

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

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 or installation;
14 ▶ addresses a deduction for bad debt; and
15 ▶ makes technical and conforming changes.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 This bill takes effect on July 1, 2012.

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **59-12-107**, as last amended by Laws of Utah 2009, Chapter 212

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

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

26 **59-12-107. Collection, remittance, and payment of tax by sellers or other persons**
27 **-- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other liability for**



28 **collection -- Rulemaking authority -- Credits -- Treatment of bad debt -- Penalties.**

29 (1) (a) Except as provided in Subsection (1)(d) [or], Section 59-12-107.1, or Section
30 59-12-123, and subject to Subsection (1)(e), each seller shall pay or collect and remit the sales
31 and use taxes imposed by this chapter if within this state the seller:

32 (i) has or utilizes:

33 (A) an office;

34 (B) a distribution house;

35 (C) a sales house;

36 (D) a warehouse;

37 (E) a service enterprise; or

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

39 (ii) maintains a stock of goods;

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

42 (A) advertising; or

43 (B) solicitation by:

44 (I) direct mail;

45 (II) electronic mail;

46 (III) the Internet;

47 (IV) telecommunications service; or

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

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

50 (A) common carrier; or

51 (B) United States mail; or

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

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

56 (i) except as provided in Subsection (1)(b)(ii), may voluntarily:

57 (A) collect a tax on a transaction described in Subsection 59-12-103(1); and

58 (B) remit the tax to the commission as provided in this part; or

59 (ii) notwithstanding Subsection (1)(b)(i), shall collect a tax on a transaction described
60 in Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to collect the tax.

61 (c) The collection and remittance of a tax under this chapter by a seller that is
62 registered under the agreement may not be used as a factor in determining whether that seller is
63 required by Subsection (1)(a) to:

64 (i) pay a tax, fee, or charge under:

65 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

66 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

67 (C) Section 19-6-714;

68 (D) Section 19-6-805;

69 (E) Section 69-2-5;

70 (F) Section 69-2-5.5;

71 (G) Section 69-2-5.6; or

72 (H) this title; or

73 (ii) collect and remit a tax, fee, or charge under:

74 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

75 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

76 (C) Section 19-6-714;

77 (D) Section 19-6-805;

78 (E) Section 69-2-5;

79 (F) Section 69-2-5.5;

80 (G) Section 69-2-5.6; or

81 (H) this title.

82 (d) A person shall pay a use tax imposed by this chapter on a transaction described in
83 Subsection 59-12-103(1) if:

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

85 (ii) the person:

86 (A) stores the tangible personal property or product transferred electronically in the
87 state;

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

89 or

90 (C) consumes the tangible personal property or product transferred electronically in the
91 state.

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

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

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

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

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

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

106 (II) is:

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

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

112 (III) does not voluntarily collect and remit a tax under Subsection (1)(b)(i).

113 (ii) A seller is not required to pay or collect and remit sales and use taxes under
114 Subsection (1)(a):

115 (A) if the seller is a related seller;

116 (B) if the seller to which the related seller is related does not engage in any of the
117 following activities on behalf of the related seller:

118 (I) advertising;

119 (II) marketing;

120 (III) sales; or

121 (IV) other services; and
122 (C) if the seller to which the related seller is related accepts the return of an item sold
123 by the related seller, the seller to which the related seller is related accepts the return of that
124 item:

125 (I) sold by a seller that is not a related seller; and
126 (II) on the same terms as the return of an item sold by that seller to which the related
127 seller is related.

128 (2) (a) Except as provided in Section 59-12-107.1, a tax under this chapter shall be
129 collected from a purchaser.

130 (b) A seller may not collect as tax an amount, without regard to fractional parts of one
131 cent, in excess of the tax computed at the rates prescribed by this chapter.

132 (c) (i) Each seller shall:

133 (A) give the purchaser a receipt for the tax collected; or

134 (B) bill the tax as a separate item and declare the name of this state and the seller's
135 sales and use tax license number on the invoice for the sale.

136 (ii) The receipt or invoice is prima facie evidence that the seller has collected the tax
137 and relieves the purchaser of the liability for reporting the tax to the commission as a
138 consumer.

139 (d) A seller is not required to maintain a separate account for the tax collected, but is
140 considered to be a person charged with receipt, safekeeping, and transfer of public money.

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

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

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

152 jeopardize collection of the tax.

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

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

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

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

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

165 (ii) For a sale that includes the delivery or installation of tangible personal property at a
166 location other than a seller's place of business described in Subsection (1)(a)(i), if the delivery
167 or installation is separately stated on an invoice or receipt, a seller may compute the tax due on
168 the sale for purposes of Subsection (3)(d)(i) based on the amount the seller receives for that
169 sale during each period for which the seller receives payment for the sale.

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

174 (f) (i) Subject to Subsection (3)(f)(ii) and in accordance with Title 63G, Chapter 3,
175 Utah Administrative Rulemaking Act, the commission may by rule extend the time for making
176 returns and paying the taxes.

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

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

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

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

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

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

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

191 (i) registered under the agreement;

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

193 (iii) not a:

194 (A) model 1 seller;

195 (B) model 2 seller; or

196 (C) model 3 seller.

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

199 (A) to the commission;

200 (B) annually; and

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

203 (ii) The commission may require that a tax a remote seller collects in accordance with
204 Subsection (1)(b) be due and payable:

205 (A) to the commission; and

206 (B) on the last day of the month immediately following any month in which the seller
207 accumulates a total of at least \$1,000 in agreement sales and use tax.

208 (c) (i) If a remote seller remits a tax to the commission in accordance with Subsection
209 (4)(b), the remote seller shall file a return:

210 (A) with the commission;

211 (B) with respect to the tax;

212 (C) containing information prescribed by the commission; and

213 (D) on a form prescribed by the commission.

214 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
215 commission shall make rules prescribing:

216 (A) the information required to be contained in a return described in Subsection
217 (4)(~~(a)~~)(c)(i); and

218 (B) the form described in Subsection (4)(c)(i)(D).

219 (d) A tax a remote seller collects in accordance with this Subsection (4) shall be
220 calculated on the basis of the total amount of taxable transactions under Subsection
221 59-12-103(1) the remote seller completes, including:

222 (i) a cash transaction; and

223 (ii) a charge transaction.

224 (5) (a) Except as provided in Subsection (5)(b), a tax a seller that files a simplified
225 electronic return collects in accordance with this chapter is due and payable:

226 (i) monthly on or before the last day of the month immediately following the month for
227 which the seller collects a tax under this chapter; and

228 (ii) for the month for which the seller collects a tax under this chapter.

229 (b) A tax a remote seller that files a simplified electronic return collects in accordance
230 with this chapter is due and payable as provided in Subsection (4).

231 (6) (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the
232 purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to
233 titling or registration under the laws of this state.

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

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

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

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

243 (8) If any sale of property or service subject to the tax is made to a person prepaying
244 sales or use tax in accordance with Title 63M, Chapter 5, Resource Development Act, or to a

245 contractor or subcontractor of that person, the person to whom such payment or consideration
246 is payable is not responsible for the collection or payment of the sales or use tax and the person
247 prepaying the sales or use tax is responsible for the collection or payment of the sales or use tax
248 if the person prepaying the sales or use tax represents that the amount prepaid as sales or use
249 tax has not been fully credited against sales or use tax due and payable under the rules
250 promulgated by the commission.

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

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

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

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

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

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

259 (B) a financing charge;

260 (C) interest;

261 (D) a tax imposed under this chapter on the purchase price of tangible personal
262 property, a product transferred electronically, or a service;

263 (E) an uncollectible amount on tangible personal property or a product transferred
264 electronically that:

265 (I) is subject to a tax under this chapter; and

266 (II) remains in the possession of a seller until the full purchase price is paid;

267 (F) an expense incurred in attempting to collect any debt; or

268 (G) an amount that a seller does not collect on repossessed property.

269 (b) ~~[A]~~ To the extent bad debt is included in a computation made in accordance with
270 Subsections (3)(d) and (e), a seller may deduct the bad debt from the total amount from which
271 a tax under this chapter is calculated on a return.

272 (c) A seller may file a refund claim with the commission if:

273 (i) the amount of bad debt for the time period described in Subsection (9)(e) exceeds
274 the amount of the seller's sales that are subject to a tax under this chapter for that same time
275 period; and

- 276 (ii) as provided in Section 59-1-1410.
- 277 (d) A bad debt deduction under this section may not include interest.
- 278 (e) A bad debt may be deducted under this Subsection (9) on a return for the time
- 279 period during which the bad debt:
 - 280 (i) is written off as uncollectible in the seller's books and records; and
 - 281 (ii) would be eligible for a bad debt deduction:
 - 282 (A) for federal income tax purposes; and
 - 283 (B) if the seller were required to file a federal income tax return.
 - 284 (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or
 - 285 claims a refund under this Subsection (9), the seller shall report and remit a tax under this
 - 286 chapter:
 - 287 (i) on the portion of the bad debt the seller recovers; and
 - 288 (ii) on a return filed for the time period for which the portion of the bad debt is
 - 289 recovered.
 - 290 (g) For purposes of reporting a recovery of a portion of bad debt under Subsection
 - 291 (9)(f), a seller shall apply amounts received on the bad debt in the following order:
 - 292 (i) in a proportional amount:
 - 293 (A) to the purchase price of the tangible personal property, product transferred
 - 294 electronically, or service; and
 - 295 (B) to the tax due under this chapter on the tangible personal property, product
 - 296 transferred electronically, or service; and
 - 297 (ii) to:
 - 298 (A) interest charges;
 - 299 (B) service charges; and
 - 300 (C) other charges.
 - 301 (h) A seller's certified service provider may make a deduction or claim a refund for bad
 - 302 debt on behalf of the seller:
 - 303 (i) in accordance with this Subsection (9); and
 - 304 (ii) if the certified service provider credits or refunds the entire amount of the bad debt
 - 305 deduction or refund to the seller.
 - 306 (i) A seller may allocate bad debt among the states that are members of the agreement

307 if the seller's books and records support that allocation.

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

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

311 (c) Each person who fails to pay any tax to the state or any amount of tax required to be
312 paid to the state, except amounts determined to be due by the commission under Chapter 1,
313 Part 14, Assessment, Collections, and Refunds Act, or Section 59-12-111, within the time
314 required by this chapter, or who fails to file any return as required by this chapter, shall pay, in
315 addition to the tax, penalties and interest as provided in ~~[Section]~~ Sections 59-1-401 and
316 59-1-402.

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

320 Section 2. **Effective date.**

321 This bill takes effect on July 1, 2012.

Legislative Review Note
as of 1-16-12 6:19 PM

Office of Legislative Research and General Counsel