

## SB0243S01 compared with SB0243

~~deleted text~~ shows text that was in SB0243 but was deleted in SB0243S01.

inserted text shows text that was not in SB0243 but was inserted into SB0243S01.

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Senator Daniel W. Thatcher proposes the following substitute bill:

### REPEAL OF ILLEGAL DRUG STAMP TAX ACT

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Daniel W. Thatcher**

House Sponsor: ~~\_\_\_\_\_~~ Johnny Anderson

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#### 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:

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None

### Other Special Clauses:

~~{None}~~ 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

~~{REPEALS:~~

~~59-19-101, as enacted by Laws of Utah 1988, Chapter 246~~

~~59-19-102, as enacted by Laws of Utah 1988, Chapter 246~~

~~59-19-103, as enacted by Laws of Utah 1988, Chapter 246~~

~~59-19-104, as enacted by Laws of Utah 1988, Chapter 246~~

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

~~59-19-106, as last amended by Laws of Utah 1989, Chapter 242~~

~~59-19-107, as enacted by Laws of Utah 1988, Chapter 246~~

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

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

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

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

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

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

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

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

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

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

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

(6) (a) The commission shall collect all taxes imposed under this chapter. ~~Amounts~~ Except as provided in Subsection (6)(d), amounts collected under this chapter, whether characterized as taxes, interest, or penalties, shall be deposited in the Drug Stamp Tax Fund as a dedicated credit and shall be applied and distributed under Section 63J-1-104 of the Budgetary Procedures Act as follows:

(i) 40% to the commission for administrative costs of recovery; and

(ii) 60% to the law enforcement agency conducting the controlled substance investigation, to be used and applied by the agency in the continued enforcement of controlled substance laws.

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

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

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

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

(b) Before an award under this Subsection (7) is ordered, the property shall be appraised by a court-appointed appraiser and the appraised value shall be credited to the taxpayer. If the taxpayer objects to the results of the court-appointed appraisal, the taxpayer may obtain the taxpayer's own appraisal at the taxpayer's own expense within 10 days of the court-appointed appraisal. The decision of the administrative law judge as to value is controlling.

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

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

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

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

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

Section ~~63J-1-104~~<sup>3</sup>. Section **63J-1-104** is amended to read:

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

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

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

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

(b) Each agency shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) develop a new work program that:

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

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

(II) prepare a written justification for the new work program that sets forth the purpose and necessity of the excess expenditure; and

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

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

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

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

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

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

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

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

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

(c) If an agency receives fixed collections greater than the maximum amount of expendable fixed collections established by law, those excess amounts lapse to the General

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Fund, the Education Fund, the Transportation Fund, or the Transportation Investment Fund of 2005 as designated by the director of the Division of Finance at the end of the fiscal year.

(6) Unless otherwise specifically provided by law, when an agency has a program or line item that is funded by more than one major revenue type:

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

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

Section ~~(2)~~4. Section **63J-2-202** is amended to read:

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

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

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

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

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

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

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

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

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

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

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

Section ~~3~~. **Repealer:**

~~This bill repeals:~~

~~Section 59-19-101, Short title:~~

~~Section 59-19-102, Definitions:~~

~~Section 59-19-103, Tax imposed on marihuana and controlled substances:~~

~~Section 59-19-104, Stamps evidencing tax paid to be provided and sold by the commission:~~

~~Section 59-19-105, Stamps to be affixed to marihuana and controlled substance -- Anonymity provided when purchasing stamps -- Collection and distribution of tax -- Property in kind:~~

~~Section 59-19-106, Civil penalty -- Criminal penalty -- Statute of limitations -- Burden of proof:~~

~~Section 59-19-107, Commission to administer tax -- No criminal immunity for dealers:~~



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### Legislative Review Note

~~as of 2-14-12 4:49 PM~~

~~Office of Legislative Research and General Counsel;~~ 5. **Effective dates.**

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

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