

TAX PENALTY AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen G. Handy

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to penalties for late payment of corporate or individual income tax liability.

Highlighted Provisions:

This bill:

- reduces the monthly penalty assessed for unpaid income tax liability during an extension of time for filing a corporate income tax return or an individual income tax return.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

59-1-401, as last amended by Laws of Utah 2018, Second Special Session, Chapter 6

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

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

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



28 **interest.**

29 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

52 (I) this title;

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

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

55 (IV) Section [19-6-410.5](#);

56 (V) Section [19-6-714](#);

57 (VI) Section [19-6-805](#);

58 (VII) Section [34A-2-202](#);

- 59 (VIII) Section 40-6-14; or
- 60 (IX) Title 69, Chapter 2, Part 4, 911 Emergency Service Charges; or
- 61 (B) another amount that by statute is subject to a penalty imposed under this section.
- 62 (ii) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:
- 63 (A) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;
- 64 (B) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
- 65 (C) Chapter 2, Property Tax Act, except for Section 59-2-1309;
- 66 (D) Chapter 3, Tax Equivalent Property Act; or
- 67 (E) Chapter 4, Privilege Tax.
- 68 (d) "Unactivated tax, fee, or charge" means a tax, fee, or charge except for an activated
- 69 tax, fee, or charge.
- 70 (2) (a) The due date for filing a return is:
- 71 (i) if the person filing the return is not allowed by law an extension of time for filing
- 72 the return, the day on which the return is due as provided by law; or
- 73 (ii) if the person filing the return is allowed by law an extension of time for filing the
- 74 return, the earlier of:
- 75 (A) the date the person files the return; or
- 76 (B) the last day of that extension of time as allowed by law.
- 77 (b) A penalty in the amount described in Subsection (2)(c) is imposed if a person files a
- 78 return after the due date described in Subsection (2)(a).
- 79 (c) For purposes of Subsection (2)(b), the penalty is an amount equal to the greater of:
- 80 (i) if the return described in Subsection (2)(b) is filed with respect to an unactivated
- 81 tax, fee, or charge:
- 82 (A) \$20; or
- 83 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or
- 84 (ii) if the return described in Subsection (2)(b) is filed with respect to an activated tax,
- 85 fee, or charge, beginning on the activation date for the tax, fee, or charge:
- 86 (A) \$20; or
- 87 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the return is
- 88 filed no later than five days after the due date described in Subsection (2)(a);
- 89 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the return is filed

90 more than five days after the due date but no later than 15 days after the due date described in
91 Subsection (2)(a); or

92 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the return is
93 filed more than 15 days after the due date described in Subsection (2)(a).

94 (d) This Subsection (2) does not apply to:

95 (i) an amended return; or

96 (ii) a return with no tax due.

97 (3) (a) A person is subject to a penalty for failure to pay a tax, fee, or charge if:

98 (i) the person files a return on or before the due date for filing a return described in
99 Subsection (2)(a), but fails to pay the tax, fee, or charge due on the return on or before that due
100 date;

101 (ii) the person:

102 (A) is subject to a penalty under Subsection (2)(b); and

103 (B) fails to pay the tax, fee, or charge due on a return within a 90-day period after the
104 due date for filing a return described in Subsection (2)(a);

105 (iii) (A) the person is subject to a penalty under Subsection (2)(b); and

106 (B) the commission estimates an amount of tax due for that person in accordance with
107 Subsection 59-1-1406(2);

108 (iv) the person:

109 (A) is mailed a notice of deficiency; and

110 (B) within a 30-day period after the day on which the notice of deficiency described in
111 Subsection (3)(a)(iv)(A) is mailed:

112 (I) does not file a petition for redetermination or a request for agency action; and

113 (II) fails to pay the tax, fee, or charge due on a return;

114 (v) (A) the commission:

115 (I) issues an order constituting final agency action resulting from a timely filed petition
116 for redetermination or a timely filed request for agency action; or

117 (II) is considered to have denied a request for reconsideration under Subsection
118 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed
119 request for agency action; and

120 (B) the person fails to pay the tax, fee, or charge due on a return within a 30-day period

121 after the date the commission:

122 (I) issues the order constituting final agency action described in Subsection

123 (3)(a)(v)(A)(I); or

124 (II) is considered to have denied the request for reconsideration described in

125 Subsection (3)(a)(v)(A)(II); or

126 (vi) the person fails to pay the tax, fee, or charge within a 30-day period after the date

127 of a final judicial decision resulting from a timely filed petition for judicial review.

128 (b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:

129 (i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with
130 respect to an unactivated tax, fee, or charge:

131 (A) \$20; or

132 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or

133 (ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with
134 respect to an activated tax, fee, or charge, beginning on the activation date:

135 (A) \$20; or

136 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the activated
137 tax, fee, or charge due on the return is paid no later than five days after the due date for filing a
138 return described in Subsection (2)(a);

139 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the activated tax,
140 fee, or charge due on the return is paid more than five days after the due date for filing a return
141 described in Subsection (2)(a) but no later than 15 days after that due date; or

142 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the activated
143 tax, fee, or charge due on the return is paid more than 15 days after the due date for filing a
144 return described in Subsection (2)(a).

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

150 (b) (i) For purposes of Subsection (4)(a), the amount of the underpayment shall be the
151 excess of the required installment over the amount, if any, of the installment paid on or before

152 the due date for the installment.

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

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

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

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

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

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

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

171 (b) For purposes of Subsection (5)(a), the penalty per month during the period of the
172 extension of time for filing the return is an amount equal to [~~2%~~] 1% of the tax due on the
173 return, unpaid as of the day on which the return is due as provided by law.

174 (6) If a person does not file a return within an extension of time allowed by Section
175 59-7-505 or 59-10-516, the person:

176 (a) is not subject to a penalty in the amount described in Subsection (5)(b); and

177 (b) is subject to a penalty in an amount equal to the sum of:

178 (i) a late file penalty in an amount equal to the greater of:

179 (A) \$20; or

180 (B) 10% of the tax due on the return, unpaid as of the day on which the return is due as
181 provided by law, not including the extension of time; and

182 (ii) a late pay penalty in an amount equal to the greater of:

183 (A) \$20; or

184 (B) 10% of the unpaid tax due on the return, unpaid as of the day on which the return is
185 due as provided by law, not including the extension of time.

186 (7) (a) Additional penalties for an underpayment of a tax, fee, or charge are as provided
187 in this Subsection (7)(a).

188 (i) Except as provided in Subsection (7)(c), if any portion of an underpayment of a tax,
189 fee, or charge is due to negligence, the penalty is 10% of the portion of the underpayment that
190 is due to negligence.

191 (ii) Except as provided in Subsection (7)(d), if any portion of an underpayment of a
192 tax, fee, or charge is due to intentional disregard of law or rule, the penalty is 15% of the entire
193 underpayment.

194 (iii) If any portion of an underpayment is due to an intent to evade a tax, fee, or charge,
195 the penalty is the greater of \$500 per period or 50% of the entire underpayment.

196 (iv) If any portion of an underpayment is due to fraud with intent to evade a tax, fee, or
197 charge, the penalty is the greater of \$500 per period or 100% of the entire underpayment.

198 (b) If the commission determines that a person is liable for a penalty imposed under
199 Subsection (7)(a)(ii), (iii), or (iv), the commission shall notify the person of the proposed
200 penalty.

201 (i) The notice of proposed penalty shall:

202 (A) set forth the basis of the assessment; and

203 (B) be mailed by certified mail, postage prepaid, to the person's last-known address.

204 (ii) Upon receipt of the notice of proposed penalty, the person against whom the
205 penalty is proposed may:

206 (A) pay the amount of the proposed penalty at the place and time stated in the notice;

207 or

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

209 (iii) A person against whom a penalty is proposed in accordance with this Subsection
210 (7) may contest the proposed penalty by filing a petition for an adjudicative proceeding with
211 the commission.

212 (iv) (A) If the commission determines that a person is liable for a penalty under this
213 Subsection (7), the commission shall assess the penalty and give notice and demand for

214 payment.

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

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

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

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

219 (c) A seller that voluntarily collects a tax under Subsection 59-12-107(2)(d) is not
220 subject to the penalty under Subsection (7)(a)(i) if on or after July 1, 2001:

221 (i) a court of competent jurisdiction issues a final unappealable judgment or order
222 determining that:

223 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
224 or is a seller required to pay or collect and remit sales and use taxes under Subsection
225 59-12-107(2)(b) or (2)(c); and

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

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

229 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
230 or is a seller required to pay or collect and remit sales and use taxes under Subsection
231 59-12-107(2)(b) or (2)(c); and

232 (B) the commission or a county, city, or town may require the seller to collect a tax
233 under Subsections 59-12-103(2)(a) through (d).

234 (d) A seller that voluntarily collects a tax under Subsection 59-12-107(2)(d) is not
235 subject to the penalty under Subsection (7)(a)(ii) if:

236 (i) (A) a court of competent jurisdiction issues a final unappealable judgment or order
237 determining that:

238 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
239 or is a seller required to pay or collect and remit sales and use taxes under Subsection
240 59-12-107(2)(b) or (2)(c); and

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

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

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

245 or is a seller required to pay or collect and remit sales and use taxes under Subsection
246 59-12-107(2)(b) or (2)(c); and

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

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

252 (8) (a) Subject to Subsections (8)(b) and (c), the penalty for failure to file an
253 information return, information report, or a complete supporting schedule is \$50 for each
254 information return, information report, or supporting schedule up to a maximum of \$1,000.

255 (b) If an employer is subject to a penalty under Subsection (13), the employer may not
256 be subject to a penalty under Subsection (8)(a).

257 (c) If an employer is subject to a penalty under this Subsection (8) for failure to file a
258 return in accordance with Subsection 59-10-406(3) on or before the due date described in
259 Subsection 59-10-406(3)(b)(ii), the commission may not impose a penalty under this
260 Subsection (8) unless the return is filed more than 14 days after the due date described in
261 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) Subject to Subsection (13)(b), an employer that is required to file a form with
381 the commission in accordance with Subsection 59-10-406(8) is subject to a penalty described
382 in Subsection (13)(b) if the 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), more than 14 days after the due date
392 provided in Subsection 59-10-406(8) but no later than 30 days after the due date provided in
393 Subsection 59-10-406(8);

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

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

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

399 (B) fails to file the form.

400 (14) Upon making a record of its actions, and upon reasonable cause shown, the
401 commission may waive, reduce, or compromise any of the penalties or interest imposed under
402 this part.

403 Section 2. **Retrospective operation.**

404 This bill has retrospective operation for a taxable year beginning on or after January 1,
405 2019.