

REPEAL OF ILLEGAL DRUG STAMP TAX ACT

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel W. Thatcher

House Sponsor: Johnny Anderson

LONG TITLE

General Description:

This bill repeals the Illegal Drug Stamp Tax Act and related references to the Act and requires the Division of Finance to deposit the money in the Drug Stamp Tax Fund into the General Fund.

Highlighted Provisions:

This bill:

- ▶ repeals the Illegal Drug Stamp Tax Act on July 1, 2012;
- ▶ requires the Division of Finance to deposit the money in the Drug Stamp Tax Fund into the General Fund;
- ▶ repeals references to the Illegal Drug Stamp Tax Act; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides effective dates.

Utah Code Sections Affected:

AMENDS:

59-19-105, as last amended by Laws of Utah 2009, Chapter 183

63I-2-259, as renumbered and amended by Laws of Utah 2008, Chapter 382

63J-1-104, as last amended by Laws of Utah 2011, Chapter 342

63J-2-202, as last amended by Laws of Utah 2009, Chapters 183 and 368

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

31 Section 1. Section **59-19-105** is amended to read:

32 **59-19-105. Stamps to be affixed to marihuana and controlled substance --**
33 **Anonymity provided when purchasing stamps -- Collection and distribution of tax --**
34 **Property in kind.**

35 (1) When a dealer purchases, acquires, transports, or imports into this state marihuana
36 or controlled substances, the dealer shall permanently affix the official indicia on the
37 marihuana or controlled substances evidencing the payment of the tax required under this
38 chapter. A stamp or other official indicia may not be used more than once.

39 (2) Taxes imposed upon marihuana or controlled substances by this chapter are due
40 and payable immediately upon acquisition or possession in this state by a dealer.

41 (3) Payments required by this chapter shall be made to the commission on forms
42 provided by the commission.

43 (4) (a) A dealer is not required to give the dealer's name, address, Social Security
44 number, or other identifying information on the form.

45 (b) The commission or its employees may not reveal any facts contained in any report,
46 form, or return required by this chapter or any information obtained from a dealer.

47 (c) None of the information contained in a report, form, or return or otherwise obtained
48 from a dealer in connection with this section may be used against the dealer in any criminal
49 proceeding unless it is independently obtained, except in connection with a proceeding
50 involving taxes due under this chapter from the dealer making the return. This Subsection
51 (4)(c) supersedes any provision to the contrary.

52 (d) A person who discloses information in violation of this Subsection (4) is guilty of a
53 class A misdemeanor.

54 (5) This section does not prohibit the commission from publishing statistics that do not
55 disclose the identity of a dealer or the actual contents of any reports, forms, or returns.

56 (6) (a) The commission shall collect all taxes imposed under this chapter. [~~Amounts~~]
57 Except as provided in Subsection (6)(d), amounts collected under this chapter, whether

58 characterized as taxes, interest, or penalties, shall be deposited in the Drug Stamp Tax Fund as
59 a dedicated credit and shall be applied and distributed under Section 63J-1-104 of the
60 Budgetary Procedures Act as follows:

61 (i) 40% to the commission for administrative costs of recovery; and
62 (ii) 60% to the law enforcement agency conducting the controlled substance
63 investigation, to be used and applied by the agency in the continued enforcement of controlled
64 substance laws.

65 (b) [Hf] Except as provided in Subsection (6)(d), if there is more than one participating
66 law enforcement agency, the 60% under Subsection (6)(a)(ii) shall be divided equitably and
67 distributed among the agencies by the administrative law judge conducting the hearing to
68 determine taxpayer liability. The distribution shall be based upon the extent of agency
69 participation as appears from evidence submitted by each agency relative to actual time and
70 expense incurred in the investigation.

71 (c) [Hf] Except as provided in Subsection (6)(d), if no law enforcement agency is
72 involved in the collection of a specific amount under this chapter, the entire amount collected
73 shall be applied under Subsection (6)(a)(i) to administrative costs of recovery.

74 (d) On or before June 30, 2012, the Division of Finance shall deposit the money in the
75 Drug Stamp Tax Fund into the General Fund.

76 (7) (a) If property in kind obtained from the taxpayer is of use or benefit to the
77 commission in the enforcement of this chapter or is of use or benefit to the participating law
78 enforcement agency in the continued enforcement of controlled substance laws, either the
79 commission or the law enforcement agency may apply to the administrative law judge for the
80 award of the property. If the administrative law judge finds the property is of use or benefit
81 either to the commission or the law enforcement agency, the property shall be awarded
82 accordingly.

83 (b) Before an award under this Subsection (7) is ordered, the property shall be
84 appraised by a court-appointed appraiser and the appraised value shall be credited to the
85 taxpayer. If the taxpayer objects to the results of the court-appointed appraisal, the taxpayer

86 may obtain the taxpayer's own appraisal at the taxpayer's own expense within 10 days of the
87 court-appointed appraisal. The decision of the administrative law judge as to value is
88 controlling.

89 (c) The value of any property in kind awarded to the commission or to the participating
90 law enforcement agency shall be counted as a portion of its percentage share under Subsection
91 (6).

92 (8) Property of the taxpayer otherwise subject to forfeiture under Section 58-37-13 is
93 not affected by this chapter if there is compliance with Section 58-37-13 regarding the
94 forfeiture and the proceeds and property seized and forfeited are accordingly divided and
95 distributed.

96 Section 2. Section **63I-2-259** is amended to read:

97 **63I-2-259. Repeal dates -- Title 59.**

98 Title 59, Chapter 19, Illegal Drug Stamp Tax Act, is repealed July 1, 2012.

99 Section 3. Section **63J-1-104** is amended to read:

100 **63J-1-104. Revenue types -- Disposition of funds collected or credited by a state**
101 **agency.**

102 (1) (a) The Division of Finance shall:

103 (i) account for revenues in accordance with generally accepted accounting principles;

104 and

105 (ii) use the major revenue types in internal accounting.

106 (b) Each agency shall:

107 (i) use the major revenue types to account for revenues;

108 (ii) deposit revenues and other public funds received by them by following the
109 procedures and requirements of Title 51, Chapter 7, State Money Management Act; and

110 (iii) expend revenues and public funds as required by this chapter.

111 (2) (a) Each agency shall deposit its free revenues into the appropriate fund.

112 (b) An agency may expend free revenues up to the amount specifically appropriated by
113 the Legislature.

114 (c) Any free revenue funds appropriated by the Legislature to an agency that remain
115 unexpended at the end of the fiscal year lapse to the source fund unless the Legislature provides
116 by law that those funds are nonlapsing.

117 (3) (a) Each agency shall deposit its restricted revenues into the applicable restricted
118 account or fund.

119 (b) Revenues in a restricted account or fund do not lapse to another account or fund
120 unless otherwise specifically provided for by law or legislative appropriation.

121 (c) The Legislature may appropriate restricted revenues from a restricted account or
122 fund for the specific purpose or program designated by law.

123 (d) If the fund equity of a restricted account or fund is insufficient to provide the
124 accounts appropriated from it by the Legislature, the Division of Finance may reduce the
125 appropriation to a level that ensures that the fund equity is not less than zero.

126 (e) Any restricted revenues appropriated by the Legislature to an agency that remain
127 unexpended at the end of the fiscal year lapse to the applicable restricted account or fund unless
128 the Legislature provides by law that those appropriations, or the program or line item financed
129 by those appropriations, are nonlapsing.

130 (4) (a) An agency may expend dedicated credits for any purpose within the program or
131 line item.

132 (b) (i) Except as provided in Subsection (4)(b)(ii), an agency may not expend dedicated
133 credits in excess of the amount appropriated as dedicated credits by the Legislature.

134 (ii) In order to expend dedicated credits in excess of the amount appropriated as
135 dedicated credits by the Legislature, the following procedure shall be followed:

136 (A) The agency seeking to make the excess expenditure shall:

137 (I) develop a new work program that:

138 (Aa) consists of the currently approved work program and the excess expenditure
139 sought to be made; and

140 (Bb) complies with the requirements of Section 63J-2-202;

141 (II) prepare a written justification for the new work program that sets forth the purpose

142 and necessity of the excess expenditure; and

143 (III) submit the new work program and the written justification for the new work
144 program to the Division of Finance.

145 (B) The Division of Finance shall process the new work program with written
146 justification and make this information available to the Governor's Office of Planning and
147 Budget and the legislative fiscal analyst.

148 (iii) An expenditure of dedicated credits in excess of amounts appropriated as
149 dedicated credits by the Legislature may not be used to permanently increase personnel within
150 the agency unless:

151 (A) the increase is approved by the Legislature; or

152 (B) the money is deposited as a dedicated credit in [~~(F) the Drug Stamp Tax Fund~~
153 ~~under Section 59-19-105; or (H)] a line item covering tuition or federal vocational funds at an
154 institution of higher education.~~

155 (c) (i) All excess dedicated credits lapse to the appropriate fund at the end of the fiscal
156 year unless the Legislature has designated the entire program or line item that is partially or
157 fully funded from dedicated credits as nonlapsing.

158 (ii) The Division of Finance shall determine the appropriate fund into which the
159 dedicated credits lapse.

160 (5) (a) The Legislature may establish by law the maximum amount of fixed collections
161 that an agency may expend.

162 (b) If an agency receives less than the maximum amount of expendable fixed
163 collections established by law, the agency's authority to expend is limited to the amount of
164 fixed collections that it receives.

165 (c) If an agency receives fixed collections greater than the maximum amount of
166 expendable fixed collections established by law, those excess amounts lapse to the General
167 Fund, the Education Fund, the Transportation Fund, or the Transportation Investment Fund of
168 2005 as designated by the director of the Division of Finance at the end of the fiscal year.

169 (6) Unless otherwise specifically provided by law, when an agency has a program or

170 line item that is funded by more than one major revenue type:

171 (a) the agency shall expend its dedicated credits and fixed collections first; and

172 (b) if the program or line item includes both free revenue and restricted revenue, an
173 agency shall expend those revenues based upon a proration of the amounts appropriated from
174 each of those major revenue types.

175 Section 4. Section **63J-2-202** is amended to read:

176 **63J-2-202. Disposition of revenues -- Reporting of balances in dedicated credits**
177 **and fixed collections.**

178 (1) (a) Each agency shall include in its annual budget request estimates of dedicated
179 credits revenues and fixed collections revenues that are identified by, collected for, or set by the
180 agency.

181 (b) If the Legislature or the Division of Finance establishes a new revenue type by law,
182 the agency shall include that new revenue type in its budget request for the next fiscal year.

183 (c) (i) Except as provided in Subsection (1)(c)(ii), if any agency fails to include the
184 estimates of a revenue type in its annual budget request, the Division of Finance shall deposit
185 the money collected in that revenue type into the General Fund or other appropriate fund as
186 free or restricted revenue.

187 (ii) The Division of Finance may not deposit the money collected from a revenue type
188 not included in an agency's annual budget request into the General Fund or other appropriate
189 fund if the agency did not include the estimates of the revenue type in its annual budget request
190 because the Legislature had not yet established or authorized the new revenue type by law.

191 (2) (a) (i) (A) Except as provided in Subsection (2)(a)(i)(B) or (2)(b), each agency that
192 receives dedicated credits and fixed collections revenues greater than the amount appropriated
193 to them by the Legislature in the annual appropriations act may expend the excess up to 25% of
194 the amount appropriated if the expenditure is authorized by an amended work program
195 approved as provided in Section 63J-1-209. [~~However, except for money deposited as~~
196 ~~dedicated credits in the Illegal Drug Stamp Tax Fund under Section 59-19-105 or]~~

197 (B) Except for line items covering tuition and federal vocational funds at institutions of

198 higher learning, any expenditure of dedicated credits in excess of amounts appropriated by the
199 Legislature may not be used to permanently increase personnel within the agency unless
200 approved by the Legislature.

201 (ii) The Division of Finance shall deposit the balance of that excess into the General
202 Fund or other appropriate fund as free or restricted revenue.

203 (b) Notwithstanding the requirements of Subsection (2)(a), when an agency's dedicated
204 credits and fixed collections revenues represent over 90% of the budget of the program for
205 which they are collected, the agency may expend 100% of the excess of the amount
206 appropriated if the expenditure is authorized by an amended work program approved as
207 provided in Section 63J-1-209.

208 (3) Each agency that receives dedicated credits or fixed collections shall report, to the
209 Division of Finance, any balances remaining in those funds at the conclusion of each fiscal
210 year.

211 **Section 5. Effective dates.**

212 (1) Except as provided in Subsection (2), this bill takes effect on May 8, 2012.

213 (2) The amendments to Sections 63J-1-104 and 63J-2-202 take effect on July 1, 2012.