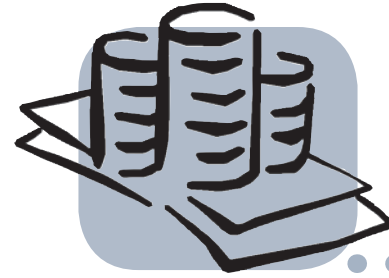


Utah Interest and Penalties



Utah State Tax Commission

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Introduction

This publication explains how the Utah State Tax Commission assesses penalties and interest on Utah tax returns.

See Utah Code §§59-1-401 and 402 for more information about penalties and interest.

Interest

General Information

Utah Code §59-1-402 is the primary authority for interest assessed for all taxes and fees administered by the Tax Commission. Unless otherwise provided by law, the interest rate for a calendar year is calculated based on the federal short-term rate determined by the Secretary of the Treasury under the Internal Revenue Code Section 6621 and in effect for the fourth quarter of the preceding calendar year.

The calendar-year simple interest rate for taxes and fees administered by the Tax Commission is two percentage points above the federal short-term rate and is used to calculate interest for overpayments, refunds, underpayments, deficiencies and delinquencies.

The Tax Commission has an online Penalty and Interest Calculator to help compute penalty and interest due on an individual income tax return. This calculator is located at tax.utah.gov/picalc.

Interest Rates

The interest rates on underpayment and overpayment of taxes and fees administered by the Tax Commission are:

<u>Period</u>	<u>Percentage Rate</u>
Jan. 1, 2012 – Dec. 31, 2012	2%
Jan. 1, 2010 – Dec. 31, 2011	3%
Jan. 1, 2009 – Dec. 31, 2009	5%
Jan. 1, 2007 – Dec. 31, 2008	7%
Jan. 1, 2006 – Dec. 31, 2006	6%
Jan. 1, 2005 – Dec. 31, 2005	4%
Jan. 1, 2004 – Dec. 31, 2004	3%

Jan. 1, 2003 – Dec. 31, 2003	5%
Jan. 1, 2002 – Dec. 31, 2002	6%
Jan. 1, 2001 – Dec. 31, 2001	8%
Jan. 1, 1999 – Dec. 31, 2000	7%
Jan. 1, 1995 – Dec. 31, 1998	8%
Oct. 12, 1993 – Dec. 31, 1994	6%
Prior to Oct. 12, 1993	12%

IFTA: The interest rate for late payments on IFTA accounts is established by rules and regulations set forth by the International Fuel Trade Agreement. The current interest rate for late payments is 12 percent per annum, or one percent per month or any part thereof.

Overpayments

Generally, interest is not allowed on an overpayment of a tax, fee or charge if the overpayment is refunded within 90 days after the later of:

- the date the return is due,
- the date the return is filed, or
- the date of the overpayment.

Interest will be calculated beginning on the 91st day from the later of the dates listed above.

If the overpayment is for a Utah individual, corporation or partnership return that was filed electronically, interest will not be allowed if the overpayment is refunded within 45 days after the later of the above dates. Interest will be calculated beginning the 46th day.

Amended Returns

If an amended return results in an overpayment, interest will accrue until the date the Tax Commission receives the amended return or request, beginning on the later of:

- the date the original return was filed, or
- the due date (not including any extensions) for filing the original return.

If the Tax Commission does not refund the overpayment shown on the amended return within 90 days after the date the amended return was received, interest will resume beginning on the 91st day after the amended return was received and ending on the date the Tax Commission completes the processing of the amended return refund.

If the overpayment is for an amended Utah individual, corporation or partnership return that was filed electronically, interest will not be allowed if the overpayment is refunded within 45 days after the amended return was received by the Tax Commission. Interest will resume beginning the 46th day after the amended return was received.

Interest will stop accruing on a Utah amended return overpayment that resulted from an Internal Revenue Service change or correction if not filed within 90 days after the conclusion of the audit. (Utah Code §59-10-529(13)(b).)

Interest will not be paid on refunds arising from a judicial decision that declares a statute to be invalid or unconstitutional under federal or Utah state law.

Underpayments

Interest shall be assessed on any underpayment, deficiency, or delinquency of taxes and fees administered by the Tax Commission from the date the original return was due to the date the full payment is received by the Tax Commission.

Application of Payment

Payments received by the Tax Commission are first applied to any outstanding penalties, second to any accrued interest, and lastly to any outstanding tax due for the unpaid filing period. If any collection activity fees are associated with the payment, unless otherwise designated by statute, such fees will be paid first, followed by penalties, interest, and then tax.

If outstanding liabilities exist for more than one tax period, unless otherwise designated by the taxpayer, the Tax Commission will apply any payment to the oldest period first.

See Tax Commission Rule R861-1A-18.

Calculation Guidelines

If an underpayment or overpayment spans more than one interest-rate period, interest shall be calculated based on the rate in effect for each interest-rate period. Interest for each interest-rate period shall be calculated for the number of days in the period, divided by 365. The calculation should be rounded to two decimal places.

Interest Calculation Formula

$(\text{underpayment}) \times (\text{interest rate}) \times (\text{number of days}) / 365$

Example: Interest due would be calculated on a tax return due April 15, 2011 and paid on February 15, 2012 with a balance of tax due of \$1,500 as follows:

<u>Period</u>	<u>Days</u>	<u>Rate</u>	<u>Interest</u>
04/15/2011 – 12/31/2011 <i>(\$1,500 x .03 x 260/365)</i>	260	3%	\$32.05
01/01/2012 – 02/15/2012 <i>(\$1,500 x .02 x 46/365)</i>	46	2%	\$3.78
Total interest due			\$35.83

Exceptions

The following taxes and fees administered by the Tax Commission are not subject to the interest calculation discussed in this publication:

- **Title 41, Chapter 1a – Motor Vehicle Act** (except for Section 41-1a-301 dealing with fees related to the apportioned registration and licensing of interstate commercial vehicles);
- **Title 41, Chapter 3 – Motor Vehicle Business Regulation;**
- **Title 59, Chapter 2 – Property Tax Act** (except for Section 59-2-1309 dealing with fees related to the redemption of certain centrally assessed property seized by the Commission);
- **Title 59, Chapter 3 – Tax Equivalent Property Act;** and
- **Title 59, Chapter 4 – Privilege Tax.**

Penalties

General Information

Utah Code §59-1-401 provides tax penalties for failure to file tax returns (late filing penalty), failure to pay tax due on returns and audit assessments (late payment penalty), and failure to file information returns or supporting schedules. Penalties are separated by tax type and the date returns are filed or the date audit assessments become final.

Late Filing Penalty and Late Payment Penalty

The late filing penalty and the late payment penalty may be assessed for returns not filed and payments not made by the due date, or the extension due date, if applicable.

The late filing penalty does not apply to an amended return. To avoid the late payment penalty on an amended return, you must pay all tax, interest, and applicable extension penalty with the return.

The late payment penalty does not apply to a return with no tax due.

You must pay all tax, interest, and penalties the same day the return is filed to avoid the late payment penalty.

The following charts summarize the application of the late filing and late payment penalties. In addition, other penalties may apply to the tax types. Please see the Utah code sections noted for additional information.

Tax Type Penalty Reference Chart

Tax Type	Utah Code Reference	Effective Date	Use Chart
Aviation Fuel Tax	§59-13, Part 4	through September 2010	A
		after September 2010	B
Beer Tax	§59-15	for all periods	A
Brine Shrimp Royalty	§59-23-8	through Dec. 11, 2011	A
		after Dec. 11, 2011	B
Cigarette/Tobacco Tax	§59-14	through June 26, 2011	A
		after June 26, 2011	B
Compressed Natural Gas Tax	§59-13-301	through September 2010	A
		after September 2010	B
Corporate Franchise and Income Tax	§59-7	through February 2009	A
		after February 2009	B
Emergency Services Telephone (including poison control)	§69-2-5	through Dec. 11, 2011	A
		after Dec. 11, 2011	B
Environmental Assurance Fee	§19-6-410.5	through September 2010	A
		after September 2010	B
Fiduciary Tax	§59-10, Part 2	through February 2008	A
		after February 2008	B
Gross Receipts Tax	§59-8	through Dec. 11, 2011	A
		after Dec. 11, 2011	B
Individual Income Tax	§59-10, Part 1	through February 2008	A
		after February 2008	B
Inheritance Tax	§59-11-107	for all periods	A
Insurance Premiums Tax	§59-9	through Dec. 11, 2011	A
		after Dec. 11, 2011	B
IFTA Tax	§59-13-501	through April 2009	C
		after April 2009	B
Lubricating Oil Tax	§19-6-714	through Dec. 11, 2011	A
		after Dec. 11, 2011	B
Mineral Production Withholding Tax	§59-6	through February 2009	A
		after February 2009	B
Motor Fuel Tax	§59-13, Part 2	through September 2010	A
		after September 2010	B
Motor Vehicle Rental Tax	§59-12, Part 12	through February 2008	A
		after February 2008	B

Continued next page

Tax Type Penalty Reference Chart, continued

Tax Type	Utah Code Reference	Effective Date	Use Chart
Multi-Channel Video and Audio Service Tax	§59-26	through Dec. 11, 2011	A
		after Dec. 11, 2011	B
Municipal Energy Tax	§10-1-301	through June 26, 2011	A
		after June 26, 2011	B
Municipal Telecommunications License Fee	§10-1-401	through Dec. 11, 2011	A
		after Dec. 11, 2011	B
Oil and Gas Severance Tax	§59-5-106	for all periods	A
Partnership Tax	§59-10-507	through February 2009	A
		after February 2009	B
Prepaid Disposable Cell Phone Tax	§69-2-5.7	for all periods	B
Radioactive Waste Tax	§59-24	for all periods	A
Resort Tax	§59-12, Part 4	through February 2008	A
		after February 2008	B
Restaurant Tax	§59-12, Part 6	through February 2008	A
		after February 2008	B
Sales and Use Tax	§59-12, Part 1	through February 2008	A
		after February 2008	B
Self-insured Employers Tax	§34A-2-202	through Dec. 11, 2011	A
		after Dec. 11, 2011	B
Sexually Explicit Business Tax	§59-27	through Dec. 11, 2011	A
		after Dec. 11, 2011	B
Special Fuels Tax	§59-13, Part 3	through September 2010	A
		after September 2010	B
Transient Room Tax	§59-12, Part 3	through February 2008	A
		after February 2008	B
Waste Tire Fee	§19-6-805	through February 2008	A
		after February 2008	B
Withholding Income Tax	§59-10, Part 4	through February 2009	A
		after February 2009	B

Chart A

Use to calculate penalties for periods in the *Tax Type Penalty Reference Chart* on pages 3 and 4.

Failure to File (Late Filing) Penalty	Failure to Pay (Late Payment) Penalty
Greater of \$20 or 10% of unpaid tax, fee or charge on return	<p><u>Return filed by due date but underpaid:</u> Greater of \$20 or 10% of unpaid tax, fee or charge on return</p> <p><u>Return filed after due date and not paid in full within 90 days of due date:</u> Greater of \$20 or 10% of unpaid tax, fee or charge on return</p> <p><u>Failure to pay when return not filed:</u> Greater of \$20 or 10% of applicable unpaid tax, fee or charge</p> <p><u>Amended return filed after original return due date and not paid in full with amended return:</u> Greater of \$20 or 10% of unpaid tax, fee or charge on amended return</p> <p><u>Audit deficiency not paid in full within 30 days of deficiency notice, final commission order or final judicial order:</u> Greater of \$20 or 10% of unpaid deficiency assessment</p>

Chart B

Use to calculate penalties for periods in the *Tax Type Penalty Reference* on pages 3 and 4.

Failure to File (Late Filing) Penalty	Failure to Pay (Late Payment) Penalty
<p><u>1 through 5 days late:</u> Greater of \$20 or 2% of unpaid tax, fee or charge on return</p> <p><u>6 through 15 days late:</u> Greater of \$20 or 5% of unpaid tax, fee or charge on return</p> <p><u>16 or more days late:</u> Greater of \$20 or 10% of unpaid tax, fee or charge on return</p>	<p><u>Return filed by due date but underpaid, or extension filed but tax underpaid on original due date:</u></p> <ul style="list-style-type: none"> • 1 through 5 days late - greater of \$20 or 2% of unpaid tax, fee or charge on return • 6 through 15 days late - greater of \$20 or 5% of unpaid tax, fee or charge on return • 16 or more days late - greater of \$20 or 10% of unpaid tax, fee or charge on return <p><u>Return filed after due date and not paid in full within 90 days of due date:</u></p> <ul style="list-style-type: none"> • 91 through 95 days late - greater of \$20 or 2% of unpaid tax, fee or charge on return • 96 through 105 days late - greater of \$20 or 5% of unpaid tax, fee or charge on return • 106 or more days late - greater of \$20 or 10% of unpaid tax, fee or charge on return <p><u>Failure to pay when return not filed:</u> Greater of \$20 or 10% of applicable unpaid tax, fee or charge</p> <p><u>Amended return filed after original return due date and not paid in full with amended return:</u></p> <ul style="list-style-type: none"> • 1 through 5 days after original return due date - greater of \$20 or 2% of unpaid tax, fee or charge on return • 6 through 15 days after original return due date - greater of \$20 or 5% of unpaid tax, fee or charge on return • 16 or more days after original return due date - greater of \$20 or 10% of unpaid tax, fee or charge on return <p><u>Audit deficiency not paid in full within 30 days of deficiency notice, final commission order or final judicial order:</u></p> <ul style="list-style-type: none"> • 31 through 35 days late - greater of \$20 or 2% of unpaid audit assessment • 36 through 45 days late - greater of \$20 or 5% of unpaid audit assessment • 46 or more days late - greater of \$20 or 10% of unpaid audit assessment

Chart C

Use to calculate penalties for periods in the *Tax Type Penalty Reference Chart* on pages 3 and 4.

Failure to File (Late Filing) Penalty	Failure to Pay (Late Payment) Penalty
Greater of \$50 or 10% of net tax due, plus sales tax, less fuel credits	<p><u>Return filed by due date but underpaid:</u> Greater of \$50 or 10% of the net tax due, plus sales tax, less fuel credits</p> <p><u>Return filed after due date and not paid in full within 90 days of due date:</u> Greater of \$50 or 10% of the net tax due, plus sales tax, less fuel credits</p> <p><u>Failure to pay when return not filed:</u> Greater of \$50 or 10% of applicable unpaid tax, fee or charge</p> <p><u>Amended return filed after original return due date and not paid in full with amended return:</u> Greater of \$50 or 10% of the net tax due, plus sales tax, less fuel credits</p> <p><u>Audit deficiency not paid in full within 30 days of deficiency notice, final commission order or final judicial order:</u> Greater of \$50 or 10% of unpaid deficiency assessment</p>

Failure to Make Sufficient Prepayment (Extension Penalty)

An automatic six-month extension to file a return is granted for individual, fiduciary and corporation tax returns. A partnership is granted an automatic five-month extension to file a return. However, the extension does not apply to the payment of any balance of tax due on the return. Payments are due on the original due date of the return.

A **failure to make sufficient prepayment** penalty will apply if the prepayment conditions below are not met by the original due date of the return.

- Total prepayments (withholding, payments applied from previous year refunds, nonrefundable credit carryovers, other nonrefundable and refundable credits, and prepayments previously made) must equal 90 percent of the current year's tax liability, or
- Total prepayments must equal 100 percent of the immediately preceding year's tax liability.

If there is an underpayment of tax after applying the above criteria, the penalty on the underpayment will be assessed at a rate of 2 percent per month, calculated on a daily basis, until the date the return is filed or the extension expires.

The formula for calculating the penalty for an individual, fiduciary or corporation is:

$$(\text{underpayment}) \times .24^* \times (\text{number of days outstanding}) / 365$$

* 2 percent rate per month up to a maximum of six months, or 12 percent (annual 24 percent)

The formula for calculating the penalty for a partnership is:

$$(\text{underpayment}) \times .24^* \times (\text{number of days outstanding}) / 365$$

* 2 percent rate per month up to a maximum of five months, or 10 percent (annual 24 percent)

Note the following additional items:

- The extension to file does not cancel the requirement to pay by the due date. Late payment penalty and interest will be assessed on any unpaid tax from the original due date of the return, not including the extension period, until the date the tax is paid.
- If you use an extension to file, any extension penalty and interest due should be paid with the return.
- If the previous year individual or fiduciary income tax return was filed and the tax was zero, no prepayment is required. If there is no previous year return, the required prepayment is 90 percent of the current year's tax liability.
- Corporations subject to the minimum tax must pay the required \$100 minimum tax (per corporation in a combined group) even when there was no previous year return.
- If the return is not filed by the extension due date, failure to file and failure to pay penalties will apply, as if the extension had not been granted. The failure to make sufficient prepayment penalty will then not apply.

Underpayment of Corporation Estimated Tax Payments

Corporations are required to make estimated tax payments if their current year tax liability is \$3,000 or more, or if the tax liability for the previous tax year was \$3,000 or more (unless a first time filer — see previous section). This provision applies also to parent corporations filing combined reports with affiliated companies when the aggregate amount of tax due is \$3,000 or more for all corporations included in the combined report, including those paying only the minimum tax.

An S corporation is also subject to the estimated tax payment requirements for tax on built-in and other gains subject to federal tax, as provided in UC §59-7-701.

A corporation is not subject to the estimated tax payment requirements the first year the corporation is required to file a Utah return if the corporation makes a payment on or before the due date, not including extensions, equal to or greater than the minimum tax.

Quarterly estimated tax payments are due in four equal payments on the 15th day of the 4th, 6th, 9th and 12th months of the corporation's taxable year. The prepayments must total the lesser of 90 percent of the current year's tax liability or 100 percent of the prior year's tax liability. (See specific details in the TC-20, corporation tax booklet.)

Failure to make the required estimated tax payments could result in an **underpayment of estimated tax** penalty in addition to the above **failure to make sufficient prepayment** penalty.

The penalty rate for the **underpayment of estimated tax** for a corporation is the interest rate provided under Section 59-1-402 (see above) plus four percentage points. For example, the penalty rate for the calendar year 2010 would be 7 percent (3 percent regular interest rate + 4 percent additional penalty rate). The penalty rate is applied to the underpayment amount calculated for each estimated tax period, multiplied by the number of days in the period and divided by 365.

Exceptions may apply to negate the penalty. (See specific details in the TC-20, corporation tax booklet.)

Underpayment of Insurance Premiums and Self Insurers Quarterly Prepayments

Admitted insurers and self insurers are required to make prepayments if the prior year's tax exceeded \$10,000. Prepayments may be based on 27 percent of the prior year's tax or the current year's estimated premiums. Prepayment due dates are the last day of April, July, and October, with the final payment due March 31 with the return. **No prepayment filing is required if no prepayment is due.**

Failure to make the required prepayments could result in a failure to make sufficient prepayment penalty.

The penalty rate for insufficient quarterly prepayments is the interest rate provided under Section 59-1-402 (see above) plus four percentage points. For example, the penalty rate for the calendar year 2011 is 7 percent (3 percent regular interest rate plus 4 percent additional penalty rate). The penalty rate is applied to the underpayment amount calculated for each quarter, multiplied by the number of days in the period and divided by 365.

Additional Penalties and Fines

Utah Code provides for additional penalties in the following circumstances:

- If any underpayment of tax is due to negligence, the penalty is 10 percent of the underpayment.
- If any underpayment of tax is due to intentional disregard of law or rule, the penalty is 15 percent of the underpayment.
- If any underpayment results from intent to evade the tax, the penalty is the greater of \$500 per period or 50 percent of the tax due.
- If the underpayment is due to fraud with intent to evade the tax, the penalty is the greater of \$500 per period or 100 percent of the underpayment.

- If there is a failure to file an information return or a complete supporting schedule, the penalty is \$50 for each return or schedule up to a maximum of \$1,000.
- If a taxpayer, in furtherance of a frivolous position, has a prima facie intent to delay or impede administration of the tax law and files a purported return that fails to contain information from which the correctness of reported tax liability can be determined or that clearly indicates the tax liability shown must be substantially incorrect, the penalty is \$500.
- Any person required to collect, truthfully account for, and pay over any state, local and related sales and use tax; municipal energy tax; municipal telecommunications tax; motor fuel, clean fuel, special fuel and aviation fuel tax; and withholding tax, who willfully fails to collect the tax, fails to truthfully account for and pay over the tax, or attempts in any manner to evade or defeat any tax or the payment of the tax, shall be liable for a penalty equal to the total amount of the tax evaded, not collected, not accounted for, or not paid over. This penalty is in addition to other penalties provided by law.
- Any person who, with intent to evade any tax or requirement of Title 59, Revenue and Taxation, of the Utah Code, or any lawful requirement of the Tax Commission, fails to make, render, sign, or verify any return or to supply any information within the time required by law, or who makes, renders, signs, or verifies any false or fraudulent return or statement, or who supplies any false or fraudulent information, is guilty of a third degree felony, and may be fined not less than \$1,000 or more than \$5,000.
- Any person who intentionally or willfully attempts to evade or defeat any tax or the payment of a tax is, in addition to other penalties provided by law, guilty of a second degree felony, and may be fined not less than \$1,500 or more than \$25,000.

Preparer Penalties

The person who prepares, presents, procures, advises, aids, assists or counsels another on a return, affidavit, claim or similar document administered by the Tax Commission, and who knows or has reason to believe it may understate a tax, fee or charge is subject to both a civil penalty (\$500 per document) and criminal penalties (second degree felony with a fine from \$1,500 to \$25,000). See Utah Code §59-1-401(11).

Waivers

Utah Code §59-1-401(13) authorizes the Tax Commission to waive, reduce, or compromise any penalties or interest that may be imposed, based on reasonable cause.

For more information about waiver procedures and reasonable cause, see Tax Commission Pub 17.