

INCOME TAX REVISIONS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Daniel McCay

LONG TITLE

General Description:

This bill amends provisions related to income taxes.

Highlighted Provisions:

This bill:

- ▶ addresses income tax penalties;
- ▶ addresses filing requirements for income tax forms ~~§~~ **and returns** ~~§~~ ;
- ▶ addresses the time period for the State Tax Commission to issue an individual income tax refund; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

59-1-401, as last amended by Laws of Utah 2014, Chapter 52

59-10-406, as last amended by Laws of Utah 2006, Chapter 10

ENACTS:

59-10-529.1, Utah Code Annotated 1953



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

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

30 **59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute**
31 **of limitations -- Commission authority to waive, reduce, or compromise penalty or**
32 **interest.**

33 (1) As used in this section:

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

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

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

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

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

44 (I) a person that files a return after the due date as described in Subsection (2)(a) is
45 subject to the penalty described in Subsection (2)(c)(ii); and

46 (II) a person that fails to pay the tax, fee, or charge as described in Subsection (3)(a) is
47 subject to the penalty described in Subsection (3)(b)(ii).

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

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

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

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

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

56 (I) this title;

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

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

- 59 (IV) Section 19-6-410.5;
- 60 (V) Section 19-6-714;
- 61 (VI) Section 19-6-805;
- 62 (VII) Section 32B-2-304;
- 63 (VIII) Section 34A-2-202;
- 64 (IX) Section 40-6-14;
- 65 (X) Section 69-2-5;
- 66 (XI) Section 69-2-5.5; or
- 67 (XII) Section 69-2-5.6; or
- 68 (B) another amount that by statute is subject to a penalty imposed under this section.
- 69 (ii) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:
 - 70 (A) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;
 - 71 (B) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
 - 72 (C) Chapter 2, Property Tax Act, except for Section 59-2-1309;
 - 73 (D) Chapter 3, Tax Equivalent Property Act; or
 - 74 (E) Chapter 4, Privilege Tax.
- 75 (d) "Unactivated tax, fee, or charge" means a tax, fee, or charge except for an activated
- 76 tax, fee, or charge.
- 77 (2) (a) The due date for filing a return is:
 - 78 (i) if the person filing the return is not allowed by law an extension of time for filing
 - 79 the return, the day on which the return is due as provided by law; or
 - 80 (ii) if the person filing the return is allowed by law an extension of time for filing the
 - 81 return, the earlier of:
 - 82 (A) the date the person files the return; or
 - 83 (B) the last day of that extension of time as allowed by law.
 - 84 (b) A penalty in the amount described in Subsection (2)(c) is imposed if a person files a
 - 85 return after the due date described in Subsection (2)(a).
 - 86 (c) For purposes of Subsection (2)(b), the penalty is an amount equal to the greater of:
 - 87 (i) if the return described in Subsection (2)(b) is filed with respect to an unactivated
 - 88 tax, fee, or charge:
 - 89 (A) \$20; or

90 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or
91 (ii) if the return described in Subsection (2)(b) is filed with respect to an activated tax,
92 fee, or charge, beginning on the activation date for the tax, fee, or charge:
93 (A) \$20; or
94 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the return is
95 filed no later than five days after the due date described in Subsection (2)(a);
96 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the return is filed
97 more than five days after the due date but no later than 15 days after the due date described in
98 Subsection (2)(a); or
99 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the return is
100 filed more than 15 days after the due date described in Subsection (2)(a).
101 (d) This Subsection (2) does not apply to:
102 (i) an amended return; or
103 (ii) a return with no tax due.
104 (3) (a) A person is subject to a penalty for failure to pay a tax, fee, or charge if:
105 (i) the person files a return on or before the due date for filing a return described in
106 Subsection (2)(a), but fails to pay the tax, fee, or charge due on the return on or before that due
107 date;
108 (ii) the person:
109 (A) is subject to a penalty under Subsection (2)(b); and
110 (B) fails to pay the tax, fee, or charge due on a return within a 90-day period after the
111 due date for filing a return described in Subsection (2)(a);
112 (iii) (A) the person is subject to a penalty under Subsection (2)(b); and
113 (B) the commission estimates an amount of tax due for that person in accordance with
114 Subsection 59-1-1406(2);
115 (iv) the person:
116 (A) is mailed a notice of deficiency; and
117 (B) within a 30-day period after the day on which the notice of deficiency described in
118 Subsection (3)(a)(iv)(A) is mailed:
119 (I) does not file a petition for redetermination or a request for agency action; and
120 (II) fails to pay the tax, fee, or charge due on a return;

121 (v) (A) the commission:
122 (I) issues an order constituting final agency action resulting from a timely filed petition
123 for redetermination or a timely filed request for agency action; or
124 (II) is considered to have denied a request for reconsideration under Subsection
125 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed
126 request for agency action; and
127 (B) the person fails to pay the tax, fee, or charge due on a return within a 30-day period
128 after the date the commission:
129 (I) issues the order constituting final agency action described in Subsection
130 (3)(a)(v)(A)(I); or
131 (II) is considered to have denied the request for reconsideration described in
132 Subsection (3)(a)(v)(A)(II); or
133 (vi) the person fails to pay the tax, fee, or charge within a 30-day period after the date
134 of a final judicial decision resulting from a timely filed petition for judicial review.
135 (b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:
136 (i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with
137 respect to an unactivated tax, fee, or charge:
138 (A) \$20; or
139 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or
140 (ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with
141 respect to an activated tax, fee, or charge, beginning on the activation date:
142 (A) \$20; or
143 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the activated
144 tax, fee, or charge due on the return is paid no later than five days after the due date for filing a
145 return described in Subsection (2)(a);
146 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the activated tax,
147 fee, or charge due on the return is paid more than five days after the due date for filing a return
148 described in Subsection (2)(a) but no later than 15 days after that due date; or
149 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the activated
150 tax, fee, or charge due on the return is paid more than 15 days after the due date for filing a
151 return described in Subsection (2)(a).

152 (4) (a) Beginning January 1, 1995, in the case of any underpayment of estimated tax or
153 quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104, there
154 shall be added a penalty in an amount determined by applying the interest rate provided under
155 Section 59-1-402 plus four percentage points to the amount of the underpayment for the period
156 of the underpayment.

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

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

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

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

165 (iii) For purposes of this Subsection (4), a payment of estimated tax shall be credited
166 against unpaid required installments in the order in which the installments are required to be
167 paid.

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

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

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

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

181 (6) If a person does not file a return within an extension of time allowed by Section
182 59-7-505 or 59-10-516, the person:

- 183 (a) is not subject to a penalty in the amount described in Subsection (5)(b); and
- 184 (b) is subject to a penalty in an amount equal to the sum of:
 - 185 (i) a late file penalty in an amount equal to the greater of:
 - 186 (A) \$20; or
 - 187 (B) 10% of the tax due on the return, unpaid as of the day on which the return is due as
 - 188 provided by law, not including the extension of time; and
 - 189 (ii) a late pay penalty in an amount equal to the greater of:
 - 190 (A) \$20; or
 - 191 (B) 10% of the unpaid tax due on the return, unpaid as of the day on which the return is
 - 192 due as provided by law, not including the extension of time.
- 193 (7) (a) Additional penalties for an underpayment of a tax, fee, or charge are as provided
- 194 in this Subsection (7)(a).
 - 195 (i) Except as provided in Subsection (7)(c), if any portion of an underpayment of a tax,
 - 196 fee, or charge is due to negligence, the penalty is 10% of the portion of the underpayment that
 - 197 is due to negligence.
 - 198 (ii) Except as provided in Subsection (7)(d), if any portion of an underpayment of a
 - 199 tax, fee, or charge is due to intentional disregard of law or rule, the penalty is 15% of the entire
 - 200 underpayment.
 - 201 (iii) If any portion of an underpayment is due to an intent to evade a tax, fee, or charge,
 - 202 the penalty is the greater of \$500 per period or 50% of the entire underpayment.
 - 203 (iv) If any portion of an underpayment is due to fraud with intent to evade a tax, fee, or
 - 204 charge, the penalty is the greater of \$500 per period or 100% of the entire underpayment.
- 205 (b) If the commission determines that a person is liable for a penalty imposed under
- 206 Subsection (7)(a)(ii), (iii), or (iv), the commission shall notify the person of the proposed
- 207 penalty.
 - 208 (i) The notice of proposed penalty shall:
 - 209 (A) set forth the basis of the assessment; and
 - 210 (B) be mailed by certified mail, postage prepaid, to the person's last-known address.
 - 211 (ii) Upon receipt of the notice of proposed penalty, the person against whom the
 - 212 penalty is proposed may:
 - 213 (A) pay the amount of the proposed penalty at the place and time stated in the notice;

214 or

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

216 (iii) A person against whom a penalty is proposed in accordance with this Subsection

217 (7) may contest the proposed penalty by filing a petition for an adjudicative proceeding with

218 the commission.

219 (iv) (A) If the commission determines that a person is liable for a penalty under this

220 Subsection (7), the commission shall assess the penalty and give notice and demand for

221 payment.

222 (B) The commission shall mail the notice and demand for payment described in

223 Subsection (7)(b)(iv)(A):

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

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

226 (c) A seller that voluntarily collects a tax under Subsection 59-12-107(2)(d) is not

227 subject to the penalty under Subsection (7)(a)(i) if on or after July 1, 2001:

228 (i) a court of competent jurisdiction issues a final unappealable judgment or order

229 determining that:

230 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)

231 or is a seller required to pay or collect and remit sales and use taxes under Subsection

232 59-12-107(2)(b); and

233 (B) the commission or a county, city, or town may require the seller to collect a tax

234 under Subsections 59-12-103(2)(a) through (d); or

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

236 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)

237 or is a seller required to pay or collect and remit sales and use taxes under Subsection

238 59-12-107(2)(b); and

239 (B) the commission or a county, city, or town may require the seller to collect a tax

240 under Subsections 59-12-103(2)(a) through (d).

241 (d) A seller that voluntarily collects a tax under Subsection 59-12-107(2)(d) is not

242 subject to the penalty under Subsection (7)(a)(ii) if:

243 (i) (A) a court of competent jurisdiction issues a final unappealable judgment or order

244 determining that:

245 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
 246 or is a seller required to pay or collect and remit sales and use taxes under Subsection
 247 59-12-107(2)(b); and

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

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

251 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
 252 or is a seller required to pay or collect and remit sales and use taxes under Subsection
 253 59-12-107(2)(b); and

254 (II) 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); and

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

259 (8) ~~§~~ → [The] (a) Subject to ~~§~~ → [Subsection (8)(b)] Subsections (8)(b) and (c) ← ~~§~~ ,
 259a the ← ~~§~~ penalty for failure to file an
 259a information return, information report, or a
 260 complete supporting schedule is \$50 for each information return, information report, or
 261 supporting schedule up to a maximum of \$1,000.

261a ~~§~~ → (b) If an employer is subject to a penalty under Subsection (13), the employer may not be
 261b subject to a penalty under Subsection (8)(a). ← ~~§~~

261c ~~§~~ → (c) If an employer is subject to a penalty under this Subsection (8) for failure to file a
 261d return in accordance with Subsection 59-10-406(3) on or before the due date described in
 261e Subsection 59-10-406(3)(b)(ii), the commission may not impose a penalty under this Subsection
 261f (8) unless the return is filed more than 14 days after the due date described in
 261g Subsection 59-10-406(3)(b)(ii). ← ~~§~~

262 (9) If a person, in furtherance of a frivolous position, has a prima facie intent to delay
 263 or impede administration of a law relating to a tax, fee, or charge and files a purported return
 264 that fails to contain information from which the correctness of reported tax, fee, or charge
 265 liability can be determined or that clearly indicates that the tax, fee, or charge liability shown is
 266 substantially incorrect, the penalty is \$500.

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

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

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

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

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

275 (ii) may not retain the percentage of sales and use taxes that would otherwise be

276 allowable under Subsection 59-12-108(2).

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

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

280 (A) a return;

281 (B) an affidavit;

282 (C) a claim; or

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

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

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

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

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

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

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

293 (iv) advising in the preparation or presentation of any portion of a document described
294 in Subsection (11)(a)(i);

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

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

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

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

302 (i) shall be imposed by the commission;

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

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

306 (d) The commission may seek a court order to enjoin a person from engaging in

307 conduct that is subject to a penalty under this Subsection (11).

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

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

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

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

- 319 (A) be less than \$500; or
- 320 (B) exceed \$1,000.

321 (c) (i) With respect to a tax, fee, or charge, a person who knowingly and intentionally,
322 and without a reasonable good faith basis, fails to make, render, sign, or verify a return within
323 the time required by law or to supply information within the time required by law, or who
324 makes, renders, signs, or verifies a false or fraudulent return or statement, or who supplies false
325 or fraudulent information, is guilty of a third degree felony.

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

- 328 (A) be less than \$1,000; or
- 329 (B) exceed \$5,000.

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

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

- 335 (A) be less than \$1,500; or
- 336 (B) exceed \$25,000.

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

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

- 340 (I) a return;
- 341 (II) an affidavit;
- 342 (III) a claim; or
- 343 (IV) a document similar to Subsections (12)(e)(i)(A)(I) through (III); and

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

- 346 (I) is false or fraudulent as to any material matter; and
- 347 (II) could be used in connection with any material matter administered by the
348 commission.

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

- 350 (A) preparing any portion of a document described in Subsection (12)(e)(i)(A);
- 351 (B) presenting any portion of a document described in Subsection (12)(e)(i)(A);
- 352 (C) procuring any portion of a document described in Subsection (12)(e)(i)(A);
- 353 (D) advising in the preparation or presentation of any portion of a document described
354 in Subsection (12)(e)(i)(A);
- 355 (E) aiding in the preparation or presentation of any portion of a document described in
356 Subsection (12)(e)(i)(A);
- 357 (F) assisting in the preparation or presentation of any portion of a document described
358 in Subsection (12)(e)(i)(A); or
- 359 (G) counseling in the preparation or presentation of any portion of a document
360 described in Subsection (12)(e)(i)(A).

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

- 362 (A) regardless of whether the person for which the document described in Subsection
363 (12)(e)(i)(A) is prepared or presented:
 - 364 (I) knew of the falsity of the document described in Subsection (12)(e)(i)(A); or
 - 365 (II) consented to the falsity of the document described in Subsection (12)(e)(i)(A); and
 - 366 (B) in addition to any other penalty provided by law.
- 367 (iv) Notwithstanding Section [76-3-301](#), for purposes of this Subsection (12)(e), the
368 penalty may not:

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

370 (B) exceed \$25,000.

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

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

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

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

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

380 (13) (a) ~~H~~→ ~~[A]~~ **Subject to Subsection (13)(b), an** ←~~H~~ employer that is required to
380a file a form with the commission in accordance
381 with Subsection 59-10-406(8) is subject to a penalty described in Subsection (13)(b) if the
382 employer:

383 (i) fails to file the form with the commission in an electronic format approved by the
384 commission as required by Subsection 59-10-406(8);

385 (ii) fails to file the form on or before the due date provided in Subsection 59-10-406(8);

386 (iii) fails to provide accurate information on the form; or

387 (iv) fails to provide all of the information required by the Internal Revenue Service to
388 be contained on the form.

389 (b) For purposes of Subsection (13)(a), the penalty is:

390 (i) \$30 per form, not to exceed \$75,000 in a calendar year, if the employer files the
391 form in accordance with Subsection 59-10-406(8), ~~H~~→ **more than 14 days after the due date**
391a **provided in Subsection 59-10-406(8) but** ←~~H~~ no later than 30 days after the due date
392 provided in Subsection 59-10-406(8);

393 (ii) \$60 per form, not to exceed \$200,000 in a calendar year, if the employer files the
394 form in accordance with Subsection 59-10-406(8), more than 30 days after the due date
395 provided in Subsection 59-10-406(8) but on or before June 1; or

396 (iii) \$100 per form, not to exceed \$500,000 in a calendar year, if the employer:

397 (A) files the form in accordance with Subsection 59-10-406(8) after June 1; or

398 (B) fails to file the form.

399 [~~(13)~~] (14) Upon making a record of its actions, and upon reasonable cause shown, the

400 commission may waive, reduce, or compromise any of the penalties or interest imposed under
401 this part.

402 Section 2. Section **59-10-406** is amended to read:

403 **59-10-406. Collection and payment of tax -- Forms filed electronically.**

404 (1) (a) Each employer shall, on or before the last day of April, July, October, and
405 January, pay to the commission the amount required to be deducted and withheld from wages
406 paid to any employee during the preceding calendar quarter under this part.

407 (b) The commission may change the time or period for making reports and payments
408 if:

409 (i) in its opinion, the tax is in jeopardy; or

410 (ii) a different time or period will facilitate the collection and payment of the tax by the
411 employer.

412 (2) Each employer shall file a return, in a form the commission prescribes, with each
413 payment of the amount deducted and withheld under this part showing:

414 (a) the total amount of wages paid to his employees;

415 (b) the amount of federal income tax deducted and withheld;

416 (c) the amount of tax under this part deducted and withheld; and

417 (d) any other information the commission may require.

418 (3) (a) Each employer shall file an annual return, in a form the commission prescribes,
419 summarizing:

420 (i) the total compensation paid;

421 (ii) the federal income tax deducted and withheld; and

422 (iii) the state tax deducted and withheld for each employee during the calendar year.

423 (b) ~~§~~ → [(i) ~~Except as provided in Subsection (3)(b)(ii), the~~] The ← ~~§~~ return required by

423a Subsection

424 (3)(a) shall be filed with the commission ~~§~~ → :

424a **(i) in an electronic format approved by the commission; and**

424b **(ii) ← ~~§~~ on or before ~~§~~ → [February 28] January 31 ← ~~§~~ of the year following that for**
425 **which the report is made.**

426 ~~§~~ → [(ii) ~~An annual return described in Subsection (3)(a) that is filed electronically shall be~~
427 ~~filed with the commission on or before the date established in Section 6071(b), Internal~~
428 ~~Revenue Code, for filing returns.] ← ~~§~~~~

429 (4) (a) Each employer shall also, in accordance with rules prescribed by the
430 commission, provide each employee from whom state income tax has been withheld with a

431 statement of the amounts of total compensation paid and the amounts deducted and withheld
432 for that employee during the preceding calendar year in accordance with this part.

433 (b) The statement shall be made available to each employee described in Subsection
434 (4)(a) on or before January 31 of the year following that for which the report is made.

435 (5) (a) The employer is liable to the commission for the payment of the tax required to
436 be deducted and withheld under this part.

437 (b) If an employer pays the tax required to be deducted and withheld under this part:

438 (i) an employee of the employer is not liable for the amount of any payment described
439 in Subsection (5)(a); and

440 (ii) the employer is not liable to any person or to any employee for the amount of any
441 such payment described in Subsection (5)(a).

442 (c) For the purpose of making penal provisions of this title applicable, any amount
443 deducted or required to be deducted and remitted to the commission under this part is
444 considered to be the tax of the employer and with respect to such amounts the employer is
445 considered to be the taxpayer.

446 (6) (a) Each employer that deducts and withholds any amount under this part shall hold
447 the amount in trust for the state for the payment of the amount to the commission in the manner
448 and at the time provided for in this part.

449 (b) So long as any delinquency continues, the state shall have a lien to secure the
450 payment of any amounts withheld, and not remitted as provided under this section, upon all of
451 the assets of the employer and all property owned or used by the employer in the conduct of the
452 employer's business, including stock-in-trade, business fixtures, and equipment.

453 (c) The lien described in Subsection (6)(b) shall be prior to any lien of any kind,
454 including existing liens for taxes.

455 (7) To the extent consistent with this section, the commission may use all the
456 provisions of this chapter relating to records, penalties, interest, deficiencies, redetermination
457 of deficiencies, overpayments, refunds, assessments, and venue to enforce this section.

458 ~~[(8) For all taxable years beginning on or after January 1, 2001, an employer that is~~
459 ~~required to file a federal Form W-2 in an electronic format with the Federal Department of the~~
460 ~~Treasury Internal Revenue Service shall file each Form W-2 that is required to be filed with the~~
461 ~~commission in an electronic format approved by the commission.]~~

462 (8) (a) Subject to Subsections (8)(b) and (c), the commission shall require an employer
463 that issues the following forms for a taxable year to file the forms with the commission in an
464 electronic format approved by the commission:

465 (i) a federal Form W-2;

466 (ii) a federal Form 1099 filed for purposes of withholding under Section 59-10-404; or

467 (iii) a federal form substantially similar to a form described in Subsection (8)(a)(i) or

468 (ii) if designated by the commission in accordance with Subsection (8)(d).

469 (b) An employer that is required to file a form with the commission in accordance with
470 Subsection (8)(a) shall file the form on or before January 31.

471 (c) An employer that is required to file a form with the commission in accordance with
472 Subsection (8)(a) shall provide:

473 (i) accurate information on the form; and

474 (ii) all of the information required by the Internal Revenue Service to be contained on
475 the form.

476 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
477 purposes of Subsection (8)(a), the commission may designate a federal form as being
478 substantially similar to a form described in Subsection (8)(a)(i) or (ii) if:

479 (i) for purposes of federal individual income taxes a different federal form contains
480 substantially similar information to a form described in Subsection (8)(a)(i) or (ii); or

481 (ii) the Internal Revenue Service replaces a form described in Subsection (8)(a)(i) or
482 (ii) with a different federal form.

483 Section 3. Section **59-10-529.1** is enacted to read:

484 **59-10-529.1. Time period for commission to issue a refund.**

485 (1) Except as provided in Subsection (2), the commission may not issue a refund
486 before March 1.

487 (2) The commission may issue a refund before March 1 if, before March 1, the
488 commission determines that:

489 (a) an employer has filed the one or more forms in accordance with Subsection
490 59-10-406(8) the employer is required to file with respect to an individual; and

491 (b) the individual has filed a return in accordance with this chapter.

492 Section 4. **Effective date.**

493

This bill takes effect on January 1, 2016.

Legislative Review Note
as of 2-21-15 8:00 AM

Office of Legislative Research and General Counsel