

Senator Wayne A. Harper proposes the following substitute bill:

AMENDMENTS TO REVENUE AND TAXATION

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Francis D. Gibson

LONG TITLE

General Description:

This bill addresses the Multistate Tax Compact and related provisions.

Highlighted Provisions:

This bill:

- ▶ repeals the Multistate Tax Compact;
- ▶ enacts the Multistate Tax Compact, excluding certain provisions from the repealed version of the Multistate Tax Compact;
- ▶ amends provisions within the Multistate Tax Compact part addressing the State Tax Commission's authority related to the Multistate Tax Commission;
- ▶ provides a repeal date for the Multistate Tax Compact enacted by this bill;
- ▶ repeals obsolete language; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides effective dates.

Utah Code Sections Affected:

AMENDS:



26 59-1-809, as renumbered and amended by Laws of Utah 1987, Chapter 3

27 63I-1-259, as last amended by Laws of Utah 2012, Chapter 9

28 ENACTS:

29 59-1-801.5, Utah Code Annotated 1953

30 REPEALS:

31 59-1-801, as last amended by Laws of Utah 2010, Chapter 155



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

34 Section 1. Section 59-1-801.5 is enacted to read:

35 **59-1-801.5. Purpose of compact -- Definitions -- Elements of income tax laws --**
36 **Elements of sales and use tax laws -- The Multistate Tax Commission -- Uniform**
37 **regulations and forms -- Interstate audits -- Entry into force and withdrawal -- Effect on**
38 **other laws and jurisdiction -- Construction and severability.**

39 The "Multistate Tax Compact" is hereby enacted into law and entered into with all
40 jurisdictions legally joining therein, in the form substantially as follows:

41 ARTICLE I. PURPOSES

42 The purposes of this compact are to:

- 43 1. Facilitate proper determination of state and local tax liability of multistate taxpayers.
- 44 2. Promote uniformity or compatibility in significant components of tax systems.
- 45 3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in
46 other phases of tax administration.
- 47 4. Avoid duplicative taxation.

48 ARTICLE II. DEFINITIONS

49 As used in this compact:

- 50 1. "State" means a state of the United States, the District of Columbia, the
51 Commonwealth of Puerto Rico, or any territory or possession of the United States.
- 52 2. "Subdivision" means any governmental unit or special district of a state.
- 53 3. "Taxpayer" means any corporation, partnership, firm, association, governmental unit
54 or agency, or person acting as a business entity in more than one state.
- 55 4. "Income tax" means a tax imposed on or measured by net income including any tax
56 imposed on or measured by an amount arrived at by deducting expenses from gross income,

57 one or more forms of which expenses are not specifically and directly related to particular
58 transactions.

59 5. "Capital stock tax" means a tax measured in any way by the capital of a corporation
60 considered in its entirety.

61 6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or
62 measured by the gross volume of business, in terms of gross receipts or in other terms, and in
63 the determination of which no deduction is allowed which would constitute the tax an income
64 tax.

65 7. "Sales tax" means a tax imposed with respect to the transfer for a consideration of
66 ownership, possession, or custody of tangible personal property or the rendering of services
67 measured by the price of the tangible personal property transferred or services rendered and
68 which is required by state or local law to be separately stated from the sales price by the seller,
69 or which is customarily separately stated from the sales price, but does not include a tax
70 imposed exclusively on the sale of a specifically identified commodity or article or class of
71 commodities or articles.

72 8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on
73 or with respect to the exercise or enjoyment of any right or power over tangible personal
74 property incident to the ownership, possession, or custody of that property or the leasing of that
75 property from another including any consumption, keeping, retention, or other use of tangible
76 personal property, and (b) is complementary to a sales tax.

77 9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax,
78 and any other tax which has a multistate impact, except that the provisions of Article V of this
79 compact shall apply only to the taxes specifically designated therein.

80 ARTICLE III. ELEMENTS OF INCOME TAX LAWS (intentionally omitted)

81 ARTICLE IV. DIVISION OF INCOME (intentionally omitted)

82 ARTICLE V. ELEMENTS OF SALES AND USE TAX LAWS

83 Tax Credit

84 1. Each purchaser liable for a use tax on tangible personal property shall be entitled to
85 full credit for the combined amount or amounts of legally imposed sales or use taxes paid by
86 him with respect to the same property to another state and any subdivision thereof. The credit
87 shall be applied first against the amount of any use tax due the state, and any unused portion of

88 the credit shall then be applied against the amount of any use tax due a subdivision.

89 Exemption Certificates, Vendors May Rely

90 2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or
91 other exemption certificate or other written evidence of exemption authorized by the
92 appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a
93 sales or use tax with respect to the transaction.

94 ARTICLE VI. THE COMMISSION

95 Organization and Management

96 1. (a) The Multistate Tax Commission is hereby established. It shall be composed of
97 one "member" from each party state who shall be the head of the state agency charged with the
98 administration of the types of taxes to which this compact applies. If there is more than one
99 such agency the state shall provide by law for the selection of the commission member from
100 the heads of the relevant agencies. State law may provide that a member of the commission be
101 represented by an alternate but only if there is on file with the commission written notification
102 of the designation and identity of the alternate. The attorney general of each party state or his
103 designee, or other counsel if the laws of the party state specifically provide, shall be entitled to
104 attend the meetings of the commission, but shall not vote. Such attorneys general, designees,
105 or other counsel shall receive all notices of meetings required under paragraph 1(e) of this
106 article.

107 (b) Each party state shall provide by law for the selection of representatives from its
108 subdivisions affected by this compact to consult with the commission member from that state.

109 (c) Each member shall be entitled to one vote. The commission shall not act unless a
110 majority of the members are present, and no action shall be binding unless approved by a
111 majority of the total number of members.

112 (d) The commission shall adopt an official seal to be used as it may provide.

113 (e) The commission shall hold an annual meeting and such other regular meetings as
114 its bylaws may provide and such special meetings as its executive committee may determine.
115 The commission bylaws shall specify the dates of the annual and any other regular meetings,
116 and shall provide for the giving of notice of annual, regular, and special meetings. Notices of
117 special meetings shall include the reasons therefor and an agenda of the items to be considered.

118 (f) The commission shall elect annually, from among its members, a chairman, a

119 vice-chairman, and a treasurer. The commission shall appoint an executive director who shall
120 serve at its pleasure, and it shall fix his duties and compensation. The executive director shall
121 be secretary of the commission. The commission shall make provision for the bonding of such
122 of its officers and employees as it may deem appropriate.

123 (g) Irrespective of the civil service, personnel, or other merit system laws of any party
124 state, the executive director shall appoint or discharge such personnel as may be necessary for
125 the performance of the functions of the commission and shall fix their duties and
126 compensation. The commission bylaws shall provide for personnel policies and programs.

127 (h) The commission may borrow, accept, or contract for the services of personnel from
128 any state, the United States, or any other governmental entity.

129 (i) The commission may accept for any of its purposes and functions any and all
130 donations and grants of money, equipment, supplies, materials, and services, conditional or
131 otherwise, from any governmental entity, and may utilize and dispose of the same.

132 (j) The commission may establish one or more offices for the transacting of its
133 business.

134 (k) The commission shall adopt bylaws for the conduct of its business. The
135 commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and
136 any amendments thereto with the appropriate agency or officer in each of the party states.

137 (l) The commission annually shall make to the governor and legislature of each party
138 state a report covering its activities for the preceding year. Any donation or grant accepted by
139 the commission or services borrowed shall be reported in the annual report of the commission,
140 and shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or
141 services borrowed and the identity of the donor or lender. The commission may make
142 additional reports as it may deem desirable.

143 Committees

144 2. (a) To assist in the conduct of its business when the full commission is not meeting,
145 the commission shall have an executive committee of seven members, including the chairman,
146 vice-chairman, treasurer, and four other members elected annually by the commission. The
147 executive committee, subject to the provisions of this compact and consistent with the policies
148 of the commission, shall function as provided in the bylaws of the commission.

149 (b) The commission may establish advisory and technical committees, membership on

150 which may include private persons and public officials, in furthering any of its activities. Such
151 committees may consider any matter of concern to the commission, including problems of
152 special interest to any party state and problems dealing with particular types of taxes.

153 (c) The commission may establish such additional committees as its bylaws may
154 provide.

155 Powers

156 3. In addition to powers conferred elsewhere in this compact, the commission shall
157 have power to:

158 (a) study state and local tax systems and particular types of state and local taxes;

159 (b) develop and recommend proposals for an increase in uniformity or compatibility of
160 state and local tax laws with a view toward encouraging the simplification and improvement of
161 state and local tax law and administration;

162 (c) compile and publish information as in its judgment would assist the party states in
163 implementation of the compact and taxpayers in complying with state and local tax laws; and

164 (d) do all things necessary and incidental to the administration of its functions pursuant
165 to this compact.

166 Finance

167 4. (a) The commission shall submit to the governor or designated officer or officers of
168 each party state a budget of its estimated expenditures for such period as may be required by
169 the laws of that state for presentation to the legislature thereof.

170 (b) Each of the commission's budgets of estimated expenditures shall contain specific
171 recommendations of the amounts to be appropriated by each of the party states. The total
172 amount of appropriations requested under any such budget shall be apportioned among the
173 party states as follows: one-tenth in equal shares; and the remainder in proportion to the
174 amount of revenue collected by each party state and its subdivisions from income taxes, capital
175 stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the
176 commission shall employ such available public sources of information as, in its judgment,
177 present the most equitable and accurate comparisons among the party states. Each of the
178 commission's budgets of estimated expenditures and requests for appropriations shall indicate
179 the sources used in obtaining information employed in applying the formula contained in this
180 paragraph.

181 (c) The commission shall not pledge the credit of any party state. The commission may
182 meet any of its obligations in whole or in part with funds available to it under paragraph 1(i) of
183 this article; provided that the commission takes specific action setting aside such funds prior to
184 incurring any obligation to be met in whole or in part in such manner. Except where the
185 commission makes use of funds available to it under paragraph 1(i), the commission shall not
186 incur any obligation prior to the allotment of funds by the party states adequate to meet the
187 same.

188 (d) The commission shall keep accurate accounts of all receipts and disbursements.
189 The receipts and disbursements of the commission shall be subject to the audit and accounting
190 procedures established under its bylaws. All receipts and disbursements of funds handled by
191 the commission shall be audited yearly by a certified or licensed public accountant and the
192 report of the audit shall be included in and become part of the annual report of the commission.

193 (e) The accounts of the commission shall be open at any reasonable time for inspection
194 by duly constituted officers of the party states and by any persons authorized by the
195 commission.

196 (f) Nothing contained in this article shall be construed to prevent commission
197 compliance with laws relating to audit or inspection of accounts by or on behalf of any
198 government contributing to the support of the commission.

199 ARTICLE VII. UNIFORM REGULATIONS AND FORMS

200 1. Whenever any two or more party states, or subdivisions of party states, have uniform
201 or similar provisions of law relating to an income tax, the commission may adopt uniform
202 regulations for any phase of the administration of such law, including assertion of jurisdiction
203 to tax, or prescribing uniform tax forms.

204 2. Prior to the adoption of any regulations, the commission shall:

205 (a) as provided in its bylaws, hold at least one public hearing on due notice to all
206 affected party states and subdivisions thereof and to all taxpayers and other persons who have
207 made timely request of the commission for advance notice of its regulation-making
208 proceedings; and

209 (b) afford all affected party states and subdivisions and interested persons an
210 opportunity to submit relevant written data and views, which shall be considered fully by the
211 commission.

212 3. The commission shall submit any regulations adopted by it to the appropriate
213 officials of all party states and subdivisions to which they might apply. Each such state and
214 subdivision shall consider any such regulation for adoption in accordance with its own laws
215 and procedures.

216 ARTICLE VIII. INTERSTATE AUDITS

217 1. This article shall be in force only in those party states that specifically provide
218 therefor by statute.

219 2. Any party state or subdivision thereof desiring to make or participate in an audit of
220 any accounts, books, papers, records, or other documents may request the commission to
221 perform the audit on its behalf. In responding to the request, the commission shall have access
222 to and may examine, at any reasonable time, such accounts, books, papers, records, and other
223 documents and any relevant property or stock of merchandise. The commission may enter into
224 agreements with party states or their subdivisions for assistance in performance of the audit.
225 The commission shall make charges, to be paid by the state or local government or
226 governments for which it performs the service, for any audits performed by it in order to
227 reimburse itself for the actual costs incurred in making the audit.

228 3. The commission may require the attendance of any person within the state where it
229 is conducting an audit or part thereof at a time and place fixed by it within such state for the
230 purpose of giving testimony with respect to any account, book, paper, document, other record,
231 property, or stock of merchandise being examined in connection with the audit. If the person is
232 not within the jurisdiction, he may be required to attend for such purpose at any time and place
233 fixed by the commission within the state of which he is a resident; provided that such state has
234 adopted this article.

235 4. The commission may apply to any court having power to issue compulsory process
236 for orders in aid of its powers and responsibilities pursuant to this article and any and all such
237 courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order
238 shall be punishable as contempt of the issuing court. If the party or subject matter on account
239 of which the commission seeks an order is within the jurisdiction of the court to which
240 application is made, such application may be to a court in the state or subdivision on behalf of
241 which the audit is being made or a court in the state in which the object of the order being
242 sought is situated. The provisions of this paragraph apply only to courts in a state that has

243 adopted this article.

244 5. The commission may decline to perform any audit requested if it finds that its
245 available personnel or other resources are insufficient for the purpose or that, in the terms
246 requested, the audit is impracticable of satisfactory performance. If the commission, on the
247 basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a
248 particular time or on a particular schedule, would be of interest to a number of party states or
249 their subdivisions, it may offer to make the audit or audits, the offer to be contingent on
250 sufficient participation therein as determined by the commission.

251 6. Information obtained by any audit pursuant to this article shall be confidential and
252 available only for tax purposes to party states, their subdivisions or the United States.
253 Availability of information shall be in accordance with the laws of the states or subdivisions on
254 whose account the commission performs the audit, and only through the appropriate agencies
255 or officers of such states or subdivisions. Nothing in this article shall be construed to require
256 any taxpayer to keep records for any period not otherwise required by law.

257 7. Other arrangements made or authorized pursuant to law for cooperative audit by or
258 on behalf of the party states or any of their subdivisions are not superseded or invalidated by
259 this article.

260 8. In no event shall the commission make any charge against a taxpayer for an audit.

261 9. As used in this article, "tax," in addition to the meaning ascribed to it in Article II,
262 means any tax or license fee imposed in whole or in part for revenue purposes.

263 ARTICLE IX. ARBITRATION (intentionally omitted)

264 ARTICLE X. ENTRY INTO FORCE AND WITHDRAWAL

265 1. This compact shall enter into force when enacted into law by any seven states.
266 Thereafter, this compact shall become effective as to any other state upon its enactment thereof.
267 The commission shall arrange for notification of all party states whenever there is a new
268 enactment of the compact.

269 2. Any party state may withdraw from this compact by enacting a statute repealing the
270 same. No withdrawal shall affect any liability already incurred by or chargeable to a party state
271 prior to the time of such withdrawal.

272 3. No proceeding commenced before an arbitration board prior to the withdrawal of a
273 state and to which the withdrawing state or any subdivision thereof is a party shall be

274 discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over
 275 any of the parties to the proceeding necessary to make a binding determination therein.

276 ARTICLE XI. EFFECT ON OTHER LAWS AND JURISDICTION

277 Nothing in this compact shall be construed to:

278 (a) affect the power of any state or subdivision thereof to fix rates of taxation;

279 (b) apply to any tax or fixed fee imposed for the registration of a motor vehicle or any
 280 tax on motor fuel, other than a sales tax; provided that the definition of "tax" in Article VIII 9
 281 may apply for the purposes of that article and the commission's powers of study and
 282 recommendation pursuant to Article VI 3 may apply;

283 (c) withdraw or limit the jurisdiction of any state or local court or administrative officer
 284 or body with respect to any person, corporation or other entity or subject matter, except to the
 285 extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another
 286 agency or body; or

287 (d) supersede or limit the jurisdiction of any court of the United States.

288 ARTICLE XII. CONSTRUCTION AND SEVERABILITY

289 This compact shall be liberally construed so as to effectuate the purposes thereof. The
 290 provisions of this compact shall be severable and if any phrase, clause, sentence, or provision
 291 of this compact is declared to be contrary to the constitution of any state or of the United States
 292 or the applicability thereof to any government, agency, person, or circumstance is held invalid,
 293 the validity of the remainder of this compact and the applicability thereof to any government,
 294 agency, person, or circumstance shall not be affected thereby. If this compact shall be held
 295 contrary to the constitution of any state participating therein, the compact shall remain in full
 296 force and effect as to the remaining party states and in full force and effect as to the state
 297 affected as to all severable matters.

298 Section 2. Section **59-1-809** is amended to read:

299 **59-1-809. Commission authority related to the Multistate Tax Commission.**

300 (1) The commission may participate in an audit, tax enforcement, or tax administration
 301 with the Multistate Tax Commission, a taxing official of another state, the District of
 302 Columbia, or the United States or its territories.

303 (2) The [~~Utah State Tax Commission~~] commission may [~~at its discretion~~] furnish to the
 304 Multistate Tax Commission, [~~the~~] a taxing [~~officials~~] official of [~~any other~~] another state, the

305 District of Columbia, ~~[and]~~ or the United States ~~[and]~~ or its territories, any information
306 contained in:

307 ~~(a) a tax [returns and reports,] return or report, a related [schedules, and documents]~~
308 schedule, or a document filed pursuant to the tax laws of this state~~[, or in]; or~~

309 ~~(b) the report of an audit or investigation made with respect [thereto]~~ ~~§~~ ~~→~~ to ~~←~~ ~~§~~ a tax
309a return or
310 report, a related schedule, or a document described in Subsection (2)(a).

311 Section 3. Section **63I-1-259** is amended to read:

312 **63I-1-259. Repeal dates, Title 59.**

313 (1) Sections 59-1-801.5 and 59-1-808 are repealed on June 30, 2014.

314 ~~[(1)]~~ (2) Subsection 59-2-924(3)(g) is repealed on December 31, 2016.

315 ~~[(2)]~~ (3) Section 59-2-924.3 is repealed on December 31, 2016.

316 ~~[(3)]~~ (4) Section 59-9-102.5 is repealed December 31, 2020.

317 ~~[(4) The language in Subsection 59-12-205(3)(a) that reads "Except as provided in~~
318 Subsection (3)(e)," is repealed January 1, 2013.]

319 ~~[(5) Subsection 59-12-205(3)(e), requiring a distribution to a qualifying city to be~~
320 reduced, is repealed January 1, 2013.]

321 Section 4. **Repealer.**

322 This bill repeals:

323 Section **59-1-801, Purpose of compact -- Definitions -- Elements of income tax laws**
324 **-- Allocation and apportionment of income -- Elements of sales and use tax laws -- The**
325 **commission -- Uniform regulations and forms -- Interstate audits -- Arbitration -- Entry**
326 **into force and withdrawal -- Effect on other laws and jurisdiction -- Construction and**
327 **severability.**

328 Section 5. **Effective date.**

329 (1) Except as provided in Subsections (2) and (3), this bill takes effect on July 1, 2013.

330 (2) Section 59-1-801 is repealed June 30, 2013.

331 (3) The actions affecting Section 59-1-809 take effect on July 1, 2014.