

SALES AND USE TAX AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Brad L. Dee

LONG TITLE

General Description:

This bill addresses the circumstances under which a person may be required to collect and remit sales and use taxes to the State Tax Commission.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the circumstances under which a person may be required to collect and remit sales and use taxes to the State Tax Commission; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2013.

Utah Code Sections Affected:

AMENDS:

59-1-401, as last amended by Laws of Utah 2012, Chapters 312 and 357

59-12-103.1, as last amended by Laws of Utah 2012, Chapter 312

59-12-107, as last amended by Laws of Utah 2012, Chapters 178, 312, and 399

59-12-211, as last amended by Laws of Utah 2012, Chapter 312

59-12-211.1, as last amended by Laws of Utah 2012, Chapter 312



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

Section 1. Section **59-1-401** is amended to read:

59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute of limitations -- Commission authority to waive, reduce, or compromise penalty or interest.

(1) As used in this section:

(a) "Activated tax, fee, or charge" means a tax, fee, or charge with respect to which the commission:

(i) has implemented the commission's GenTax system; and

(ii) at least 30 days before implementing the commission's GenTax system as described in Subsection (1)(a)(i), has provided notice in a conspicuous place on the commission's website stating:

(A) the date the commission will implement the GenTax system with respect to the tax, fee, or charge; and

(B) that, at the time the commission implements the GenTax system with respect to the tax, fee, or charge:

(I) a person that files a return after the due date as described in Subsection (2)(a) is subject to the penalty described in Subsection (2)(c)(ii); and

(II) a person that fails to pay the tax, fee, or charge as described in Subsection (3)(a) is subject to the penalty described in Subsection (3)(b)(ii).

(b) "Activation date for a tax, fee, or charge" means with respect to a tax, fee, or charge, the later of:

(i) the date on which the commission implements the commission's GenTax system with respect to the tax, fee, or charge; or

(ii) 30 days after the date the commission provides the notice described in Subsection (1)(a)(ii) with respect to the tax, fee, or charge.

(c) (i) Except as provided in Subsection (1)(c)(ii), "tax, fee, or charge" means:

(A) a tax, fee, or charge the commission administers under:

(I) this title;

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

- 59 (III) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 60 (IV) Section 19-6-410.5;
- 61 (V) Section 19-6-714;
- 62 (VI) Section 19-6-805;
- 63 (VII) Section 32B-2-304;
- 64 (VIII) Section 34A-2-202;
- 65 (IX) Section 40-6-14;
- 66 (X) Section 69-2-5;
- 67 (XI) Section 69-2-5.5; or
- 68 (XII) Section 69-2-5.6; or
- 69 (B) another amount that by statute is subject to a penalty imposed under this section.
- 70 (ii) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:
 - 71 (A) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;
 - 72 (B) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
 - 73 (C) Chapter 2, Property Tax Act, except for Section 59-2-1309;
 - 74 (D) Chapter 3, Tax Equivalent Property Act; or
 - 75 (E) Chapter 4, Privilege Tax.
- 76 (d) "Unactivated tax, fee, or charge" means a tax, fee, or charge except for an activated
- 77 tax, fee, or charge.
- 78 (2) (a) The due date for filing a return is:
 - 79 (i) if the person filing the return is not allowed by law an extension of time for filing
 - 80 the return, the day on which the return is due as provided by law; or
 - 81 (ii) if the person filing the return is allowed by law an extension of time for filing the
 - 82 return, the earlier of:
 - 83 (A) the date the person files the return; or
 - 84 (B) the last day of that extension of time as allowed by law.
 - 85 (b) A penalty in the amount described in Subsection (2)(c) is imposed if a person files a
 - 86 return after the due date described in Subsection (2)(a).
 - 87 (c) For purposes of Subsection (2)(b), the penalty is an amount equal to the greater of:
 - 88 (i) if the return described in Subsection (2)(b) is filed with respect to an unactivated
 - 89 tax, fee, or charge:

- 90 (A) \$20; or
- 91 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or
- 92 (ii) if the return described in Subsection (2)(b) is filed with respect to an activated tax,
- 93 fee, or charge, beginning on the activation date for the tax, fee, or charge:
- 94 (A) \$20; or
- 95 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the return is
- 96 filed no later than five days after the due date described in Subsection (2)(a);
- 97 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the return is filed
- 98 more than five days after the due date but no later than 15 days after the due date described in
- 99 Subsection (2)(a); or
- 100 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the return is
- 101 filed more than 15 days after the due date described in Subsection (2)(a).
- 102 (d) This Subsection (2) does not apply to:
- 103 (i) an amended return; or
- 104 (ii) a return with no tax due.
- 105 (3) (a) A person is subject to a penalty for failure to pay a tax, fee, or charge if:
- 106 (i) the person files a return on or before the due date for filing a return described in
- 107 Subsection (2)(a), but fails to pay the tax, fee, or charge due on the return on or before that due
- 108 date;
- 109 (ii) the person:
- 110 (A) is subject to a penalty under Subsection (2)(b); and
- 111 (B) fails to pay the tax, fee, or charge due on a return within a 90-day period after the
- 112 due date for filing a return described in Subsection (2)(a);
- 113 (iii) (A) the person is subject to a penalty under Subsection (2)(b); and
- 114 (B) the commission estimates an amount of tax due for that person in accordance with
- 115 Subsection 59-1-1406(2);
- 116 (iv) the person:
- 117 (A) is mailed a notice of deficiency; and
- 118 (B) within a 30-day period after the day on which the notice of deficiency described in
- 119 Subsection (3)(a)(iv)(A) is mailed:
- 120 (I) does not file a petition for redetermination or a request for agency action; and

- 121 (II) fails to pay the tax, fee, or charge due on a return;
- 122 (v) (A) the commission:
- 123 (I) issues an order constituting final agency action resulting from a timely filed petition
- 124 for redetermination or a timely filed request for agency action; or
- 125 (II) is considered to have denied a request for reconsideration under Subsection
- 126 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed
- 127 request for agency action; and
- 128 (B) the person fails to pay the tax, fee, or charge due on a return within a 30-day period
- 129 after the date the commission:
- 130 (I) issues the order constituting final agency action described in Subsection
- 131 (3)(a)(v)(A)(I); or
- 132 (II) is considered to have denied the request for reconsideration described in
- 133 Subsection (3)(a)(v)(A)(II); or
- 134 (vi) the person fails to pay the tax, fee, or charge within a 30-day period after the date
- 135 of a final judicial decision resulting from a timely filed petition for judicial review.
- 136 (b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:
- 137 (i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with
- 138 respect to an unactivated tax, fee, or charge:
- 139 (A) \$20; or
- 140 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or
- 141 (ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with
- 142 respect to an activated tax, fee, or charge, beginning on the activation date:
- 143 (A) \$20; or
- 144 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the activated
- 145 tax, fee, or charge due on the return is paid no later than five days after the due date for filing a
- 146 return described in Subsection (2)(a);
- 147 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the activated tax,
- 148 fee, or charge due on the return is paid more than five days after the due date for filing a return
- 149 described in Subsection (2)(a) but no later than 15 days after that due date; or
- 150 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the activated
- 151 tax, fee, or charge due on the return is paid more than 15 days after the due date for filing a

152 return described in Subsection (2)(a).

153 (4) (a) Beginning January 1, 1995, in the case of any underpayment of estimated tax or
154 quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104, there
155 shall be added a penalty in an amount determined by applying the interest rate provided under
156 Section 59-1-402 plus four percentage points to the amount of the underpayment for the period
157 of the underpayment.

158 (b) (i) For purposes of Subsection (4)(a), the amount of the underpayment shall be the
159 excess of the required installment over the amount, if any, of the installment paid on or before
160 the due date for the installment.

161 (ii) The period of the underpayment shall run from the due date for the installment to
162 whichever of the following dates is the earlier:

163 (A) the original due date of the tax return, without extensions, for the taxable year; or

164 (B) with respect to any portion of the underpayment, the date on which that portion is
165 paid.

166 (iii) For purposes of this Subsection (4), a payment of estimated tax shall be credited
167 against unpaid required installments in the order in which the installments are required to be
168 paid.

169 (5) (a) Notwithstanding Subsection (2) and except as provided in Subsection (6), a
170 person allowed by law an extension of time for filing a corporate franchise or income tax return
171 under Chapter 7, Corporate Franchise and Income Taxes, or an individual income tax return
172 under Chapter 10, Individual Income Tax Act, is subject to a penalty in the amount described in
173 Subsection (5)(b) if, on or before the day on which the return is due as provided by law, not
174 including the extension of time, the person fails to pay:

175 (i) for a person filing a corporate franchise or income tax return under Chapter 7,
176 Corporate Franchise and Income Taxes, the payment required by Subsection 59-7-507(1)(b); or

177 (ii) for a person filing an individual income tax return under Chapter 10, Individual
178 Income Tax Act, the payment required by Subsection 59-10-516(2).

179 (b) For purposes of Subsection (5)(a), the penalty per month during the period of the
180 extension of time for filing the return is an amount equal to 2% of the tax due on the return,
181 unpaid as of the day on which the return is due as provided by law.

182 (6) If a person does not file a return within an extension of time allowed by Section

183 59-7-505 or 59-10-516, the person:

184 (a) is not subject to a penalty in the amount described in Subsection (5)(b); and

185 (b) is subject to a penalty in an amount equal to the sum of:

186 (i) a late file penalty in an amount equal to the greater of:

187 (A) \$20; or

188 (B) 10% of the tax due on the return, unpaid as of the day on which the return is due as
189 provided by law, not including the extension of time; and

190 (ii) a late pay penalty in an amount equal to the greater of:

191 (A) \$20; or

192 (B) 10% of the unpaid tax due on the return, unpaid as of the day on which the return is
193 due as provided by law, not including the extension of time.

194 (7) (a) Additional penalties for an underpayment of a tax, fee, or charge are as provided
195 in this Subsection (7)(a).

196 (i) Except as provided in Subsection (7)(c), if any portion of an underpayment of a tax,
197 fee, or charge is due to negligence, the penalty is 10% of the portion of the underpayment that
198 is due to negligence.

199 (ii) Except as provided in Subsection (7)(d), if any portion of an underpayment of a
200 tax, fee, or charge is due to intentional disregard of law or rule, the penalty is 15% of the entire
201 underpayment.

202 (iii) If any portion of an underpayment is due to an intent to evade a tax, fee, or charge,
203 the penalty is the greater of \$500 per period or 50% of the entire underpayment.

204 (iv) If any portion of an underpayment is due to fraud with intent to evade a tax, fee, or
205 charge, the penalty is the greater of \$500 per period or 100% of the entire underpayment.

206 (b) If the commission determines that a person is liable for a penalty imposed under
207 Subsection (7)(a)(ii), (iii), or (iv), the commission shall notify the person of the proposed
208 penalty.

209 (i) The notice of proposed penalty shall:

210 (A) set forth the basis of the assessment; and

211 (B) be mailed by certified mail, postage prepaid, to the person's last-known address.

212 (ii) Upon receipt of the notice of proposed penalty, the person against whom the
213 penalty is proposed may:

214 (A) pay the amount of the proposed penalty at the place and time stated in the notice;

215 or

216 (B) proceed in accordance with the review procedures of Subsection (7)(b)(iii).

217 (iii) A person against whom a penalty is proposed in accordance with this Subsection
218 (7) may contest the proposed penalty by filing a petition for an adjudicative proceeding with
219 the commission.

220 (iv) (A) If the commission determines that a person is liable for a penalty under this
221 Subsection (7), the commission shall assess the penalty and give notice and demand for
222 payment.

223 (B) The commission shall mail the notice and demand for payment described in
224 Subsection (7)(b)(iv)(A):

225 (I) to the person's last-known address; and

226 (II) in accordance with Section 59-1-1404.

227 (c) A seller that voluntarily collects a tax under Subsection 59-12-107(2)[~~(d)~~](f) is not
228 subject to the penalty under Subsection (7)(a)(i) if on or after July 1, 2001:

229 (i) a court of competent jurisdiction issues a final unappealable judgment or order
230 determining that:

231 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
232 or is a seller required to pay or collect and remit sales and use taxes under Subsection
233 59-12-107(2)(b) or (2)(d); and

234 (B) the commission or a county, city, or town may require the seller to collect a tax
235 under Subsections 59-12-103(2)(a) through (d); or

236 (ii) the commission issues a final unappealable administrative order determining that:

237 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
238 or is a seller required to pay or collect and remit sales and use taxes under Subsection
239 59-12-107(2)(b) or (2)(d); and

240 (B) the commission or a county, city, or town may require the seller to collect a tax
241 under Subsections 59-12-103(2)(a) through (d).

242 (d) A seller that voluntarily collects a tax under Subsection 59-12-107(2)[~~(d)~~](f) is not
243 subject to the penalty under Subsection (7)(a)(ii) if:

244 (i) (A) a court of competent jurisdiction issues a final unappealable judgment or order

245 determining that:

246 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
247 or is a seller required to pay or collect and remit sales and use taxes under Subsection
248 59-12-107(2)(b) or (2)(d); and

249 (II) the commission or a county, city, or town may require the seller to collect a tax
250 under Subsections 59-12-103(2)(a) through (d); or

251 (B) the commission issues a final unappealable administrative order determining that:

252 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
253 or is a seller required to pay or collect and remit sales and use taxes under Subsection
254 59-12-107(2)(b) or (2)(d); and

255 (II) the commission or a county, city, or town may require the seller to collect a tax
256 under Subsections 59-12-103(2)(a) through (d); and

257 (ii) the seller's intentional disregard of law or rule is warranted by existing law or by a
258 nonfrivolous argument for the extension, modification, or reversal of existing law or the
259 establishment of new law.

260 (8) The penalty for failure to file an information return, information report, or a
261 complete supporting schedule is \$50 for each information return, information report, or
262 supporting schedule up to a maximum of \$1,000.

263 (9) If a person, in furtherance of a frivolous position, has a prima facie intent to delay
264 or impede administration of a law relating to a tax, fee, or charge and files a purported return
265 that fails to contain information from which the correctness of reported tax, fee, or charge
266 liability can be determined or that clearly indicates that the tax, fee, or charge liability shown is
267 substantially incorrect, the penalty is \$500.

268 (10) (a) A seller that fails to remit a tax, fee, or charge monthly as required by
269 Subsection 59-12-108(1)(a):

270 (i) is subject to a penalty described in Subsection (2); and

271 (ii) may not retain the percentage of sales and use taxes that would otherwise be
272 allowable under Subsection 59-12-108(2).

273 (b) A seller that fails to remit a tax, fee, or charge by electronic funds transfer as
274 required by Subsection 59-12-108(1)(a)(ii)(B):

275 (i) is subject to a penalty described in Subsection (2); and

276 (ii) may not retain the percentage of sales and use taxes that would otherwise be
277 allowable under Subsection 59-12-108(2).

278 (11) (a) A person is subject to the penalty provided in Subsection (11)(c) if that person:

279 (i) commits an act described in Subsection (11)(b) with respect to one or more of the
280 following documents:

281 (A) a return;

282 (B) an affidavit;

283 (C) a claim; or

284 (D) a document similar to Subsections (11)(a)(i)(A) through (C);

285 (ii) knows or has reason to believe that the document described in Subsection (11)(a)(i)
286 will be used in connection with any material matter administered by the commission; and

287 (iii) knows that the document described in Subsection (11)(a)(i), if used in connection
288 with any material matter administered by the commission, would result in an understatement of
289 another person's liability for a tax, fee, or charge.

290 (b) The following acts apply to Subsection (11)(a)(i):

291 (i) preparing any portion of a document described in Subsection (11)(a)(i);

292 (ii) presenting any portion of a document described in Subsection (11)(a)(i);

293 (iii) procuring any portion of a document described in Subsection (11)(a)(i);

294 (iv) advising in the preparation or presentation of any portion of a document described
295 in Subsection (11)(a)(i);

296 (v) aiding in the preparation or presentation of any portion of a document described in
297 Subsection (11)(a)(i);

298 (vi) assisting in the preparation or presentation of any portion of a document described
299 in Subsection (11)(a)(i); or

300 (vii) counseling in the preparation or presentation of any portion of a document
301 described in Subsection (11)(a)(i).

302 (c) For purposes of Subsection (11)(a), the penalty:

303 (i) shall be imposed by the commission;

304 (ii) is \$500 for each document described in Subsection (11)(a)(i) with respect to which
305 the person described in Subsection (11)(a) meets the requirements of Subsection (11)(a); and

306 (iii) is in addition to any other penalty provided by law.

307 (d) The commission may seek a court order to enjoin a person from engaging in
308 conduct that is subject to a penalty under this Subsection (11).

309 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
310 commission may make rules prescribing the documents that are similar to Subsections
311 (11)(a)(i)(A) through (C).

312 (12) (a) As provided in Section 76-8-1101, criminal offenses and penalties are as
313 provided in Subsections (12)(b) through (e).

314 (b) (i) A person who is required by this title or any laws the commission administers or
315 regulates to register with or obtain a license or permit from the commission, who operates
316 without having registered or secured a license or permit, or who operates when the registration,
317 license, or permit is expired or not current, is guilty of a class B misdemeanor.

318 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(b)(i), the
319 penalty may not:

320 (A) be less than \$500; or

321 (B) exceed \$1,000.

322 (c) (i) A person who, with intent to evade a tax, fee, or charge or requirement of this
323 title or any lawful requirement of the commission, fails to make, render, sign, or verify a return
324 or to supply information within the time required by law, or who makes, renders, signs, or
325 verifies a false or fraudulent return or statement, or who supplies false or fraudulent
326 information, is guilty of a third degree felony.

327 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(c)(i), the
328 penalty may not:

329 (A) be less than \$1,000; or

330 (B) exceed \$5,000.

331 (d) (i) A person who intentionally or willfully attempts to evade or defeat a tax, fee, or
332 charge or the payment of a tax, fee, or charge is, in addition to other penalties provided by law,
333 guilty of a second degree felony.

334 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(d)(i), the
335 penalty may not:

336 (A) be less than \$1,500; or

337 (B) exceed \$25,000.

338 (e) (i) A person is guilty of a second degree felony if that person commits an act:
339 (A) described in Subsection (12)(e)(ii) with respect to one or more of the following
340 documents:
341 (I) a return;
342 (II) an affidavit;
343 (III) a claim; or
344 (IV) a document similar to Subsections (12)(e)(i)(A)(I) through (III); and
345 (B) subject to Subsection (12)(e)(iii), with knowledge that the document described in
346 Subsection (12)(e)(i)(A):
347 (I) is false or fraudulent as to any material matter; and
348 (II) could be used in connection with any material matter administered by the
349 commission.
350 (ii) The following acts apply to Subsection (12)(e)(i):
351 (A) preparing any portion of a document described in Subsection (12)(e)(i)(A);
352 (B) presenting any portion of a document described in Subsection (12)(e)(i)(A);
353 (C) procuring any portion of a document described in Subsection (12)(e)(i)(A);
354 (D) advising in the preparation or presentation of any portion of a document described
355 in Subsection (12)(e)(i)(A);
356 (E) aiding in the preparation or presentation of any portion of a document described in
357 Subsection (12)(e)(i)(A);
358 (F) assisting in the preparation or presentation of any portion of a document described
359 in Subsection (12)(e)(i)(A); or
360 (G) counseling in the preparation or presentation of any portion of a document
361 described in Subsection (12)(e)(i)(A).
362 (iii) This Subsection (12)(e) applies:
363 (A) regardless of whether the person for which the document described in Subsection
364 (12)(e)(i)(A) is prepared or presented:
365 (I) knew of the falsity of the document described in Subsection (12)(e)(i)(A); or
366 (II) consented to the falsity of the document described in Subsection (12)(e)(i)(A); and
367 (B) in addition to any other penalty provided by law.
368 (iv) Notwithstanding Section 76-3-301, for purposes of this Subsection (12)(e), the

369 penalty may not:

370 (A) be less than \$1,500; or

371 (B) exceed \$25,000.

372 (v) The commission may seek a court order to enjoin a person from engaging in
373 conduct that is subject to a penalty under this Subsection (12)(e).

374 (vi) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
375 the commission may make rules prescribing the documents that are similar to Subsections
376 (12)(e)(i)(A)(I) through (III).

377 (f) The statute of limitations for prosecution for a violation of this Subsection (12) is
378 the later of six years:

379 (i) from the date the tax should have been remitted; or

380 (ii) after the day on which the person commits the criminal offense.

381 (13) Upon making a record of its actions, and upon reasonable cause shown, the
382 commission may waive, reduce, or compromise any of the penalties or interest imposed under
383 this part.

384 Section 2. Section **59-12-103.1** is amended to read:

385 **59-12-103.1. Action by Supreme Court of the United States authorizing or action**
386 **by Congress permitting a state to require certain sellers to collect a sales or use tax --**
387 **Collection of tax by commission -- Commission report to Revenue and Taxation Interim**
388 **Committee -- Revenue and Taxation Interim Committee study.**

389 (1) Except as provided in Section 59-12-107.1, a seller shall remit a tax to the
390 commission as provided in Section 59-12-107 if:

391 (a) the Supreme Court of the United States issues a decision authorizing a state to
392 require the following sellers to collect a sales or use tax:

393 (i) a seller that does not meet one or more of the criteria described in Subsection
394 59-12-107(2)(a); or

395 (ii) a seller that is not a seller required to pay or collect and remit sales and use taxes
396 under Subsection 59-12-107(2)(b) or (2)(d); or

397 (b) Congress permits the state to require the following sellers to collect a sales or use
398 tax:

399 (i) a seller that does not meet one or more of the criteria described in Subsection

400 59-12-107(2)(a); or
401 (ii) a seller that is not a seller required to pay or collect and remit sales and use taxes
402 under Subsection 59-12-107(2)(b) or (2)(d).
403 (2) The commission shall:
404 (a) collect the tax described in Subsection (1) from the seller:
405 (i) to the extent:
406 (A) authorized by the Supreme Court of the United States; or
407 (B) permitted by Congress; and
408 (ii) beginning on the first day of a calendar quarter as prescribed by the Revenue and
409 Taxation Interim Committee; and
410 (b) make a report to the Revenue and Taxation Interim Committee:
411 (i) regarding the actions taken by:
412 (A) the Supreme Court of the United States; or
413 (B) Congress; and
414 (ii) at the Revenue and Taxation Interim Committee meeting immediately following
415 the day on which the Supreme Court of the United States' or Congress' actions become
416 effective.
417 (3) The Revenue and Taxation Interim Committee shall after hearing the commission's
418 report under Subsection (2)(b):
419 (a) review the actions taken by:
420 (i) the Supreme Court of the United States; or
421 (ii) Congress;
422 (b) direct the commission regarding the day on which the commission is required to
423 collect the tax described in Subsection (1); and
424 (c) make recommendations to the Legislative Management Committee:
425 (i) regarding whether as a result of the Supreme Court of the United States' or
426 Congress' actions any provisions of this chapter should be amended or repealed; and
427 (ii) within a one-year period after the day on which the commission makes a report
428 under Subsection (2)(b).
429 Section 3. Section **59-12-107** is amended to read:
430 **59-12-107. Definitions -- Collection, remittance, and payment of tax by sellers or**

431 other persons -- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other
432 liability for collection -- Rulemaking authority -- Credits -- Treatment of bad debt --
433 Penalties and interest.

434 (1) As used in this section:

435 (a) (i) "Advertising" means:

436 (A) announcing tangible personal property, a service, or a product transferred
437 electronically for sale by graphic, pictorial, verbal, written, or other similar means; or

438 (B) employing purchased space or time in print or electronic media if that purchased
439 space or time is given to communicate an announcement of tangible personal property, a
440 service, or a product transferred electronically for sale.

441 (ii) "Advertising" includes online advertising.

442 (b) "Affiliate" means:

443 (i) a person that is a member of the same controlled group of corporations as a seller;

444 or

445 (ii) another entity that, regardless of how the entity is organized, bears the same
446 ownership relationship to a seller as a corporation that is a member of the same controlled
447 group of corporations.

448 (c) "Controlled group of corporations" is as defined in Section 1563(a), Internal
449 Revenue Code.

450 (d) "Online advertising" includes:

451 (i) email communication, generated as a result of generic algorithmic functions that are
452 anonymous and passive in nature;

453 (ii) an advertisement tied to an Internet search engine;

454 (iii) a banner advertisement;

455 (iv) a click-through advertisement;

456 (v) a cost-per-action advertisement;

457 (vi) a link to a seller's website; or

458 (vii) an online advertising service similar to Subsections (1)(d)(i) through (vi) as the
459 commission may define by rule made in accordance with Title 63G, Chapter 3, Utah
460 Administrative Rulemaking Act.

461 [~~(a)~~] (e) "Ownership" means direct ownership or indirect ownership through a parent,

462 subsidiary, or affiliate.

463 ~~[(b)]~~ (f) "Related seller" means a seller that:

464 (i) meets one or more of the criteria described in Subsection (2)(a)(i); and

465 (ii) delivers tangible personal property, a service, or a product transferred electronically

466 that is sold:

467 (A) by a seller that does not meet one or more of the criteria described in Subsection

468 (2)(a)(i); and

469 (B) to a purchaser in the state.

470 (g) (i) "Solicit" means to communicate directly or indirectly to a specific person within

471 the state in a manner that is intended to and calculated to incite the person to purchase tangible

472 personal property, a service, or a product transferred electronically from a specific seller.

473 (ii) "Solicit" does not include online advertising.

474 ~~[(e)]~~ (h) "Substantial ownership interest" means an ownership interest in a business

475 entity if that ownership interest is greater than the degree of ownership of equity interest

476 specified in 15 U.S.C. Sec. 78p, with respect to a person other than a director or an officer.

477 (2) (a) Except as provided in Subsection (2)~~[(e)]~~(h), Section 59-12-107.1, or Section

478 59-12-123, and subject to Subsection (2)~~[(f)]~~(i), each seller shall pay or collect and remit the

479 sales and use taxes imposed by this chapter if within this state the seller:

480 (i) has or utilizes:

481 (A) an office;

482 (B) a distribution house;

483 (C) a sales house;

484 (D) a warehouse;

485 (E) a service enterprise; or

486 (F) a place of business similar to Subsections (2)(a)(i)(A) through (E);

487 (ii) maintains a stock of goods;

488 (iii) regularly solicits orders, regardless of whether or not the orders are accepted in the

489 state, unless the seller's only activity in the state is:

490 (A) advertising; or

491 (B) ~~[solicitation]~~ to solicit by:

492 (I) direct mail;

- 493 (II) electronic mail;
- 494 (III) except as provided in Subsection (2)(d), the Internet;
- 495 (IV) telecommunications service; or
- 496 (V) a means similar to Subsection (2)(a)(iii)(A) or (B);
- 497 (iv) regularly engages in the delivery of property in the state other than by:
- 498 (A) common carrier; or
- 499 (B) United States mail; or
- 500 (v) regularly engages in an activity directly related to the leasing or servicing of
- 501 property located within the state.

502 (b) [~~A~~] There is a rebuttable presumption that a seller is considered to be engaged in

503 the business of selling tangible personal property, a service, or a product transferred

504 electronically for use in the state, and shall pay or collect and remit the sales and use taxes

505 imposed by this chapter if:

- 506 (i) the seller;
- 507 (A) holds a substantial ownership interest in[~~;~~or] a related seller;
- 508 (B) is owned in whole or in substantial part by, a related seller; [~~and~~] or
- 509 (C) is an affiliate of a seller who meets one or more of the criteria described in
- 510 Subsection (2)(a); and
- 511 (ii) (A) the seller sells the same or a substantially similar line of products as the related
- 512 seller and does so under the same or a substantially similar business name; [~~or~~]
- 513 (B) the place of business described in Subsection (2)(a)(i) of the related seller or an
- 514 in-state employee of the related seller is used to advertise, promote, or facilitate sales by the
- 515 seller to a purchaser[~~;~~];
- 516 (C) the place of business described in Subsection (2)(a)(i) of the related seller or an
- 517 in-state employee of the related seller is used to deliver tangible personal property, a service, or
- 518 a product transferred electronically by the seller to a purchaser;
- 519 (D) a related seller delivers, installs, assembles, or performs maintenance services for
- 520 the seller's purchasers within the state;
- 521 (E) a related seller facilitates the seller's delivery of tangible personal property to a
- 522 purchaser in the state by allowing the purchaser to pick up the tangible personal property sold
- 523 by the seller at a location described in Subsection (2)(a)(i) that is maintained by the related

524 seller; or

525 (F) a related seller conducts another activity in the state that is significantly associated
526 with the seller's ability to establish and maintain a market in the state for the seller's sales of
527 tangible personal property, a service, or a product transferred electronically.

528 (c) For purposes of Subsection (2)(b), a presumption may be rebutted by demonstrating
529 that the activities in this state of an affiliate or a related seller are not significantly associated
530 with the seller's ability to establish and maintain a market in the state for the seller's sales of
531 tangible personal property, a service, or a product transferred electronically.

532 (d) (i) Subject to the other provisions of this Subsection (2)(d), there is a rebuttable
533 presumption that a seller is engaged in the business of selling tangible personal property, a
534 service, or a product transferred electronically in the state if:

535 (A) the seller enters into an agreement with another person in this state, for a
536 commission or other consideration, to refer a potential purchaser of the tangible personal
537 property, service, or product transferred electronically to the seller in a manner described in
538 Subsection (2)(d)(ii);

539 (B) the total taxable sales from all of the seller's sales of tangible personal property,
540 services, and products transferred electronically, for the preceding 12 months, to purchasers in
541 the state that are referred in accordance with an agreement described in Subsection (2)(d)(i)(A),
542 exceeds \$10,000; and

543 (C) the seller's total taxable sales of tangible personal property, services, and products
544 transferred electronically, for the preceding 12 months, to purchasers in the state, exceed
545 \$125,000.

546 (ii) For purposes of Subsection (2)(d)(i), a referral:

547 (A) includes a referral made by an Internet-based link, an Internet website, or other
548 similar means; and

549 (B) does not include online advertising.

550 (iii) For purposes of Subsection (2)(d)(i), an agreement described in Subsection
551 (2)(d)(i) does not include an agreement under which a seller purchases advertising from a
552 person in the state, unless the person who enters into the agreement with the seller also solicits
553 one or more potential customers in the state as described in Subsection (2)(d)(iv).

554 (iv) For purposes of Subsection (2)(d)(iii), a person is considered to solicit one or more

555 potential customers in the state if:

556 (A) the person directs the solicitation at a resident of the state;

557 (B) the solicitation originates from within the state; and

558 (C) the solicitation is made by a person in the state.

559 (v) For purposes of Subsection (2)(d)(i), a presumption may be rebutted by proving as
560 provided in Subsection (2)(d)(vi) that a person with whom a seller has entered into an
561 agreement has not engaged in an activity within the state that is significantly associated with
562 the seller's ability to establish and maintain a market in the state, within the preceding 12
563 months, for the seller's sales of tangible personal property, a service, or a product transferred
564 electronically.

565 (vi) For purposes of Subsection (2)(d)(v), proof may be made by obtaining written
566 sworn statements, made in good faith, from all of the persons with whom the seller has entered
567 into an agreement, stating that the persons have not engaged in an activity within the state that
568 is significantly associated with the seller's ability to establish and maintain a market in the
569 state, within the preceding 12 months, for the seller's sales of tangible personal property, a
570 service, or a product transferred electronically.

571 (e) The use of a computer located in this state by a seller to create, maintain, or take an
572 order through a web page, website, Internet post, Internet listing, or online marketplace may not
573 be considered as a factor in determining whether the seller is required to pay or collect and
574 remit sales and use taxes under this Subsection (2), unless the seller owns or leases the
575 computer.

576 ~~[(e)]~~ (f) A seller that does not meet one or more of the criteria provided for in
577 Subsection (2)(a) or is not a seller required to pay or collect and remit sales and use taxes under
578 Subsection (2)(b) or (2)(d):

579 (i) except as provided in Subsection (2)~~[(e)]~~(f)(ii), may voluntarily:

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

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

582 (ii) ~~[notwithstanding Subsection (2)(e)(i),]~~ shall collect a tax on a transaction described
583 in Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to collect the tax.

584 ~~[(d)]~~ (g) The collection and remittance of a tax under this chapter by a seller that is
585 registered under the agreement may not be used as a factor in determining whether that seller is

586 required by Subsection (2) to:

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

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

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

590 (C) Section 19-6-714;

591 (D) Section 19-6-805;

592 (E) Section 69-2-5;

593 (F) Section 69-2-5.5;

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

595 (H) this title; or

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

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

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

599 (C) Section 19-6-714;

600 (D) Section 19-6-805;

601 (E) Section 69-2-5;

602 (F) Section 69-2-5.5;

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

604 (H) this title.

605 [~~(e)~~] (h) A person shall pay a use tax imposed by this chapter on a transaction

606 described in Subsection 59-12-103(1) if:

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

608 (ii) the person:

609 (A) stores the tangible personal property or product transferred electronically in the

610 state;

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

612 or

613 (C) consumes the tangible personal property or product transferred electronically in the

614 state.

615 [~~(f)~~] (i) The ownership of property that is located at the premises of a printer's facility

616 with which the retailer has contracted for printing and that consists of the final printed product,

617 property that becomes a part of the final printed product, or copy from which the printed
618 product is produced, shall not result in the retailer being considered to have or maintain an
619 office, distribution house, sales house, warehouse, service enterprise, or other place of
620 business, or to maintain a stock of goods, within this state.

621 (3) (a) Except as provided in Section 59-12-107.1, a tax under this chapter shall be
622 collected from a purchaser.

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

625 (c) (i) Each seller shall:

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

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

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

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

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

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

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

646 (h) (i) For a purchase paid with specie legal tender as defined in Section 59-1-1501.1,
647 and until such time as the commission accepts specie legal tender for the payment of a tax

648 under this chapter, if the commission requires a seller to remit a tax under this chapter in legal
649 tender other than specie legal tender, the seller shall state on the seller's books and records and
650 on an invoice, bill of sale, or similar document provided to the purchaser:

651 (A) the purchase price in specie legal tender and in the legal tender the seller is
652 required to remit to the commission;

653 (B) subject to Subsection (3)(h)(ii), the amount of tax due under this chapter in specie
654 legal tender and in the legal tender the seller is required to remit to the commission;

655 (C) the tax rate under this chapter applicable to the purchase; and

656 (D) the date of the purchase.

657 (ii) (A) Subject to Subsection (3)(h)(ii)(B), for purposes of determining the amount of
658 tax due under Subsection (3)(h)(i), a seller shall use the most recent London fixing price for the
659 specie legal tender the purchaser paid.

660 (B) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
661 commission may make rules for determining the amount of tax due under Subsection (3)(h)(i)
662 if the London fixing price is not available for a particular day.

663 (4) (a) Except as provided in Subsections (5) through (7) and Section 59-12-108, the
664 sales or use tax imposed by this chapter is due and payable to the commission quarterly on or
665 before the last day of the month next succeeding each calendar quarterly period.

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

668 (ii) The seller shall remit with the return under Subsection (4)(b)(i) the amount of the
669 tax required under this chapter to be collected or paid for the period covered by the return.

670 (c) Except as provided in Subsection (5)(c), a return shall contain information and be in
671 a form the commission prescribes by rule.

672 (d) (i) Subject to Subsection (4)(d)(ii), the sales tax as computed in the return shall be
673 based on the total nonexempt sales made during the period for which the return is filed,
674 including both cash and charge sales.

675 (ii) For a sale that includes the delivery or installation of tangible personal property at a
676 location other than a seller's place of business described in Subsection (2)(a)(i), if the delivery
677 or installation is separately stated on an invoice or receipt, a seller may compute the tax due on
678 the sale for purposes of Subsection (4)(d)(i) based on the amount the seller receives for that

679 sale during each period for which the seller receives payment for the sale.

680 (e) (i) The use tax as computed in the return shall be based on the total amount of
681 purchases for storage, use, or other consumption in this state made during the period for which
682 the return is filed, including both cash and charge purchases.

683 (ii) (A) As used in this Subsection (4)(e)(ii), "qualifying purchaser" means a purchaser
684 who is required to remit taxes under this chapter, but is not required to remit taxes monthly in
685 accordance with Section 59-12-108, and who converts tangible personal property into real
686 property.

687 (B) Subject to Subsections (4)(e)(ii)(C) and (D), a qualifying purchaser may remit the
688 taxes due under this chapter on tangible personal property for which the qualifying purchaser
689 claims an exemption as allowed under Subsection 59-12-104(23) or (25) based on the period in
690 which the qualifying purchaser receives payment, in accordance with Subsection (4)(e)(ii)(C),
691 for the conversion of the tangible personal property into real property.

692 (C) A qualifying purchaser remitting taxes due under this chapter in accordance with
693 Subsection (4)(e)(ii)(B) shall remit an amount equal to the total amount of tax due on the
694 qualifying purchaser's purchase of the tangible personal property that was converted into real
695 property multiplied by a fraction, the numerator of which is the payment received in the period
696 for the qualifying purchaser's sale of the tangible personal property that was converted into real
697 property and the denominator of which is the entire sales price for the qualifying purchaser's
698 sale of the tangible personal property that was converted into real property.

699 (D) A qualifying purchaser may remit taxes due under this chapter in accordance with
700 this Subsection (4)(e)(ii) only if the books and records that the qualifying purchaser keeps in
701 the qualifying purchaser's regular course of business identify by reasonable and verifiable
702 standards that the tangible personal property was converted into real property.

703 (f) (i) Subject to Subsection (4)(f)(ii) and in accordance with Title 63G, Chapter 3,
704 Utah Administrative Rulemaking Act, the commission may by rule extend the time for making
705 returns and paying the taxes.

706 (ii) An extension under Subsection (4)(f)(i) may not be for more than 90 days.

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

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

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

714 (A) the information required to be included in the additional electronic report described
715 in Subsection (4)(h)(i); and

716 (B) one or more due dates for filing the additional electronic report described in
717 Subsection (4)(h)(i).

718 (5) (a) As used in this Subsection (5) and Subsection (6)(b), "remote seller" means a
719 seller that is:

- 720 (i) registered under the agreement;
- 721 (ii) described in Subsection (2)~~(f)~~(f); and
- 722 (iii) not a:

- 723 (A) model 1 seller;
- 724 (B) model 2 seller; or
- 725 (C) model 3 seller.

726 (b) (i) Except as provided in Subsection (5)(b)(ii), a tax a remote seller collects in
727 accordance with Subsection (2)~~(f)~~(f) is due and payable:

- 728 (A) to the commission;
- 729 (B) annually; and
- 730 (C) on or before the last day of the month immediately following the last day of each
731 calendar year.

732 (ii) The commission may require that a tax a remote seller collects in accordance with
733 Subsection (2)~~(f)~~(f) be due and payable:

- 734 (A) to the commission; and
- 735 (B) on the last day of the month immediately following any month in which the seller
736 accumulates a total of at least \$1,000 in agreement sales and use tax.

737 (c) (i) If a remote seller remits a tax to the commission in accordance with Subsection
738 (5)(b), the remote seller shall file a return:

- 739 (A) with the commission;
- 740 (B) with respect to the tax;

- 741 (C) containing information prescribed by the commission; and
742 (D) on a form prescribed by the commission.
- 743 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
744 commission shall make rules prescribing:
- 745 (A) the information required to be contained in a return described in Subsection
746 (5)(c)(i); and
- 747 (B) the form described in Subsection (5)(c)(i)(D).
- 748 (d) A tax a remote seller collects in accordance with this Subsection (5) shall be
749 calculated on the basis of the total amount of taxable transactions under Subsection
750 59-12-103(1) the remote seller completes, including:
- 751 (i) a cash transaction; and
752 (ii) a charge transaction.
- 753 (6) (a) Except as provided in Subsection (6)(b), a tax a seller that files a simplified
754 electronic return collects in accordance with this chapter is due and payable:
- 755 (i) monthly on or before the last day of the month immediately following the month for
756 which the seller collects a tax under this chapter; and
757 (ii) for the month for which the seller collects a tax under this chapter.
- 758 (b) A tax a remote seller that files a simplified electronic return collects in accordance
759 with this chapter is due and payable as provided in Subsection (5).
- 760 (7) (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the
761 purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to
762 titling or registration under the laws of this state.
- 763 (b) The commission shall collect the tax described in Subsection (7)(a) when the
764 vehicle is titled or registered.
- 765 (8) If any sale of tangible personal property or any other taxable transaction under
766 Subsection 59-12-103(1), is made by a wholesaler to a retailer, the wholesaler is not
767 responsible for the collection or payment of the tax imposed on the sale and the retailer is
768 responsible for the collection or payment of the tax imposed on the sale if:
- 769 (a) the retailer represents that the personal property is purchased by the retailer for
770 resale; and
771 (b) the personal property is not subsequently resold.

772 (9) If any sale of property or service subject to the tax is made to a person prepaying
773 sales or use tax in accordance with Title 63M, Chapter 5, Resource Development Act, or to a
774 contractor or subcontractor of that person, the person to whom such payment or consideration
775 is payable is not responsible for the collection or payment of the sales or use tax and the person
776 prepaying the sales or use tax is responsible for the collection or payment of the sales or use tax
777 if the person prepaying the sales or use tax represents that the amount prepaid as sales or use
778 tax has not been fully credited against sales or use tax due and payable under the rules
779 promulgated by the commission.

780 (10) (a) For purposes of this Subsection (10):

781 (i) Except as provided in Subsection (10)(a)(ii), "bad debt" is as defined in Section
782 166, Internal Revenue Code.

783 (ii) Notwithstanding Subsection (10)(a)(i), "bad debt" does not include:

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

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

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

788 (B) a financing charge;

789 (C) interest;

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

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

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

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

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

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

798 (b) (i) To the extent an amount remitted in accordance with Subsection (4)(d) later
799 becomes bad debt, a seller may deduct the bad debt from the total amount from which a tax
800 under this chapter is calculated on a return.

801 (ii) A qualifying purchaser, as defined in Subsection (4)(e)(ii)(A), may deduct from the
802 total amount of taxes due under this chapter the amount of tax the qualifying purchaser paid on

803 the qualifying purchaser's purchase of tangible personal property converted into real property to
804 the extent that:

805 (A) tax was remitted in accordance with Subsection (4)(e) on that tangible personal
806 property converted into real property;

807 (B) the qualifying purchaser's sale of that tangible personal property converted into real
808 property later becomes bad debt; and

809 (C) the books and records that the qualifying purchaser keeps in the qualifying
810 purchaser's regular course of business identify by reasonable and verifiable standards that the
811 tangible personal property was converted into real property.

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

813 (i) the amount of bad debt for the time period described in Subsection (10)(e) exceeds
814 the amount of the seller's sales that are subject to a tax under this chapter for that same time
815 period; and

816 (ii) as provided in Section 59-1-1410.

817 (d) A bad debt deduction under this section may not include interest.

818 (e) A bad debt may be deducted under this Subsection (10) on a return for the time
819 period during which the bad debt:

820 (i) is written off as uncollectible in the seller's books and records; and

821 (ii) would be eligible for a bad debt deduction:

822 (A) for federal income tax purposes; and

823 (B) if the seller were required to file a federal income tax return.

824 (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or
825 claims a refund under this Subsection (10), the seller shall report and remit a tax under this
826 chapter:

827 (i) on the portion of the bad debt the seller recovers; and

828 (ii) on a return filed for the time period for which the portion of the bad debt is
829 recovered.

830 (g) For purposes of reporting a recovery of a portion of bad debt under Subsection
831 (10)(f), a seller shall apply amounts received on the bad debt in the following order:

832 (i) in a proportional amount:

833 (A) to the purchase price of the tangible personal property, product transferred

834 electronically, or service; and

835 (B) to the tax due under this chapter on the tangible personal property, product

836 transferred electronically, or service; and

837 (ii) to:

838 (A) interest charges;

839 (B) service charges; and

840 (C) other charges.

841 (h) A seller's certified service provider may make a deduction or claim a refund for bad

842 debt on behalf of the seller:

843 (i) in accordance with this Subsection (10); and

844 (ii) if the certified service provider credits or refunds the entire amount of the bad debt

845 deduction or refund to the seller.

846 (i) A seller may allocate bad debt among the states that are members of the agreement

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

848 (11) (a) A seller may not, with intent to evade any tax, fail to timely remit the full

849 amount of tax required by this chapter.

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

851 (c) Each person who fails to pay any tax to the state or any amount of tax required to be

852 paid to the state, except amounts determined to be due by the commission under Chapter 1,

853 Part 14, Assessment, Collections, and Refunds Act, or Section 59-12-111, within the time

854 required by this chapter, or who fails to file any return as required by this chapter, shall pay, in

855 addition to the tax, penalties and interest as provided in Sections 59-1-401 and 59-1-402.

856 (d) For purposes of prosecution under this section, each quarterly tax period in which a

857 seller, with intent to evade any tax, collects a tax and fails to timely remit the full amount of the

858 tax required to be remitted, constitutes a separate offense.

859 Section 4. Section **59-12-211** is amended to read:

860 **59-12-211. Definitions -- Location of certain transactions -- Reports to**

861 **commission -- Direct payment provision for a seller making certain purchases --**

862 **Exceptions.**

863 (1) As used in this section:

864 (a) (i) "Receipt" and "receive" mean:

- 865 (A) taking possession of tangible personal property;
- 866 (B) making first use of a service; or
- 867 (C) for a product transferred electronically, the earlier of:
 - 868 (I) taking possession of the product transferred electronically; or
 - 869 (II) making first use of the product transferred electronically.
- 870 (ii) "Receipt" and "receive" do not include possession by a shipping company on behalf
871 of a purchaser.
- 872 (b) "Transportation equipment" means:
 - 873 (i) a locomotive or rail car that is used to carry a person or property in interstate
874 commerce;
 - 875 (ii) a truck or truck-tractor:
 - 876 (A) with a gross vehicle weight rating of 10,001 pounds or more;
 - 877 (B) registered under Section 41-1a-301; and
 - 878 (C) operated under the authority of a carrier authorized and certificated:
 - 879 (I) by the United States Department of Transportation or another federal authority; and
 - 880 (II) to engage in carrying a person or property in interstate commerce;
 - 881 (iii) a trailer, semitrailer, or passenger bus that is:
 - 882 (A) registered under Section 41-1a-301; and
 - 883 (B) operated under the authority of a carrier authorized and certificated:
 - 884 (I) by the United States Department of Transportation or another federal authority; and
 - 885 (II) to engage in carrying a person or property in interstate commerce;
 - 886 (iv) an aircraft that is operated by an air carrier authorized and certificated:
 - 887 (A) by the United States Department of Transportation or another federal or foreign
888 authority; and
 - 889 (B) to engage in carrying a person or property in interstate commerce; or
 - 890 (v) a container designed for use on, or a component part attached or secured on, an
891 item of equipment listed in Subsections (1)(b)(i) through (iv).
 - 892 (2) Except as provided in Subsections (8) and (14), if tangible personal property, a
893 product transferred electronically, or a service that is subject to taxation under this chapter is
894 received by a purchaser at a business location of a seller, the location of the transaction is the
895 business location of the seller.

896 (3) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
897 and (14), if tangible personal property, a product transferred electronically, or a service that is
898 subject to taxation under this chapter is not received by a purchaser at a business location of a
899 seller, the location of the transaction is the location where the purchaser takes receipt of the
900 tangible personal property or service.

901 (4) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
902 and (14), if Subsection (2) or (3) does not apply, the location of the transaction is the location
903 indicated by an address for or other information on the purchaser if:

- 904 (a) the address or other information is available from the seller's business records; and
- 905 (b) use of the address or other information from the seller's records does not constitute
906 bad faith.

907 (5) (a) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9),
908 (11), and (14), if Subsection (2), (3), or (4) does not apply, the location of the transaction is the
909 location indicated by an address for the purchaser if:

- 910 (i) the address is obtained during the consummation of the transaction; and
- 911 (ii) use of the address described in Subsection (5)(a)(i) does not constitute bad faith.
- 912 (b) An address used under Subsection (5)(a) includes the address of a purchaser's
913 payment instrument if no other address is available.

914 (6) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
915 and (14), if Subsection (2), (3), (4), or (5) does not apply or if a seller does not have sufficient
916 information to apply Subsection (2), (3), (4), or (5), the location of the transaction is the
917 location:

- 918 (a) indicated by the address from which:
 - 919 (i) except as provided in Subsection (6)(a)(ii), for tangible personal property that is
920 subject to taxation under this chapter, the tangible personal property is shipped;
 - 921 (ii) for computer software delivered electronically or for a product transferred
922 electronically that is subject to taxation under this chapter, the computer software or product
923 transferred electronically is first available for transmission by the seller; or
 - 924 (iii) for a service that is subject to taxation under this chapter, the service is provided;
- 925 or
- 926 (b) as determined by the seller with respect to a prepaid wireless calling service:

- 927 (i) provided in Subsection (6)(a)(iii); or
- 928 (ii) associated with the mobile telephone number.
- 929 (7) (a) For purposes of this Subsection (7), "shared ZIP Code" means a nine-digit ZIP
- 930 Code that is located within two or more local taxing jurisdictions.
- 931 (b) If the location of a transaction determined under Subsections (3) through (6) is in a
- 932 shared ZIP Code, the location of the transaction is:
- 933 (i) if there is only one local taxing jurisdiction that imposes the lowest agreement
- 934 combined tax rate for the shared ZIP Code, the local taxing jurisdiction that imposes the lowest
- 935 agreement combined tax rate; or
- 936 (ii) if two or more local taxing jurisdictions impose the lowest agreement combined tax
- 937 rate for the shared ZIP Code, the local taxing jurisdiction that:
- 938 (A) imposes the lowest agreement combined tax rate for the shared ZIP Code; and
- 939 (B) has located within the local taxing jurisdiction the largest number of street
- 940 addresses within the shared ZIP Code.
- 941 (c) Notwithstanding any provision under this chapter authorizing or requiring the
- 942 imposition of a sales and use tax, for purposes of Subsection (7)(b), a seller shall collect a sales
- 943 and use tax imposed under this chapter at the lowest agreement combined tax rate imposed
- 944 within the local taxing jurisdiction in which the transaction is located under Subsection (7)(b).
- 945 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 946 commission may make rules:
- 947 (i) providing for the circumstances under which a seller has exercised due diligence in
- 948 determining the nine-digit ZIP Code for an address; or
- 949 (ii) notwithstanding Subsection (7)(b), for determining the local taxing jurisdiction
- 950 within which a transaction is located if a seller is unable to determine the local taxing
- 951 jurisdiction within which the transaction is located under Subsection (7)(b).
- 952 (8) The location of a transaction made with a direct payment permit described in
- 953 Section 59-12-107.1 is the location where receipt of the tangible personal property, product, or
- 954 service by the purchaser occurs.
- 955 (9) The location of a purchase of direct mail is the location determined in accordance
- 956 with Section 59-12-123.
- 957 (10) (a) Except as provided in Subsection (10)(b), the location of a transaction

958 determined under Subsections (3) through (6), (8), or (9), is the local taxing jurisdiction within
959 which:

960 (i) the nine-digit ZIP Code assigned to the location determined under Subsections (3)
961 through (6), (8), or (9) is located; or

962 (ii) the five-digit ZIP Code assigned to the location determined under Subsections (3)
963 through (6), (8), or (9) is located if:

964 (A) a nine-digit ZIP Code is not available for the location determined under
965 Subsections (3) through (6), (8), or (9); or

966 (B) after exercising due diligence, a seller or certified service provider is unable to
967 determine a nine-digit ZIP Code for the location determined under Subsections (3) through (6),
968 (8), or (9).

969 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
970 commission may make rules for determining the local taxing jurisdiction within which a
971 transaction is located if a seller or certified service provider is unable to determine the local
972 taxing jurisdiction within which the transaction is located under Subsection (10)(a).

973 (11) (a) As used in this Subsection (11), "florist delivery transaction" means a
974 transaction commenced by a florist that transmits an order:

975 (i) by:

976 (A) telegraph;

977 (B) telephone; or

978 (C) a means of communication similar to Subsection (11)(a)(i)(A) or (B); and

979 (ii) for delivery to another place:

980 (A) in this state; or

981 (B) outside this state.

982 (b) Notwithstanding Subsections (3) through (6), beginning on January 1, 2009, and
983 ending on December 31, 2009, the location of a florist delivery transaction is the business
984 location of the florist that commences the florist delivery transaction.

985 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
986 commission may by rule:

987 (i) define:

988 (A) "business location"; and

- 989 (B) "florist";
- 990 (ii) define what constitutes a means of communication similar to Subsection
- 991 (11)(a)(i)(A) or (B); and
- 992 (iii) provide procedures for determining when a transaction is commenced.
- 993 (12) (a) Notwithstanding any other provision of this section and except as provided in
- 994 Subsection (12)(b), if a purchaser uses computer software and there is not a transfer of a copy
- 995 of that software to the purchaser, the location of the transaction is determined in accordance
- 996 with Subsections (4) and (5).
- 997 (b) If a purchaser uses computer software described in Subsection (12)(a) at more than
- 998 one location, the location of the transaction shall be determined in accordance with rules made
- 999 by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
- 1000 Act.
- 1001 (13) (a) A tax collected under this chapter shall be reported to the commission on a
- 1002 form that identifies the location of each transaction that occurs during the return filing period.
- 1003 (b) The form described in Subsection (13)(a) shall be filed with the commission as
- 1004 required under this chapter.
- 1005 (14) This section does not apply to:
- 1006 (a) amounts charged by a seller for:
- 1007 (i) telecommunications service except for a prepaid calling service or a prepaid
- 1008 wireless calling service as provided in Subsection (6)(b) or Section 59-12-215; or
- 1009 (ii) the retail sale or transfer of:
- 1010 (A) a motor vehicle other than a motor vehicle that is transportation equipment;
- 1011 (B) an aircraft other than an aircraft that is transportation equipment;
- 1012 (C) a watercraft;
- 1013 (D) a modular home;
- 1014 (E) a manufactured home; or
- 1015 (F) a mobile home; or
- 1016 (iii) except as provided in Section 59-12-214, the lease or rental of tangible personal
- 1017 property other than tangible personal property that is transportation equipment;
- 1018 (b) a tax a person pays in accordance with Subsection 59-12-107(2)[~~(e)~~](h); or
- 1019 (c) a retail sale of tangible personal property or a product transferred electronically if:

1020 (i) the seller receives the order for the tangible personal property or product transferred
1021 electronically in this state;

1022 (ii) receipt of the tangible personal property or product transferred electronically by the
1023 purchaser or the purchaser's donee occurs in this state;

1024 (iii) the location where receipt of the tangible personal property or product transferred
1025 electronically by the purchaser occurs is determined in accordance with Subsections (3)
1026 through (5); and

1027 (iv) at the time the seller receives the order, the record keeping system that the seller
1028 uses to calculate the proper amount of tax imposed under this chapter captures the location
1029 where the order is received.

1030 Section 5. Section **59-12-211.1** is amended to read:

1031 **59-12-211.1. Location of a transaction that is subject to a use tax.**

1032 (1) Subject to Subsection (2), a person that is required by Subsection
1033 59-12-107(2)~~(e)~~(h) to pay a use tax on a transaction shall report the location of that
1034 transaction at the person's location.

1035 (2) For purposes of Subsection (1), if a person has more than one location in this state,
1036 the person shall report the location of the transaction at the location at which tangible personal
1037 property, a product transferred electronically, or a service is received.

1038 Section 6. **Effective date.**

1039 This bill takes effect on July 1, 2013.

Legislative Review Note

as of 2-21-13 3:05 PM

As required by legislative rules and practice, the Office of Legislative Research and General Counsel provides the following legislative review note to assist the Legislature in making its own determination as to the constitutionality of the bill. The note is based on an analysis of relevant state and federal constitutional law as applied to the bill. The note is not written for the purpose of influencing whether the bill should become law, but is written to provide information relevant to legislators' consideration of this bill. The note is not a substitute for the judgment of the judiciary, which has authority to determine the constitutionality of a law in the context of a specific case.

This bill creates a rebuttable presumption that certain sellers who do not have a physical

presence in the state, such as a business location in the state, are required to pay or collect and remit state and local sales and use taxes if those sellers have business relationships with a seller who does have a physical presence in the state. These relationships include sellers who are members of the same controlled group of corporations, if the in-state seller performs certain functions for the out-of-state seller, such as functions related to delivery, installation, assembly, or maintenance, or conducting another activity that is significantly associated with the out-of-state seller's ability to establish and maintain a market in the state. The bill creates an additional rebuttable presumption that a seller is engaged in the business of selling tangible personal property, a service, or a product transferred electronically in the state, and is therefore required to pay or collect and remit state and local sales and use taxes, if the seller enters into certain agreements with a person in the state to refer potential purchasers to the seller, so long as the seller meets certain sales thresholds within the state.

Because this bill imposes obligations on out-of-state sellers who do not have a physical presence in Utah, the bill raises issues under the Commerce Clause of the United States Constitution. The Constitution of the United States grants Congress the authority to "regulate Commerce with foreign Nations, and among the several States." *U.S. Const.* art. I, § 8, cl. 3. Case law has interpreted the Commerce Clause as having a dormant aspect, which "prohibits certain state actions that interfere with interstate commerce." *Quill Corp. v. North Dakota By and Through Heitkamp*, 504 U.S. 298, 309 (1992) (quoting *South Carolina State Highway Dept. v. Barnwell Brothers, Inc.*, 303 U.S. 177, 185 (1938)).

In evaluating a state statute under a dormant Commerce Clause challenge, the Supreme Court of the United States has held that a state may not require an out-of-state seller to collect and remit a use tax unless the seller has "substantial nexus" with the taxing state. *Quill*, 504 U.S. at 311. The Court has found that "a vendor whose only contacts with the taxing State are by mail or common carrier lacks the 'substantial nexus' required by the Commerce Clause." The *Quill* case thus established a bright-line rule that some physical presence is required in a state before the state may impose sales and use tax collection obligations on a seller. *Quill*, 504 U.S. at 315 ("[w]hether or not a State may compel a vendor to collect a sales or use tax may turn on the presence in the taxing State of a small sales force, plant, or office.") In *Scripto v. Carson*, the Supreme Court of the United States found that independent contractors soliciting business within a state was sufficient presence for the state to impose use tax collection duties. *Scripto v. Carson*, 362 U.S. 207, 211 (1960).

This bill raises the issue of the application of the *Quill* case and its "substantial nexus" standard to an area of rapidly changing, evolving technology. Cases are currently moving through the courts that provide the courts with an opportunity to more clearly define and articulate the legal contours of what constitutes "substantial nexus" with a taxing state. It is impossible to predict the outcome of these cases and what changes, if any, they might have on the standards set forth in *Quill*. In addition, the Court in *Quill* noted that this issue is "one that Congress may be better qualified to resolve" and also "has the ultimate power to resolve." *Quill*, 504 U.S. at 318. Thus, it is also possible that Congress may act on this interstate commerce issue.

However, because current dormant Commerce Clause case law under *Quill* requires physical presence to satisfy "substantial nexus," there is a high probability that if challenged, a court

would hold that the factors that establish nexus under this bill fall short of the physical presence required under *Quill*.

Office of Legislative Research and General Counsel