

TAX ON SAND AND GRAVEL EXTRACTION

2013 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, 2013.

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 natural 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, 2013, by majority vote of the legislative body:

53 (i) a county may impose a severance tax at a rate of up to 5% of the value of all sand
54 and gravel extracted, sold, or otherwise disposed of; and

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

58 (b) If a city or county enacts, repeals, or changes the rate of tax imposed under this

59 chapter, the enactment, repeal, or rate change shall take effect:

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

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

63 (c) The notice described in Subsection (1)(b) shall state:

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

66 (ii) the statutory authority for the tax;

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

68 (iv) the rate of the tax.

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

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

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

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

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

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

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

85 **59-5-303. Determining taxable value.**

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

89 (a) if the sand and gravel is sold under a bona fide contract of sale between unaffiliated

90 parties, the value of that sand and gravel is the gross amount the producer receives from that
91 sale;

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

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

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

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

106 **59-5-304. Statements filed -- Contents -- Verification -- Falsification as perjury.**

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

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

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

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

116 (d) such other reasonable and necessary information as the commission may require for
117 the proper enforcement of this chapter as specified in a rule adopted under Title 63G, Chapter
118 3, Utah Administrative Rulemaking Act.

119 (2) The owner of a mine shall be responsible for the statement or report required by
120 this section, but a principal lessee, contractor, or operator may, with the consent of the

121 commission, report and pay the tax as agent for the owner. The owner shall be entitled to
122 deduct and remit to the commission any tax chargeable upon the operations conducted by the
123 lessees or other parties.

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

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

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

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

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

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

133 **59-5-305. Interest and penalty -- Overpayments.**

134 (1) In case of any failure to make or file a return required by this chapter, the penalty
135 provided in Section 59-1-401 and interest at the rate and in the manner prescribed in Section
136 59-1-402 shall be charged and added to the tax. The amount so added to any tax, whether as a
137 penalty, interest, or both, shall be collected at the same time and in the same manner as a part
138 of the tax.

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

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

142 **59-5-306. Date tax due -- Extensions -- Installment payments -- Penalty on**
143 **delinquencies -- Audit.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

172 **59-5-307. Tax as lien.**

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

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

178 **59-5-308. Adjudicative proceedings for correction of amount of tax -- Decisions of**
179 **commission.**

180 (1) If any person feels aggrieved because of the amount of the tax determined by the
181 commission, the person may file a request for agency action with the commission within 30
182 days after notice is mailed to the person, requesting an adjudicative proceeding and the

183 correction of the assessed tax.

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

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

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

191 **59-5-309. Condition precedent to judicial review.**

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

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

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

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

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

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

207 **59-5-310. Disposition of taxes collected.**

208 All taxes imposed and collected under Section 59-5-202 shall be paid to the
209 commission, promptly remitted to the state treasurer, and quarterly remitted to the city or
210 county imposing the tax.

211 Section 11. **Effective date.**

212 This bill takes effect on July 1, 2013.

Legislative Review Note
as of 3-5-13 10:25 AM

Office of Legislative Research and General Counsel