

1991

# Wendell E. Brumley, et al. v. Utah State Tax Commission, et al. : Brief of Amicus Curiae

Utah Supreme Court

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Jack C. Helgesen; Richard W. Jones; Lyon, Helgesen, Waterfall, Jones; Attorneys for Plaintiffs/Cross-Appellants.

Jan Graham; Attorney General; Carol Clawson; Reed Richards.

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IN THE UTAH SUPREME COURT

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WENDELL L. BRUMLEY, et al.,	)	
	)	
Plaintiffs/	)	
Cross-Appellants,	)	Appeal No. 91-0242
	)	
	)	
UTAH STATE TAX COMMISSION,	)	Priority No. 11
et al	)	
	)	
Defendants/	)	
Appellants.	)	

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BRIEF OF AMICUS CURIAE

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ON WRIT OF HABEAS CORPUS AND PERPETUARY APPEAL OF PARTIAL SUMMARY JUDGMENT GRANTED  
PLAINTIFFS IN THE THIRD JUDICIAL DISTRICT COURT,  
THE HONORABLE DAVID YOUNG PRESIDING.

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JACK C. LIGESSEN  
RICHARD L. JONES  
LYON, HENRY L. ESEN, WATERFALL, JONES  
Attorneys for Plaintiffs/Cross-Appellants  
4768 Harrison Blvd.  
Ogden, Utah 84403  
Telephone (801) 479-4777

JAN GRAHAM #1231  
Attorney General  
CAROL CLAWSON  
REED RICHARDS  
Attorneys for  
Hon. Michael O. Leavitt  
Amicus Curiae  
236 State Capitol  
Salt Lake City, Utah 84114  
Telephone: (801) 538-9600

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IN THE UTAH SUPREME COURT

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WENDELL E. BRUMLEY, et al.,	)	
	)	
Plaintiffs/	)	
Cross-Appellants,	)	Appeal No. 91-0242
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v.	)	
	)	
UTAH STATE TAX COMMISSION,	)	Priority No. 11
et al.,	)	
	)	
Defendants/	)	
Appellants.	)	

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BRIEF OF AMICUS CURIAE

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ON INTERLOCUTORY APPEAL OF PARTIAL SUMMARY JUDGMENT GRANTED  
PLAINTIFFS IN THE THIRD JUDICIAL DISTRICT COURT,  
THE HONORABLE DAVID YOUNG PRESIDING.

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JACK C. HELGESEN  
RICHARD W. JONES  
LYON, HELGESEN, WATERFALL, JONES  
Attorneys for Plaintiffs/Cross-Appellants  
4768 Harrison Blvd.  
Ogden, Utah 84403  
Telephone: (801) 479-4777

JAN GRAHAM #1231  
Attorney General  
CAROL CLAWSON  
REED RICHARDS  
Attorneys for  
Hon. Michael O. Leavitt  
Amicus Curiae  
236 State Capitol  
Salt Lake City, Utah 84114  
Telephone: (801) 538-9600

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## ARGUMENT

### INTRODUCTION

Governor Leavitt, as amicus curiae, files this brief in support of the pending Petition for Rehearing. The Governor files this brief to underscore the importance of the issues presented by the petition, and to call to the Court's attention legislation enacted by the special session of the Legislature relating to the rate of interest on the claims for refund for "overpayment" of state income taxes. Planning and budgetary issues which may result from the Brumley decision warrant resolution of these issues and the clearest possible mandate to the District Court.

I. THE COURT SHOULD GRANT A REHEARING TO ADDRESS AND DECIDE THE THRESHOLD ISSUE OF WHETHER THE TAXPAYERS ARE ENTITLED TO A REFUND UNDER FEDERAL LAW IN VIEW OF THE AVAILABILITY OF "PREDEPRIVATION RIGHTS" IN UTAH.

The Governor respectfully requests that the Court grant a rehearing to address the fundamental issue in this case -- whether the plaintiffs are entitled to a refund as a matter of federal law in view of the availability of "predeprivation rights" in Utah. This issue was not addressed by the Court in Brumley.

The Court in Brumley held that section 59-10-529 of the Utah Code was the controlling state refund statute and that there had been "overpayment" of state income taxes within the meaning

of that section. By not addressing the issue of whether the plaintiffs are entitled to a refund as a matter of federal law, the Court's decision begs the question. There would only be an "overpayment" if the taxpayers were entitled to a refund under federal law. If the plaintiffs were not entitled to a refund under federal law, there was no "overpayment." Indeed, section 59-10-529(1) explicitly limits refunds to "cases where there has been an overpayment . . . ."

In Davis v. Michigan Dep't of Treasury, 489 U.S. 803 (1989), the court held the intergovernmental tax immunity doctrine embodied in 4 U.S.C. § 111 (1988) invalidated state income tax statutes that did not treat federal and state retirement income equally for state income tax purposes. Whether the taxpayers were entitled to a refund was not decided in Harper v. Virginia Dep't of Taxation, 113 S. Ct. 2510 (1993). Instead, Harper held the rule of Davis, as a matter of federal law, applied retroactively.

Significantly, Harper held that the retroactive application of Davis did not entitle plaintiffs to a refund under federal law: "We do not enter judgment for petitioners, however, because federal law does not necessarily entitle them to a refund. Rather, the Constitution requires Virginia 'to provide relief consistent with federal due process principles.'" Harper, 113 S. Ct. at 2519.

The Supreme Court in Harper further held if a state afforded "predeprivation rights" to challenge the constitutionality of a state's contested income tax provisions, the requirements of federal law would be satisfied and no refund due: "If Virginia 'offers a meaningful opportunity for taxpayers to withhold contested tax assessments and to challenge their validity in a predeprivation hearing,' the 'availability of a predeprivation hearing constitutes a procedural safeguard . . . sufficient by itself to satisfy the Due Process Clause.'" Id. The Court went on to explain:

The Constitutional sufficiency of any remedy thus turns (at least initially) on whether Virginia Law 'provide[s] a[n] [adequate] form of 'predeprivation process,' for example by authorizing taxpayers to bring suit to enjoin imposition of a tax prior to its payment, or by allowing taxpayers to withhold payment and then interpose their objections as defenses in a tax enforcement proceeding.

Harper, 113 S. Ct. at 2520 (quoting McKesson Corp. v. Division of Alcoholic Beverages and Tobacco, 496 U. S. 18, 36-37 (1990)).

The Supreme Court left to the state's discretion the precise form of the predeprivation process: "Virginia 'is free to choose which form of relief it will provide, so long as that relief satisfies the minimum federal requirements we have outlined.'" Id.

In affirming entry of judgment for the retiree taxpayers, the Court in Brumley ignores the question posed by Harper -- whether plaintiffs are entitled to a refund under

federal law. Under Harper, this Court must examine Utah's predeprivation procedures to determine whether they pass constitutional muster.

Stated differently, had Harper decided that Davis was not to be applied retroactively would there have been an "overpayment" under section 59-10-529? Applying this Court's construction of section 59-10-529 in Brumley, there would have been no "overpayment" in the usual sense of an "excessive payment" or more than was "rightfully due" unless the plaintiffs were entitled to a refund under federal law. Thus, the issue with regard to "overpayment" under section 59-10-529 is not whether the class certified by the District Court is "overbroad." The issue is whether plaintiffs are entitled to a refund under federal law in view of the availability of "predeprivation rights" in Utah. This Court is obliged to examine the constitutional sufficiency of all applicable and available predeprivation procedures. Harper, 113 S. Ct. at 2519-20.

Utah provides adequate predeprivation rights. Utah Code Ann. § 63-46b-21(1) (1989); Utah Admin. Code R861-1-5A(Q) (formerly R884-05A-1 (1986) & A12-01-1:5:(6) (1983). This Court should determine that Utah's predeprivation rights were sufficient to meet the Due Process requirements of Harper. Taxpayers who wish to contest the constitutional validity of state income tax provisions can do so without having to pay their taxes. The plaintiffs had ample opportunity to seek declaratory

relief before the Commission or the courts prior to paying any taxes in 1985, 1986, 1987 or 1988.

The issue of whether the plaintiffs are entitled to a refund under federal law is pivotal. The Governor requests that this Court grant the Petition for Rehearing and address and decide this issue before the state is required to refund tens of millions of dollars to plaintiffs.

II. THIS COURT SHOULD CLARIFY THAT ONLY TAXPAYERS WHO HAVE PERFECTED THEIR CLAIMS FOR REFUND BY TIMELY FILINGS WITH THE TAX COMMISSION ARE ENTITLED TO A REFUND.

The Governor respectfully requests this Court to clarify either on rehearing or by mandate its ruling that only members of the taxpayer class who have perfected their right to a refund by timely filing an amended return or claim with the Utah State Tax Commission are entitled to a refund.

The partial summary judgment granted by the district court certified the plaintiff class as "consisting of all federal retirees and estates of deceased persons who paid Utah State income tax on federal retirement income" for the tax years of 1985, 1986, 1987 and 1988. The order of the district court provided that the class was entitled to a refund regardless of whether the taxpayers had perfected their right to a refund by timely filing an amended return or claim with the Utah State Tax Commission as provided by the Utah Income Tax Code. Utah Code Ann. § 59-10-529(7).

This Court in Brumley did not accept the ruling of the lower court. Rather, this Court recognized that the Tax Commission has the responsibility of determining whether a taxpayer has met the statutory requirements to perfect a claim:

The district court, after deciding the issues and determining that refunds should be paid to class members, properly left to the Commission the responsibility for making the factual determinations as to whether each class member has timely filed an amended return or a claim and whether each member has paid state income tax on federal retirement income for the years in question. This leaves the Commission with the duty to challenge, audit, and review amended returns and claims through its administrative process.

Brumley v. Utah State Tax Comm'n, 220 Utah Adv. Rep. 45, 47 (Sept. 2, 1993).

The district court, however, did not leave anything to the Tax Commission. In order to insure there is no question on remand, this Court should either by rehearing or by explicit mandate make unequivocally clear that the Utah Tax Commission has the responsibility of making the factual determination whether each class member has timely filed with the Commission an amended return or claim for refund.

The difference in the number and dollar amount of potential claims between the pool of federal retirees who have perfected their claims for a refund and those who have not is significant. Approximately 12,000 federal retirees have perfected their claims for a refund by timely filing with the Tax

Commission. Their claims for refund total approximately \$29.3 million. In contrast, 8,700 retirees have failed to perfect their right to a refund by timely filings, even though they were given an additional opportunity to file the required claim. The taxes paid by retirees who failed to perfect their claims is \$13 million.

In view of the millions of dollars at stake and to avoid any further question on this issue, this Court should make its ruling clear, either by rehearing or by explicit direction in its mandate.

**III. THIS COURT'S MANDATE IN RESPONSE TO ACTION TAKEN AT THE SPECIAL SESSION OF THE STATE LEGISLATURE SHOULD PROVIDE THAT THE TAX COMMISSION SHALL DETERMINE THE RATE OF INTEREST APPLICABLE TO ANY REFUNDS FOR "OVERPAYMENT."**

The Supreme Court has reserved to the states broad latitude in crafting "'backward-looking relief to rectify any unconstitutional deprivation.'" Harper, 113 S. Ct. at 2519 (quoting McKesson, 496 U.S. at 31). As set forth in the Petition for Rehearing at 6 and 7, that latitude should be exercised by the Utah Legislature. The Governor wishes to underscore that one of those constitutionally sufficient remedies would be a refund without interest. Id. at 7 & n.3.

Prior to the October 1993 special session of the Utah State Legislature, the Utah Tax Code provided for the payment of interest on tax refunds at a rate of 12%. Utah Code Ann. §§ 59-1-402, 59-10-538. The 12% rate of interest would provide

taxpayers with a windfall. A 12% rate is far above market rates or the rate the State has earned on its investment of state funds. The Legislature, at the October 1993 special session, has taken action to remedy such windfalls by amending the provision of the Tax Code dealing with the payment of interest on claims for tax refunds. Specifically, the Legislature has provided that no interest shall be allowed on any "overpayment" arising from the retroactive application of a federal or state judicial decision invalidating a state income tax provision. See Appendix A (Section 59-1-402).

The Interlocutory Appeal in Brumley was from a partial summary judgment. No final judgment has been entered and the interest rate amendments to the Tax Code adopted by the Special Session will take effect immediately upon signing by the Governor, and by their terms will be applicable to all pending cases. The action of the Utah State Legislature is consistent with the broad latitude afforded to states by Harper in crafting "backward-looking relief to rectify an unconstitutional deprivation."

Addressing this issue, the Oregon Supreme Court recently ruled in Pendell v. Dep't. of Revenue, 847 P.2d 846 (Or. 1993), that a refund of state income taxes paid on federal retirement income, without interest, does not violate any of the retiree taxpayers' constitutional rights. The Pendell Court noted that "[n]either McKesson nor other Supreme Court cases applying

McKesson's principles mention the subject of interest, much less indicate that interest would be required." Id. at 850.

The holding in Pendell was premised on several conclusions:

- (1) the interest does not amount to money "taken by the government," because the issue is taxation power, not eminent domain, Id. at 849-50;
- (2) the lack of interest on refunds is a "reasonable limitation on the relief provided," since it "'sufficiently protect[s] States' fiscal security when weighted against their obligation to provide meaningful relief for their unconstitutional taxation,'" Id. at 850 (quoting McKesson, 496 U.S. at 50); and
- (3) failure to pay interest does not violate the Fourteenth Amendment's Equal Protection Clause, because the retiree taxpayers are not a protected class, Id. at 851.

The Pendell Court stated:

If it is permissible for a state to utilize short statutes of limitations in order to aid its fiscal planning, there is no reason to infer that a state's decision to decline to offer interest would be so egregious as to deprive the taxpayers of a meaningful remedy.

Id. at 850 (citing Chicago Freight Car Leasing Co. v. Limbach, 584 N.E.2d 690 (1992) (McKesson permits states to withhold payment of interest on illegally collected taxes)). Consequently, a refund without interest is a constitutionally permissible remedy.

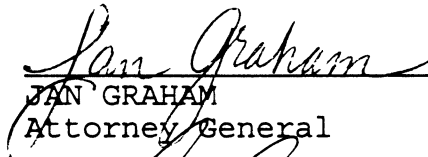
The Governor, as amicus, respectfully requests that this Court set aside that portion of the district court's order determining a rate of interest for refunds where the amount has not yet been determined and direct that the rate of interest is

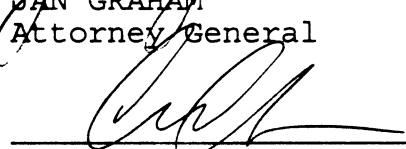
determined under applicable law in force at the time the Tax Commission exercises its duties and responsibilities to determine the amount of refunds to which individual taxpayers are entitled.

**CONCLUSION**

For the foregoing reasons, the Governor respectfully requests that the Court rehear this case.

DATED this 13<sup>th</sup> day of October, 1993.


  
\_\_\_\_\_  
JAN GRAHAM  
Attorney General

  
\_\_\_\_\_  
CAROL CLAWSON  
Solicitor General

CERTIFICATE OF MAILING

I hereby certify that on the 13<sup>th</sup> day of  
October, 1993, I caused two copies of the foregoing **AMICUS CURIAE**  
to be mailed, postage prepaid, to:

Jack C. Helgesen, Esq.  
Richard W. Jones, Esq.  
LYON, HELGESEN, WATERFALL & JONES  
4768 Harrison Boulevard  
Ogden, Utah 84403

  
\_\_\_\_\_

## APPENDIX A

INCOME TAX AMENDMENTS

1993

SECOND SPECIAL SESSION

Enrolled Copy

H. B. No. 7

By Rob W. Bishop

Frank R. Pignanelli

Martin R. Stephens

Kelly C. Atkinson

Christine R. Fox

Grant D. Protzman

Melvin R. Brown

David M. Jones

John L. Valentine

AN ACT RELATING TO REVENUE AND TAXATION; MODIFYING THE RATE AND MANNER IN WHICH INTEREST IS PAID FOR OVERPAYMENTS, REFUNDS, UNDERPAYMENTS, DEFICIENCIES, AND DELINQUENCIES OF TAXES; MAKING OTHER TECHNICAL AMENDMENTS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:

19-6-410, AS LAST AMENDED BY CHAPTER 214, LAWS OF UTAH 1992

40-6-14, AS LAST AMENDED BY CHAPTER 135, LAWS OF UTAH 1992

59-1-402, AS LAST AMENDED BY CHAPTER 169, LAWS OF UTAH 1993

59-1-402, AS LAST AMENDED BY CHAPTER 3, LAWS OF UTAH 1987

59-5-106, AS LAST AMENDED BY CHAPTER 4, LAWS OF UTAH 1988

59-5-107, AS LAST AMENDED BY CHAPTER 4, LAWS OF UTAH 1988

59-5-206, AS ENACTED BY CHAPTER 4, LAWS OF UTAH 1988

59-5-207, AS ENACTED BY CHAPTER 4, LAWS OF UTAH 1988

H. B. No. 7

59-7-129, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987  
59-7-131, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987  
59-7-132, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987  
59-7-141, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987  
59-7-154, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987  
59-7-510, AS RENUMBERED AND AMENDED BY CHAPTER 169, LAWS OF UTAH 1993  
59-7-512, AS RENUMBERED AND AMENDED BY CHAPTER 169, LAWS OF UTAH 1993  
59-7-513, AS RENUMBERED AND AMENDED BY CHAPTER 169, LAWS OF UTAH 1993  
59-7-522, AS RENUMBERED AND AMENDED BY CHAPTER 169, LAWS OF UTAH 1993  
59-7-533, AS RENUMBERED AND AMENDED BY CHAPTER 169, LAWS OF UTAH 1993  
59-9-104, AS RENUMBERED AND AMENDED BY CHAPTERS 2 AND 3, LAWS OF UTAH  
1987  
59-10-529, AS LAST AMENDED BY CHAPTER 183, LAWS OF UTAH 1990  
59-10-537, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987  
59-10-538, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987  
59-10-539, AS RENUMBERED AND AMENDED BY CHAPTERS 2 AND 3, LAWS OF UTAH  
1987  
59-11-107, AS RENUMBERED AND AMENDED BY CHAPTERS 2 AND 3, LAWS OF UTAH  
1987  
59-11-109, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987  
59-12-110, AS RENUMBERED AND AMENDED BY CHAPTERS 3 AND 5, LAWS OF UTAH  
1987  
59-12-111, AS RENUMBERED AND AMENDED BY CHAPTERS 3 AND 5, LAWS OF UTAH  
1987  
59-13-209, AS LAST AMENDED BY CHAPTER 169, LAWS OF UTAH 1993

H. B. No. 7

59-13-209, AS ENACTED BY CHAPTER 6, LAWS OF UTAH 1987

59-13-210, AS LAST AMENDED BY CHAPTER 4, LAWS OF UTAH 1993

59-13-308, AS ENACTED BY CHAPTER 6, LAWS OF UTAH 1987

59-13-313, AS ENACTED BY CHAPTER 6, LAWS OF UTAH 1987

59-13-316, AS ENACTED BY CHAPTER 6, LAWS OF UTAH 1987

59-13-318, AS LAST AMENDED BY CHAPTER 210, LAWS OF UTAH 1990

59-14-303, AS RENUMBERED AND AMENDED BY CHAPTERS 2 AND 3, LAWS OF UTAH  
1987

59-14-401, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987

59-15-102, AS RENUMBERED AND AMENDED BY CHAPTERS 2 AND 3, LAWS OF UTAH  
1987

59-15-103, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987

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

Section 1. Section 19-6-410, Utah Code Annotated 1953, as last amended by Chapter 214, Laws of Utah 1992, is amended to read:

19-6-410. **Environmental surcharge on petroleum.**

(1) An environmental surcharge of one-half cent per gallon is imposed on all petroleum that is sold, used, or received for sale or use in this state, except under Subsection (2).

(2) The environmental surcharge is not imposed on petroleum delivered to any tank that is:

(a) not an underground storage tank, unless the petroleum is being held for subsequent retail sale; or

(b) exempt from this part, unless the tank becomes eligible for payments from the Petroleum Storage Tank Fund.

(3) The revenues generated by the environmental surcharge and any penalties for failure to pay the environmental surcharge shall be deposited in the Petroleum Storage Tank Fund.

(4) The State Tax Commission:

(a) shall prescribe by rule the method of payment of the environmental surcharge; and

(b) is responsible for the enforcement of this section.

(5) (a) The penalties and interest for failure to pay the environmental surcharge are the same as the penalties and interest for failure to pay a tax as specified in Sections 59-1-401 and 59-1-402.

(b) The State Tax Commission may also revoke any license issued by the commission to distribute petroleum if the distributor is delinquent in payment of the environmental surcharge.

Section 2. Section 40-6-14, Utah Code Annotated 1953, as last amended by Chapter 135, Laws of Utah 1992, is amended to read:

**40-6-14. Fee on oil and gas at well -- Use -- Collection -- Penalty and interest on delinquencies -- Payment when product taken in-kind -- Interests exempt.**

(1) There is levied a fee of .002 of the value at the well of oil and gas:

(a) produced and saved;

(b) sold; or

(c) transported from the premises in Utah where the oil or gas is produced.

(2) (a) The State Tax Commission shall [~~provide-for~~] administer the collection of the fee, including any penalties and interest.

(b) The monies collected shall be deposited as fixed collections to be used by the Division of Oil, Gas and Mining for the purposes specified in Section 40-6-14.5.

(3) (a) Each person having an ownership interest in oil or gas at the time of production shall be liable for a proportionate share of the fee equivalent to his ownership interest.

(b) As used in this section "ownership interest" means any:

(i) working interest;

(ii) royalty interest;

(iii) interest in payments out of production; or

(iv) any other interest in the oil or gas, or in the proceeds of the oil or gas, subject to the fee.

(4) The operator, on behalf of himself and any person having an ownership interest in the oil or gas, shall pay the assessed fee quarterly to the State Tax Commission on or before the 45th day following the quarter in which the fee accrued.

(5) (a) Any fee not paid within the time specified shall:

(i) carry a penalty as provided in Section 59-1-401; and

(ii) bear interest [~~as--provided~~] at the rate and in the manner prescribed in Section 59-1-402 [~~from-the-date-of-delinquency-until-paid~~].

(b) The fee, together with the interest, shall be a lien upon the oil or gas against which it is levied. The operator shall deduct from any amounts due to the persons owning an interest in the oil or gas, or

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in the proceeds at the time of production, a proportionate amount of the charge before making payment to the persons.

(6) (a) When product is taken in-kind by an interest owner who is not the operator and the operator cannot determine the value of the in-kind product, the operator shall:

- (i) report 100% of the production;
- (ii) deduct the product taken in-kind; and
- (iii) pay the levy on the difference.

(b) The interest owner who takes the product in-kind shall file a report and pay the levy on his share of production excluded from the operator's report.

(7) This section shall apply to any interest in oil or gas produced in the state except:

- (a) any interest of the United States;
- (b) any interest of the state or its political subdivisions in any oil or gas or in the proceeds;
- (c) any interest of any Indian or Indian tribe in any oil or gas or in the proceeds produced from land subject to the supervision of the United States; or
- (d) oil or gas used in producing or drilling operations or for repressuring or recycling purposes.

Section 3. Section 59-1-402, Utah Code Annotated 1953, as last amended by Chapter 169, Laws of Utah 1993, is amended to read:

59-1-402 (Effective 01/01/94). **Interest.**

~~[(1)--Except--as--provided--in--Subsection--(2),--the--rate--of--interest applicable--to--any--tax--provision--administered--directly--by--the--commission is--12%--annually.]~~

~~[(2)--The]~~ (1) Notwithstanding Subsections (2) and (3), the rate of interest applicable to certain installment sales for the purposes of the corporate franchise tax shall be determined pursuant to Section 453A, Internal Revenue Code as provided in Section 59-7-112.

(2) The interest rate for a calendar year for all taxes and fees administered by the tax commission shall be calculated based on the federal short-term rate determined by the Secretary of the Treasury under Section 6621, Internal Revenue Code and in effect for the preceding fourth calendar quarter.

(3) The interest rate calculation shall be as follows:

(a) In the case of overpayments and refunds, except as otherwise provided in Subsection (6), simple interest shall be calculated at the rate of two percentage points above the federal short-term rate.

(b) In the case of underpayments, deficiencies, and delinquencies, simple interest shall be calculated at the rate of two percentage points above the federal short-term rate.

(4) (a) If any overpayment of tax or fee administered by the tax commission is refunded within 90 days after the last date prescribed for filing the return of such tax or fee, no interest shall be allowed on the overpayment.

(b) If the return is filed after the last date prescribed for filing the return, no interest shall be allowed on the overpayment if the

overpayment is refunded within 90 days after the date the return is filed.

(c) If a refund of an overpayment is requested, and if interest may be calculated in accordance with this section, interest shall be calculated forward from the preparation date of the refund document to allow for processing.

(5) Interest on any underpayment, deficiency, or delinquency of any tax or fee administered by the tax commission shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received.

(6) (a) Interest on refunds may not be paid on any overpayment which arises from a statute which is determined to be invalid under state or federal law or declared unconstitutional under the constitution of the United States or Utah if the basis for the refund is the retroactive application of a judicial decision upholding the claim of unconstitutionality or the invalidation of a statute.

(b) For purposes of this subsection:

(i) "Final judicial decision" means a final ruling by a court of this state or the United States for which the time for any further review or proceeding has expired.

(ii) "Retroactive application of a judicial decision" means the application of a final judicial decision which invalidates a state or federal taxation statute and which requires the state to provide refunds for overpayments that were made prior to the final judicial decision or

for overpayments made during the 180 day period after the final judicial decision.

(7) This section does not apply to:

(a) Title 59, Chapter 2, except for Section 59-2-1309, Title 59, Chapter 3 or 4, or Chapter 13, Part 5;

(b) Title 41, Chapter 1a, except for Section 41-1a-301, or Title 41, Chapter 3.

Section 4. Section 59-1-402, Utah Code Annotated 1953, as last amended by Chapter 3, Laws of Utah 1987, is amended to read:

59-1-402 (Superseded 01/01/94). **Interest.**

(1) The ~~[rate--of]~~ interest rate ~~[applicable-to-any-tax-provision administered-directly]~~ for a calendar year for all taxes and fees administered by the tax commission shall be calculated based on the federal short-term rate determined by the ~~[commission--is--12%--annually]~~ Secretary of the Treasury under Section 6621, Internal Revenue Code and in effect for the preceding fourth calendar quarter.

(2) The interest rate calculation shall be as follows:

(a) In the case of overpayments and refunds, except as otherwise provided in Subsection (5), simple interest shall be calculated at the rate of two percentage points above the federal short-term rate.

(b) In the case of underpayments, deficiencies, and delinquencies, simple interest shall be calculated at the rate of two percentage points above the federal short-term rate.

(3) (a) If any overpayment of tax or fee administered by the tax commission is refunded within 90 days after the last date prescribed for

filing the return of such tax or fee, no interest shall be allowed on the overpayment.

(b) If the return is filed after the last date prescribed for filing the return, no interest shall be allowed on the overpayment if the overpayment is refunded within 90 days after the date the return is filed.

(c) If a refund of an overpayment is requested, and if interest may be calculated in accordance with this section, interest shall be calculated forward from the preparation date of the refund document to allow for processing.

(4) Interest on any underpayment, deficiency, or delinquency of any tax or fee administered by the tax commission shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received.

(5) (a) Interest on refunds may not be paid on any overpayment which arises from a statute which is determined to be invalid under state or federal law or declared unconstitutional under the constitution of the United States or Utah if the basis for the refund is the retroactive application of a judicial decision upholding the claim of unconstitutionality or the invalidation of a statute.

(b) For purposes of this subsection:

(i) "Final judicial decision" means a final ruling by a court of this state or the United States for which the time for any further review or proceeding has expired.

(ii) "Retroactive application of a judicial decision" means the application of a final judicial decision which invalidates a state or federal taxation statute and which requires the state to provide refunds for overpayments that were made prior to the final judicial decision or for overpayments made during the 180 day period after the final judicial decision.

(6) This section does not apply to:

(a) Title 59, Chapter 2, except for Section 59-2-1309, Title 59, Chapter 3 or 4, or Chapter 13, Part 5;

(b) Title 41, Chapter 1a, except for Section 41-1a-301, or Title 41, Chapter 3.

Section 5. Section 59-5-106, Utah Code Annotated 1953, as last amended by Chapter 4, Laws of Utah 1988, is amended to read:

**59-5-106. Interest and penalty -- Overpayments.**

(1) In case of any failure to make or file a return required by this chapter, the penalty provided in Section 59-1-401 [~~shall be added to the tax;--interest~~] and interest at the rate and in the manner prescribed in Section 59-1-402 shall be charged and added [~~from the date provided for the payment of the tax to the date the payment is received~~] to the tax. The amount so added to any tax, whether as a penalty, interest, or both, shall be collected at the same time and in the same manner and as a part of the tax.

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

Section 6. Section 59-5-107, Utah Code Annotated 1953, as last amended by Chapter 4, Laws of Utah 1988, is amended to read:

**59-5-107. Date tax due -- Extensions -- Installment payments -- Penalty on delinquencies -- Audit.**

(1) The tax imposed by this chapter is due and payable on or before June 1 of the year next succeeding the calendar year when the oil or gas is produced, saved, and sold or transported from the field where produced.

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

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

(4) The quarterly installments are due as follows:

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

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

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

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

(5) If the tax is not paid when due or is underpaid, the taxpayer is subject to the penalty provided under Section 59-1-401 and interest at the rate and in the manner prescribed in Section 59-1-402, unless otherwise provided in Subsection (6).

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

(b) An underpayment of tax due for any quarter begins on the last date prescribed for payment for that quarter and ends on March 1 following the close of the year in which the payment was due or on the date it is paid, whichever is earlier.

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

(7) A taxpayer who fails to report and pay any installment of tax when due is subject to the penalty provided in Section 59-1-401.

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

Section 7. Section 59-5-206, Utah Code Annotated 1953, as enacted by Chapter 4, Laws of Utah 1988, is amended to read:

**59-5-206. Interest and penalty -- Overpayments.**

(1) In case of any failure to make or file a return required by this chapter, the penalty provided in Section 59-1-401 [~~shall be added to the~~

~~tax--interest]~~ and interest at the rate and in the manner prescribed in Section 59-1-402 shall be charged and added ~~[from-the-date--provided--for the--payment--of-the-tax-to-the-date-the-payment-is-received]~~ to the tax. The amount so added to any tax, whether as a penalty, interest, or both, shall be collected at the same time and in the same manner and as a part of the tax.

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

Section 8. Section 59-5-207, Utah Code Annotated 1953, as enacted by Chapter 4, Laws of Utah 1988, is amended to read:

**59-5-207. Date tax due -- Extensions -- Installment payments -- Penalty on delinquencies -- Audit.**

(1) The tax imposed by this chapter is due and payable on or before June 1 of the year next succeeding the calendar year when the mineral is produced and sold or delivered.

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

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

taxpayer during the quarter preceding the date on which the installment is due.

(4) The quarterly installments are due as follows:

- (a) for January 1 through March 31, on or before June 1;
- (b) for April 1 through June 30, on or before September 1;
- (c) for July 1 through September 30, on or before December 1; and
- (d) for October 1 through December 31, on or before March 1 of the next year.

(5) If the [~~tax-is-not-paid-when-due-or-is-underpaid~~] taxpayer fails to report and pay any tax when due, the taxpayer is subject to the penalties provided under Section 59-1-401 and interest at the rate and in the manner prescribed in Section 59-1-402, unless otherwise provided in Subsection (6).

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

(b) An underpayment of tax due for any quarter begins on the last date prescribed for payment for that quarter and ends on March 1 following the close of the year in which the payment was due or on the date it is paid, whichever is earlier.

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

(7) A taxpayer who fails to report and pay any installment of tax when due is subject to the penalty provided in Section 59-1-401. The

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commission may conduct audits to determine whether any tax is owed under this section.

Section 9. Section 59-7-129, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

59-7-129 (Renumbered 01/01/94). **Deficiency -- Interest.**

Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the commission, and shall be collected as a part of the tax at the rate and in the manner prescribed in Section 59-1-402 [~~from--the--date prescribed--for--the--payment--of--the--tax--to--the--date--the--deficiency--is assessed~~].

Section 10. Section 59-7-131, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

59-7-131 (Renumbered 01/01/94). **Addition to tax in case of nonpayment.**

[~~Interest-on-Unpaid-Amount:~~]

[~~(1)-(a)~~] Where the amount determined by the taxpayer as the tax imposed by this chapter, or any part of such amount, is not paid on or before the date prescribed for its payment, there shall be collected as a part of the tax interest upon such unpaid amount at the rate and in the manner prescribed in Section 59-1-402 [~~from--the--date--prescribed--for payment-until-paid~~].

[~~In-Case-Extension-Is-Granted:~~]

~~[(b)--Where--an--extension--of--time--for--payment--of--the--amount--so determined--as--the--tax--by--the--taxpayer;--or--any--part--thereof;--has--been granted;--and--the--amount--(the--time--for--payment--of--which--has--been--extended) and--the--interest--thereon--determined--under--Section--59-7-132--is--not--paid--in full--prior--to--the--expiration--of--the--period--of--the--extension;--then;--in lieu--of--the--interest--provided--for--in--Subsection--(1)--(a);--interest--at--the rate--prescribed--in--Section--59-1-402--shall--be--collected--on--such--unpaid amount--from--the--date--of--the--expiration--of--the--period--of--the--extension until--it--is--paid.]~~

~~[Interest--on--Deficiency--and--Additional--Amounts;--if--Unpaid.]~~

~~[(2)--When--a--deficiency;--or--any--interest--or--additional--amounts assessed--in--connection--therewith--under--Section--59-7-129;--or--under--Section 59-7-130;--or--any--addition--to--the--tax--in--case--of--delinquency--provided--for in--Section--59-7-128;--is--not--paid--in--full--within--ten--days--from--the--date--of notice--and--demand--from--the--commission;--there--shall--be--collected;--as--part of--the--tax;--interest--upon--the--unpaid--amount--at--the--rate--prescribed--in Section--59-1-402--from--the--date--of--such--notice--and--demand--until--paid.]~~

Section 11. Section 59-7-132, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

59-7-132 (Renumbered 01/01/94). Interest when time for payment extended.

If the time for payment of the amount determined as the tax by the taxpayer is extended under the authority of [Section] Subsection 59-7-126 (2), there shall be collected as a part of such amount interest at the

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rate prescribed in Section 59-1-402 from the date when such payment should have been made, if no extension had been granted, until ~~[the expiration-of-the-period-of-the-extension]~~ payment is received.

Section 12. Section 59-7-141, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

59-7-141 (Renumbered 01/01/94). **Overpayments.**

~~[Credits-and-Refunds:]~~

(1) Where there has been an overpayment of any tax imposed by this chapter, the amount of such overpayment and interest calculated at the rate and in the manner prescribed in Section 59-1-402 shall be credited against any tax then due from the taxpayer under this chapter, and any balance shall be refunded immediately to the taxpayer.

~~[Limitations-on-Time:]~~

(2) (a) No such credit or refund shall be allowed or made after three years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed with the commission by the taxpayer.

(b) If the claim for credit or refund relates to an overpayment attributable to a net loss carryback adjustment as provided in Subsection 59-7-108 (14), in lieu of the three-year period provided for in Subsection (2) (a), the period shall be that period which ends with the expiration of the 15th day of the 40th month following the end of the taxable year of the net loss which results in the carryback.

(c) Where an overpayment relates to adjustments to net income referred to in Section 59-7-138, credit may be allowed or a refund paid any time before the expiration of the period within which a deficiency may be assessed.

~~[Amount:]~~

(d) The amount of the credit or refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or if no claim was filed, then during the two years immediately preceding the allowance of the credit or refund.

~~[Overpayment-Found-on-Appeal:]~~

(3) Except as provided in Subsections (2)(b) and (2)(c), if on appeal the tax division of the district court and/or the Supreme Court finds that there is no deficiency and further finds that the taxpayer has made an overpayment of tax in respect of the taxable year in respect to which the commission determined the deficiency, the tax division of the district court and/or the Supreme Court shall have jurisdiction to determine the amount of such overpayment and such amount shall, when the decision of the tax division of the district court and/or the Supreme Court has become final, be credited or refunded to the taxpayer. No such credit or refund shall be made of any portion of the tax paid more than three years before the filing of the claim or the filing of the appeal or petition, whichever is earlier.

Section 13. Section 59-7-154, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

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59-7-154 (Renumbered 01/01/94). **Interest on overpayments and refunds.**

Interest shall be allowed and paid upon any overpayment in respect of any tax imposed by this chapter at the rate and in the manner prescribed in Section 59-1-402[~~;-as-follows~~].

[~~(1)--in--the--case--of--a--credit;--from--the--date--of--the--overpayment--to--the--due--date--of--the--amount--against--which--the--credit--is--taken;--and~~]

[~~(2)--in--the--case--of--a--refund;--from--the--date--of--the--overpayment--to--a--date--preceding--the--date--of--the--refund--check--by--not--more--than--30--days;--such--date--to--be--determined--by--the--commission~~].

Section 14. Section 59-7-510, Utah Code Annotated 1953, as renumbered and amended by Chapter 169, Laws of Utah 1993, is amended to read:

59-7-510 (Effective 01/01/94). **Deficiency -- Interest.**

Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the commission, and shall be collected as a part of the tax at the rate and in the manner prescribed in Section 59-1-402 [~~from--the--date--prescribed--for--the--payment--of--the--tax--to--the--date--the--deficiency--is--assessed~~].

Section 15. Section 59-7-512, Utah Code Annotated 1953, as renumbered and amended by Chapter 169, Laws of Utah 1993, is amended to read:

59-7-512 (Effective 01/01/94). **Addition to tax in case of nonpayment.**

~~[(1)-(a)]~~ Where the entire amount determined by the taxpayer as the tax imposed by this chapter is not paid on or before the date prescribed for its payment, there shall be collected as a part of the tax interest upon such unpaid amount at the rate and in the manner prescribed in Section 59-1-402 ~~[from the date prescribed for payment until paid]~~.

~~[(b)--Where--an--extension--of--time--for--payment--of--the--amount--so--determined--as--the--tax--by--the--taxpayer;--or--any--part--thereof;--has--been--granted;--and--the--amount--(the--time--for--payment--of--which--has--been--extended)--and--the--interest--thereon--determined--under--Section--59-7-513--is--not--paid--in--full--prior--to--the--expiration--of--the--period--of--the--extension;--then;--in--lieu--of--the--interest--provided--for--in--Subsection--(1)-(a);--interest--at--the--rate--prescribed--in--Section--59-1-402--shall--be--collected--on--such--unpaid--amount--from--the--date--of--the--expiration--of--the--period--of--the--extension--until--it--is--paid.]~~

~~[(2)--When--a--deficiency;--or--any--interest--or--additional--amounts--assessed--in--connection--therewith--under--Section--59-7-510;--or--under--Section--59-7-511;--or--any--addition--to--the--tax--in--case--of--delinquency--provided--for--in--Section--59-7-509;--is--not--paid--in--full--within--ten--days--from--the--date--of--notice--and--demand--from--the--commission;--there--shall--be--collected;--as--part--of--the--tax;--interest--upon--the--unpaid--amount--at--the--rate--prescribed--in--Section--59-1-402--from--the--date--of--such--notice--and--demand--until--paid.]~~

Section 16. Section 59-7-513, Utah Code Annotated 1953, as renumbered and amended by Chapter 169, Laws of Utah 1993, is amended to read:

59-7-513 (Effective 01/01/94). **Interest when time for payment extended.**

If the time for payment of the amount determined as the tax by the taxpayer is extended under the authority of Subsection 59-7-507 (2), there shall be collected as a part of such amount interest at the rate prescribed in Section 59-1-402 from the date when such payment should have been made, if no extension had been granted, until ~~[the--expiration of-the-period-of-the-extension]~~ payment is received.

Section 17. Section 59-7-522, Utah Code Annotated 1953, as renumbered and amended by Chapter 169, Laws of Utah 1993, is amended to read:

59-7-522 (Effective 01/01/94). **Overpayments.**

(1) Where there has been an overpayment of any tax imposed by this chapter, the amount of such overpayment and interest calculated at the rate and in the manner prescribed in Section 59-1-402 shall be credited against any tax then due from the taxpayer under this chapter, and any balance shall be refunded immediately to the taxpayer.

(2) (a) A credit or refund may not be allowed or made after three years from the time the tax was paid, unless before the expiration of such period a claim is filed with the commission by the taxpayer.

(b) If the claim for credit or refund relates to an overpayment attributable to a net loss carryback adjustment as provided in Section 59-7-110, in lieu of the three-year period provided for in Subsection (2)(a), the period shall be that period which ends with the expiration of

the 15th day of the 40th month following the end of the taxable year of the net loss which results in the carryback.

(c) Where an overpayment relates to adjustments to federal taxable income referred to in Section 59-7-519, credit may be allowed or a refund paid any time before the expiration of the period within which a deficiency may be assessed.

(d) The amount of the credit or refund may not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or if no claim was filed, then during the two years immediately preceding the allowance of the credit or refund.

(3) Except as provided in Subsections (2)(b) and (2)(c), if on appeal a court finds that there is no deficiency and further finds that the taxpayer has made an overpayment of tax in respect of the taxable year in respect to which the commission determined the deficiency, the court shall have jurisdiction to determine the amount of the overpayment and that amount shall, when the court's decision has become final, be credited or refunded to the taxpayer. A credit or refund may not be made of any portion of the tax paid more than three years before the filing of the claim or the filing of the appeal or petition, whichever is earlier.

Section 18. Section 59-7-533, Utah Code Annotated 1953, as renumbered and amended by Chapter 169, Laws of Utah 1993, is amended to read:

**59-7-533 (Effective 01/01/94). Interest on overpayments and refunds.**

Interest shall be allowed and paid upon any overpayment in respect of

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any tax imposed by this chapter at the rate and in the manner prescribed in Section 59-1-402[~~, as follows~~].

[~~(1) in the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken; and~~]

[~~(2) in the case of a refund, from the date of the overpayment to a date preceding the date of the refund check by not more than 30 days, such date to be determined by the commission;~~]

Section 19. Section 59-9-104, Utah Code Annotated 1953, as renumbered and amended by Chapters 2 and 3, Laws of Utah 1987, is amended to read:

**59-9-104. Installment payments -- Penalty.**

(1) A person whose total tax obligation under this chapter for the preceding taxable year was \$10,000 or more shall pay the taxes levied under this chapter in quarterly installments. Each installment shall be based on the estimated insurance premiums received, or for the taxes imposed under Section 59-9-103, upon the estimated total administrative and claims expense incurred during the calendar quarter preceding the date on which that quarterly installment is due. The installments are due on or before May 1, August 1, November 1, and March 31. To the extent installment payments result in an overpayment of the tax obligation under this chapter, the overpayment shall be promptly refunded.

(2) If an installment is not paid or is underpaid, except as provided in Subsection (3), there shall be added a penalty [~~as provided~~] at the rate and in the manner prescribed in Section 59-1-401 and interest

as provided in Section 59-1-402. The amount of the underpayment is the excess of 80% of the installment shown to be due by an audit of the taxpayer's records over the amount, if any, of the installment paid on or before the last date prescribed for the payment. The taxpayer shall pay the cost of the audit, if any. The period of the underpayment begins after the last date prescribed for payment and ends on the date any remaining portion of the underpayment is paid.

(3) No penalty, interest, or audit charge may be assessed under Subsection (2) if the taxpayer pays, for any installment required by this section, at least 27% of the annual tax reported on its annual statement for the preceding taxable year.

Section 20. Section 59-10-529, Utah Code Annotated 1953, as last amended by Chapter 183, Laws of Utah 1990, is amended to read:

**59-10-529. Overpayment of tax -- Credits -- Refunds.**

(1) In cases where there has been an overpayment of any tax imposed by this chapter, the amount of overpayment is credited as follows:

(a) against any income tax then due from the taxpayer;

(b) against the amount of any judgment against the taxpayer, including one ordering the payment of a fine or of restitution to a victim under Section 76-3-201, obtained through due process of law by any entity of state government;

(c) against any child support obligation which is delinquent, as determined by the Office of Recovery Services in the Department of Human Services, in enforcing, under Title IV-D of the Social Security Act, a court or administrative order for support of a child which has not been

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reduced to judgment, and after notice and an opportunity for a hearing, as provided in Subsection (2);

(d) as bail, to ensure the appearance of the taxpayer before the appropriate authority to resolve an outstanding warrant against the taxpayer for which bail is due, if a court of competent jurisdiction has not approved an alternative form of payment. This bail may be applied to any fine or forfeiture which is due and related to a warrant which is outstanding on or after February 16, 1984, and in accordance with Subsections (3) and (4).

(2) (a) Subsection (1)(c) may be exercised only if the Office of Recovery Services serves prior written notice on the taxpayer by personal service or certified mail, restricted delivery, stating:

(i) the amount of child support which is alleged to be delinquent; and

(ii) that the overpayment shall be applied to reduce that alleged child support debt unless the taxpayer appears at an administrative hearing before the department and successfully contests the child support debt or the application of the overpayment to that debt.

(b) If an overpayment of tax is credited against a delinquent child support obligation in accordance with Subsection (1)(c) in non-AFDC cases, the Office of Recovery Services shall inform the non-AFDC custodial parent in advance if it will first use any portion of the overpayment to satisfy unreimbursed AFDC or foster care maintenance payments which have been provided to that family.

(c) The Department of Human Services shall establish rules to implement this subsection, including procedures, in accordance with the other provisions of this section, to ensure prompt reimbursement to the taxpayer of any amount of an overpayment of taxes which was credited against a child support obligation in error, and to ensure prompt distribution of properly credited funds to the custodial parent.

(3) Subsection (1)(d) may be exercised only if:

(a) a court has issued a warrant for the arrest of the taxpayer for failure to post bail, appear, or otherwise satisfy the terms of a citation, summons, or court order; and

(b) a notice of intent to apply the overpayment as bail on the issued warrant has been mailed to the person's current address on file with the commission.

(4) (a) The commission shall deliver the overpayment applied as bail to the court that issued the warrant of arrest. The clerk of the court is authorized to endorse the check or commission warrant of payment on behalf of the payees and deposit the monies in the court treasury.

(b) The court receiving the overpayment applied as bail shall order withdrawal of the warrant for arrest of the taxpayer if the case is one for which a personal appearance of the taxpayer is not required and if the dollar amount of the overpayment represents the full dollar amount of bail. In all other cases, the court receiving the overpayment applied as bail is not required to order the withdrawal of the warrant of arrest of the taxpayer during the 40-day period, and the taxpayer may be arrested

on the warrant. However, the bail amount shall be reduced by the amount of tax overpayment received by the court.

(c) If the taxpayer fails to respond to the notice described in Subsection (3), or to resolve the warrant within 40 days after the mailing under that subsection, the overpayment applied as bail is forfeited and notice of the forfeiture shall be mailed to the taxpayer at the current address on file with the commission. The court may then issue another warrant or allow the original warrant to remain in force if:

(i) the taxpayer has not complied with an order of the court;

(ii) the taxpayer has failed to appear and respond to a criminal charge for which a personal appearance is required; or

(iii) the taxpayer has paid partial but not full bail in a case for which a personal appearance is not required.

(5) If the alleged violations named in the warrant are later resolved in favor of the taxpayer, the bail amount shall be remitted to the taxpayer.

(6) Any balance shall be refunded immediately to the taxpayer.

(7) (a) If a refund or credit is due because the amount of tax deducted and withheld from wages exceeds the actual tax due, no refund or credit may be made or allowed unless the taxpayer or his legal representative files with the commission a tax return claiming the refund or credit:

(i) within three years from the due date of the return, plus the period of any extension of time for filing the return; or

(ii) within two years from the date the tax was paid, whichever period is later.

(b) In other instances where a refund or credit of tax which has not been deducted and withheld from income is due, no credit or refund may be allowed or made after three years from the time the tax was paid, unless, before the expiration of the period, a claim is filed by the taxpayer or his legal representative.

(8) The fine and bail forfeiture provisions of this section apply to all warrants and fines issued in cases charging the taxpayer with a felony, a misdemeanor, or an infraction described in this section which are outstanding on or after February 16, 1984.

(9) If the amount allowable as a credit for tax withheld from the taxpayer exceeds the tax to which the credit relates, the excess is considered an overpayment.

(10) A claim for credit or refund of an overpayment which is attributable to the application to the taxpayer of a net operating loss carryback shall be filed within three years from the time the return was due for the taxable year of the loss.

(11) If there has been an overpayment of the tax which is required to be deducted and withheld under Section 59-10-402, a refund shall be made to the employer only to the extent that the amount of overpayment was not deducted and withheld by the employer.

(12) If there is no tax liability for a period in which an amount is paid as income tax, the amount is an overpayment.

(13) If an income tax is assessed or collected after the expiration of the applicable period of limitation, that amount is an overpayment.

(14) (a) If a taxpayer is required to report a change or correction in federal taxable income reported on his federal income tax return, or to report a change or correction which is treated in the same manner as if it were an overpayment for federal income tax purposes, or to file an amended return with the commission, a claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the date the notice of the change, correction, or amended return was required to be filed with the commission.

(b) If the report or amended return is not filed within 90 days, interest on any resulting refund or credit ceases to accrue after the 90-day period.

(c) The amount of the credit or refund may not exceed the amount of the reduction in tax attributable to the federal change, correction, or items amended on the taxpayer's amended federal income tax return.

(d) Except as specifically provided, this section does not affect the amount or the time within which a claim for credit or refund may be filed.

(15) No credit or refund may be allowed or made if the overpayment is less than \$1.

(16) The amount of the credit or refund may not exceed the tax paid during the three years immediately preceding the filing of the claim, or if no claim is filed, then during the three years immediately preceding the allowance of the credit or refund.

(17) In the case of an overpayment of tax by the employer under the withholding provisions of this chapter, a refund or credit shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld from wages under the provisions of this chapter.

(18) If a taxpayer who is entitled to a refund under this chapter dies, the commission may make payment to the duly appointed executor or administrator of the taxpayer's estate. If there is no executor or administrator, payment may be made to those persons who establish entitlement to inherit the property of the decedent in the proportions set out in Title 75.

(19) Where an overpayment relates to adjustments to net income referred to in Subsection 59-10-536 (3)(c), credit may be allowed or a refund paid any time before the expiration of the period within which a deficiency may be assessed.

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

Section 21. Section 59-10-537, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

**59-10-537. Interest on underpayment, nonpayment or extension of time for payment of tax.**

(1) If any amount of income tax is not paid on or before the last date prescribed in this chapter for payment, interest on such amount at the rate and in the manner prescribed in Section 59-1-402 shall be paid

~~[for the period from such last date to the date paid; whether or not any extension of time for payment was granted]~~. Interest under this subsection may not be paid if the amount thereof is less than \$1. If the time for filing of a return of tax withheld by an employer is extended, the employer shall pay interest for the period for which the extension is granted and may not charge such interest to the employee.

~~[(2) Where an extension of time for payment of the amount so determined as the tax by the taxpayer, or any part thereof, has been granted, and the amount the time for payment of which has been extended, and the interest thereon, is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in Subsection (1), interest at the rate of 1% per month, or at the rate prescribed in Section 59-1-402 if it is higher than 12% per annum, shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.]~~

[(3)] (2) Where a deficiency or any interest or additional amounts assessed in connection therewith under Section 59-10-525 or under Subsection (1), or an addition to the tax in case of delinquency provided for in Section 59-10-539 is not paid in full within ten days from the date of notice and demand from the commission, there shall be collected as part of the tax, interest ~~[upon the unpaid amount at the rate of 1% per month; or]~~ at the rate and in the manner prescribed in Section 59-1-402 ~~[if it is higher than 12% per annum;]~~ from the date of such notice and demand until it is paid.

~~[(4)]~~ (3) For any period an estate is held by a fiduciary appointed by order of any court of competent jurisdiction or by will, there shall be collected interest at a rate 4% below that prescribed in Section 59-1-402 in lieu of the interest provided in ~~[Subsections]~~ Subsection (2) ~~[and-(3)]~~.

~~[(5)]~~ (4) If the time for payment of the amount determined as the tax by the taxpayer is extended under the authority of Section 59-10-522, there shall be collected as a part of such amount, interest thereon at the rate and in the manner prescribed in Section 59-1-402 ~~[from-the-date when-such-payment-should--have--been--made;--if--no--extension--had--been granted;--until-the-expiration-of-the-period-of-the-extension]~~.

Section 22. Section 59-10-538, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

59-10-538. Interest on overpayments and refunds.

(1) Interest shall be allowed and paid upon any overpayment in respect of any tax imposed by this chapter, at the rate and in the manner prescribed in Section 59-1-402~~[;--as-follows]~~.

~~[(a)--In-the-case-of-a-credit;--interest-shall-be--computed--beginning 90--days--following--the--date--of-the-overpayment-to-the-due-date-of-the amount-against-which-the-credit-is-taken.]~~

~~[(b)--In-the-case-of-a-refund;--interest-shall-be--computed--beginning 90--days--following--the--date-of-the-overpayment-to-a-date-preceding-the date-of-the-refund-check-by-not-more--than--30--days;--such--date--to--be determined-by-the-commission.]~~

~~[(c)--Where--a-credit-is-claimed-and-is-due-because-the-amount-of-the tax-deducted-and-withheld-from-wages-exceeded-the-amount-of-tax--actually due;-interest-shall-be-computed-beginning-90-days-following-the-date-when the--return--claiming-said-credit-is-due-and-filed-with-the-commission-to the-due-date-of-the-return-against-which-the-credit-is-taken;-]~~

~~[(d)--Where-a-refund-is-claimed-and-is-due-because-the-amount-of--the tax--deducted-and-withheld-from-wages-exceeded-the-amount-of-tax-actually due;-interest-shall-be-computed-beginning-90-days-following-the-date-when the-return-claiming-said-refund-is-due-and-filed-with-the-commission-to-a date-preceding-the-date-of-the-refund-check-by-not--more--than--30--days; such-date-to-be-determined-by-the-commission;-]~~

(2) For purposes of this section, if any overpayment of tax imposed by this chapter results from a carryback of a net operating loss, such overpayment shall be deemed not to have been made prior to the close of the taxable year of the net operating loss which results in such carryback.

Section 23. Section 59-10-539, Utah Code Annotated 1953, as renumbered and amended by Chapters 2 and 3, Laws of Utah 1987, is amended to read:

**59-10-539. Additions to tax and civil penalties.**

(1) In case of failure to file an income tax return and pay the tax required under this chapter on or before the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown

as tax on such return a penalty as provided in Section 59-1-401. For the purposes of this subsection, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(2) If any part of any deficiency in tax imposed by this chapter, as defined by Section 59-10-523, is due to negligence or intentional disregard of rules, but without intent to defraud, a penalty shall be assessed, collected, and paid as provided in Section 59-1-401 in the same manner as if it were [~~a deficiency; except that the provisions of Section 59-10-537 relating to interest on deficiencies are not applicable~~] an underpayment.

(3) If any part of a deficiency in tax imposed by this chapter, as defined by Section 59-10-523, is due to fraud, there shall be added to the tax a penalty as provided in Section 59-1-401. This amount shall be in lieu of any other addition to tax imposed by Subsection (1) or (2).

(4) If any employer, without intent to evade or defeat any tax imposed by this chapter or the payment thereof, fails to make a return and pay a tax withheld by him at the time required under Section 59-10-402, such employer shall be liable for such tax and shall pay it together with interest [~~on it~~] at the rate and in the manner prescribed in Section 59-1-402. The addition to tax provided in Subsection (1) and such interest may not be charged to or collected from the employee by the employer. The commission has the same rights and powers for the

collection of such tax, interest, and addition to tax against such employer as are prescribed by this chapter for the collection of tax against an individual taxpayer.

(5) Any person required to collect, truthfully account for, and pay over the tax imposed by this chapter who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or default the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty as provided in Section 59-1-401. No addition to tax under Subsection (1) or (2) may be imposed for any offense to which this subsection applies.

(6) In case of each failure to file a statement of a payment to another person, required under authority of Section 59-10-406 (relating to information at source, including the duplicate statement of tax withheld on wages), on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall, upon notice and demand by the commission and in the same manner as tax, be paid by the person so failing to file the statement, a penalty as provided in Section 59-1-401.

(7) If any person who is required by rules prescribed by the commission under this chapter: (a) to include his identifying number in any return statement or other document, (b) to furnish his identifying number to another person, or (c) to include any return, statement, or other document made with respect to another person the identifying number of such other person, fails to comply with such requirement at the time

prescribed by such rules, such person shall pay a penalty as provided in Section 59-1-401, unless it is shown that such failure is due to reasonable cause. For failure to include his own identification number in any return, statement, or other document required to be filed by him, such penalty may not be imposed unless such person fails to supply his identification number to the commission within 30 days after demand therefor.

(8) In addition to the penalties added by this section, there shall be added to the tax due interest payable at the rate and in the manner prescribed in Section 59-1-402 for underpayments.

~~[(8)]~~ (9) The additions to tax ~~[and]~~, penalties, and interest provided by this section shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as taxes. Any reference in this chapter to income tax or tax imposed by this chapter, is deemed also to refer to the additions to tax ~~[and]~~, penalties, and interest provided by this section.

~~[(9)]~~ (10) For purposes of Subsections (2) and (3), the amount shown as the tax by the taxpayer upon his return shall be taken into account in determining the amount of the deficiency only if such return was filed on or before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing.

Section 24. Section 59-11-107, Utah Code Annotated 1953, as renumbered and amended by Chapters 2 and 3, Laws of Utah 1987, is amended to read:

**59-11-107. Delinquencies -- Interest -- Penalty.**

(1) Any tax due under this chapter which is not paid by the time prescribed for the filing of the return as provided under Subsection 59-11-105 (1), not including any extensions in respect to the filing of the return or the payment of the tax, shall bear interest at the rate and in the manner prescribed in Section 59-1-402 [~~until~~-paid].

(2) If the return provided for in Section 59-11-105 is not filed within the specified time periods, the personal representative shall pay, in addition to the interest provided in Subsection (1), a penalty as provided in Section 59-1-401 in respect to the transfer for each month beyond the time periods that the return has not been filed.

Section 25. Section 59-11-109, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

**59-11-109. Deposit of monies collected -- Refund of overpayments -- Limitation.**

(1) All monies collected by the commission under this chapter shall be deposited as provided under Section 51-4-1.

(2) If the commission determines that a personal representative has overpaid the tax due under this chapter, the commission is authorized to refund the amount of the overpayment together with interest at the rate and in the manner prescribed under Section 59-1-402. Each claim for refund may not be initiated after three years from the date the amount of the tax was deposited as provided under Subsection (1).

Section 26. Section 59-12-110, Utah Code Annotated 1953, as renumbered and amended by Chapters 3 and 5, Laws of Utah 1987, is amended to read:

**59-12-110. Overpayments and deficiencies.**

(1) As soon as practicable after the return is filed, the commission shall examine it. If it then appears that the correct amount of tax to be remitted is greater or less than that shown on the return to be due, the tax shall be recomputed. If the amount paid exceeds that which is due, the excess, together with interest thereon at the rate and in the manner prescribed in Section 59-1-402 [~~from--the--date--of--overpayment;~~] shall be credited or refunded to the person paying it, upon written application, if it is determined that the overpayment was not made for the purpose of investment.

(2) If any tax, penalty, or interest has been paid more than once or has been erroneously collected or computed, the commission shall credit it on any amounts then due from that person to the state under this chapter or under any other taxing law, the administration of which is vested in the commission, and the balance shall be refunded to that person or his successors, administrators, executors, or assigns. No such credit or refund is allowed unless a claim is filed with the commission within three years from date of overpayment.

(3) If any amount has been erroneously determined to be due from any person, the commission shall authorize the cancellation of the amounts upon its records.

(4) If the amount paid is less than the amount due, interest at the rate and in the manner prescribed in Section 59-1-402 shall be added to the difference due [~~computed-from-the-time-the-return-was-due~~].

(5) If any part of the deficiency is due to negligence or intentional disregard of authorized rules with knowledge thereof, but without intent to defraud, there shall be added a penalty as provided in Section 59-1-401 and interest at the rate and in the manner prescribed in Section 59-1-402 to the amount of the deficiency [~~from--the--time--the--return-was-due~~].

(6) If any part of the deficiency is due to fraud with the intent to evade, there shall be added a penalty as provided in Section 59-1-401 and interest at the rate and in the manner prescribed in Section 59-1-402 to the amount of the deficiency [~~from-the-date-the-return-was-due~~].

(7) The deficiencies in tax, together with penalties and interest imposed by this section, shall be due and payable by the taxpayer within ten days after notice and demand by the commission, except that when the commission determines that a greater amount was due than was shown on the return, and the tax is not deemed to be in jeopardy, the additional tax, penalty, and interest shall be due and payable within 30 days after the commission mailed its report of deficiency determination.

(8) Except if a deficiency is due to fraud with intent to evade tax or of a failure to file a return, the amount of taxes imposed by this chapter shall be assessed within three years after the return was filed and if not so assessed no proceeding for the collection of the taxes shall be begun after the expiration of the period.

(9) In the case of a false or fraudulent return or payment with intent to evade tax or of failure to file a return, the tax may be assessed or a proceeding for the collection of the tax may commence without assessment at any time.

Section 27. Section 59-12-111, Utah Code Annotated 1953, as renumbered and amended by Chapters 3 and 5, Laws of Utah 1987, is amended to read:

**59-12-111. Licensee to keep records -- Failure to make return -- Penalties.**

(1) Each person engaging or continuing in any business in this state for the transaction of which a license is required under this chapter shall: (a) keep and preserve suitable records of all sales made by the person and other books or accounts necessary to determine the amount of tax for the collection of which the person is liable under this chapter in a form prescribed by the commission; (b) keep and preserve for a period of three years all such books, invoices, and other records; and (c) open such records for examination at any time by the commission or its duly authorized agent. If no return is made by any person required to make returns as provided in this chapter, the commission shall give written notices by mail postpaid to such person to make such return within a reasonable time to be designated by the commission or, alternatively, the commission may make an estimate for the period or periods or any part thereof in respect to which such person failed to make a return, based upon any information in its possession or that may come into its possession of the total sales subject to the tax imposed by

this chapter. Upon the basis of this estimate the commission may compute and determine the amount of tax required to be paid to the state. Such return shall be prima facie correct for the purposes of this chapter and the amount of the tax due thereon shall be subject to the penalties and interest as provided in Sections 59-1-401 and 59-1-402. Promptly thereafter the commission shall give to such person written notice by mail postpaid of such estimate, determination, penalty, and interest.

(2) If any person not holding a sales tax license under Section 59-12-106 or a valid use tax registration certificate makes a purchase of tangible personal property for storage, use, or other consumption in this state and fails to file a return or pay the tax due within 170 days from the time the return is due, this person shall pay a penalty as provided in Section 59-1-401 plus interest at the rate and in the manner prescribed in Section 59-1-402 and all other penalties and interest as provided by this title.

Section 28. Section 59-13-209, Utah Code Annotated 1953, as last amended by Chapter 169, Laws of Utah 1993, is amended to read:

59-13-209 (Effective 01/01/94). **Due date -- Delinquency -- Penalties -- Interest -- License withheld.**

(1) The motor fuel tax is due and payable by the distributor on or before the last day of each month to the commission for the number of gallons of motor fuel sold, used, or received for sale or use by the distributor during the preceding calendar month. The commission shall receipt the distributor for taxes paid and shall promptly deposit all revenue with the state treasurer.

(2) If any distributor fails or refuses to pay any tax when it becomes due and payable, the tax is delinquent. If a distributor is delinquent in tax payments, the commission shall revoke the distributor's license and impose a penalty as provided under Section 59-1-401. The amount of the tax shall bear interest at the rate and in the manner prescribed in Section 59-1-402 [~~from-the-date-of--delinquency--until--the delinquent-tax-is-paid~~].

(3) No report or payment of tax is considered delinquent if the envelope in which the report or remittance is enclosed bears a post office cancellation mark dated on or before the date on which the report or payment was due. The commission, upon receipt of the report or remittance, shall treat the report or payment as if it had been received on the date it was due.

(4) If any part of the tax due is deficient or delinquent because of negligence or disregard of this part, or in the case of false or fraudulent monthly reports, or intent to evade the tax, a penalty shall be added to the tax due as provided in Section 59-1-401.

(5) A tax due and unpaid under this part constitutes a debt due the state and may be collected, together with interest, penalty, and costs, by appropriate judicial proceeding. This remedy is in addition to all other remedies. If the tax imposed by this part is not paid when it is due, collection may be made as provided in Sections 59-7-526 and 59-7-527.

(6) No license may be issued to any distributor who has permitted any tax levied and imposed by this part to become delinquent until the tax, penalty, and interest have been fully paid.

Section 29. Section 59-13-209, Utah Code Annotated 1953, as enacted by Chapter 6, Laws of Utah 1987, is amended to read:

59-13-209 (Superseded 01/01/94). **Due date -- Delinquency -- Penalties -- Interest -- License withheld.**

(1) The motor fuel tax is due and payable by the distributor on or before the last day of each month to the commission for the number of gallons of motor fuel sold, used, or received for sale or use by the distributor during the preceding calendar month. The commission shall receipt the distributor for taxes paid and shall promptly deposit all revenue with the state treasurer.

(2) If any distributor fails or refuses to pay any tax when it becomes due and payable, the tax is delinquent. If a distributor is delinquent in tax payments, the commission shall revoke the distributor's license and impose a penalty as provided under Section 59-1-401. The amount of the tax shall bear interest at the rate and in the manner prescribed in Section 59-1-402 [~~from-the-date-of--delinquency--until--the delinquent-tax-is-paid~~].

(3) No report or payment of tax is considered delinquent if the envelope in which the report or remittance is enclosed bears a post office cancellation mark dated on or before the date on which the report or payment was due. The commission, upon receipt of the report or

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remittance, shall treat the report or payment as if it had been received on the date it was due.

(4) If any part of the tax due is deficient or delinquent because of negligence or disregard of this part, or in the case of false or fraudulent monthly reports, or intent to evade the tax, a penalty shall be added to the tax due as provided in Section 59-1-401.

(5) A tax due and unpaid under this part constitutes a debt due the state and may be collected, together with interest, penalty, and costs, by appropriate judicial proceeding. This remedy is in addition to all other remedies. If the tax imposed by this part is not paid when it is due, collection may be made as provided in Sections 59-7-147 and 59-7-148.

(6) No license may be issued to any distributor who has permitted any tax levied and imposed by this part to become delinquent until the tax, penalty, and interest have been fully paid.

Section 30. Section 59-13-210, Utah Code Annotated 1953, as last amended by Chapter 4, Laws of Utah 1993, is amended to read:

**59-13-210. Rules to be adopted by commission -- Examination of monthly reports -- Estimations of amount due -- Judicial review -- Overpayments -- Interest -- Collection procedures.**

(1) The commission may promulgate rules to administer and enforce this part.

(2) The commission may examine the monthly reports of sales, recompute the tax due on them, or, if no monthly report is filed, estimate the amount of tax due. The estimate may be based upon

information either in its possession or that comes into its possession, and is prima facie correct for purposes of this part.

(3) If the amount determined due is greater than the amount paid, the difference, together with penalty and interest, as provided under Sections 59-1-401 and 59-1-402, shall be due and payable 30 days after notice by the commission. Any distributor aggrieved by the tax adjustment may petition for redetermination, hearing, and review by the commission. A taxpayer who is dissatisfied with a final decision received from the commission may seek judicial review.

(4) If the commission finds an overpayment has been made, the amount of overpayment shall be credited or refunded to the person who made the overpayment, or the person's successors, administrators, executors, or assigns.

(5) Interest at the rate and in the manner prescribed in Section 59-1-402 shall be added [~~from--the--due--date--of--the--return~~] to any delinquency or refund determined by the commission.

(6) No proceedings to collect the tax may begin more than three years after the filing of any monthly report; but in case of fraud, proceedings to collect the tax may begin without assessment at any time. No refund may be made unless a claim has been filed within three years of the date of overpayment.

Section 31. Section 59-13-308, Utah Code Annotated 1953, as enacted by Chapter 6, Laws of Utah 1987, is amended to read:

**59-13-308. Delinquency -- Revocation of license or permits -- Penalties -- Interest.**

If any user or user-dealer fails or refuses to pay the special fuel tax when it becomes delinquent, all licenses or permits issued under this part are automatically revoked and there is imposed a penalty determined under Section 59-1-401. The amount of the delinquent tax and the penalty shall bear interest at the rate and in the manner prescribed in Section 59-1-402 [~~from-the-date-of-delinquency-until-paid~~].

Section 32. Section 59-13-313, Utah Code Annotated 1953, as enacted by Chapter 6, Laws of Utah 1987, is amended to read:

**59-13-313. Commission to enforce the laws -- Estimations of tax -- Penalties -- Notice of determinations -- Information sharing with other states.**

(1) The commission is charged with the enforcement of this part and may prescribe rules relating to administration and enforcement of this part.

(2) If the commission has reason to question the report filed or the amount of special fuel tax paid to the state by any user-dealer, it may compute and determine the amount to be paid based upon the best information available to it. Any added amount of special fuel tax determined to be due under this section shall have added to it a penalty as provided under Section 59-1-401, and shall bear interest at the rate and in the manner prescribed in Section 59-1-402 [~~from-the-date-the-added amount--was--due--until--it--is--paid~~]. The commission shall give to the user-dealer written notice of its determination. The notice may be served personally or by mail when addressed to the user-dealer at the

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user-dealer's last known address as it appears in the records of the commission.

(3) The commission may, upon the duly received request of the officials to whom the enforcement of the special fuel laws of any other state are entrusted, forward to those officials any information which the commission may have in its possession relative to the production, manufacture, refining, compounding, receipt, sale, use, transportation, or shipment of special fuel by any person.

Section 33. Section 59-13-316, Utah Code Annotated 1953, as enacted by Chapter 6, Laws of Utah 1987, is amended to read:

**59-13-316. Neglect or refusal to report -- Estimations -- Penalties -- Notice to user-dealer.**

If any user-dealer neglects or refuses to make a report required by this part, the commission shall make an estimate based upon the best information available to it, for the month or months in which the user-dealer failed to make a report, or for the amount of special fuel sold or used by the user-dealer subject to the special fuel tax. On the basis of the estimate, the commission shall compute and determine the amount required to be paid to the state, adding to this sum a penalty as provided under Section 59-1-401, and ~~[shall-bear]~~ interest at the rate and in the manner prescribed in Section 59-1-402 ~~[from-the-date-the amount-was-determined-to-be-due]~~. The commission shall give to the user-dealer written notice of the estimate and determination personally, or by mail when addressed to the user-dealer at the user-dealer's last-known address.

Section 34. Section 59-13-318, Utah Code Annotated 1953, as last amended by Chapter 210, Laws of Utah 1990, is amended to read:

**59-13-318. Errors in payments -- Refunds.**

(1) If the commission, [~~illegally-or~~] through error, collects or receives any special fuel tax, penalty, or interest imposed by this part, the amount of tax, penalty, or interest, upon written application, shall be refunded to the person paying it. The application shall state the specific grounds on which it is founded within two years after the date of payment, and whether the sums were paid voluntarily or under protest. Refunds may not be made to successors or assigns in business of the person making the payment but shall be made to an estate or heir of the person if written application is made within the time limit, accompanied by proper authority from a probate court. Refunds to which taxpayers are entitled under this chapter shall be paid from the Transportation Fund.

(2) Any user who has paid taxes on purchases in the state which exceed the amount due based on the special fuel reported to be used in the state shall receive a refund of taxes overpaid in a timely manner.

(3) Interest shall be applied to refunds given under this section as prescribed in Section 59-1-402.

Section 35. Section 59-14-303, Utah Code Annotated 1953, as renumbered and amended by Chapters 2 and 3, Laws of Utah 1987, is amended to read:

**59-14-303. Remittance of tax -- Returns -- Credits -- Invoice required -- Filing requirements -- Reports -- Exceptions -- Penalties -- Overpayments.**

(1) The taxes imposed on all tobacco products shall be remitted to the commission together with quarterly returns as prescribed by it. These returns shall be due and payable to the commission quarterly on or before the last day of the month following each calendar quarterly period.

(2) Any tax imposed or remitted on any tobacco product may be allowed and claimed as a credit if any part of the tobacco products are destroyed or returned to the original manufacturer, wholesaler, retailer, or any other person, through rules and forms prescribed by the commission.

(3) Every manufacturer, wholesaler, retailer, or any other person selling tobacco products to persons other than ultimate consumers shall furnish with each sale an itemized invoice showing the seller's name and address, the name and address of the purchaser, the date of sale, the name and price of the product, and the discount, if any. A notation should be made that the price includes or does not include the tax. Copies of this invoice shall be retained by the seller and the purchaser and shall be available for inspection by the commission or its agent for a period of three years.

(4) Any person who causes untaxed products, subject to the tax imposed by this chapter, to be brought into the state for use or other consumption, shall file with the commission, on forms prescribed by it, a

statement showing the quantity and description of the products and pay the tax imposed by this chapter on all those products. This statement shall be filed and the tax paid no later than 15 days from the date of the import of the untaxed products. If any person regularly imports those products, the person may, upon applying to the commission, arrange to file reports on a monthly basis and pay the tax on all products imported during the previous calendar month on or before the 15th day of the following month.

(5) No report is required from nonresidents or tourists who import any products taxed by this chapter if the products are for their own use or consumption while in this state. No report is required of persons who are liable for the payment of taxes in the manner set forth in this section and Section 59-14-205.

(6) Any manufacturer, wholesaler, retailer, or any other person subject to this section who fails to pay the tax prescribed by this chapter, or fails to pay the tax on time, or fails to file a return required by this chapter, shall pay, in addition to the tax, a penalty as provided in Section 59-1-401, plus interest at the rate and in the manner prescribed in Section 59-1-402. The minimum penalty shall be \$10 for each offense.

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

Section 36. Section 59-14-401, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

**59-14-401. Refund of taxes paid -- Exemption for exported cigarettes.**

(1) When any cigarette or tobacco product taxed under this chapter is sold and shipped to a regular dealer in those articles in another state, the seller in this state shall be entitled to a refund of the actual amount of the taxes paid, upon condition that the seller in this state is a licensed dealer and signs an affidavit that the goods were so sold and shipped. The seller in this state shall furnish from the purchaser a written acknowledgment that he has received the goods and the amount of stamps, together with the name and address of the purchaser. The taxes shall be refunded in the manner provided in Subsection 59-14-206 (2) [~~for~~] for unused stamps.

(2) Wholesalers or distributors in this state who export taxable cigarettes and tobacco products to a regular dealer in another state shall be exempt from the payment of any tax upon the sale of the articles upon furnishing such proof of the sale and exportation as the commission may require.

Section 37. Section 59-15-102, Utah Code Annotated 1953, as renumbered and amended by Chapters 2 and 3, Laws of Utah 1987, is amended to read:

**59-15-102. Tax delinquency -- Penalty.**

If any person fails to pay the amount of any tax at the time it is due, a penalty as provided under Section 59-1-401 shall be imposed, and the tax shall bear interest at the rate and in the manner prescribed in Section 59-1-402 [~~from the date of the delinquency~~].

Section 38. Section 59-15-103, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

**59-15-103. Overpayment and deficiency.**

(1) The commission shall examine the return as soon as practical after the return is filed. If it appears that the amount of taxes remitted is greater or less than the amount shown in the return to be due, the tax shall be recomputed. If the amount paid exceeds the amount due, the excess shall be credited or refunded to the person paying the tax. If the commission determines that any amount, penalty, or interest has been paid more than once or has been erroneously collected or computed, the commission shall identify the amount collected in excess of what was legally due, and from whom it was collected or by whom it was paid. The amount shall be credited on any amounts then due from the person to the state. The balance shall be refunded with interest at the rate and in the manner prescribed by Section 59-1-402, to the person, successor, administrator, executor, or assigns, but no credit or refund is allowed unless a claim for the credit or refund is filed with the commission within three years from the date of overpayment.

(2) If any amount has been erroneously determined due from any person, the commission shall authorize the cancellation of the amounts upon its records. The amount of taxes imposed by this chapter shall be assessed within three years after the return was filed and if not so assessed, no proceeding for the collection of the taxes may be commenced after the expiration of that period. The three-year limitation does not

apply if the deficiency is based upon fraud with intent to evade or a failure to file a return.

(3) In the case of a false or fraudulent return, payment with intent to evade tax, or failure to file a return, the taxes may be assessed or a proceeding for the collection of the taxes may be commenced at any time.

**Section 39. Informational Section.**

The new provisions on interest enacted as Subsections 59-1-402(6) (Effective 01/01/94) and 59-1-402(5) (Superseded 01/01/94) in this bill shall apply to all matters pending as of the effective date of this act.

**Section 40. Severability Clause.**

If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall be given effect without the invalid provision or application.

**Section 41. Effective Date.**

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.