

1 **SALES AND USE TAX FOR COMMUNITY**

2 **DEVELOPMENT**

3 2001 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Pete Suazo**

6 **This act modifies the Sales and Use Tax Act to expand the purposes of the tourism,**
7 **recreation, cultural, and convention facilities tax to include affordable housing, to change**
8 **the name of the tax, and to make technical and conforming amendments.**

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11 **59-1-302**, as last amended by Chapter 107, Laws of Utah 1994

12 **59-12-601**, as last amended by Chapter 265, Laws of Utah 1991

13 **59-12-602**, as last amended by Chapter 248, Laws of Utah 1995

14 **59-12-603**, as last amended by Chapter 319, Laws of Utah 2000

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

16 Section 1. Section **59-1-302** is amended to read:

17 **59-1-302. Penalty for nonpayment of sales, use, withholding, or fuels taxes --**

18 **Jeopardy proceedings.**

19 (1) ~~[The provisions of this]~~ This section [apply] applies to the following taxes in this title:

20 (a) ~~[state and local]~~ **§ [sales and use]** ~~§ [tax]~~ taxes collected by the commission under

20a Chapter

21 12~~[-Parts 1 and 2];~~

22 ~~[(b) transient room tax under Chapter 12, Part 3;]~~

23 ~~[(c) resort communities tax under Chapter 12, Part 4;]~~

24 ~~[(d) public transit tax under Chapter 12, Part 5;]~~

25 ~~[(e) tourism, recreation, cultural, and convention facilities tax under Chapter 12, Part 6;]~~

26 ~~[(f)]~~ (b) motor fuel, clean fuel, special fuel, and aviation fuel taxes under Chapter 13, Parts
27 2, 3, and 4; ~~[and]~~ or



28 [~~(g)~~] (c) withholding tax under Chapter 10, Part 4.

29 (2) Any person required to collect, truthfully account for, and pay over any tax listed in
30 Subsection (1) who willfully fails to collect the tax, fails to truthfully account for and pay over the
31 tax, or attempts in any manner to evade or defeat any tax or the payment of the tax, shall be liable
32 for a penalty equal to the total amount of the tax evaded, not collected, not accounted for, or not
33 paid over. This penalty is in addition to other penalties provided by law.

34 (3) (a) If the commission determines in accordance with Subsection (2) that a person is
35 liable for the penalty, the commission shall notify the taxpayer of the proposed penalty.

36 (b) The notice of proposed penalty shall:

37 (i) set forth the basis of the assessment; and

38 (ii) be mailed by registered mail, postage prepaid, to the person's last-known address.

39 (4) Upon receipt of the notice of proposed penalty, the person against whom the penalty
40 is proposed may:

41 (a) pay the amount of the proposed penalty at the place and time stated in the notice; or

42 (b) proceed in accordance with the review procedures of Subsection (5).

43 (5) Any person against whom a penalty has been proposed in accordance with Subsections
44 (2) and (3) may contest the proposed penalty by filing a petition for an adjudicative proceeding
45 with the commission.

46 (6) If the commission determines that the collection of the penalty is in jeopardy, nothing
47 in this section may prevent the immediate collection of the penalty in accordance with the
48 procedures and requirements for emergency proceedings in Title 63, Chapter 46b, Administrative
49 Procedures Act.

50 (7) (a) In any hearing before the commission and in any judicial review of the hearing, the
51 commission and the court shall consider any inference and evidence that a person has willfully
52 failed to collect, truthfully account for, or pay over any tax listed in Subsection (1).

53 (b) It is prima facie evidence that a person has willfully failed to collect, truthfully account
54 for, or pay over any of the taxes listed in Subsection (1) if the commission or a court finds that the
55 person charged with the responsibility of collecting, accounting for, or paying over the taxes:

56 (i) made a voluntary, conscious, and intentional decision to prefer other creditors over the
57 state government or utilize the tax money for personal purposes;

58 (ii) recklessly disregarded obvious or known risks, which resulted in the failure to collect,

59 account for, or pay over the tax; or

60 (iii) failed to investigate or to correct mismanagement, having notice that the tax was not
61 or is not being collected, accounted for, or paid over as provided by law.

62 (c) The commission or court need not find a bad motive or specific intent to defraud the
63 government or deprive it of revenue to establish willfulness under this section.

64 (d) If the commission determines that a person is liable for the penalty under Subsection
65 (2), the commission shall assess the penalty and give notice and demand for payment. The notice
66 and demand for payment shall be mailed by registered mail, postage prepaid, to the person's
67 last-known address.

68 Section 2. Section **59-12-601** is amended to read:

69 **59-12-601. Purpose statement.**

70 (1) The Utah Legislature finds and declares that:

71 (a) the development of tourism, recreation, cultural, [~~and~~] convention facilities, and
72 affordable housing throughout Utah is necessary to insure continued growth in the tourism,
73 recreation, and convention industry and in community development in Utah;

74 (b) [~~modern and~~] state-of-the-art tourism, recreation, cultural, and convention facilities
75 [~~would~~] attract tourists, recreation, and convention business in a substantially greater amount than
76 facilities that are obsolete or do not [~~otherwise~~] fill the needs of such business;

77 (c) available sources of assistance and capital in the individual counties are inadequate [~~by~~
78 ~~themselves~~] without state assistance to assure necessary development of tourism, recreation,
79 cultural, [~~and~~] convention facilities, and affordable housing;

80 (d) other states have programs of aid to their political subdivisions to foster the
81 development of tourism, recreation, cultural, [~~and~~] convention facilities, and affordable housing;
82 and

83 (e) fostering the development of tourism, recreation, cultural, [~~and~~] convention facilities,
84 and affordable housing is a state purpose affecting the welfare of all state citizens and the growth
85 of the economy statewide.

86 (2) It is therefore the purpose of this part that the state provide a means to foster the
87 development of tourism, recreation, cultural, [~~and~~] convention facilities [~~in order~~], and affordable
88 housing to further the welfare of the citizens of the state and its economic growth.

89 Section 3. Section **59-12-602** is amended to read:

90 **59-12-602. Definitions.**

91 As used in this part:

92 (1) "Affordable housing" is as defined in Section 11-38-102.

93 ~~[(1)]~~ (2) "Convention facility" means ~~[any]~~ a publicly owned or operated convention
94 center, sports arena, or other facility;

95 (a) at which conventions, conferences, and other gatherings are held; and

96 (b) whose primary business or function is to host such conventions, conferences, and other
97 gatherings.

98 ~~[(2)]~~ (3) "Cultural facility" means any publicly owned or operated;

99 (a) museum[;];

100 (b) theater[;];

101 (c) art center[;];

102 (d) music hall[;]; or

103 (e) other cultural or arts facility.

104 ~~[(3)]~~ (4) "Recreation facility" or "tourist facility" means any publicly owned or operated;

105 (a) park[;];

106 (b) campground[;];

107 (c) marina[;];

108 (d) dock[;];

109 (e) golf course[;];

110 (f) water park[;];

111 (g) historic park[;];

112 (h) monument[;];

113 (i) planetarium[;];

114 (j) zoo[;];

115 (k) bicycle trails~~[, and]~~; or

116 (l) other recreation or tourism-related facility.

117 ~~[(4)]~~ (5) (a) "Restaurant" includes any coffee shop, cafeteria, luncheonette, soda fountain,
118 or fast-food service where food is prepared for immediate consumption.

119 (b) "Restaurant" does not include:

120 (i) any retail establishment ~~[whose]~~, the primary business or function of which is the sale

121 of fuel or food items for off-premise, but not immediate, consumption; ~~and~~ or

122 (ii) a theater that sells food items, but not a dinner theater.

123 Section 4. Section **59-12-603** is amended to read:

124 **59-12-603. County tax -- Bases -- Rates -- Ordinance required -- Collection --**
 125 **Administration -- Distribution -- Imposition of tax -- Tax rate change -- Effective date --**
 126 **Notice requirements.**

127 (1) In addition to any other taxes, a county legislative body may, as provided in this part,
 128 impose a ~~[tourism, recreation, cultural, and convention]~~ community development tax as follows:

129 (a) (i) a county legislative body of any county may impose a tax of not to exceed 3% on
 130 all short-term leases and rentals of motor vehicles not exceeding 30 days, except for leases and
 131 rentals of motor vehicles made for the purpose of temporarily replacing a person's motor vehicle
 132 that is being repaired pursuant to a repair or an insurance agreement;

133 (ii) beginning on or after January 1, 1999, a county legislative body of any county
 134 imposing a tax under Subsection (1)(a)(i) may, in addition to imposing the tax under Subsection
 135 (1)(a)(i), impose a tax of not to exceed 4% on all short-term leases and rentals of motor vehicles
 136 not exceeding 30 days, except for leases and rentals of motor vehicles made for the purpose of
 137 temporarily replacing a person's motor vehicle that is being repaired pursuant to a repair or an
 138 insurance agreement;

139 (b) a county legislative body of any county may impose a tax of not to exceed 1% of all
 140 sales of prepared foods and beverages that are sold by restaurants; and

141 (c) a county legislative body of any county may impose a tax of not to exceed 1/2% of the
 142 rent for every occupancy of a suite, room, or rooms on all persons, companies, corporations, or
 143 other similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns,
 144 or similar public accommodations.

145 (2) The revenue from the imposition of the taxes provided for in Subsections (1)(a)
 146 through (c) may be used for the purposes of financing~~[-, in whole or in part,];~~

147 (a) tourism promotion[-, and];

148 (b) the development, operation, and maintenance of;

149 (i) a tourist[-] facility;

150 (ii) recreation[-] facility;

151 (iii) a cultural[-, and] facility; or

152 (iv) a convention [~~facilities as defined in Section 59-12-602.] facility; or~~
153 (c) affordable housing.

154 (3) The tax imposed under Subsection (1)(c) shall be in addition to the transient room tax
155 imposed under Part 3, Transient Room Tax, and may be imposed only by a county of the first class.

156 (4) (a) A tax imposed under this part shall be levied at the same time and collected in the
157 same manner as provided in Part 2, Local Sales and Use Tax Act, except that the collection and
158 distribution of the tax revenue is not subject to the provisions of Subsection 59-12-205(2).

159 (b) A tax imposed under this part may be pledged as security for bonds, notes, or other
160 evidences of indebtedness incurred by a county under Title 11, Chapter 14, Utah Municipal Bond
161 Act, to finance [~~tourism,];~~

- 162 (i) a tourist facility;
- 163 (ii) a recreation[;] facility;
- 164 (iii) a cultural[;] facility; and
- 165 (iv) a convention [~~facilities.] facility; or~~
- 166 (v) affordable housing.

167 (5) (a) In order to impose the tax under Subsection (1), each county legislative body shall
168 annually adopt an ordinance imposing the tax.

169 (b) (i) The ordinance under Subsection (5)(a) shall include provisions substantially the
170 same as those contained in Part 1, Tax Collection, except that the tax shall be imposed only on
171 those items and sales described in Subsection (1).

172 (ii) A county legislative body imposing a tax under this part shall impose the tax as
173 provided in this section on the leases, rentals, and sales described in Subsection (1) relating to the
174 Olympic Winter Games of 2002 made to or by an organization exempt from federal income
175 taxation under Section 501(c)(3), Internal Revenue Code, except for leases, rentals, and sales
176 described in Subsection (1):

177 (A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter Games
178 of 2002;

179 (B) exclusively used by:

180 (I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the
181 Olympic Winter Games of 2002; or

182 (II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic Winter

183 Games of 2002; and

184 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002
185 does not receive reimbursement.

186 (c) The name of the county as the taxing agency shall be substituted for that of the state
187 where necessary, and an additional license is not required if one has been or is issued under
188 Section 59-12-106.

189 (6) ~~In order to~~ To maintain in effect ~~its~~ a tax ordinance adopted under this part, ~~each~~
190 a county legislative body shall, within 30 days of any amendment of any applicable provisions of
191 Part 1, Tax Collection, adopt amendments to its tax ordinance to conform with the applicable
192 amendments to Part 1, Tax Collection.

193 (7) The commission shall:

194 (a) administer, collect, and enforce the tax authorized under this part pursuant to:

195 (i) the same procedures used to administer, collect, and enforce the sales and use tax under
196 Part 1, Tax Collection; and

197 (ii) Chapter 1, General Taxation Policies;

198 (b) (i) except as provided in Subsection (7)(c), for a tax under this part other than the tax
199 under Subsection (1)(a)(ii), distribute the revenues to the county imposing the tax; and

200 (ii) except as provided in Subsection (7)(c), for a tax under Subsection (1)(a)(ii), distribute
201 the revenues according to the distribution formula provided in Subsection (8); and

202 (c) deduct from the distributions under Subsection (7)(b) an administrative charge for
203 collecting the tax as provided in Section 59-12-206.

204 (8) The commission shall distribute the revenues generated by the tax under Subsection
205 (1)(a)(ii) to each county collecting a tax under Subsection (1)(a)(ii) according to the following
206 formula:

207 (a) the commission shall distribute 70% of the revenues based on the percentages
208 generated by dividing the revenues collected by each county under Subsection (1)(a)(ii) by the total
209 revenues collected by all counties under Subsection (1)(a)(ii); and

210 (b) the commission shall distribute 30% of the revenues based on the percentages
211 generated by dividing the population of each county collecting a tax under Subsection (1)(a)(ii)
212 by the total population of all counties collecting a tax under Subsection (1)(a)(ii).

213 (9) (a) For purposes of this Subsection (9):

214 (i) "Annexation" means an annexation to a county under Title 17, Chapter 2, Annexation
215 to County.

216 (ii) "Annexing area" means an area that is annexed into a county.

217 (b) (i) If, on or after May 1, 2000, a county enacts or repeals a tax or changes the rate of
218 a tax under this part, the enactment, repeal, or change shall take effect:

219 (A) on the first day of a calendar quarter; and

220 (B) after a 75-day period beginning on the date the commission receives notice meeting
221 the requirements of Subsection (9)(b)(ii) from the county.

222 (ii) The notice described in Subsection (9)(b)(i)(B) shall state:

223 (A) that the county will enact or repeal a tax or change the rate of a tax under this part;

224 (B) the statutory authority for the tax described in Subsection (9)(b)(ii)(A);

225 (C) the effective date of the tax described in Subsection (9)(b)(ii)(A); and

226 (D) if the county enacts the tax or changes the rate of the tax described in Subsection
227 (9)(b)(ii)(A), the new rate of the tax.

228 (c) (i) If, for an annexation that occurs on or after May 1, 2000, the annexation will result
229 in a change in the rate of a tax under this part for an annexing area, the change shall take effect:

230 (A) on the first day of a calendar quarter; and

231 (B) after a 75-day period beginning on the date the commission receives notice meeting
232 the requirements of Subsection (9)(c)(ii) from the county that annexes the annexing area.

233 (ii) The notice described in Subsection (9)(c)(i)(B) shall state:

234 (A) that the annexation described in Subsection (9)(c)(i) will result in a change in the rate
235 of a tax under this part for the annexing area;

236 (B) the statutory authority for the tax described in Subsection (9)(c)(ii)(A);

237 (C) the effective date of the tax described in Subsection (9)(c)(ii)(A); and

238 (D) the new rate of the tax described in Subsection (9)(c)(ii)(A).

Legislative Review Note
as of 2-14-01 10:22 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel