

TAX LAW MODIFICATIONS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ryan D. Wilcox

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions in the Revenue and Taxation title to address certain issues related to the Utah Supreme Court case Ivory Homes v. Utah State Tax Commission.

Highlighted Provisions:

This bill:

- ▶ amends the circumstances under which a person who pays a tax, fee, or charge liability may receive a credit or refund;
- ▶ addresses the construction of a statute involving a tax, fee, or charge by the State Tax Commission or a court;
- ▶ addresses sales and use tax refund procedures; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

This bill provides for retrospective operation.

Utah Code Sections Affected:

AMENDS:

59-1-1410, as enacted by Laws of Utah 2009, Chapter 212

59-1-1417, as enacted by Laws of Utah 2009, Chapter 212



28 **59-12-110**, as last amended by Laws of Utah 2009, Chapters 203 and 212

29

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

31 Section 1. Section **59-1-1410** is amended to read:

32 **59-1-1410. Action for collection of tax, fee, or charge -- Action for refund or**
33 **credit of tax, fee, or charge -- Denial of refund claim under appeal -- Appeal of denied**
34 **refund claim.**

35 (1) (a) Except as provided in Subsections (3) through (7) and Sections 59-5-114,
36 59-7-519, 59-10-536, and 59-11-113, the commission shall assess a tax, fee, or charge within
37 three years after the day on which a person files a return.

38 (b) Except as provided in Subsections (3) through (7), if the commission does not
39 assess a tax, fee, or charge within the three-year period provided in Subsection (1)(a), the
40 commission may not commence a proceeding to collect the tax, fee, or charge.

41 (2) (a) Except as provided in Subsection (2)(b), for purposes of this part, a return filed
42 before the last day prescribed by statute or rule for filing the return is considered to be filed on
43 the last day for filing the return.

44 (b) A return of withholding tax under Chapter 10, Part 4, Withholding of Tax, is
45 considered to be filed on April 15 of the succeeding calendar year if the return:

46 (i) is for a period ending with or within a calendar year; and

47 (ii) is filed before April 15 of the succeeding calendar year.

48 (3) The commission may assess a tax, fee, or charge or commence a proceeding for the
49 collection of a tax, fee, or charge at any time if:

50 (a) a person:

51 (i) files a:

52 (A) false return with intent to evade; or

53 (B) fraudulent return with intent to evade; or

54 (ii) fails to file a return; or

55 (b) the commission estimates the amount of tax, fee, or charge due in accordance with
56 Subsection 59-1-1406(2).

57 (4) The commission may extend the period to make an assessment or to commence a
58 proceeding to collect a tax, fee, or charge if:

- 59 (a) the three-year period under Subsection (1) has not expired; and
- 60 (b) the commission and the person sign a written agreement:
 - 61 (i) authorizing the extension; and
 - 62 (ii) providing for the length of the extension.
- 63 (5) The commission may make an assessment as provided in Subsection (6) if:
 - 64 (a) the commission delays an audit at the request of a person;
 - 65 (b) the person subsequently refuses to agree to an extension request by the commission;
 - 66 and
 - 67 (c) the three-year period under Subsection (1) expires before the commission
 - 68 completes the audit.
- 69 (6) An assessment under Subsection (5) shall be:
 - 70 (a) for the time period for which the commission could not make the assessment
 - 71 because of the expiration of the three-year period; and
 - 72 (b) in an amount equal to the difference between:
 - 73 (i) the commission's estimate of the amount of tax, fee, or charge the person would
 - 74 have been assessed for the time period described in Subsection (6)(a); and
 - 75 (ii) the amount of tax, fee, or charge the person actually paid for the time period
 - 76 described in Subsection (6)(a).
 - 77 (7) If a person erroneously pays a liability, overpays a liability, pays a liability more
 - 78 than once, or the commission erroneously receives, collects, or computes a liability, the
 - 79 commission shall:
 - 80 (a) credit the liability against any amount of liability the person owes; and
 - 81 (b) refund any balance to:
 - 82 (i) the person; or
 - 83 (ii) (A) the person's assign;
 - 84 (B) the person's personal representative;
 - 85 (C) the person's successor; or
 - 86 (D) a person similar to Subsections (7)(b)(ii)(A) through (C) as determined by the
 - 87 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
 - 88 Rulemaking Act.
 - 89 (8) (a) Except as provided in Subsection (8)(b) or Section 19-2-124, 59-7-522,

90 59-10-529, or 59-12-110, the commission may not make a credit or refund unless a person files
91 a claim with the commission within the later of:

92 (i) three years from the due date of the return, including the period of any extension of
93 time provided in statute for filing the return; or

94 (ii) two years from the date the tax was paid.

95 (b) The commission shall extend the time period for a person to file a claim under
96 Subsection (8)(a) if:

97 (i) the time period described in Subsection (8)(a) has not expired; and

98 (ii) the commission and the person sign a written agreement:

99 (A) authorizing the extension; and

100 (B) providing for the length of the extension.

101 (9) If the commission denies a claim for a credit or refund, a person may request a
102 redetermination of the denial by filing a petition or request for agency action with the
103 commission:

104 (a) (i) within a 30-day period after the day on which the commission mails a notice of
105 denial for the claim for credit or refund; or

106 (ii) within a 90-day period after the day on which the commission mails a notice of
107 denial for the claim for credit or refund, if the notice is addressed to a person outside the
108 United States or the District of Columbia; and

109 (b) in accordance with:

110 (i) Section 59-1-501; and

111 (ii) Title 63G, Chapter 4, Administrative Procedures Act.

112 (10) The action of the commission on a person's petition for redetermination of a denial
113 of a claim for credit or refund is final 30 days after the day on which the commission sends the
114 commission's decision or order, unless the person seeks judicial review.

115 Section 2. Section **59-1-1417** is amended to read:

116 **59-1-1417. Burden of proof.**

117 (1) In a proceeding before the commission, the burden of proof is on the petitioner
118 except for determining the following, in which the burden of proof is on the commission:

119 [~~(1)~~] (a) whether the petitioner committed fraud with intent to evade a tax, fee, or
120 charge;

121 ~~[(2)]~~ (b) whether the petitioner is obligated as the transferee of property of the person
122 that originally owes a liability or a preceding transferee, but not to show that the person that
123 originally owes a liability is obligated for the liability; and

124 ~~[(3)]~~ (c) whether the petitioner is liable for an increase in a deficiency if the increase is
125 asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405
126 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the
127 increase in the deficiency is the result of a change or correction of federal taxable income:

128 ~~[(a)]~~ (i) required to be reported; and

129 ~~[(b)]~~ (ii) of which the commission has no notice at the time the commission mails the
130 notice of deficiency.

131 (2) Regardless of whether a taxpayer has paid or remitted a tax, fee, or charge, the
132 commission or a court considering a case involving the tax, fee, or charge shall:

133 (a) construe a statute imposing the tax, fee, or charge strictly in favor of the taxpayer;
134 and

135 (b) construe a statute providing an exemption from or credit against the tax, fee, or
136 charge strictly against the taxpayer.

137 Section 3. Section **59-12-110** is amended to read:

138 **59-12-110. Refunds procedures.**

139 (1) A seller that files a claim for a refund under Section 59-12-107 for bad debt shall
140 file the claim with the commission within three years from the date on which the seller could
141 first claim the refund for the bad debt.

142 (2) A seller that files a claim for a refund for a repossessed item shall file the claim
143 with the commission within three years from the date the item is repossessed.

144 ~~[(3) A taxpayer may obtain a refund under Section 59-1-1410 of a tax paid under this~~
145 ~~chapter on a transaction that is taxable under Subsection 59-12-103(1) if:]~~

146 ~~[(a) the sale or use is exempt from sales and use taxes under Section 59-12-104 on the~~
147 ~~date of purchase; and]~~

148 ~~[(b) the taxpayer files a claim for a refund with the commission as provided in Section~~
149 ~~59-1-1410.]~~

150 (3) Except as provided in Subsection (1) or (2), procedures and requirements for a
151 taxpayer to obtain a refund from the commission are as provided in Section 59-1-1410.

152 Section 4. **Effective date -- Retrospective operation.**
153 (1) Subject to Subsection (2), this bill takes effect on May 8, 2012.
154 (2) This bill applies retrospectively to a refund request that is pending on, or filed on or
155 after, September 27, 2011.

Legislative Review Note
as of 2-22-12 5:36 PM

Office of Legislative Research and General Counsel