

**TAX CHANGES**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David Litvack**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends the Revenue and Taxation title to address penalties, the payment of taxes, and estimated tax payments for individual income tax purposes.

**Highlighted Provisions:**

This bill:

- ▶ modifies penalties related to certain taxes;
- ▶ 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

- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**



28 None

29 **Other Special Clauses:**

30 This bill provides effective dates.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **59-1-401**, as last amended by Laws of Utah 2010, Chapter 233

34 ENACTS:

35 **59-10-1501**, Utah Code Annotated 1953

36 **59-10-1502**, Utah Code Annotated 1953

37 **59-10-1503**, Utah Code Annotated 1953

38 **59-10-1504**, Utah Code Annotated 1953

39 **59-10-1505**, Utah Code Annotated 1953

40 **59-10-1506**, Utah Code Annotated 1953



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

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

44 **59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute**  
45 **of limitations -- Commission authority to waive, reduce, or compromise penalty or**  
46 **interest.**

47 (1) As used in this section:

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

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

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

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

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

58 (I) a person that files a return after the due date as described in Subsection (2)(a) is

59 subject to the penalty described in Subsection (2)(c)(ii); and

60 (II) a person that fails to pay the tax, fee, or charge as described in Subsection (3)(a) is

61 subject to the penalty described in Subsection (3)(b)(ii).

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

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

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

68 (c) (i) Except as provided in Subsection (1)(c)(ii), "tax, fee, or charge" means:

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

70 (I) this title;

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

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

73 (IV) Section 19-6-410.5;

74 (V) Section 19-6-714;

75 (VI) Section 19-6-805;

76 (VII) Section 34A-2-202;

77 (VIII) Section 40-6-14;

78 (IX) Section 69-2-5;

79 (X) Section 69-2-5.5; or

80 (XI) Section 69-2-5.6; or

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

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

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

84 (B) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;

85 (C) Chapter 2, Property Tax Act, except for Section 59-2-1309;

86 (D) Chapter 3, Tax Equivalent Property Act; or

87 (E) Chapter 4, Privilege Tax.

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

90 (2) (a) The due date for filing a return is:  
91 (i) if the person filing the return is not allowed by law an extension of time for filing  
92 the return, the day on which the return is due as provided by law; or  
93 (ii) if the person filing the return is allowed by law an extension of time for filing the  
94 return, the earlier of:  
95 (A) the date the person files the return; or  
96 (B) the last day of that extension of time as allowed by law.  
97 (b) A penalty in the amount described in Subsection (2)(c) is imposed if:  
98 (i) a person files a return after the due date described in Subsection (2)(a)[-]; or  
99 (ii) (A) a person fails to file a return; and  
100 (B) the commission estimates a tax, fee, or charge due in accordance with Section  
101 59-1-1406.  
102 (c) For purposes of Subsection (2)(b), the penalty is an amount equal to the greater of:  
103 (i) if the return described in Subsection (2)(b) is filed with respect to an unactivated  
104 tax, fee, or charge:  
105 (A) \$20; or  
106 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or  
107 (ii) if the return described in Subsection (2)(b) is filed with respect to an activated tax,  
108 fee, or charge, beginning on the activation date for the tax, fee, or charge:  
109 (A) \$20; or  
110 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the return is  
111 filed no later than five days after the due date described in Subsection (2)(a);  
112 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the return is filed  
113 more than five days after the due date but no later than 15 days after the due date described in  
114 Subsection (2)(a); or  
115 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the return is  
116 filed more than 15 days after the due date described in Subsection (2)(a).  
117 (d) This Subsection (2) does not apply to:  
118 (i) an amended return; or  
119 (ii) a return with no tax due.  
120 (3) (a) A person is subject to a penalty for failure to pay a tax, fee, or charge if:

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

124 (ii) the person:

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

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

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

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

131 (iv) the person:

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

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

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

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

137 (v) (A) the commission:

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

140 (II) is considered to have denied a request for reconsideration under Subsection  
141 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed  
142 request for agency action; and

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

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

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

149 (vi) the person fails to pay the tax, fee, or charge within a 30-day period after the date  
150 of a final judicial decision resulting from a timely filed petition for judicial review.

151 (b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:

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

154 (A) \$20; or

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

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

158 (A) \$20; or

159 (B) (I) 2% 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 no later than five days after the due date for filing a  
161 return described in Subsection (2)(a);

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

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

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

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

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

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

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

182 (iii) For purposes of this Subsection (4), a payment of estimated tax shall be credited

183 against unpaid required installments in the order in which the installments are required to be  
184 paid.

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

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

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

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

198 (6) If a person does not file a return within an extension of time allowed by Section  
199 59-7-505 or 59-10-516, the person:

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

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

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

203 (A) \$20; or

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

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

207 (A) \$20; or

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

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

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

214 is due to negligence.

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

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

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

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

225 (i) The notice of proposed penalty shall:

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

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

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

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

231 or

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

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

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

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

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

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

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



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

247 (A) the seller meets one or more of the criteria described in Subsection  
248 59-12-107(1)(a); and

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

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

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

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

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

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

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

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

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

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

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

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

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

275 (9) If a person, in furtherance of a frivolous position, has a prima facie intent to delay

276 or impede administration of a law relating to a tax, fee, or charge and files a purported return  
277 that fails to contain information from which the correctness of reported tax, fee, or charge  
278 liability can be determined or that clearly indicates that the tax, fee, or charge liability shown is  
279 substantially incorrect, the penalty is \$500.

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

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

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

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

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

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

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

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

293 (A) a return;

294 (B) an affidavit;

295 (C) a claim; or

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

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

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

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

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

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

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

306 (iv) advising in the preparation or presentation of any portion of a document described

307 in Subsection (11)(a)(i);

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

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

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

314 (c) For purposes of Subsection (11)(a), the penalty:

315 (i) shall be imposed by the commission;

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

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

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

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

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

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

330 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(b)(i), the  
331 penalty may not:

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

333 (B) exceed \$1,000.

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

338 information, is guilty of a third degree felony.

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

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

342 (B) exceed \$5,000.

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

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

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

349 (B) exceed \$25,000.

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

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

353 (I) a return;

354 (II) an affidavit;

355 (III) a claim; or

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

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

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

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

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

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

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

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

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

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

369 Subsection (12)(e)(i)(A);

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

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

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

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

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

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

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

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

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

383 (B) exceed \$25,000.

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

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

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

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

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

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

396 Section 2. Section **59-10-1501** is enacted to read:

397 **Part 15. Estimated Tax Payments Act**

398 **59-10-1501. Title.**

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

400 Section 3. Section **59-10-1502** is enacted to read:

401 **59-10-1502. Definitions.**

402 As used in this part:

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

404 (a) the difference between:

405 (i) the product of:

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

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

408 chapter; and

409 (ii) the sum of:

410 (A) the nonrefundable tax credits and refundable tax credits that the taxpayer claims as

411 allowed for that taxable year on the applicable taxpayer's return filed under this chapter for the

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

413 (B) any adjustments the commission makes in accordance with Subsection

414 59-10-1505(2); and

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

416 withheld under:

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

418 (ii) this chapter for the taxable year.

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

420 (a) the product of:

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

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

423 chapter; and

424 (b) the sum of:

425 (i) the nonrefundable tax credits and refundable tax credits that the taxpayer claims as

426 allowed for that taxable year on the applicable taxpayer's return filed under this chapter for the

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

428 (ii) any adjustments the commission makes in accordance with Subsection

429 59-10-1505(2).

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

431 (4) "Calendar year taxpayer" means an individual, an estate, or a trust that has a taxable  
432 year that:

433 (a) begins on January 1; and

434 (b) is for a 12-month period.

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

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

437 (7) "Fiscal year taxpayer" means an individual, an estate, or a trust that has a taxable  
438 year that:

439 (a) begins on a day other than January 1; and

440 (b) is for a 12-month period.

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

442 (9) "Required annual payment" means:

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

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

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

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

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

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

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

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

457 (ii) this chapter for the taxable year.

458 Section 4. Section **59-10-1503** is enacted to read:

459 **59-10-1503. Required annual payment -- Estimated tax payments.**

460 (1) For a taxable year beginning on or after January 1, 2012, an applicable taxpayer  
461 required to file a return under this chapter for a taxable year shall pay to the commission the

462 required annual payment if on the last day of the applicable taxpayer's taxable year the  
463 applicable taxpayer's adjusted state tax liability after withholding for the taxable year will be  
464 \$1,000 or more, regardless of the applicable taxpayer's filing status.

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

467 (a) deduction and withholding under:

468 (i) Chapter 6, Mineral Production Tax Withholding; or

469 (ii) this chapter;

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

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

473 (3) (a) If an applicable taxpayer makes an estimated tax payment to the commission,  
474 the estimated tax payment shall be made in accordance with this Subsection (3) and Subsection  
475 (4).

476 (b) Subject to Subsection (3)(f), if, on or before the last day of the third month of the  
477 taxable year, the applicable taxpayer's adjusted state tax liability after withholding will be  
478 \$1,000 or more on the last day of the applicable taxpayer's taxable year, the applicable taxpayer  
479 shall pay:

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

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

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

486 (iv) 25% of the required annual payment after withholding on or before the 15th day of  
487 the first month of the year after the taxable year.

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

492 (i) 50% of the required annual payment after withholding on or before the 15th day of



493 the sixth month of the taxable year;

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

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

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

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

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

506 (e) Subject to Subsection (3)(f), if, on or after the first day of the ninth month of the  
507 taxable year, an applicable taxpayer's adjusted state tax liability after withholding will be  
508 \$1,000 or more on the last day of the applicable taxpayer's taxable year, the applicable taxpayer  
509 shall pay 100% of the required annual payment after withholding on or before the 15th day of  
510 the first month of the year after the taxable year.

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

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

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

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

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

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

527 Section 5. Section **59-10-1504** is enacted to read:

528 **59-10-1504. Penalties -- Commission authority to waive, reduce, or compromise**  
529 **penalty.**

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

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

536 Section 6. Section **59-10-1505** is enacted to read:

537 **59-10-1505. Rulemaking authority -- Taxpayer with a taxable year of less than 12**  
538 **months -- Farmer or fisherman -- Nonresident alien -- Exceptions to penalty --**  
539 **Calculation of adjusted state tax liability.**

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

542 (a) providing for estimated tax payments for a taxpayer with a taxable year of less than  
543 12 months;

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

545 (i) for a:

546 (A) farmer or fisherman; or

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

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

549 (c) providing for the following exceptions to the penalty described in Section

550 59-10-1504:

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

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

554 (iii) an exception for an applicable taxpayer's failure to pay the final estimated tax

555 payment for a taxable year consistent with Section 6654(h), Internal Revenue Code; and  
556 (iv) an exception consistent with Section 6658(a), Internal Revenue Code.  
557 (2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
558 the commission may make rules:  
559 (i) except as provided in Subsection (2)(b), allowing for an adjustment to the  
560 calculation of adjusted state tax liability after withholding and adjusted state tax liability before  
561 withholding for purposes of this part, by adding or subtracting an amount that is added or  
562 subtracted on a return filed under this chapter; and  
563 (ii) defining the circumstances that constitute an undue hardship to make an estimated  
564 tax payment by electronic means described in Section 59-10-1503.  
565 (b) The commission may not make a rule under Subsection (2)(a)(i) that adjusts the  
566 calculation of adjusted state tax liability after withholding or adjusted state tax liability before  
567 withholding to include:  
568 (i) a nonrefundable tax credit or refundable tax credit that is added or subtracted on a  
569 return filed under this chapter;  
570 (ii) a contribution made in accordance with Part 13, Individual Income Tax  
571 Contribution Act; or  
572 (iii) an amount of use tax liability under Chapter 12, Sales and Use Tax Act, reported  
573 on a return filed under this chapter.  
574 Section 7. Section **59-10-1506** is enacted to read:  
575 **59-10-1506. Commission to summarize requirements of this part on the**  
576 **commission's website.**  
577 On or before December 1, 2011, the commission shall provide a summary of the  
578 requirements of this part in a conspicuous place on the commission's website.  
579 Section 8. **Effective dates.**  
580 (1) The amendments to Sections 59-10-1505 and 59-10-1506 take effect on May 10,  
581 2011.  
582 (2) The following sections take effect for a taxable year beginning on or after January  
583 1, 2012:  
584 (a) Section 59-10-1501;  
585 (b) Section 59-10-1502;

- 586            (c) Section 59-10-1503; and
  - 587            (d) Section 59-10-1504.
  - 588            (3) The amendments to Section 59-1-401 take effect on January 1, 2012.
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**Legislative Review Note**  
**as of 2-24-11 11:12 AM**

**Office of Legislative Research and General Counsel**

# FISCAL NOTE

H.B. 422

SHORT TITLE: **Tax Changes**

SPONSOR: **Litvack, D.**

2011 GENERAL SESSION, STATE OF UTAH

## STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill could increase the Education Fund by \$125,000,000 on a one-time basis in FY 2012.

### STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue:			
Education Fund	\$0	\$125,000,000	\$0
Total Revenue	\$0	\$125,000,000	\$0
Expenditure	\$0	\$0	\$0
Net Impact, All Funds (Rev.-Exp.)	\$0	\$125,000,000	\$0
Net Impact, General/Education Funds	\$0	\$125,000,000	\$0

## LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

## DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.