

TAX ON SAND AND GRAVEL EXTRACTION

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Douglas V. Sagers

Senate Sponsor: _____

LONG TITLE

General Description:

This bill authorizes imposition of a tax on sand and gravel extraction.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ authorizes certain local governments to impose a tax on sand and gravel extraction;
- ▶ establishes a tax rate cap;
- ▶ provides an exemption;
- ▶ establishes taxable value for purposes of the tax;
- ▶ establishes administrative procedures for the tax; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2014.

Utah Code Sections Affected:

ENACTS:

59-5-301, Utah Code Annotated 1953

59-5-302, Utah Code Annotated 1953

59-5-303, Utah Code Annotated 1953



- 28 [59-5-304](#), Utah Code Annotated 1953
- 29 [59-5-305](#), Utah Code Annotated 1953
- 30 [59-5-306](#), Utah Code Annotated 1953
- 31 [59-5-307](#), Utah Code Annotated 1953
- 32 [59-5-308](#), Utah Code Annotated 1953
- 33 [59-5-309](#), Utah Code Annotated 1953
- 34 [59-5-310](#), Utah Code Annotated 1953



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

37 Section 1. Section **59-5-301** is enacted to read:

38 **Part 3. Local Option Sand and Gravel Severance Tax**

39 **59-5-301. Definitions.**

40 As used in this part:

41 (1) "Mine" means an operation for extracting sand or gravel.

42 (2) "Mining" means:

43 (a) the act, process, or work of extracting sand or gravel from its naturally occurring
44 environment or from a mine; and

45 (b) transporting or moving the sand or gravel to a point of processing, use, or sale.

46 (3) "Sand and gravel" means:

47 (a) sand;

48 (b) gravel; or

49 (c) any combination of sand and gravel.

50 Section 2. Section **59-5-302** is enacted to read:

51 **59-5-302. Severance tax -- Rate -- Computation -- Annual exemption.**

52 (1) (a) Beginning July 1, 2014, by majority vote of the legislative body:

53 (i) except as provided in Subsection (1)(b), a county may impose a severance tax at a
54 rate of up to 5% of the value of all sand and gravel extracted, sold, or otherwise disposed of;
55 and

56 (ii) if a tax, in accordance with Subsection (1)(a)(i), is not imposed by the county, a
57 city may impose a severance tax at a rate of up to 5% of the value of all sand and gravel
58 extracted, sold, or otherwise disposed of.

59 (b) If a county has not imposed a severance tax on sand and gravel extracted, sold, or
60 otherwise disposed of under Subsection (1)(a)(i), and a city then imposes a severance tax under
61 Subsection (1)(a)(ii), the county may not impose a severance tax on sand and gravel unless the
62 city first repeals its tax under Subsection (1)(c).

63 (c) If a city or county enacts, repeals, or changes the rate of tax imposed under this
64 chapter, the enactment, repeal, or rate change shall take effect:

65 (i) on the first day of a calendar quarter; and

66 (ii) after a 90-day period beginning on the date the commission receives notice meeting
67 the requirements of Subsection (1)(d) from the city or county.

68 (d) The notice described in Subsection (1)(c) shall state:

69 (i) that the city or county will enact, repeal, or change the rate of a tax imposed under
70 this chapter;

71 (ii) the statutory authority for the tax;

72 (iii) the effective date of the tax; and

73 (iv) the rate of the tax.

74 (2) (a) For purposes of a tax imposed in accordance with Subsection (1), shipping sand
75 and gravel outside of a city or county imposing the tax constitutes a sale.

76 (b) (i) If the sand and gravel is stockpiled for two years or less after extraction, a tax
77 under Subsection (1) is not applicable until the sand or gravel is sold or shipped out of the city
78 or county imposing the tax.

79 (ii) Sand and gravel stockpiled for more than two years is subject to the tax under
80 Subsection (1) at the market value of the sand and gravel at the end of the two-year period
81 described in Subsection (2)(b)(i).

82 (iii) An owner of stockpiled sand and gravel shall annually report to the commission, in
83 a form determined by the commission, the amount of stockpiled sand and gravel.

84 (3) An annual exemption of the first \$50,000 in gross value of sand and gravel is
85 allowed to each mine from a tax imposed in accordance with Subsection (1).

86 (4) Taxes due under this chapter are in addition to all other taxes provided by law and
87 are delinquent, unless otherwise deferred, on June 1 of the calendar year following the calendar
88 year in which the sand or gravel is produced and sold or delivered.

89 Section 3. Section **59-5-303** is enacted to read:

90 **59-5-303. Determining taxable value.**

91 (1) The basis for computing the gross proceeds, prior to those deductions or
92 adjustments specified in this chapter, in determining the taxable value of the sand and gravel
93 sold or otherwise disposed of, in the order of priority, is as follows:

94 (a) if the sand and gravel is sold under a bona fide contract of sale between unaffiliated
95 parties, the value of that sand and gravel is the gross amount the producer receives from that
96 sale;

97 (b) if the sand and gravel is not actually sold but is shipped, transported, or delivered
98 out of the city or county imposing the tax, the value is the product of the number of tons of the
99 sand and gravel and the average daily price per ton as quoted by an established authority for
100 market prices of sand and gravel for the period during which the tax imposed by this chapter is
101 due; and

102 (c) in the event of a sale of sand and gravel between affiliated persons that is not a bona
103 fide sale because the value received is not proportionate to the fair market value of the sand and
104 gravel, the commission shall determine the value of such sand and gravel in an equitable
105 manner by reference to an objective standard as specified in a rule adopted in accordance with
106 the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

107 (2) The commission shall, by rule adopted in accordance with Title 63G, Chapter 3,
108 Utah Administrative Rulemaking Act, designate the established authority or authorities
109 described in Subsection (1)(b) and the objective standard described in Subsection (1)(c).

110 Section 4. Section **59-5-304** is enacted to read:

111 **59-5-304. Statements filed -- Contents -- Verification -- Falsification as perjury.**

112 (1) Every person engaged in the business of mining sand and gravel shall make and file
113 with the commission, on or before June 1 of each year on forms furnished by the commission, a
114 statement containing:

115 (a) the name, description, and location of the mine owned and operated by the person
116 during the preceding calendar year;

117 (b) the number of tons of sand and gravel mined during the preceding calendar year
118 and the disposition of the sand and gravel;

119 (c) the total amount received during the preceding calendar year from the sale of sand
120 and gravel; and

121 (d) such other reasonable and necessary information as the commission may require for
122 the proper enforcement of this chapter as specified in a rule adopted under Title 63G, Chapter
123 3, Utah Administrative Rulemaking Act.

124 (2) The owner of a mine shall be responsible for the statement or report required by
125 this section, but a principal lessee, contractor, or operator may, with the consent of the
126 commission, report and pay the tax as agent for the owner. The owner shall be entitled to
127 deduct and remit to the commission any tax chargeable upon the operations conducted by the
128 lessees or other parties.

129 (3) (a) The statements or reports required to be filed with the commission shall be
130 signed and sworn to by:

131 (i) the person required to file the statements or reports; and

132 (ii) (A) a partner, if a partnership; or

133 (B) the president, secretary, or managing officer, if a corporation.

134 (b) Any willful false swearing as to the purported material facts set out in the
135 statements or reports submitted under Subsection (3)(a) constitutes the crime of perjury and
136 shall be punished as such under Title 76, Utah Criminal Code.

137 Section 5. Section **59-5-305** is enacted to read:

138 **59-5-305. Interest and penalty -- Overpayments.**

139 (1) In case of any failure to make or file a return required by this chapter, the penalty
140 provided in Section [59-1-401](#) and interest at the rate and in the manner prescribed in Section
141 [59-1-402](#) shall be charged and added to the tax. The amount so added to any tax, whether as a
142 penalty, interest, or both, shall be collected at the same time and in the same manner as a part
143 of the tax.

144 (2) An overpayment of a tax imposed by this chapter shall accrue interest at the rate
145 and in the manner prescribed in Section [59-1-402](#).

146 Section 6. Section **59-5-306** is enacted to read:

147 **59-5-306. Date tax due -- Extensions -- Installment payments -- Penalty on**
148 **delinquencies -- Audit.**

149 (1) The tax imposed by this chapter is due and payable on or before June 1 of the
150 calendar year following the calendar year in which the sand and gravel is produced and sold or
151 delivered.

152 (2) The commission may, for good cause shown upon a written application by the
153 taxpayer, extend the time of payment of the whole or any part of the tax for a period not to
154 exceed six months. If an extension is granted, interest at the rate and in the manner prescribed
155 in Section 59-1-402 shall be charged and added to the amount of the deferred payment of the
156 tax.

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

161 (4) The quarterly installments are due as follows:

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

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

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

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

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

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

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

172 (7) There shall be no interest added to any estimated tax payments subject to a penalty
173 under this section.

174 (8) The commission may conduct audits to determine whether any tax is owed under
175 this section.

176 Section 7. Section **59-5-307** is enacted to read:

177 **59-5-307. Tax as lien.**

178 The tax imposed by this chapter, together with penalties and interest, is and shall
179 remain a lien upon the mine or mining claim from which the sand and gravel is extracted, until
180 the tax is paid. In the case of unpatented claims or leases on unpatented ground, the lien shall
181 be upon the mining rights.

182 Section 8. Section **59-5-308** is enacted to read:

183 **59-5-308. Adjudicative proceedings for correction of amount of tax -- Decisions of**
184 **commission.**

185 (1) If any person feels aggrieved because of the amount of the tax determined by the
186 commission, the person may file a request for agency action with the commission within 30
187 days after notice is mailed to the person, requesting an adjudicative proceeding and the
188 correction of the assessed tax.

189 (2) Every decision of the commission shall be in writing, and notice of the decision
190 shall be mailed to the taxpayer within 10 days.

191 (3) All decisions become final upon the expiration of 30 days after notice has been
192 mailed to the taxpayer, unless proceedings are taken within such time for a review in
193 accordance with Title 63G, Chapter 4, Administrative Procedures Act, in which case it
194 becomes final as specified in the Administrative Procedures Act.

195 Section 9. Section **59-5-309** is enacted to read:

196 **59-5-309. Condition precedent to judicial review.**

197 (1) Before seeking judicial review, a taxpayer shall deposit with the commission the
198 full amount of taxes, interest, and other charges audited and stated in the decision of the
199 commission.

200 (2) (a) If the party appealing executes an undertaking meeting the requirements of
201 Subsection (2)(b), the party is not required to pay the taxes, interest, and other charges as a
202 condition precedent to obtaining judicial review.

203 (b) The undertaking shall be filed with the commission in the amount and with the
204 surety approved by the commission.

205 (c) The undertaking shall provide that, if the appeal is dismissed or the decision of the
206 commission is affirmed, the party appealing will pay all costs and charges that may accrue
207 against the party in the prosecution of the case.

208 (d) At the option of the party appealing, the undertaking may be in a sum sufficient to
209 cover the taxes, interest, and other charges audited or stated in the decision, plus the costs or
210 charges that may accrue against the party appealing in the prosecution of the case.

211 Section 10. Section **59-5-310** is enacted to read:

212 **59-5-310. Disposition of taxes collected.**

213 All taxes imposed and collected under Section [59-5-202](#) shall be paid to the

214 commission, promptly remitted to the state treasurer, and quarterly remitted to the city or
215 county imposing the tax.

216 Section 11. **Effective date.**

217 This bill takes effect on July 1, 2014.

Legislative Review Note
as of 10-15-13 6:45 AM

Office of Legislative Research and General Counsel