

Senator Howard A. Stephenson proposes the following substitute bill:

AMENDMENTS TO REVENUE AND TAXATION TITLE

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Howard A. Stephenson

House Sponsor: Patrick Painter

Cosponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends provisions in the Revenue and Taxation title to address certain issues related to the Utah Supreme Court case Ivory Homes v. Utah State Tax Commission.

Highlighted Provisions:

This bill:

- ▶ amends the circumstances under which a person who pays a tax, fee, or charge liability may receive a credit or refund;
- ▶ addresses the construction of a statute involving a tax, fee, or charge by the State Tax Commission or a court;
- ▶ addresses sales and use tax refund procedures; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

This bill provides for retrospective operation.



25 **Utah Code Sections Affected:**

26 AMENDS:

27 **59-1-1410**, as enacted by Laws of Utah 2009, Chapter 212

28 **59-1-1417**, as enacted by Laws of Utah 2009, Chapter 212

29 **59-12-110**, as last amended by Laws of Utah 2009, Chapters 203 and 212



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

32 Section 1. Section **59-1-1410** is amended to read:

33 **59-1-1410. Action for collection of tax, fee, or charge -- Action for refund or**
34 **credit of tax, fee, or charge -- Denial of refund claim under appeal -- Appeal of denied**
35 **refund claim.**

36 (1) (a) Except as provided in Subsections (3) through (7) and Sections 59-5-114,
37 59-7-519, 59-10-536, and 59-11-113, the commission shall assess a tax, fee, or charge within
38 three years after the day on which a person files a return.

39 (b) Except as provided in Subsections (3) through (7), if the commission does not
40 assess a tax, fee, or charge within the three-year period provided in Subsection (1)(a), the
41 commission may not commence a proceeding to collect the tax, fee, or charge.

42 (2) (a) Except as provided in Subsection (2)(b), for purposes of this part, a return filed
43 before the last day prescribed by statute or rule for filing the return is considered to be filed on
44 the last day for filing the return.

45 (b) A return of withholding tax under Chapter 10, Part 4, Withholding of Tax, is
46 considered to be filed on April 15 of the succeeding calendar year if the return:

47 (i) is for a period ending with or within a calendar year; and

48 (ii) is filed before April 15 of the succeeding calendar year.

49 (3) The commission may assess a tax, fee, or charge or commence a proceeding for the
50 collection of a tax, fee, or charge at any time if:

51 (a) a person:

52 (i) files a:

53 (A) false return with intent to evade; or

54 (B) fraudulent return with intent to evade; or

55 (ii) fails to file a return; or

56 (b) the commission estimates the amount of tax, fee, or charge due in accordance with
57 Subsection 59-1-1406(2).

58 (4) The commission may extend the period to make an assessment or to commence a
59 proceeding to collect a tax, fee, or charge if:

60 (a) the three-year period under Subsection (1) has not expired; and

61 (b) the commission and the person sign a written agreement:

62 (i) authorizing the extension; and

63 (ii) providing for the length of the extension.

64 (5) The commission may make an assessment as provided in Subsection (6) if:

65 (a) the commission delays an audit at the request of a person;

66 (b) the person subsequently refuses to agree to an extension request by the commission;

67 and

68 (c) the three-year period under Subsection (1) expires before the commission
69 completes the audit.

70 (6) An assessment under Subsection (5) shall be:

71 (a) for the time period for which the commission could not make the assessment
72 because of the expiration of the three-year period; and

73 (b) in an amount equal to the difference between:

74 (i) the commission's estimate of the amount of tax, fee, or charge the person would
75 have been assessed for the time period described in Subsection (6)(a); and

76 (ii) the amount of tax, fee, or charge the person actually paid for the time period
77 described in Subsection (6)(a).

78 (7) If a person erroneously pays a liability, overpays a liability, pays a liability more
79 than once, or the commission erroneously receives, collects, or computes a liability, the
80 commission shall:

81 (a) credit the liability against any amount of liability the person owes; and

82 (b) refund any balance to:

83 (i) the person; or

84 (ii) (A) the person's assign;

85 (B) the person's personal representative;

86 (C) the person's successor; or

87 (D) a person similar to Subsections (7)(b)(ii)(A) through (C) as determined by the
88 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
89 Rulemaking Act.

90 (8) (a) Except as provided in Subsection (8)(b) or Section 19-2-124, 59-7-522,
91 59-10-529, or 59-12-110, the commission may not make a credit or refund unless a person files
92 a claim with the commission within the later of:

93 (i) three years from the due date of the return, including the period of any extension of
94 time provided in statute for filing the return; or

95 (ii) two years from the date the tax was paid.

96 (b) The commission shall extend the time period for a person to file a claim under
97 Subsection (8)(a) if:

98 (i) the time period described in Subsection (8)(a) has not expired; and

99 (ii) the commission and the person sign a written agreement:

100 (A) authorizing the extension; and

101 (B) providing for the length of the extension.

102 (9) If the commission denies a claim for a credit or refund, a person may request a
103 redetermination of the denial by filing a petition or request for agency action with the
104 commission:

105 (a) (i) within a 30-day period after the day on which the commission mails a notice of
106 denial for the claim for credit or refund; or

107 (ii) within a 90-day period after the day on which the commission mails a notice of
108 denial for the claim for credit or refund, if the notice is addressed to a person outside the
109 United States or the District of Columbia; and

110 (b) in accordance with:

111 (i) Section 59-1-501; and

112 (ii) Title 63G, Chapter 4, Administrative Procedures Act.

113 (10) The action of the commission on a person's petition for redetermination of a denial
114 of a claim for credit or refund is final 30 days after the day on which the commission sends the
115 commission's decision or order, unless the person seeks judicial review.

116 Section 2. Section **59-1-1417** is amended to read:

117 **59-1-1417. Burden of proof -- Statutory construction.**

118 (1) In a proceeding before the commission, the burden of proof is on the petitioner
119 except for determining the following, in which the burden of proof is on the commission:

120 ~~[(1)]~~ (a) whether the petitioner committed fraud with intent to evade a tax, fee, or
121 charge;

122 ~~[(2)]~~ (b) whether the petitioner is obligated as the transferee of property of the person
123 that originally owes a liability or a preceding transferee, but not to show that the person that
124 originally owes a liability is obligated for the liability; and

125 ~~[(3)]~~ (c) whether the petitioner is liable for an increase in a deficiency if the increase is
126 asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405
127 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the
128 increase in the deficiency is the result of a change or correction of federal taxable income:

129 ~~[(a)]~~ (i) required to be reported; and

130 ~~[(b)]~~ (ii) of which the commission has no notice at the time the commission mails the
131 notice of deficiency.

132 (2) Regardless of whether a taxpayer has paid or remitted a tax, fee, or charge, the
133 commission or a court considering a case involving the tax, fee, or charge shall:

134 (a) construe a statute imposing the tax, fee, or charge strictly in favor of the taxpayer;
135 and

136 (b) construe a statute providing an exemption from or credit against the tax, fee, or
137 charge strictly against the taxpayer.

138 Section 3. Section **59-12-110** is amended to read:

139 **59-12-110. Refunds procedures.**

140 (1) A seller that files a claim for a refund under Section 59-12-107 for bad debt shall
141 file the claim with the commission within three years from the date on which the seller could
142 first claim the refund for the bad debt.

143 (2) A seller that files a claim for a refund for a repossessed item shall file the claim
144 with the commission within three years from the date the item is repossessed.

145 ~~[(3) A taxpayer may obtain a refund under Section 59-1-1410 of a tax paid under this~~
146 ~~chapter on a transaction that is taxable under Subsection 59-12-103(1) if:]~~

147 ~~[(a) the sale or use is exempt from sales and use taxes under Section 59-12-104 on the~~
148 ~~date of purchase; and]~~

149 ~~[(b) the taxpayer files a claim for a refund with the commission as provided in Section~~
150 ~~59-1-1410.]~~

151 (3) Except as provided in Subsection (1) or (2), procedures and requirements for a
152 taxpayer to obtain a refund from the commission are as provided in Section 59-1-1410.

153 Section 4. **Effective date -- Retrospective operation.**

154 (1) Subject to Subsection (2), this bill takes effect on May 8, 2012.

155 (2) This bill applies retrospectively to a refund request that is pending on, or filed on or
156 after, September 27, 2011.