(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) If any portion of an underpayment is due to an intent to evade a tax, fee, or charge,

the penalty is the greater of \$500 per period or 50% of the entire underpayment.

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

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

(i) The notice of proposed penalty shall:

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

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

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

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

or

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

(iii) A person against whom a penalty is proposed in accordance with this Subsection ~~[(7)]~~ (5) may contest the proposed penalty by filing a petition for an adjudicative proceeding with the commission.

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

(B) The commission shall mail the notice and demand for payment described in Subsection ~~[(7)]~~ (5)(b)(iv)(A):

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

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

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

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

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

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

under Subsections 59-12-103(2)(a) through (d); or

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

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

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

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

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

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

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

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

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

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

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

~~[(8)]~~ (6) The penalty for failure to file an information return, information report, or a complete supporting schedule is \$50 for each information return, information report, or supporting schedule up to a maximum of \$1,000.

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

~~[(10)]~~ (8) (a) A seller that fails to remit a tax, fee, or charge monthly as required by

305 Subsection 59-12-108(1)(a):

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

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

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

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

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

314 ~~[(H)]~~ (9) (a) A person is subject to the penalty provided in Subsection ~~[(H)]~~ (9)(c) if
315 that person:

316 (i) commits an act described in Subsection ~~[(H)]~~ (9)(b) with respect to one or more of
317 the following documents:

318 (A) a return;

319 (B) an affidavit;

320 (C) a claim; or

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

322 (ii) knows or has reason to believe that the document described in Subsection ~~[(H)]~~
323 (9)(a)(i) will be used in connection with any material matter administered by the commission;
324 and

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

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

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

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

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

332 (iv) advising in the preparation or presentation of any portion of a document described
333 in Subsection ~~[(H)]~~ (9)(a)(i);

334 (v) aiding in the preparation or presentation of any portion of a document described in
335 Subsection ~~[(H)]~~ (9)(a)(i);

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

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

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

(i) shall be imposed by the commission;

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

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

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

(e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules prescribing the documents that are similar to Subsections ~~[(11)]~~ (9)(a)(i)(A) through (C).

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

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

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

(A) be less than \$500; or

(B) exceed \$1,000.

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

(ii) Notwithstanding Section 76-3-301, for purposes of Subsection ~~[(12)]~~ (10)(c)(i), the

367 penalty may not:

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

369 (B) exceed \$5,000.

370 (d) (i) A person who intentionally or willfully attempts to evade or defeat a tax, fee, or
371 charge or the payment of a tax, fee, or charge is, in addition to other penalties provided by law,
372 guilty of a second degree felony.

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

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

376 (B) exceed \$25,000.

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

378 (A) described in Subsection [~~(12)~~] (10)(e)(ii) with respect to one or more of the

379 following documents:

380 (I) a return;

381 (II) an affidavit;

382 (III) a claim; or

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

384 (B) subject to Subsection [~~(12)~~] (10)(e)(iii), with knowledge that the document

385 described in Subsection [~~(12)~~] (10)(e)(i)(A):

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

387 (II) could be used in connection with any material matter administered by the

388 commission.

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

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

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

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

393 (D) advising in the preparation or presentation of any portion of a document described

394 in Subsection [~~(12)~~] (10)(e)(i)(A);

395 (E) aiding in the preparation or presentation of any portion of a document described in

396 Subsection [~~(12)~~] (10)(e)(i)(A);

397 (F) assisting in the preparation or presentation of any portion of a document described

in Subsection ~~[(12)]~~ (10)(e)(i)(A); or

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

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

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

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

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

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

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

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

(B) exceed \$25,000.

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

(vi) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules prescribing the documents that are similar to Subsections ~~[(12)]~~ (10)(e)(i)(A)(I) through (III).

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

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

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

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

Section 2. Section **59-1-1408** is amended to read:

59-1-1408. Assessments.

(1) Except as provided in Subsections (2) through (4), an assessment is made on the date a liability is posted to the records of the commission.

(2) Except as provided in Subsection (4), for purposes of a liability for which the

commission mails a notice of deficiency to a person in accordance with Section 59-1-1405, an assessment is made:

(a) if a person has not filed a petition for redetermination of a deficiency under Section 59-1-501, on the date:

(i) (A) 30 days after the day on which the commission mails the notice of deficiency to the person; or

(B) 90 days after the day on which the commission mails the notice of deficiency to the person if the notice is addressed to a person outside the United States or the District of Columbia; or

(ii) the person in writing:

(A) agrees with the commission on the existence and amount of the liability; and

(B) consents to the assessment of the liability; or

(b) if a person files a petition for redetermination of a deficiency under Section 59-1-501, on the date the liability resulting from a final commission decision is posted to the records of the commission.

(3) Except as provided in Subsection (4), for purposes of a notice of proposed penalty under Section 59-1-302 or Subsection 59-1-401[~~(7)~~] (6), an assessment is made:

(a) if a person has not filed a petition for redetermination of a deficiency under Section 59-1-501, on the date:

(i) (A) 30 days after the day on which the commission mails the notice of proposed penalty to the person; or

(B) 90 days after the day on which the commission mails the notice of proposed penalty to the person if the notice is addressed to a person outside the United States or the District of Columbia; or

(ii) the person in writing:

(A) agrees with the commission on the existence and amount of the liability; and

(B) consents to the assessment of the liability; or

(b) if a person files a petition for redetermination of a deficiency under Section 59-1-501, on the date the liability resulting from a final commission decision is posted to the records of the commission.

(4) In the case of interest under Section 59-1-402 that accrues to a tax, fee, or charge,

an assessment is considered to have been made on the date the tax, fee, or charge is assessed.

(5) The commission may at any time within the time period prescribed for assessment under Section 59-1-1410, increase or decrease an assessment if the commission ascertains that the assessment is imperfect or incomplete in a material respect.

Section 3. Section **59-5-107** is amended to read:

59-5-107. Date tax due -- Extensions -- Installment payments -- Taxpayer not required to recalculate taxes assessed under certain circumstances -- Penalty on delinquencies -- Audit.

(1) Except as provided in Subsections (2) and (3), the tax imposed by this part is due and payable on or before June 1 of the year next succeeding the calendar year when the oil or gas is:

(a) (i) produced;

(ii) saved; and

(iii) sold; or

(b) transported from the field where produced.

(2) (a) Notwithstanding Subsection (1), the commission may, for good cause shown upon a written application by the taxpayer, extend the time of payment of the whole or any part of the tax for a period not to exceed six months.

(b) If the commission allows an extension under Subsection (2)(a), interest at the rate and in the manner prescribed in Section 59-1-402 shall be charged and added to the amount of the tax allowed the extension.

(3) (a) A taxpayer subject to this part whose total tax obligation for the current calendar year will be \$3,000 or more shall pay the taxes assessed under this part in quarterly installments as provided in Subsections (3)(b) and (4).

(b) For purposes of Subsection (3)(a), each quarterly installment shall be based on the estimated gross value received by the taxpayer during the quarter preceding the date on which the installment is due.

(4) For purposes of Subsection (3), the quarterly installments are due as follows:

(a) for the quarter beginning on January 1 and ending on March 31, on or before June 1;

(b) for the quarter beginning on April 1 and ending on June 30, on or before September

1;

(c) for the quarter beginning on July 1 and ending on September 30, on or before December 1; and

(d) for the quarter beginning on October 1 and ending on December 31, on or before March 1 of the next year.

(5) If a taxpayer files an amended return under this part after the original due date for filing the return, not including extensions, the taxpayer is not required to recalculate the taxpayer's taxes assessed under this part for purposes of calculating quarterly installments due under this section.

~~[(5)]~~ (6) (a) Subject to Subsection ~~[(5)]~~ (6)(b) and except as provided in Subsection ~~[(6)]~~ (7), if the tax imposed by Section 59-5-102 is not paid when due or is underpaid, the taxpayer is subject to the penalty provided under Section 59-1-401.

(b) For purposes of Subsection ~~[(5)]~~ (6)(a), an underpayment exists if less than 80% of the tax due for a quarter is paid.

~~[(6)]~~ (7) Notwithstanding Subsection ~~[(5)]~~ (6)(a), the penalty for failure to pay a tax due or for underpayment of a tax may not be assessed if the taxpayer's total quarterly tax installment payments equal 25% or more of the tax reported and paid by the taxpayer for the preceding calendar year.

~~[(7)]~~ (8) The commission may not add interest to any quarterly installment subject to a penalty under this section.

~~[(8)]~~ (9) The commission may conduct audits to determine whether any tax is owed under this part.

Section 4. Section **59-5-207** is amended to read:

59-5-207. Date tax due -- Extensions -- Installment payments -- Taxpayer not required to recalculate taxes assessed under certain circumstances -- Penalty on delinquencies -- Audit.

(1) The tax imposed by this chapter is due and payable on or before June 1 of the year next succeeding the calendar year when the mineral is produced and sold or delivered.

(2) The commission may, for good cause shown upon a written application by the taxpayer, extend the time of payment of the whole or any part of the tax for a period not to exceed six months. If an extension is granted, interest at the rate and in the manner prescribed

in Section 59-1-402 shall be charged and added to the amount of the deferred payment of the tax.

(3) Every taxpayer subject to this chapter whose total tax obligation for the preceding calendar year was \$3,000 or more shall pay the taxes assessed under this chapter in quarterly installments. Each installment shall be based on the estimated gross value received by the taxpayer during the quarter preceding the date on which the installment is due.

(4) The quarterly installments are due as follows:

(a) for January 1 through March 31, on or before June 1;

(b) for April 1 through June 30, on or before September 1;

(c) for July 1 through September 30, on or before December 1; and

(d) for October 1 through December 31, on or before March 1 of the next year.

(5) If a taxpayer files an amended return under this part after the original due date for filing the return, not including extensions, the taxpayer is not required to recalculate the taxpayer's taxes assessed under this part for purposes of calculating quarterly installments due under this section.

~~[(5)]~~ (6) (a) If the taxpayer fails to report and pay any tax when due, the taxpayer is subject to the penalties provided under Section 59-1-401, unless otherwise provided in Subsection ~~[(6)]~~ (7).

(b) An underpayment exists if less than 80% of the tax due for a quarter is paid.

~~[(6)]~~ (7) The penalty for failure to pay the tax due or underpayment of tax may not be assessed if the taxpayer's quarterly tax installment payment equals 25% of the tax reported and paid by the taxpayer for the preceding taxable year.

~~[(7)]~~ (8) There shall be no interest added to any estimated tax payments subject to a penalty under this section.

~~[(8)]~~ (9) The commission may conduct audits to determine whether any tax is owed under this section.

Section 5. Section **59-7-504** is amended to read:

59-7-504. Estimated tax payments -- Taxpayer not required to recalculate tax liability under certain circumstances -- Penalty -- Waiver.

(1) Except as otherwise provided in this section, each corporation subject to taxation under this chapter having a tax liability of \$3,000 or more in the current tax year, or which had

a tax liability of \$3,000 or more in the previous tax year, shall make payments of estimated tax at the same time and using any method provided under Section 6655, Internal Revenue Code.

(2) The following are modifications or exceptions to the provisions of Section 6655, Internal Revenue Code:

(a) for the first year a corporation is required to file a return in Utah, that corporation is not subject to Subsection (1) if it makes a payment on or before the due date of the return, without extensions, equal to or greater than the minimum tax required under Section 59-7-104 or 59-7-201;

(b) the applicable percentage of the required annual payment, as defined in Section 6655, Internal Revenue Code, for annualized income installments, adjusted seasonal installments, and those estimated tax payments based on the current year tax liability shall be:

Installment	Percentage
1st	22.5
2nd	45.0
3rd	67.5
4th	90.0

(c) large corporations shall be treated as any other corporation for purposes of this section; and

(d) if a taxpayer elects a different annualization period than the one used for federal purposes, the taxpayer shall make an election with the Tax Commission at the same time as provided under Section 6655, Internal Revenue Code.

(3) If a corporation files an amended return under this chapter after the original due date for filing the return, not including extensions, the corporation is not required to recalculate the corporation's tax liability under this chapter for purposes of calculating payments of estimated tax due under this section.

~~[(3)]~~ (4) A penalty shall be added as provided in Section 59-1-401 for any quarterly estimated tax payment which is not made in accordance with this section.

~~[(4)]~~ (5) There shall be no interest added to any estimated tax payments subject to a penalty under this section.

Section 6. Section **59-7-507** is amended to read:

59-7-507. Payment of tax.

(1) (a) If quarterly estimated payments are not made as provided in Section 59-7-504, the amount of tax imposed by this chapter shall be paid no later than the original due date of the return.

(b) If an extension of time is necessary for filing a return, as provided in Subsection 59-7-505(3) or Section 59-7-803, payment must be made no later than the original due date of the return in an amount equal to the ~~[lesser of: (i) The]~~ greater of:

~~[(A)]~~ (i) 90% of the total tax ~~[reported on the return]~~ liability for the current taxable year; or

~~[(B)]~~ (ii) 100% of the minimum tax described in Section 59-7-104~~[-or]~~.

~~[(ii) 100% of the total tax liability for the taxable year immediately preceding the current taxable year.]~~

(c) If payment is not made as provided in Subsection (1)(b), the commission shall add ~~[an extension]~~ a penalty as provided in ~~[Section]~~ Subsection 59-1-401(3)(b)(iii), until the tax is paid ~~[during the period of extension]~~ in full.

(2) (a) At the request of the taxpayer, the commission may extend the time for payment of the amount determined as the tax by the taxpayer, or any part of that amount, for a period not to exceed six months from the date prescribed for the payment of the tax.

(b) For purposes of Subsection (2)(a), the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

Section 7. Section **59-9-104** is amended to read:

59-9-104. Installment payments -- Person not required to recalculate tax obligation under certain circumstances -- Penalty.

(1) A person whose total tax obligation under this chapter for the preceding taxable year was \$10,000 or more shall pay the taxes levied under this chapter in quarterly installments. Each installment shall be based on the estimated insurance premiums received, or for the taxes imposed under Section 59-9-103, upon the estimated total administrative and claims expense incurred during the calendar quarter preceding the date on which that quarterly installment is due. The installments are due on or before April 30, July 31, October 31, and March 31. To the extent installment payments result in an overpayment of the tax obligation under this chapter, the overpayment shall be promptly refunded.

(2) If a person files an amended return under this chapter after the original due date for

filing the return, not including extensions, the person is not required to recalculate the person's tax obligation under this chapter for purposes of calculating payments of quarterly installments due under this section.

~~[(2)]~~ (3) If an installment is not paid or is underpaid, except as provided in Subsection ~~[(3)]~~ (4), there shall be added a penalty at the rate and in the manner prescribed in Section 59-1-401. The amount of the underpayment is the excess of 80% of the installment shown to be due by an audit of the taxpayer's records over the amount, if any, of the installment paid on or before the last date prescribed for the payment. The taxpayer shall pay the cost of the audit, if any.

~~[(3)]~~ (4) No penalty, interest, or audit charge may be assessed under Subsection ~~[(2)]~~ (3) if the taxpayer pays, for any installment required by this section, at least 27% of the annual tax reported on its annual statement for the preceding taxable year.

~~[(4)]~~ (5) There shall be no interest added to any estimated tax payments subject to a penalty under this section.

Section 8. Section **59-10-516** is amended to read:

59-10-516. Filing extension -- Payment of tax -- Penalty -- Foreign residency.

(1) (a) The commission shall allow a taxpayer an extension of time for filing returns.

(b) The extension under Subsection (1)(a) may not exceed six months.

(2) (a) Except as provided in Subsection (2)(b), the commission may not impose on a taxpayer during the extension period prescribed under Subsection (1) a penalty under ~~[Section]~~ Subsection 59-1-401(3)(b)(iii) if the taxpayer pays~~;~~ 90% of the total tax liability for the current taxable year on or before the 15th day of the fourth month following the close of the taxpayer's taxable year~~[-the lesser of:]~~.

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

~~[(ii) 100% of the total tax liability for the taxable year immediately preceding the current taxable year.]~~

(b) If a taxpayer fails to meet the requirements of Subsection (2)(a), the commission may apply to the total balance due a penalty as provided in Section 59-1-401.

(3) If any federal income tax return filing is lawfully delayed pending a determination of qualification for federal tax exemption due to residency outside of the United States, a taxpayer shall file a return within 30 days after that determination is made.

Section 9. Section **59-10-1501** is enacted to read:

Part 15. Estimated Tax Payments Act

59-10-1501. Title.

This part is known as the "Estimated Tax Payments Act."

Section 10. Section **59-10-1502** is enacted to read:

59-10-1502. Definitions.

As used in this part:

(1) "Adjusted state tax liability after withholding" means the difference between:

(a) the difference between:

(i) the product of:

(A) an applicable taxpayer's state taxable income for a taxable year; and

(B) the tax rate imposed on the applicable taxpayer's state taxable income under this chapter; and

(ii) the sum of:

(A) the nonrefundable tax credits and refundable tax credits that the taxpayer claims as allowed for that taxable year on the applicable taxpayer's return filed under this chapter for the taxable year except for a credit described in Subsection (1)(b); and

(B) any adjustments the commission makes in accordance with Subsection 59-10-1505(2); and

(b) a credit the applicable taxpayer claims on a return as allowed for amounts paid or withheld under:

(i) Chapter 6, Mineral Production Tax Withholding, for the taxable year; or

(ii) this chapter for the taxable year.

(2) "Adjusted state tax liability before withholding" means the difference between:

(a) the product of:

(i) an applicable taxpayer's state taxable income for a taxable year; and

(ii) the tax rate imposed on the applicable taxpayer's state taxable income under this chapter; and

(b) the sum of:

(i) the nonrefundable tax credits and refundable tax credits that the taxpayer claims as allowed for that taxable year on the applicable taxpayer's return filed under this chapter for the

677 taxable year except for a credit described in Subsection (1)(b); and

678 (ii) any adjustments the commission makes in accordance with Subsection
679 59-10-1505(2).

680 (3) "Applicable taxpayer" means a calendar year taxpayer or a fiscal year taxpayer.

681 (4) "Calendar year taxpayer" means the following that has a taxable year that begins on
682 January 1 and is for a 12-month period:

683 (a) an individual;

684 (b) an estate; or

685 (c) a trust.

686 (5) "Electronic" is as defined in Section 59-10-514.1.

687 (6) "Farmer" is as defined in Section 6654, Internal Revenue Code.

688 (7) "Fiscal year taxpayer" means the following that has a taxable year that begins on a
689 day other than January 1 and is for a 12-month period:

690 (a) an individual;

691 (b) an estate; or

692 (c) a trust.

693 (8) "Fisherman" is as defined in Section 6654, Internal Revenue Code.

694 (9) "Required annual payment" means:

695 (a) for an applicable taxpayer except for a farmer or fisherman, an amount equal to the
696 lesser of:

697 (i) 90% of the applicable taxpayer's adjusted state tax liability before withholding for
698 the current taxable year; or

699 (ii) 100% of the applicable taxpayer's adjusted state tax liability before withholding for
700 the previous taxable year, if that taxable year was for a 12-month period and the taxpayer filed
701 a return under this chapter for the taxable year; and

702 (b) for a farmer or fisherman, an amount as defined by the commission in accordance
703 with Section 59-10-1505.

704 (10) "Required annual payment after withholding" means the difference between:

705 (a) an applicable taxpayer's required annual payment; and

706 (b) a credit the applicable taxpayer claims on a return as allowed for amounts paid or
707 withheld under:

- (i) Chapter 6, Mineral Production Tax Withholding, for the taxable year; or
(ii) this chapter for the taxable year.

Section 11. Section **59-10-1503** is enacted to read:

59-10-1503. Required annual payment -- Estimated tax payments.

(1) For a taxable year beginning on or after January 1, 2011, an applicable taxpayer required to file a return under this chapter for the taxable year shall pay to the commission the required annual payment if on the last day of the applicable taxpayer's taxable year the applicable taxpayer's adjusted state tax liability after withholding for the taxable year will be \$1,000 or more, regardless of the applicable taxpayer's filing status.

(2) The applicable taxpayer shall make the required annual payment described in Subsection (1) by:

(a) deduction and withholding under:

- (i) Chapter 6, Mineral Production Tax Withholding; or
(ii) this chapter;

(b) the applicable taxpayer making one or more estimated tax payments to the commission as provided in this part; or

(c) a combination of Subsections (2)(a) and (b).

(3) (a) If an applicable taxpayer makes an estimated tax payment to the commission, the estimated tax payment shall be made in accordance with this Subsection (3) and Subsection (4).

(b) Subject to Subsection (3)(f), if, on or before the last day of the third month of the taxable year, the applicable taxpayer's adjusted state tax liability after withholding will be \$1,000 or more on the last day of the applicable taxpayer's taxable year, the applicable taxpayer shall pay:

(i) 25% of the required annual payment after withholding on or before the 15th day of the fourth month of the taxable year;

(ii) 25% of the required annual payment after withholding on or before the 15th day of the sixth month of the taxable year;

(iii) 25% of the required annual payment after withholding on or before the 15th day of the ninth month of the taxable year; and

(iv) 25% of the required annual payment after withholding on or before the 15th day of

739 the first month of the year after the taxable year.

740 (c) Subject to Subsection (3)(f), if, on or after the first day of the fourth month of the
741 taxable year but on or before the last day of the fifth month of the taxable year, an applicable
742 taxpayer's adjusted state tax liability after withholding will be \$1,000 or more on the last day of
743 the applicable taxpayer's taxable year, the applicable taxpayer shall pay:

744 (i) 50% of the required annual payment after withholding on or before the 15th day of
745 the sixth month of the taxable year;

746 (ii) 25% of the required annual payment after withholding on or before the 15th day of
747 the ninth month of the taxable year; and

748 (iii) 25% of the required annual payment after withholding on or before the 15th day of
749 the first month of the year after the taxable year.

750 (d) Subject to Subsection (3)(f), if, on or after the first day of the sixth month but on or
751 before the last day of the eighth month of the taxable year, an applicable taxpayer's adjusted
752 state tax liability after withholding will be \$1,000 or more on the last day of the applicable
753 taxpayer's taxable year, the applicable taxpayer shall pay:

754 (i) 75% of the required annual payment after withholding on or before the 15th day of
755 the ninth month of the taxable year; and

756 (ii) 25% of the required annual payment after withholding on or before the 15th day of
757 the first month of the year after the taxable year.

758 (e) Subject to Subsection (3)(f), if, on or after the first day of the ninth month of the
759 taxable year, an applicable taxpayer's adjusted state tax liability after withholding will be
760 \$1,000 or more on the last day of the applicable taxpayer's taxable year, the applicable taxpayer
761 shall pay 100% of the required annual payment after withholding on or before the 15th day of
762 the first month of the year after the taxable year.

763 (f) (i) Except as provided in Subsection (3)(f)(ii), if, after making an estimated tax
764 payment, an applicable taxpayer's adjusted state tax liability after withholding changes, the
765 applicable taxpayer shall proportionally increase or decrease the applicable taxpayer's
766 remaining estimated tax payments for the taxable year so that the balance of the required
767 annual payment after withholding is made in equal installments.

768 (ii) If a taxpayer files an amended return for a taxable year after the original due date
769 for filing the return, not including extensions, the applicable taxpayer is not required to:

(A) recalculate the applicable taxpayer's adjusted state tax liability for the taxable year for purposes of this part; or

(B) proportionally increase or decrease the applicable taxpayer's estimated tax payments for the taxable year under Subsection (3)(f)(i).

(4) (a) An applicable taxpayer that makes an estimated tax payment under this section shall make the estimated tax payment by electronic means.

(b) Notwithstanding Subsection (4)(a), the commission may waive the requirement of Subsection (4)(a) if the applicable taxpayer demonstrates to the commission that the requirement of Subsection (4)(a) would cause an undue hardship.

Section 12. Section **59-10-1504** is enacted to read:

59-10-1504. Penalties -- Commission authority to waive, reduce, or compromise penalty.

(1) Subject to Subsection 59-10-1505(1)(c) and except as provided in Subsection (2), an applicable taxpayer shall pay a penalty as provided in Section 59-1-401 if the applicable taxpayer fails to pay or underpays an estimated tax payment in accordance with this part.

(2) Subject to Subsection 59-10-1505(1)(c), in accordance with the procedures and requirements of Section 59-1-401, the commission may waive, reduce, or compromise the penalty described in Subsection (1).

Section 13. Section **59-10-1505** is enacted to read:

59-10-1505. Rulemaking authority -- Taxpayer with a taxable year of less than 12 months -- Farmer or fisherman -- Nonresident alien -- Exceptions to penalty -- Calculation of adjusted state tax liability.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules:

(a) providing for estimated tax payments for a taxpayer with a taxable year of less than 12 months;

(b) establishing the required annual payment and providing for estimated tax payments:

(i) for a:

(A) farmer or fisherman; or

(B) nonresident alien described in Section 6654(j), Internal Revenue Code; and

(ii) consistent with Section 6654, Internal Revenue Code; and

(c) providing for the following exceptions to the penalty described in Section 59-10-1504:

(i) an exception consistent with Section 6654(e)(2), Internal Revenue Code, for an applicable taxpayer that filed a return under this chapter for the prior taxable year;

(ii) an exception consistent with Section 6654(e)(3), Internal Revenue Code;

(iii) an exception for an applicable taxpayer's failure to pay the final estimated tax payment for a taxable year consistent with Section 6654(h), Internal Revenue Code; and

(iv) an exception consistent with Section 6658(a), Internal Revenue Code.

(2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

(i) except as provided in Subsection (2)(b), allowing for an adjustment to the calculation of adjusted state tax liability after withholding and adjusted state tax liability before withholding for purposes of this part, by adding or subtracting an amount that is added or subtracted on a return filed under this chapter; and

(ii) defining the circumstances that constitute an undue hardship to make an estimated tax payment by electronic means described in Section 59-10-1503.

(b) The commission may not make a rule under Subsection (2)(a)(i) that adjusts the calculation of adjusted state tax liability after withholding or adjusted state tax liability before withholding to include:

(i) a nonrefundable tax credit or refundable tax credit that is added or subtracted on a return filed under this chapter;

(ii) a contribution made in accordance with Part 13, Individual Income Tax Contribution Act; or

(iii) an amount of use tax liability under Chapter 12, Sales and Use Tax Act, reported on a return filed under this chapter.

Section 14. Section **59-10-1506** is enacted to read:

59-10-1506. Commission to summarize requirements of this part on the commission's website.

On or before December 1, 2010, the commission shall provide a summary of the requirements of this part in a conspicuous place on the commission's website.

Section 15. **Effective date.**

- 832 (1) Sections 59-10-1505 and 59-10-1506 take effect on May 11, 2010.
- 833
- 834 (2) The following sections take effect for a taxable year beginning on or after January
- 835 1, 2011:
- 836 (a) Section 59-1-401;
- 837 (b) Section 59-1-1408;
- 838 (c) Section 59-5-107;
- 839 (d) Section 59-5-207;
- 840 (e) Section 59-7-504;
- 841 (f) Section 59-7-507;
- 842 (g) Section 59-9-104;
- 843 (h) Section 59-10-516;
- 844 (i) Section 59-10-1501;
- 845 (j) Section 59-10-1502;
- 846 (k) Section 59-10-1503; and
- 847 (l) Section 59-10-1504.