

1                   **SALES AND USE TAX COLLECTION AMENDMENTS**

2                                   2012 GENERAL SESSION

3                                   STATE OF UTAH

4                           **Chief Sponsor: David G. Butterfield**

5                                   Senate Sponsor: Lyle W. Hillyard

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7   **LONG TITLE**

8   **General Description:**

9           This bill makes changes to the collection and remittance of sales and use taxes.

10 **Highlighted Provisions:**

11       This bill:

12           ▶ changes the timing of sales and use tax collection and remittance for certain sales  
13 involving delivery, installation, or the conversion of tangible personal property into  
14 real property;

15           ▶ addresses a deduction for bad debt; and

16           ▶ makes technical and conforming changes.

17 **Money Appropriated in this Bill:**

18       None

19 **Other Special Clauses:**

20       This bill takes effect on July 1, 2012.

21 **Utah Code Sections Affected:**

22 AMENDS:

23       **59-12-107**, as last amended by Laws of Utah 2009, Chapter 212

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

26       Section 1. Section **59-12-107** is amended to read:

27       **59-12-107. Collection, remittance, and payment of tax by sellers or other persons**  
28 **-- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other liability for**  
29 **collection -- Rulemaking authority -- Credits -- Treatment of bad debt -- Penalties and**

30 **interest.**

31 (1) (a) Except as provided in Subsection (1)(d) [~~or~~], Section 59-12-107.1<sub>2</sub> or Section  
32 59-12-123<sub>2</sub>, and subject to Subsection (1)(e), each seller shall pay or collect and remit the sales  
33 and use taxes imposed by this chapter if within this state the seller:

34 (i) has or utilizes:

35 (A) an office;

36 (B) a distribution house;

37 (C) a sales house;

38 (D) a warehouse;

39 (E) a service enterprise; or

40 (F) a place of business similar to Subsections (1)(a)(i)(A) through (E);

41 (ii) maintains a stock of goods;

42 (iii) regularly solicits orders, regardless of whether or not the orders are accepted in the  
43 state, unless the seller's only activity in the state is:

44 (A) advertising; or

45 (B) solicitation by:

46 (I) direct mail;

47 (II) electronic mail;

48 (III) the Internet;

49 (IV) telecommunications service; or

50 (V) a means similar to Subsection (1)(a)(iii)(A) or (B);

51 (iv) regularly engages in the delivery of property in the state other than by:

52 (A) common carrier; or

53 (B) United States mail; or

54 (v) regularly engages in an activity directly related to the leasing or servicing of  
55 property located within the state.

56 (b) A seller that does not meet one or more of the criteria provided for in Subsection  
57 (1)(a):

58 (i) except as provided in Subsection (1)(b)(ii), may voluntarily:  
59 (A) collect a tax on a transaction described in Subsection 59-12-103(1); and  
60 (B) remit the tax to the commission as provided in this part; or  
61 (ii) notwithstanding Subsection (1)(b)(i), shall collect a tax on a transaction described  
62 in Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to collect the tax.  
63 (c) The collection and remittance of a tax under this chapter by a seller that is  
64 registered under the agreement may not be used as a factor in determining whether that seller is  
65 required by Subsection (1)(a) to:  
66 (i) pay a tax, fee, or charge under:  
67 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;  
68 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;  
69 (C) Section 19-6-714;  
70 (D) Section 19-6-805;  
71 (E) Section 69-2-5;  
72 (F) Section 69-2-5.5;  
73 (G) Section 69-2-5.6; or  
74 (H) this title; or  
75 (ii) collect and remit a tax, fee, or charge under:  
76 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;  
77 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;  
78 (C) Section 19-6-714;  
79 (D) Section 19-6-805;  
80 (E) Section 69-2-5;  
81 (F) Section 69-2-5.5;  
82 (G) Section 69-2-5.6; or  
83 (H) this title.  
84 (d) A person shall pay a use tax imposed by this chapter on a transaction described in  
85 Subsection 59-12-103(1) if:

86 (i) the seller did not collect a tax imposed by this chapter on the transaction; and

87 (ii) the person:

88 (A) stores the tangible personal property or product transferred electronically in the  
89 state;

90 (B) uses the tangible personal property or product transferred electronically in the state;

91 or

92 (C) consumes the tangible personal property or product transferred electronically in the  
93 state.

94 (e) The ownership of property that is located at the premises of a printer's facility with  
95 which the retailer has contracted for printing and that consists of the final printed product,  
96 property that becomes a part of the final printed product, or copy from which the printed  
97 product is produced, shall not result in the retailer being considered to have or maintain an  
98 office, distribution house, sales house, warehouse, service enterprise, or other place of  
99 business, or to maintain a stock of goods, within this state.

100 (f) (i) As used in this Subsection (1)(f):

101 (A) "Affiliated group" is as defined in Section 59-7-101, except that "affiliated group"  
102 includes a corporation that is qualified to do business but is not otherwise doing business in  
103 this state.

104 (B) "Common ownership" is as defined in Section 59-7-101.

105 (C) "Related seller" means a seller that:

106 (I) is not required to pay or collect and remit sales and use taxes under Subsection  
107 (1)(a) or Section 59-12-103.1;

108 (II) is:

109 (Aa) related to a seller that is required to pay or collect and remit sales and use taxes  
110 under Subsection (1)(a) as part of an affiliated group or because of common ownership; or

111 (Bb) a limited liability company owned by the parent corporation of an affiliated group  
112 if that parent corporation of the affiliated group is required to pay or collect and remit sales and  
113 use taxes under Subsection (1)(a); and

114 (III) does not voluntarily collect and remit a tax under Subsection (1)(b)(i).  
115 (ii) A seller is not required to pay or collect and remit sales and use taxes under  
116 Subsection (1)(a):  
117 (A) if the seller is a related seller;  
118 (B) if the seller to which the related seller is related does not engage in any of the  
119 following activities on behalf of the related seller:  
120 (I) advertising;  
121 (II) marketing;  
122 (III) sales; or  
123 (IV) other services; and  
124 (C) if the seller to which the related seller is related accepts the return of an item sold  
125 by the related seller, the seller to which the related seller is related accepts the return of that  
126 item:  
127 (I) sold by a seller that is not a related seller; and  
128 (II) on the same terms as the return of an item sold by that seller to which the related  
129 seller is related.  
130 (2) (a) Except as provided in Section 59-12-107.1, a tax under this chapter shall be  
131 collected from a purchaser.  
132 (b) A seller may not collect as tax an amount, without regard to fractional parts of one  
133 cent, in excess of the tax computed at the rates prescribed by this chapter.  
134 (c) (i) Each seller shall:  
135 (A) give the purchaser a receipt for the tax collected; or  
136 (B) bill the tax as a separate item and declare the name of this state and the seller's  
137 sales and use tax license number on the invoice for the sale.  
138 (ii) The receipt or invoice is prima facie evidence that the seller has collected the tax  
139 and relieves the purchaser of the liability for reporting the tax to the commission as a  
140 consumer.  
141 (d) A seller is not required to maintain a separate account for the tax collected, but is

142 considered to be a person charged with receipt, safekeeping, and transfer of public money.

143 (e) Taxes collected by a seller pursuant to this chapter shall be held in trust for the  
144 benefit of the state and for payment to the commission in the manner and at the time provided  
145 for in this chapter.

146 (f) If any seller, during any reporting period, collects as a tax an amount in excess of  
147 the lawful state and local percentage of total taxable sales allowed under this chapter, the seller  
148 shall remit to the commission the full amount of the tax imposed under this chapter, plus any  
149 excess.

150 (g) If the accounting methods regularly employed by the seller in the transaction of the  
151 seller's business are such that reports of sales made during a calendar month or quarterly period  
152 will impose unnecessary hardships, the commission may accept reports at intervals that will, in  
153 the commission's opinion, better suit the convenience of the taxpayer or seller and will not  
154 jeopardize collection of the tax.

155 (3) (a) Except as provided in Subsections (4) through (6) and Section 59-12-108, the  
156 sales or use tax imposed by this chapter is due and payable to the commission quarterly on or  
157 before the last day of the month next succeeding each calendar quarterly period.

158 (b) (i) Each seller shall, on or before the last day of the month next succeeding each  
159 calendar quarterly period, file with the commission a return for the preceding quarterly period.

160 (ii) The seller shall remit with the return under Subsection (3)(b)(i) the amount of the  
161 tax required under this chapter to be collected or paid for the period covered by the return.

162 (c) Except as provided in Subsection (4)(c), a return shall contain information and be in  
163 a form the commission prescribes by rule.

164 (d) ~~[The]~~ (i) Subject to Subsection (3)(d)(ii), the sales tax as computed in the return  
165 shall be based [upon] on the total nonexempt sales made during the period~~[, including both~~  
166 ~~cash and charge sales]~~ for which the return is filed, including both cash and charge sales.

167 (ii) For a sale that includes the delivery or installation of tangible personal property at a  
168 location other than a seller's place of business described in Subsection (1)(a)(i), if the delivery  
169 or installation is separately stated on an invoice or receipt, a seller may compute the tax due on

170 the sale for purposes of Subsection (3)(d)(i) based on the amount the seller receives for that  
171 sale during each period for which the seller receives payment for the sale.

172 (e) (i) The use tax as computed in the return shall be based [upon] on the total amount  
173 of purchases for storage, use, or other consumption in this state made during the period[;  
174 including both by cash and by charge] for which the return is filed, including both cash and  
175 charge purchases.

176 (ii) (A) As used in this Subsection (3)(e)(ii), "qualifying purchaser" means a purchaser  
177 who is required to remit taxes under this chapter, but is not required to remit taxes monthly in  
178 accordance with Section 59-12-108, and who converts tangible personal property into real  
179 property.

180 (B) Subject to Subsections (3)(e)(ii)(C) and (D), a qualifying purchaser may remit the  
181 taxes due under this chapter on tangible personal property for which the qualifying purchaser  
182 claims an exemption as allowed under Subsection 59-12-104(23) or (25) based on the period in  
183 which the qualifying purchaser receives payment, in accordance with Subsection (3)(e)(ii)(C),  
184 for the conversion of the tangible personal property into real property.

185 (C) A qualifying purchaser remitting taxes due under this chapter in accordance with  
186 Subsection (3)(e)(ii)(B) shall remit an amount equal to the total amount of tax due on the  
187 qualifying purchaser's purchase of the tangible personal property that was converted into real  
188 property multiplied by a fraction, the numerator of which is the payment received in the period  
189 for the qualifying purchaser's sale of the tangible personal property that was converted into real  
190 property and the denominator of which is the entire sales price for the qualifying purchaser's  
191 sale of the tangible personal property that was converted into real property.

192 (D) A qualifying purchaser may remit taxes due under this chapter in accordance with  
193 this Subsection (3)(e)(ii) only if the books and records that the qualifying purchaser keeps in  
194 the qualifying purchaser's regular course of business identify by reasonable and verifiable  
195 standards that the tangible personal property was converted into real property.

196 (f) (i) Subject to Subsection (3)(f)(ii) and in accordance with Title 63G, Chapter 3,  
197 Utah Administrative Rulemaking Act, the commission may by rule extend the time for making

198 returns and paying the taxes.

199 (ii) An extension under Subsection (3)(f)(i) may not be for more than 90 days.

200 (g) The commission may require returns and payment of the tax to be made for other  
201 than quarterly periods if the commission considers it necessary in order to ensure the payment  
202 of the tax imposed by this chapter.

203 (h) (i) The commission may require a seller that files a simplified electronic return with  
204 the commission to file an additional electronic report with the commission.

205 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
206 commission may make rules providing:

207 (A) the information required to be included in the additional electronic report described  
208 in Subsection (3)(h)(i); and

209 (B) one or more due dates for filing the additional electronic report described in  
210 Subsection (3)(h)(i).

211 (4) (a) As used in this Subsection (4) and Subsection (5)(b), "remote seller" means a  
212 seller that is:

213 (i) registered under the agreement;

214 (ii) described in Subsection (1)(b); and

215 (iii) not a:

216 (A) model 1 seller;

217 (B) model 2 seller; or

218 (C) model 3 seller.

219 (b) (i) Except as provided in Subsection (4)(b)(ii), a tax a remote seller collects in  
220 accordance with Subsection (1)(b) is due and payable:

221 (A) to the commission;

222 (B) annually; and

223 (C) on or before the last day of the month immediately following the last day of each  
224 calendar year.

225 (ii) The commission may require that a tax a remote seller collects in accordance with

226 Subsection (1)(b) be due and payable:  
227       (A) to the commission; and  
228       (B) on the last day of the month immediately following any month in which the seller  
229 accumulates a total of at least \$1,000 in agreement sales and use tax.  
230       (c) (i) If a remote seller remits a tax to the commission in accordance with Subsection  
231 (4)(b), the remote seller shall file a return:  
232           (A) with the commission;  
233           (B) with respect to the tax;  
234           (C) containing information prescribed by the commission; and  
235           (D) on a form prescribed by the commission.  
236       (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
237 commission shall make rules prescribing:  
238           (A) the information required to be contained in a return described in Subsection  
239 (4)~~(a)~~(c)(i); and  
240           (B) the form described in Subsection (4)(c)(i)(D).  
241       (d) A tax a remote seller collects in accordance with this Subsection (4) shall be  
242 calculated on the basis of the total amount of taxable transactions under Subsection  
243 59-12-103(1) the remote seller completes, including:  
244           (i) a cash transaction; and  
245           (ii) a charge transaction.  
246       (5) (a) Except as provided in Subsection (5)(b), a tax a seller that files a simplified  
247 electronic return collects in accordance with this chapter is due and payable:  
248           (i) monthly on or before the last day of the month immediately following the month for  
249 which the seller collects a tax under this chapter; and  
250           (ii) for the month for which the seller collects a tax under this chapter.  
251       (b) A tax a remote seller that files a simplified electronic return collects in accordance  
252 with this chapter is due and payable as provided in Subsection (4).  
253       (6) (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the

254 purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to  
255 titling or registration under the laws of this state.

256 (b) The commission shall collect the tax described in Subsection (6)(a) when the  
257 vehicle is titled or registered.

258 (7) If any sale of tangible personal property or any other taxable transaction under  
259 Subsection 59-12-103(1), is made by a wholesaler to a retailer, the wholesaler is not  
260 responsible for the collection or payment of the tax imposed on the sale and the retailer is  
261 responsible for the collection or payment of the tax imposed on the sale if:

262 (a) the retailer represents that the personal property is purchased by the retailer for  
263 resale; and

264 (b) the personal property is not subsequently resold.

265 (8) If any sale of property or service subject to the tax is made to a person prepaying  
266 sales or use tax in accordance with Title 63M, Chapter 5, Resource Development Act, or to a  
267 contractor or subcontractor of that person, the person to whom such payment or consideration  
268 is payable is not responsible for the collection or payment of the sales or use tax and the person  
269 prepaying the sales or use tax is responsible for the collection or payment of the sales or use tax  
270 if the person prepaying the sales or use tax represents that the amount prepaid as sales or use  
271 tax has not been fully credited against sales or use tax due and payable under the rules  
272 promulgated by the commission.

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

274 (i) Except as provided in Subsection (9)(a)(ii), "bad debt" is as defined in Section 166,  
275 Internal Revenue Code.

276 (ii) Notwithstanding Subsection (9)(a)(i), "bad debt" does not include:

277 (A) an amount included in the purchase price of tangible personal property, a product  
278 transferred electronically, or a service that is:

279 (I) not a transaction described in Subsection 59-12-103(1); or

280 (II) exempt under Section 59-12-104;

281 (B) a financing charge;

- 282 (C) interest;
- 283 (D) a tax imposed under this chapter on the purchase price of tangible personal
- 284 property, a product transferred electronically, or a service;
- 285 (E) an uncollectible amount on tangible personal property or a product transferred
- 286 electronically that:
  - 287 (I) is subject to a tax under this chapter; and
  - 288 (II) remains in the possession of a seller until the full purchase price is paid;
  - 289 (F) an expense incurred in attempting to collect any debt; or
  - 290 (G) an amount that a seller does not collect on repossessed property.
- 291 (b) (i) ~~[A]~~ To the extent an amount remitted in accordance with Subsection (3)(d) later
- 292 becomes bad debt, a seller may deduct the bad debt from the total amount from which a tax
- 293 under this chapter is calculated on a return.
- 294 (ii) A qualifying purchaser, as defined in Subsection (3)(e)(ii)(A), may deduct from the
- 295 total amount of taxes due under this chapter the amount of tax the qualifying purchaser paid on
- 296 the qualifying purchaser's purchase of tangible personal property converted into real property to
- 297 the extent that:
  - 298 (A) tax was remitted in accordance with Subsection (3)(e) on that tangible personal
  - 299 property converted into real property;
  - 300 (B) the qualifying purchaser's sale of that tangible personal property converted into real
  - 301 property later becomes bad debt; and
  - 302 (C) the books and records that the qualifying purchaser keeps in the qualifying
  - 303 purchaser's regular course of business identify by reasonable and verifiable standards that the
  - 304 tangible personal property was converted into real property.
- 305 (c) A seller may file a refund claim with the commission if:
  - 306 (i) the amount of bad debt for the time period described in Subsection (9)(e) exceeds
  - 307 the amount of the seller's sales that are subject to a tax under this chapter for that same time
  - 308 period; and
  - 309 (ii) as provided in Section 59-1-1410.

- 310 (d) A bad debt deduction under this section may not include interest.
- 311 (e) A bad debt may be deducted under this Subsection (9) on a return for the time
- 312 period during which the bad debt:
  - 313 (i) is written off as uncollectible in the seller's books and records; and
  - 314 (ii) would be eligible for a bad debt deduction:
    - 315 (A) for federal income tax purposes; and
    - 316 (B) if the seller were required to file a federal income tax return.
  - 317 (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or
  - 318 claims a refund under this Subsection (9), the seller shall report and remit a tax under this
  - 319 chapter:
    - 320 (i) on the portion of the bad debt the seller recovers; and
    - 321 (ii) on a return filed for the time period for which the portion of the bad debt is
    - 322 recovered.
      - 323 (g) For purposes of reporting a recovery of a portion of bad debt under Subsection
      - 324 (9)(f), a seller shall apply amounts received on the bad debt in the following order:
        - 325 (i) in a proportional amount:
          - 326 (A) to the purchase price of the tangible personal property, product transferred
          - 327 electronically, or service; and
          - 328 (B) to the tax due under this chapter on the tangible personal property, product
          - 329 transferred electronically, or service; and
          - 330 (ii) to:
            - 331 (A) interest charges;
            - 332 (B) service charges; and
            - 333 (C) other charges.
        - 334 (h) A seller's certified service provider may make a deduction or claim a refund for bad
        - 335 debt on behalf of the seller:
          - 336 (i) in accordance with this Subsection (9); and
          - 337 (ii) if the certified service provider credits or refunds the entire amount of the bad debt

338 deduction or refund to the seller.

339 (i) A seller may allocate bad debt among the states that are members of the agreement  
340 if the seller's books and records support that allocation.

341 (10) (a) A seller may not, with intent to evade any tax, fail to timely remit the full  
342 amount of tax required by this chapter.

343 (b) A violation of this section is punishable as provided in Section 59-1-401.

344 (c) Each person who fails to pay any tax to the state or any amount of tax required to be  
345 paid to the state, except amounts determined to be due by the commission under Chapter 1,  
346 Part 14, Assessment, Collections, and Refunds Act, or Section 59-12-111, within the time  
347 required by this chapter, or who fails to file any return as required by this chapter, shall pay, in  
348 addition to the tax, penalties and interest as provided in ~~[Section]~~ Sections 59-1-401 and  
349 59-1-402.

350 (d) For purposes of prosecution under this section, each quarterly tax period in which a  
351 seller, with intent to evade any tax, collects a tax and fails to timely remit the full amount of the  
352 tax required to be remitted, constitutes a separate offense.

353 **Section 2. Effective date.**

354 This bill takes effect on July 1, 2012.