

**Representative Mike K. McKell** proposes the following substitute bill:

**REMOTE TRANSACTIONS PARITY ACT**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Mike K. McKell**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill amends provisions related to sales and use taxes.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ addresses the state sales and use tax rates;
- ▶ addresses the circumstances under which a person may be required to collect and remit sales and use taxes to the State Tax Commission;
- ▶ makes technical and conforming changes; and
- ▶ contains a severability provision.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

**Utah Code Sections Affected:**

AMENDS:

**59-1-401**, as last amended by Laws of Utah 2015, Chapter 369

**59-12-103**, as last amended by Laws of Utah 2015, Chapter 283



26 **59-12-103.1**, as last amended by Laws of Utah 2013, Chapter 150

27 **59-12-107**, as last amended by Laws of Utah 2012, Chapters 178, 312, and 399

28 **59-12-108**, as last amended by Laws of Utah 2013, Chapter 50

29 **59-12-211**, as last amended by Laws of Utah 2012, Chapter 312

30 **59-12-211.1**, as last amended by Laws of Utah 2012, Chapter 312

31 **76-8-1101**, as last amended by Laws of Utah 2014, Chapter 52

32 ENACTS:

33 **59-12-103.3**, Utah Code Annotated 1953



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

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

37 **59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute**  
38 **of limitations -- Commission authority to waive, reduce, or compromise penalty or**  
39 **interest.**

40 (1) As used in this section:

41 [~~(a) "Activated tax, fee, or charge" means a tax, fee, or charge with respect to which the~~  
42 ~~commission:~~]

43 [~~(i) has implemented the commission's GenTax system; and]~~

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

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

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

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

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

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

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

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

61 ~~[(c)(i)] (a) Except as provided in Subsection (1)~~[(c)(ii)](b)~~, "tax, fee, or charge"~~  
 62 means:

63 ~~[(A)] (i) a tax, fee, or charge the commission administers under:~~

64 ~~[(H)] (A) this title;~~

65 ~~[(H)] (B) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;~~

66 ~~[(H)] (C) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;~~

67 ~~[(IV)] (D) Section 19-6-410.5;~~

68 ~~[(V)] (E) Section 19-6-714;~~

69 ~~[(VI)] (F) Section 19-6-805;~~

70 ~~[(VII)] (G) Section 32B-2-304;~~

71 ~~[(VIII)] (H) Section 34A-2-202;~~

72 ~~[(IX)] (I) Section 40-6-14;~~

73 ~~[(X)] (J) Section 69-2-5;~~

74 ~~[(XI)] (K) Section 69-2-5.5; or~~

75 ~~[(XII)] (L) Section 69-2-5.6; or~~

76 ~~[(B)] (ii) another amount that by statute is subject to a penalty imposed under this~~  
 77 section.

78 ~~[(ii)] (b) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:~~

79 ~~[(A)] (i) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;~~

80 ~~[(B)] (ii) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;~~

81 ~~[(C)] (iii) Chapter 2, Property Tax Act, except for Section 59-2-1309;~~

82 ~~[(D)] (iv) Chapter 3, Tax Equivalent Property Act; or~~

83 ~~[(E)] (v) Chapter 4, Privilege Tax.~~

84 ~~[(d) "Unactivated tax, fee, or charge" means a tax, fee, or charge except for an~~  
 85 ~~activated tax, fee, or charge.]~~

86 (2) (a) The due date for filing a return is:

87 (i) if the person filing the return is not allowed by law an extension of time for filing

88 the return, the day on which the return is due as provided by law; or

89 (ii) if the person filing the return is allowed by law an extension of time for filing the  
90 return, the earlier of:

91 (A) the date the person files the return; or

92 (B) the last day of that extension of time as allowed by law.

93 (b) A penalty in the amount described in Subsection (2)(c) is imposed if a person files a  
94 return after the due date described in Subsection (2)(a).

95 (c) For purposes of Subsection (2)(b), the penalty is an amount equal to the greater of:

96 ~~[(i) if the return described in Subsection (2)(b) is filed with respect to an unactivated~~  
97 ~~tax, fee, or charge:]~~

98 ~~[(A) \$20; or]~~

99 ~~[(B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or]~~

100 ~~[(ii) if the return described in Subsection (2)(b) is filed with respect to an activated tax,~~  
101 ~~fee, or charge, beginning on the activation date for the tax, fee, or charge:]~~

102 ~~[(A)] (i) \$20; or~~

103 ~~[(B)-(F)] (ii) (A) 2% of the unpaid [activated] tax, fee, or charge due on the return if the~~  
104 ~~return is filed no later than five days after the due date described in Subsection (2)(a);~~

105 ~~[(H)] (B) 5% of the unpaid [activated] tax, fee, or charge due on the return if the return~~  
106 ~~is filed more than five days after the due date but no later than 15 days after the due date~~  
107 ~~described in Subsection (2)(a); or~~

108 ~~[(H)] (C) 10% of the unpaid [activated] tax, fee, or charge due on the return if the~~  
109 ~~return is filed more than 15 days after the due date described in Subsection (2)(a).~~

110 (d) This Subsection (2) does not apply to:

111 (i) an amended return; or

112 (ii) a return with no tax due.

113 (3) (a) A person is subject to a penalty for failure to pay a tax, fee, or charge if:

114 (i) the person files a return on or before the due date for filing a return described in  
115 Subsection (2)(a), but fails to pay the tax, fee, or charge due on the return on or before that due  
116 date;

117 (ii) the person:

118 (A) is subject to a penalty under Subsection (2)(b); and

119 (B) fails to pay the tax, fee, or charge due on a return within a 90-day period after the  
120 due date for filing a return described in Subsection (2)(a);  
121 (iii) (A) the person is subject to a penalty under Subsection (2)(b); and  
122 (B) the commission estimates an amount of tax due for that person in accordance with  
123 Subsection 59-1-1406(2);  
124 (iv) the person:  
125 (A) is mailed a notice of deficiency; and  
126 (B) within a 30-day period after the day on which the notice of deficiency described in  
127 Subsection (3)(a)(iv)(A) is mailed:  
128 (I) does not file a petition for redetermination or a request for agency action; and  
129 (II) fails to pay the tax, fee, or charge due on a return;  
130 (v) (A) the commission:  
131 (I) issues an order constituting final agency action resulting from a timely filed petition  
132 for redetermination or a timely filed request for agency action; or  
133 (II) is considered to have denied a request for reconsideration under Subsection  
134 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed  
135 request for agency action; and  
136 (B) the person fails to pay the tax, fee, or charge due on a return within a 30-day period  
137 after the date the commission:  
138 (I) issues the order constituting final agency action described in Subsection  
139 (3)(a)(v)(A)(I); or  
140 (II) is considered to have denied the request for reconsideration described in  
141 Subsection (3)(a)(v)(A)(II); or  
142 (vi) the person fails to pay the tax, fee, or charge within a 30-day period after the date  
143 of a final judicial decision resulting from a timely filed petition for judicial review.  
144 (b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:  
145 [~~(i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with~~  
146 ~~respect to an unactivated tax, fee, or charge:~~]  
147 [~~(A) \$20; or~~]  
148 [~~(B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or~~]  
149 [~~(ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with~~

150 respect to an activated tax, fee, or charge, beginning on the activation date:]

151 ~~[(A)]~~ (i) \$20; or

152 ~~[(B)-(F)]~~ (ii) (A) 2% of the unpaid [activated] tax, fee, or charge due on the return if the  
153 activated tax, fee, or charge due on the return is paid no later than five days after the due date  
154 for filing a return described in Subsection (2)(a);

155 ~~[(H)]~~ (B) 5% of the unpaid [activated] tax, fee, or charge due on the return if the  
156 activated tax, fee, or charge due on the return is paid more than five days after the due date for  
157 filing a return described in Subsection (2)(a) but no later than 15 days after that due date; or

158 ~~[(H)]~~ (C) 10% of the unpaid [activated] tax, fee, or charge due on the return if the  
159 activated tax, fee, or charge due on the return is paid more than 15 days after the due date for  
160 filing a return described in Subsection (2)(a).

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

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

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

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

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

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

177 (5) (a) Notwithstanding Subsection (2) and except as provided in Subsection (6), a  
178 person allowed by law an extension of time for filing a corporate franchise or income tax return  
179 under Chapter 7, Corporate Franchise and Income Taxes, or an individual income tax return  
180 under Chapter 10, Individual Income Tax Act, is subject to a penalty in the amount described in

181 Subsection (5)(b) if, on or before the day on which the return is due as provided by law, not  
182 including the extension of time, the person fails to pay:

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

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

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

190 (6) If a person does not file a return within an extension of time allowed by Section  
191 59-7-505 or 59-10-516, the person:

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

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

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

195 (A) \$20; or

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

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

199 (A) \$20; or

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

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

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

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

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

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

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

217 (i) The notice of proposed penalty shall:

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

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

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

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

223 or

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

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

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

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

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

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

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

237 (i) a court of competent jurisdiction issues a final, unappealable judgment or order  
238 determining that:

239 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)  
240 or is a seller required to pay or collect and remit sales and use taxes under Subsection  
241 59-12-107(2)(b) or (d); and

242 (B) the commission or a county, city, or town may require the seller to collect a tax



243 under Subsections 59-12-103(2)(a) through (d); or  
244 (ii) the commission issues a final, unappealable administrative order determining that:  
245 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)  
246 or is a seller required to pay or collect and remit sales and use taxes under Subsection  
247 59-12-107(2)(b) or (d); and  
248 (B) the commission or a county, city, or town may require the seller to collect a tax  
249 under Subsections 59-12-103(2)(a) through (d).  
250 (d) A seller that voluntarily collects a tax under Subsection 59-12-107(2)(~~d~~)(f)(i) is  
251 not subject to the penalty under Subsection (7)(a)(ii) if:  
252 (i) (A) a court of competent jurisdiction issues a final, unappealable judgment or order  
253 determining that:  
254 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)  
255 or is a seller required to pay or collect and remit sales and use taxes under Subsection  
256 59-12-107(2)(b) or (d); and  
257 (II) the commission or a county, city, or town may require the seller to collect a tax  
258 under Subsections 59-12-103(2)(a) through (d); or  
259 (B) the commission issues a final, unappealable administrative order determining that:  
260 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)  
261 or is a seller required to pay or collect and remit sales and use taxes under Subsection  
262 59-12-107(2)(b) or (d); and  
263 (II) the commission or a county, city, or town may require the seller to collect a tax  
264 under Subsections 59-12-103(2)(a) through (d); and  
265 (ii) the seller's intentional disregard of law or rule is warranted by existing law or by a  
266 nonfrivolous argument for the extension, modification, or reversal of existing law or the  
267 establishment of new law.  
268 (8) (a) Subject to Subsections (8)(b) and (c), the penalty for failure to file an  
269 information return, information report, or a complete supporting schedule is \$50 for each  
270 information return, information report, or supporting schedule up to a maximum of \$1,000.  
271 (b) If an employer is subject to a penalty under Subsection (13), the employer may not  
272 be subject to a penalty under Subsection (8)(a).  
273 (c) If an employer is subject to a penalty under this Subsection (8) for failure to file a

274 return in accordance with Subsection 59-10-406(3) on or before the due date described in  
275 Subsection 59-10-406(3)(b)(ii), the commission may not impose a penalty under this  
276 Subsection (8) unless the return is filed more than 14 days after the due date described in  
277 Subsection 59-10-406(3)(b)(ii).

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

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

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

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

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

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

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

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

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

296 (A) a return;

297 (B) an affidavit;

298 (C) a claim; or

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

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

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

- 305 (b) The following acts apply to Subsection (11)(a)(i):
- 306 (i) preparing any portion of a document described in Subsection (11)(a)(i);
- 307 (ii) presenting any portion of a document described in Subsection (11)(a)(i);
- 308 (iii) procuring any portion of a document described in Subsection (11)(a)(i);
- 309 (iv) advising in the preparation or presentation of any portion of a document described
- 310 in Subsection (11)(a)(i);
- 311 (v) aiding in the preparation or presentation of any portion of a document described in
- 312 Subsection (11)(a)(i);
- 313 (vi) assisting in the preparation or presentation of any portion of a document described
- 314 in Subsection (11)(a)(i); or
- 315 (vii) counseling in the preparation or presentation of any portion of a document
- 316 described in Subsection (11)(a)(i).
- 317 (c) For purposes of Subsection (11)(a), the penalty:
- 318 (i) shall be imposed by the commission;
- 319 (ii) is \$500 for each document described in Subsection (11)(a)(i) with respect to which
- 320 the person described in Subsection (11)(a) meets the requirements of Subsection (11)(a); and
- 321 (iii) is in addition to any other penalty provided by law.
- 322 (d) The commission may seek a court order to enjoin a person from engaging in
- 323 conduct that is subject to a penalty under this Subsection (11).
- 324 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 325 commission may make rules prescribing the documents that are similar to Subsections
- 326 (11)(a)(i)(A) through (C).
- 327 (12) (a) As provided in Section 76-8-1101, criminal offenses and penalties are as
- 328 provided in Subsections (12)(b) through (e).
- 329 (b) (i) A person ~~[who]~~ is guilty of a class B misdemeanor if the person:
- 330 (A) is required by this title or any laws the commission administers or regulates to
- 331 register with or obtain a license or permit from the commission~~[-who]; and~~
- 332 (B) operates without having registered or secured a license or permit~~[-];~~ or ~~[who]~~
- 333 operates when the registration, license, or permit is expired or not current~~[-is guilty of a class~~
- 334 B misdemeanor].
- 335 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(b)(i), the

336 penalty may not:

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

338 (B) exceed \$1,000.

339 (c) (i) With respect to a tax, fee, or charge, a person [~~who~~] is guilty of a third degree

340 felony if the person:

341 (A) knowingly and intentionally, and without a reasonable good faith basis, fails to  
342 make, render, sign, or verify a return within the time required by law or to supply information  
343 within the time required by law[~~, or who~~];

344 (B) makes, renders, signs, or verifies a false or fraudulent return or statement[~~;~~]; or  
345 [~~who~~]

346 (C) supplies false or fraudulent information[~~, is guilty of a third degree felony~~].

347 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(c)(i), the

348 penalty may not:

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

350 (B) exceed \$5,000.

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

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

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

357 (B) exceed \$25,000.

358 (e) (i) A person is guilty of a second degree felony if that person commits an act:

359 (A) described in Subsection (12)(e)(ii) with respect to one or more of the following

360 documents:

361 (I) a return;

362 (II) an affidavit;

363 (III) a claim; or

364 (IV) a document similar to Subsections (12)(e)(i)(A)(I) through (III); and

365 (B) subject to Subsection (12)(e)(iii), with knowledge that the document described in

366 Subsection (12)(e)(i)(A):

- 367 (I) is false or fraudulent as to any material matter; and  
368 (II) could be used in connection with any material matter administered by the  
369 commission.
- 370 (ii) The following acts apply to Subsection (12)(e)(i):  
371 (A) preparing any portion of a document described in Subsection (12)(e)(i)(A);  
372 (B) presenting any portion of a document described in Subsection (12)(e)(i)(A);  
373 (C) procuring any portion of a document described in Subsection (12)(e)(i)(A);  
374 (D) advising in the preparation or presentation of any portion of a document described  
375 in Subsection (12)(e)(i)(A);  
376 (E) aiding in the preparation or presentation of any portion of a document described in  
377 Subsection (12)(e)(i)(A);  
378 (F) assisting in the preparation or presentation of any portion of a document described  
379 in Subsection (12)(e)(i)(A); or  
380 (G) counseling in the preparation or presentation of any portion of a document  
381 described in Subsection (12)(e)(i)(A).
- 382 (iii) This Subsection (12)(e) applies:  
383 (A) regardless of whether the person for which the document described in Subsection  
384 (12)(e)(i)(A) is prepared or presented:  
385 (I) knew of the falsity of the document described in Subsection (12)(e)(i)(A); or  
386 (II) consented to the falsity of the document described in Subsection (12)(e)(i)(A); and  
387 (B) in addition to any other penalty provided by law.  
388 (iv) Notwithstanding Section [76-3-301](#), for purposes of this Subsection (12)(e), the  
389 penalty may not:  
390 (A) be less than \$1,500; or  
391 (B) exceed \$25,000.  
392 (v) The commission may seek a court order to enjoin a person from engaging in  
393 conduct that is subject to a penalty under this Subsection (12)(e).  
394 (vi) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
395 the commission may make rules prescribing the documents that are similar to Subsections  
396 (12)(e)(i)(A)(I) through (III).  
397 (f) The statute of limitations for prosecution for a violation of this Subsection (12) is

398 the later of six years:

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

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

401 (13) (a) Subject to Subsection (13)(b), an employer that is required to file a form with  
402 the commission in accordance with Subsection 59-10-406(8) is subject to a penalty described  
403 in Subsection (13)(b) if the employer:

404 (i) fails to file the form with the commission in an electronic format approved by the  
405 commission as required by Subsection 59-10-406(8);

406 (ii) fails to file the form on or before the due date provided in Subsection 59-10-406(8);

407 (iii) fails to provide accurate information on the form; or

408 (iv) fails to provide all of the information required by the Internal Revenue Service to  
409 be contained on the form.

410 (b) For purposes of Subsection (13)(a), the penalty is:

411 (i) \$30 per form, not to exceed \$75,000 in a calendar year, if the employer files the  
412 form in accordance with Subsection 59-10-406(8), more than 14 days after the due date  
413 provided in Subsection 59-10-406(8) but no later than 30 days after the due date provided in  
414 Subsection 59-10-406(8);

415 (ii) \$60 per form, not to exceed \$200,000 in a calendar year, if the employer files the  
416 form in accordance with Subsection 59-10-406(8), more than 30 days after the due date  
417 provided in Subsection 59-10-406(8) but on or before June 1; or

418 (iii) \$100 per form, not to exceed \$500,000 in a calendar year, if the employer:

419 (A) files the form in accordance with Subsection 59-10-406(8) after June 1; or

420 (B) fails to file the form.

421 (14) Upon making a record of its actions, and upon reasonable cause shown, the  
422 commission may waive, reduce, or compromise any of the penalties or interest imposed under  
423 this part.

424 Section 2. Section 59-12-103 is amended to read:

425 **59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use**  
426 **tax revenues.**

427 (1) A tax is imposed on the purchaser as provided in this part for amounts paid or  
428 charged for the following transactions:

- 429 (a) retail sales of tangible personal property made within the state;
- 430 (b) amounts paid for:
  - 431 (i) telecommunications service, other than mobile telecommunications service, that
  - 432 originates and terminates within the boundaries of this state;
  - 433 (ii) mobile telecommunications service that originates and terminates within the
  - 434 boundaries of one state only to the extent permitted by the Mobile Telecommunications
  - 435 Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or
  - 436 (iii) an ancillary service associated with a:
    - 437 (A) telecommunications service described in Subsection (1)(b)(i); or
    - 438 (B) mobile telecommunications service described in Subsection (1)(b)(ii);
  - 439 (c) sales of the following for commercial use:
    - 440 (i) gas;
    - 441 (ii) electricity;
    - 442 (iii) heat;
    - 443 (iv) coal;
    - 444 (v) fuel oil; or
    - 445 (vi) other fuels;
  - 446 (d) sales of the following for residential use:
    - 447 (i) gas;
    - 448 (ii) electricity;
    - 449 (iii) heat;
    - 450 (iv) coal;
    - 451 (v) fuel oil; or
    - 452 (vi) other fuels;
  - 453 (e) sales of prepared food;
  - 454 (f) except as provided in Section [59-12-104](#), amounts paid or charged as admission or
  - 455 user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,
  - 456 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,
  - 457 fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit
  - 458 television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf
  - 459 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,

460 tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises,  
461 horseback rides, sports activities, or any other amusement, entertainment, recreation,  
462 exhibition, cultural, or athletic activity;

463 (g) amounts paid or charged for services for repairs or renovations of tangible personal  
464 property, unless Section 59-12-104 provides for an exemption from sales and use tax for:

465 (i) the tangible personal property; and

466 (ii) parts used in the repairs or renovations of the tangible personal property described  
467 in Subsection (1)(g)(i), regardless of whether:

468 (A) any parts are actually used in the repairs or renovations of that tangible personal  
469 property; or

470 (B) the particular parts used in the repairs or renovations of that tangible personal  
471 property are exempt from a tax under this chapter;

472 (h) except as provided in Subsection 59-12-104(7), amounts paid or charged for  
473 assisted cleaning or washing of tangible personal property;

474 (i) amounts paid or charged for tourist home, hotel, motel, or trailer court  
475 accommodations and services that are regularly rented for less than 30 consecutive days;

476 (j) amounts paid or charged for laundry or dry cleaning services;

477 (k) amounts paid or charged for leases or rentals of tangible personal property if within  
478 this state the tangible personal property is:

479 (i) stored;

480 (ii) used; or

481 (iii) otherwise consumed;

482 (l) amounts paid or charged for tangible personal property if within this state the  
483 tangible personal property is:

484 (i) stored;

485 (ii) used; or

486 (iii) consumed; and

487 (m) amounts paid or charged for a sale:

488 (i) (A) of a product transferred electronically; or

489 (B) of a repair or renovation of a product transferred electronically; and

490 (ii) regardless of whether the sale provides:



- 491 (A) a right of permanent use of the product; or
- 492 (B) a right to use the product that is less than a permanent use, including a right:
- 493 (I) for a definite or specified length of time; and
- 494 (II) that terminates upon the occurrence of a condition.
- 495 (2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax
- 496 is imposed on a transaction described in Subsection (1) equal to the sum of:
- 497 (i) a state tax imposed on the transaction at a tax rate equal to the sum of:
- 498 (A) [~~4.70%, and~~] the state sales and use tax rate, described in Subsection
- 499 59-12-103.3(2); and
- 500 (B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales
- 501 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211
- 502 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional
- 503 State Sales and Use Tax Act; and
- 504 (II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales
- 505 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211
- 506 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state
- 507 imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and
- 508 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
- 509 transaction under this chapter other than this part.
- 510 (b) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed
- 511 on a transaction described in Subsection (1)(d) equal to the sum of:
- 512 (i) a state tax imposed on the transaction at a tax rate of 2%; and
- 513 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
- 514 transaction under this chapter other than this part.
- 515 (c) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed
- 516 on amounts paid or charged for food and food ingredients equal to the sum of:
- 517 (i) a state tax imposed on the amounts paid or charged for food and food ingredients at
- 518 a tax rate of 1.75%; and
- 519 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
- 520 amounts paid or charged for food and food ingredients under this chapter other than this part.
- 521 (d) (i) For a bundled transaction that is attributable to food and food ingredients and

522 tangible personal property other than food and food ingredients, a state tax and a local tax is  
523 imposed on the entire bundled transaction equal to the sum of:

524 (A) a state tax imposed on the entire bundled transaction equal to the sum of:

525 (I) the tax rate described in Subsection (2)(a)(i)(A); and

526 (II) (Aa) the tax rate the state imposes in accordance with Part 18, Additional State

527 Sales and Use Tax Act, if the location of the transaction as determined under Sections

528 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18,

529 Additional State Sales and Use Tax Act; and

530 (Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State

531 Sales and Use Tax Act, if the location of the transaction as determined under Sections

532 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which

533 the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

534 (B) a local tax imposed on the entire bundled transaction at the sum of the tax rates  
535 described in Subsection (2)(a)(ii).

536 (ii) If an optional computer software maintenance contract is a bundled transaction that  
537 consists of taxable and nontaxable products that are not separately itemized on an invoice or  
538 similar billing document, the purchase of the optional computer software maintenance contract  
539 is 40% taxable under this chapter and 60% nontaxable under this chapter.

540 (iii) Subject to Subsection (2)(d)(iv), for a bundled transaction other than a bundled  
541 transaction described in Subsection (2)(d)(i) or (ii):

542 (A) if the sales price of the bundled transaction is attributable to tangible personal  
543 property, a product, or a service that is subject to taxation under this chapter and tangible  
544 personal property, a product, or service that is not subject to taxation under this chapter, the  
545 entire bundled transaction is subject to taxation under this chapter unless:

546 (I) the seller is able to identify by reasonable and verifiable standards the tangible  
547 personal property, product, or service that is not subject to taxation under this chapter from the  
548 books and records the seller keeps in the seller's regular course of business; or

549 (II) state or federal law provides otherwise; or

550 (B) if the sales price of a bundled transaction is attributable to two or more items of  
551 tangible personal property, products, or services that are subject to taxation under this chapter  
552 at different rates, the entire bundled transaction is subject to taxation under this chapter at the

553 higher tax rate unless:

554 (I) the seller is able to identify by reasonable and verifiable standards the tangible  
555 personal property, product, or service that is subject to taxation under this chapter at the lower  
556 tax rate from the books and records the seller keeps in the seller's regular course of business; or

557 (II) state or federal law provides otherwise.

558 (iv) For purposes of Subsection (2)(d)(iii), books and records that a seller keeps in the  
559 seller's regular course of business includes books and records the seller keeps in the regular  
560 course of business for nontax purposes.

561 (e) (i) Except as otherwise provided in this chapter and subject to Subsections (2)(e)(ii)  
562 and (iii), if a transaction consists of the sale, lease, or rental of tangible personal property, a  
563 product, or a service that is subject to taxation under this chapter, and the sale, lease, or rental  
564 of tangible personal property, other property, a product, or a service that is not subject to  
565 taxation under this chapter, the entire transaction is subject to taxation under this chapter unless  
566 the seller, at the time of the transaction:

567 (A) separately states the portion of the transaction that is not subject to taxation under  
568 this chapter on an invoice, bill of sale, or similar document provided to the purchaser; or

569 (B) is able to identify by reasonable and verifiable standards, from the books and  
570 records the seller keeps in the seller's regular course of business, the portion of the transaction  
571 that is not subject to taxation under this chapter.

572 (ii) A purchaser and a seller may correct the taxability of a transaction if:

573 (A) after the transaction occurs, the purchaser and the seller discover that the portion of  
574 the transaction that is not subject to taxation under this chapter was not separately stated on an  
575 invoice, bill of sale, or similar document provided to the purchaser because of an error or  
576 ignorance of the law; and

577 (B) the seller is able to identify by reasonable and verifiable standards, from the books  
578 and records the seller keeps in the seller's regular course of business, the portion of the  
579 transaction that is not subject to taxation under this chapter.

580 (iii) For purposes of Subsections (2)(e)(i) and (ii), books and records that a seller keeps  
581 in the seller's regular course of business includes books and records the seller keeps in the  
582 regular course of business for nontax purposes.

583 (f) (i) If the sales price of a transaction is attributable to two or more items of tangible

584 personal property, products, or services that are subject to taxation under this chapter at  
585 different rates, the entire purchase is subject to taxation under this chapter at the higher tax rate  
586 unless the seller, at the time of the transaction:

587 (A) separately states the items subject to taxation under this chapter at each of the  
588 different rates on an invoice, bill of sale, or similar document provided to the purchaser; or

589 (B) is able to identify by reasonable and verifiable standards the tangible personal  
590 property, product, or service that is subject to taxation under this chapter at the lower tax rate  
591 from the books and records the seller keeps in the seller's regular course of business.

592 (ii) For purposes of Subsection (2)(f)(i), books and records that a seller keeps in the  
593 seller's regular course of business includes books and records the seller keeps in the regular  
594 course of business for nontax purposes.

595 (g) Subject to Subsections (2)(h) and (i), a tax rate repeal or tax rate change for a tax  
596 rate imposed under the following shall take effect on the first day of a calendar quarter:

597 (i) Subsection (2)(a)(i)(A);

598 (ii) Subsection (2)(b)(i);

599 (iii) Subsection (2)(c)(i); or

600 (iv) Subsection (2)(d)(i)(A)(I).

601 (h) (i) A tax rate increase takes effect on the first day of the first billing period that  
602 begins on or after the effective date of the tax rate increase if the billing period for the  
603 transaction begins before the effective date of a tax rate increase imposed under:

604 (A) Subsection (2)(a)(i)(A);

605 (B) Subsection (2)(b)(i);

606 (C) Subsection (2)(c)(i); or

607 (D) Subsection (2)(d)(i)(A)(I).

608 (ii) The repeal of a tax or a tax rate decrease applies to a billing period if the billing  
609 statement for the billing period is rendered on or after the effective date of the repeal of the tax  
610 or the tax rate decrease imposed under:

611 (A) Subsection (2)(a)(i)(A);

612 (B) Subsection (2)(b)(i);

613 (C) Subsection (2)(c)(i); or

614 (D) Subsection (2)(d)(i)(A)(I).

615 (i) (i) For a tax rate described in Subsection (2)(i)(ii), if a tax due on a catalogue sale is  
616 computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal or  
617 change in a tax rate takes effect:

- 618 (A) on the first day of a calendar quarter; and
- 619 (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.

620 (ii) Subsection (2)(i)(i) applies to the tax rates described in the following:

- 621 (A) Subsection (2)(a)(i)(A);
- 622 (B) Subsection (2)(b)(i);
- 623 (C) Subsection (2)(c)(i); or
- 624 (D) Subsection (2)(d)(i)(A)(I).

625 (iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
626 the commission may by rule define the term "catalogue sale."

627 (3) (a) The following state taxes shall be deposited into the General Fund:

- 628 (i) the tax imposed by Subsection (2)(a)(i)(A);
- 629 (ii) the tax imposed by Subsection (2)(b)(i);
- 630 (iii) the tax imposed by Subsection (2)(c)(i); or
- 631 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

632 (b) The following local taxes shall be distributed to a county, city, or town as provided  
633 in this chapter:

- 634 (i) the tax imposed by Subsection (2)(a)(ii);
- 635 (ii) the tax imposed by Subsection (2)(b)(ii);
- 636 (iii) the tax imposed by Subsection (2)(c)(ii); and
- 637 (iv) the tax imposed by Subsection (2)(d)(i)(B).

638 (4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,  
639 2003, the lesser of the following amounts shall be expended as provided in Subsections (4)(b)  
640 through (g):

- 641 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:
  - 642 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and
  - 643 (B) for the fiscal year; or
- 644 (ii) \$17,500,000.

645 (b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount

646 described in Subsection (4)(a) shall be transferred each year as dedicated credits to the  
647 Department of Natural Resources to:

648 (A) implement the measures described in Subsections 79-2-303(3)(a) through (d) to  
649 protect sensitive plant and animal species; or

650 (B) award grants, up to the amount authorized by the Legislature in an appropriations  
651 act, to political subdivisions of the state to implement the measures described in Subsections  
652 79-2-303(3)(a) through (d) to protect sensitive plant and animal species.

653 (ii) Money transferred to the Department of Natural Resources under Subsection  
654 (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other  
655 person to list or attempt to have listed a species as threatened or endangered under the  
656 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

657 (iii) At the end of each fiscal year:

658 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources  
659 Conservation and Development Fund created in Section 73-10-24;

660 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan  
661 Program Subaccount created in Section 73-10c-5; and

662 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan  
663 Program Subaccount created in Section 73-10c-5.

664 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in  
665 Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund  
666 created in Section 4-18-106.

667 (d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described  
668 in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water  
669 Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of  
670 water rights.

671 (ii) At the end of each fiscal year:

672 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources  
673 Conservation and Development Fund created in Section 73-10-24;

674 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan  
675 Program Subaccount created in Section 73-10c-5; and

676 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan

677 Program Subaccount created in Section 73-10c-5.

678 (e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described  
679 in Subsection (4)(a) shall be deposited in the Water Resources Conservation and Development  
680 Fund created in Section 73-10-24 for use by the Division of Water Resources.

681 (ii) In addition to the uses allowed of the Water Resources Conservation and  
682 Development Fund under Section 73-10-24, the Water Resources Conservation and  
683 Development Fund may also be used to:

684 (A) conduct hydrologic and geotechnical investigations by the Division of Water  
685 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of  
686 quantifying surface and ground water resources and describing the hydrologic systems of an  
687 area in sufficient detail so as to enable local and state resource managers to plan for and  
688 accommodate growth in water use without jeopardizing the resource;

689 (B) fund state required dam safety improvements; and

690 (C) protect the state's interest in interstate water compact allocations, including the  
691 hiring of technical and legal staff.

692 (f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described  
693 in Subsection (4)(a) shall be deposited in the Utah Wastewater Loan Program Subaccount  
694 created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

695 (g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described  
696 in Subsection (4)(a) shall be deposited in the Drinking Water Loan Program Subaccount  
697 created in Section 73-10c-5 for use by the Division of Drinking Water to:

698 (i) provide for the installation and repair of collection, treatment, storage, and  
699 distribution facilities for any public water system, as defined in Section 19-4-102;

700 (ii) develop underground sources of water, including springs and wells; and

701 (iii) develop surface water sources.

702 (5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,  
703 2006, the difference between the following amounts shall be expended as provided in this  
704 Subsection (5), if that difference is greater than \$1:

705 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the  
706 fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

707 (ii) \$17,500,000.

708 (b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:

709 (A) transferred each fiscal year to the Department of Natural Resources as dedicated  
710 credits; and

711 (B) expended by the Department of Natural Resources for watershed rehabilitation or  
712 restoration.

713 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described  
714 in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund  
715 created in Section 73-10-24.

716 (c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the  
717 remaining difference described in Subsection (5)(a) shall be:

718 (A) transferred each fiscal year to the Division of Water Resources as dedicated  
719 credits; and

720 (B) expended by the Division of Water Resources for cloud-seeding projects  
721 authorized by Title 73, Chapter 15, Modification of Weather.

722 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described  
723 in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund  
724 created in Section 73-10-24.

725 (d) After making the transfers required by Subsections (5)(b) and (c), 94% of the  
726 remaining difference described in Subsection (5)(a) shall be deposited into the Water  
727 Resources Conservation and Development Fund created in Section 73-10-24 for use by the  
728 Division of Water Resources for:

729 (i) preconstruction costs:

730 (A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter  
731 26, Bear River Development Act; and

732 (B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project  
733 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

734 (ii) the cost of employing a civil engineer to oversee any project authorized by Title 73,  
735 Chapter 26, Bear River Development Act;

736 (iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project  
737 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

738 (iv) other uses authorized under Sections 73-10-24, 73-10-25.1, 73-10-30, and



739 Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

740 (e) After making the transfers required by Subsections (5)(b) and (c) and subject to  
741 Subsection (5)(f), 6% of the remaining difference described in Subsection (5)(a) shall be  
742 transferred each year as dedicated credits to the Division of Water Rights to cover the costs  
743 incurred for employing additional technical staff for the administration of water rights.

744 (f) At the end of each fiscal year, any unexpended dedicated credits described in  
745 Subsection (5)(e) over \$150,000 lapse to the Water Resources Conservation and Development  
746 Fund created in Section 73-10-24.

747 (6) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,  
748 2003, and for taxes listed under Subsection (3)(a), the amount of revenue generated by a 1/16%  
749 tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited in  
750 the Transportation Fund created by Section 72-2-102.

751 (7) Notwithstanding Subsection (3)(a), beginning on July 1, 2012, the Division of  
752 Finance shall deposit into the Transportation Investment Fund of 2005 created in Section  
753 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated  
754 by a 1/64% tax rate on the taxable transactions under Subsection (1).

755 (8) (a) Notwithstanding Subsection (3)(a), in addition to the amounts deposited in  
756 Subsection (7), and subject to Subsection (8)(b), for a fiscal year beginning on or after July 1,  
757 2012, the Division of Finance shall deposit into the Transportation Investment Fund of 2005  
758 created by Section 72-2-124:

759 (i) a portion of the taxes listed under Subsection (3)(a) in an amount equal to 8.3% of  
760 the revenues collected from the following taxes, which represents a portion of the  
761 approximately 17% of sales and use tax revenues generated annually by the sales and use tax  
762 on vehicles and vehicle-related products:

763 (A) the tax imposed by Subsection (2)(a)(i)(A);

764 (B) the tax imposed by Subsection (2)(b)(i);

765 (C) the tax imposed by Subsection (2)(c)(i); and

766 (D) the tax imposed by Subsection (2)(d)(i)(A)(I); plus

767 (ii) an amount equal to 30% of the growth in the amount of revenues collected in the  
768 current fiscal year from the sales and use taxes described in Subsections (8)(a)(i)(A) through  
769 (D) that exceeds the amount collected from the sales and use taxes described in Subsections

770 (8)(a)(i)(A) through (D) in the 2010-11 fiscal year.

771 (b) (i) Subject to Subsections (8)(b)(ii) and (iii), in any fiscal year that the portion of  
772 the sales and use taxes deposited under Subsection (8)(a) represents an amount that is a total  
773 lower percentage of the sales and use taxes described in Subsections (8)(a)(i)(A) through (D)  
774 generated in the current fiscal year than the total percentage of sales and use taxes deposited in  
775 the previous fiscal year, the Division of Finance shall deposit an amount under Subsection  
776 (8)(a) equal to the product of:

777 (A) the total percentage of sales and use taxes deposited under Subsection (8)(a) in the  
778 previous fiscal year; and

779 (B) the total sales and use tax revenue generated by the taxes described in Subsections  
780 (8)(a)(i)(A) through (D) in the current fiscal year.

781 (ii) In any fiscal year in which the portion of the sales and use taxes deposited under  
782 Subsection (8)(a) would exceed 17% of the revenues collected from the sales and use taxes  
783 described in Subsections (8)(a)(i)(A) through (D) in the current fiscal year, the Division of  
784 Finance shall deposit 17% of the revenues collected from the sales and use taxes described in  
785 Subsections (8)(a)(i)(A) through (D) for the current fiscal year under Subsection (8)(a).

786 (iii) In all subsequent fiscal years after a year in which 17% of the revenues collected  
787 from the sales and use taxes described in Subsections (8)(a)(i)(A) through (D) was deposited  
788 under Subsection (8)(a), the Division of Finance shall annually deposit 17% of the revenues  
789 collected from the sales and use taxes described in Subsections (8)(a)(i)(A) through (D) in the  
790 current fiscal year under Subsection (8)(a).

791 (9) Notwithstanding Subsection (3)(a), and in addition to the amounts deposited under  
792 Subsections (7) and (8), for a fiscal year beginning on or after July 1, 2012, the Division of  
793 Finance shall annually deposit \$90,000,000 of the revenues generated by the taxes listed under  
794 Subsection (3)(a) into the Transportation Investment Fund of 2005 created by Section  
795 [72-2-124](#).

796 (10) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year  
797 2009-10, \$533,750 shall be deposited into the Qualified Emergency Food Agencies Fund  
798 created by Section [35A-8-1009](#) and expended as provided in Section [35A-8-1009](#).

799 (11) (a) Notwithstanding Subsection (3)(a), except as provided in Subsection (11)(b),  
800 and in addition to any amounts deposited under Subsections (7), (8), and (9), beginning on July

801 1, 2012, the Division of Finance shall deposit into the Transportation Investment Fund of 2005  
802 created by Section 72-2-124 the amount of tax revenue generated by a .025% tax rate on the  
803 transactions described in Subsection (1).

804 (b) For purposes of Subsection (11)(a), the Division of Finance may not deposit into  
805 the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or  
806 charged for food and food ingredients, except for tax revenue generated by a bundled  
807 transaction attributable to food and food ingredients and tangible personal property other than  
808 food and food ingredients described in Subsection (2)(d).

809 (12) (a) Notwithstanding Subsection (3)(a), and except as provided in Subsection  
810 (12)(b), beginning on January 1, 2009, the Division of Finance shall deposit into the  
811 Transportation Fund created by Section 72-2-102 the amount of tax revenue generated by a  
812 .025% tax rate on the transactions described in Subsection (1) to be expended to address  
813 chokepoints in construction management.

814 (b) For purposes of Subsection (12)(a), the Division of Finance may not deposit into  
815 the Transportation Fund any tax revenue generated by amounts paid or charged for food and  
816 food ingredients, except for tax revenue generated by a bundled transaction attributable to food  
817 and food ingredients and tangible personal property other than food and food ingredients  
818 described in Subsection (2)(d).

819 (13) Notwithstanding Subsection (3)(a), beginning the second fiscal year after the  
820 fiscal year during which the Division of Finance receives notice under Subsection  
821 63N-2-510~~(3)~~(2) that construction on a qualified hotel, as defined in Section 63N-2-502, has  
822 begun, the Division of Finance shall, for two consecutive fiscal years, annually deposit  
823 \$1,900,000 of the revenue generated by the taxes listed under Subsection (3)(a) into the Hotel  
824 Impact Mitigation Fund, created in Section 63N-2-512.

825 (14) Notwithstanding Subsections (4) through (13), an amount required to be expended  
826 or deposited in accordance with Subsections (4) through (13) may not include an amount the  
827 Division of Finance deposits in accordance with Section 59-12-103.2.

828 Section 3. Section 59-12-103.1 is amended to read:

829 **59-12-103.1. Action by Supreme Court of the United States authorizing or action**  
830 **by Congress permitting a state to require certain sellers to collect a sales or use tax --**  
831 **Collection of tax by commission -- Commission report to Revenue and Taxation Interim**

832 **Committee -- Revenue and Taxation Interim Committee study -- Division of Finance**  
833 **requirement to make certain deposits.**

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

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

838 (i) a seller that does not meet one or more of the criteria described in Subsection  
839 59-12-107(2)(a); or

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

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

844 (i) a seller that does not meet one or more of the criteria described in Subsection  
845 59-12-107(2)(a); or

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

848 (2) The commission shall:

849 [~~(a) collect the tax described in Subsection (1) from the seller;~~]

850 [~~(i) to the extent;~~]

851 [~~(A) authorized by the Supreme Court of the United States; or~~]

852 [~~(B) permitted by Congress; and~~]

853 [~~(ii) beginning on the first day of a calendar quarter as prescribed by the Revenue and  
854 Taxation Interim Committee; and~~]

855 [~~(b)~~] (a) make a report to the Revenue and Taxation Interim Committee:

856 (i) regarding the actions taken by:

857 (A) the Supreme Court of the United States; or

858 (B) Congress;

859 (ii) (A) stating the amount of state revenue collected at the time of the report, if any;

860 and

861 (B) estimating the state sales and use tax rate reduction that would offset the amount of  
862 state revenue estimated to be collected for the current fiscal year and the next fiscal year; and

863 (iii) (A) at the Revenue and Taxation Interim Committee meeting immediately  
864 following the day on which the actions of the Supreme Court of the United States or Congress  
865 become effective; and

866 (B) any other meeting of the Revenue and Taxation Interim Committee as requested by  
867 the chairs of the committee[-]; and

868 (b) collect the tax described in Subsection (1) from the seller:

869 (i) to the extent:

870 (A) authorized by the Supreme Court of the United States; or

871 (B) permitted by Congress; and

872 (ii) beginning on the first day of a calendar quarter as prescribed by the Revenue and  
873 Taxation Interim Committee.

874 (3) The Revenue and Taxation Interim Committee shall after hearing the commission's  
875 report under Subsection (2)~~(b)~~(a):

876 (a) review the actions taken by:

877 (i) the Supreme Court of the United States; or

878 (ii) Congress;

879 (b) direct the commission regarding the day on which the commission is required to  
880 collect the tax described in Subsection (1); and

881 (c) make recommendations to the Legislative Management Committee:

882 (i) regarding whether as a result of the actions of the Supreme Court of the United  
883 States or Congress any provisions of this chapter should be amended or repealed; and

884 (ii) within a one-year period after the day on which the commission makes a report  
885 under Subsection (2)(b).

886 (4) The Division of Finance shall deposit a portion of the revenue collected under this  
887 section into the Remote Sales Restricted Account as required by Section [59-12-103.2](#).

888 Section 4. Section **59-12-103.3** is enacted to read:

889 **59-12-103.3. Definitions -- State sales and use tax rate calculation -- Notice.**

890 (1) As used in this section:

891 (a) "Above-forecast state sales and use tax revenue" means sales and use tax revenue  
892 remitted to the commission that is:

893 (i) collected from the tax imposed by Subsection [59-12-103\(2\)\(a\)\(i\)\(A\)](#); and

894 (ii) greater than:

895 (A) for the fiscal year beginning on July 1, 2016, and ending on June 30, 2017,

896 \$2,301,045,700;

897 (B) for the fiscal year beginning on July 1, 2017, and ending on June 30, 2018,

898 \$2,409,953,600;

899 (C) for the fiscal year beginning on July 1, 2018, and ending on June 30, 2019,

900 \$2,524,016,100; and

901 (D) for the fiscal year beginning on July 1, 2019, and ending on June 30, 2020,

902 \$2,643,477,100.

903 (b) "State sales and use tax rate" means the tax rate calculated under Subsection (2).

904 (2) (a) Except as provided in Subsection (2)(b)(i), the state sales and use tax rate is

905 4.70%.

906 (b) (i) Subject to Subsection (2)(b)(ii), and except as provided in Subsection (2)(b)(iii)  
907 or (iv):

908 (A) the state sales and use tax rate decreases by 0.1%, if the commission collects at  
909 least \$50,000,000, but less than \$100,000,000, in above-forecast state sales and use tax revenue  
910 for a fiscal year;

911 (B) the state sales and use tax rate decreases by 0.2%, if the commission collects at  
912 least \$100,000,000, but less than \$150,000,000, in above-forecast state sales and use tax  
913 revenue; and

914 (C) the state sales and use tax rate decreases by 0.3%, if the commission collects at  
915 least \$150,000,000 in above-forecast state sales and use tax revenue.

916 (ii) Any decrease to the state sales and use tax rate under Subsection (2)(b)(i) shall take  
917 effect on July 1 of the year immediately following the fiscal year in which the applicable  
918 threshold described in Subsection (2)(b)(i) is reached or exceeded.

919 (iii) The state sales and use tax rate may not decrease below 4.40%.

920 (iv) The state sales and use tax rate may not decrease, under this section, after July 1,  
921 2021.

922 (3) The Office of the Legislative Fiscal Analyst shall annually, on or before January 1:

923 (a) determine the amount of above-forecast state sales and use tax revenue that the  
924 commission collected for the previous fiscal year;

925 (b) calculate whether the commission collected enough above-forecast state sales and  
 926 use tax revenue to trigger a state sales and use tax rate decrease under Subsection (2)(b); and

927 (c) if the Office of the Legislative Fiscal Analyst determines that the commission  
 928 collected enough above-forecast state sales and use tax revenue for the previous fiscal year to  
 929 trigger a state sales and use tax rate decrease under Subsection (2)(b), report the above-forecast  
 930 state sales and use tax revenue to the Executive Appropriations Committee.

931 (4) Within 30 days after receiving the report described in Subsection (3), the Executive  
 932 Appropriations Committee shall notify the commission of:

933 (a) the amount of the above-forecast state sales and use tax revenue that the  
 934 commission collected for the previous fiscal year; and

935 (b) the decrease in rate, described in Subsection (2)(b)(i), that is applicable to the  
 936 amount described in Subsection (4)(a).

937 (5) If the commission collects enough above-forecast state sales and use tax revenue to  
 938 trigger a state sales and use tax rate decrease under Subsection (2)(b)(i), the commission shall  
 939 publish, post, or otherwise make public the new state sales and use tax rate that will be  
 940 effective July 1.

941 Section 5. Section **59-12-107** is amended to read:

942 **59-12-107. Definitions -- Collection, remittance, and payment of tax by sellers or**  
 943 **other persons -- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other**  
 944 **liability for collection -- Rulemaking authority -- Credits -- Treatment of bad debt --**  
 945 **Penalties and interest.**

946 (1) As used in this section:

947 [~~(a) "Ownership" means direct ownership or indirect ownership through a parent,~~  
 948 ~~subsidiary, or affiliate.]~~

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

950 [~~(i) meets one or more of the criteria described in Subsection (2)(a)(i); and]~~

951 [~~(ii) delivers tangible personal property, a service, or a product transferred~~  
 952 ~~electronically that is sold:]~~

953 [~~(A) by a seller that does not meet one or more of the criteria described in Subsection~~  
 954 ~~(2)(a)(i); and]~~

955 [~~(B) to a purchaser in the state.]~~

956 ~~[(c) "Substantial ownership interest" means an ownership interest in a business entity if~~  
957 ~~that ownership interest is greater than the degree of ownership of equity interest specified in 15~~  
958 ~~U.S.C. Sec. 78p, with respect to a person other than a director or an officer.]~~

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

960 (A) announcing by graphic, pictorial, verbal, written, or other similar means the  
961 availability of a product for sale; or

962 (B) employing purchased space or time in print or electronic media if that purchased  
963 space or time is used to communicate an announcement of a product for sale.

964 (ii) "Advertising" includes online advertising.

965 (b) "Affiliate" means:

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

968 (ii) another entity that, regardless of how that entity is organized, has the same  
969 ownership relationship to a seller as another corporation or group of corporations.

970 (c) (i) "Arrangement" means an agreement between a noncollecting seller and a  
971 referring seller, under which the referring seller, for a commission or other consideration,  
972 directly or indirectly makes a referral to the noncollecting seller of a potential purchaser of  
973 tangible personal property, a product transferred electronically, or a service.

974 (ii) "Arrangement" does not include any agreement under which a noncollecting seller  
975 purchases advertising from a person in the state, unless the person in the state also directs a  
976 solicitation toward one or more potential purchasers in the state.

977 (d) "Controlled group of corporations" means the same as that term is defined in  
978 Section 1563(a), Internal Revenue Code.

979 (e) "Noncollecting seller" means a remote seller that:

980 (i) does not voluntarily collect and remit sales and use tax under this chapter; and

981 (ii) during the 12-month period immediately preceding the current month, makes sales  
982 totaling \$125,000 or more of tangible personal property, products transferred electronically, or  
983 services:

984 (A) for storage, use, or consumption in the state; and

985 (B) as a result of an arrangement with one or more referring sellers.

986 (f) (i) "Online advertising" means advertising delivered through the Internet.



987 (ii) "Online advertising" includes:

988 (A) an email communication generated as a result of generic algorithmic functions if  
989 the email communication does not target a specific person;

990 (B) an advertisement tied to an Internet search engine;

991 (C) a banner announcement;

992 (D) a cost-per-action advertisement; or

993 (E) an online advertising service similar to the online advertising described in

994 Subsections (1)(f)(ii)(A) through (D), as the commission may define by rule made in

995 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

996 (iii) "Online advertising" does not include an Internet-based link to a seller's website.

997 (g) (i) "Referral" means the act of sending a potential purchaser to a noncollecting  
998 seller by:

999 (A) an Internet-based link;

1000 (B) an Internet website;

1001 (C) telemarketing;

1002 (D) in-person marketing; or

1003 (E) other means similar to the means described in Subsections (1)(g)(i)(A) through (D),

1004 as the commission may define by rule made in accordance with Title 63G, Chapter 3, Utah

1005 Administrative Rulemaking Act.

1006 (ii) "Referral" does not include online advertising.

1007 (h) "Referring seller" means a person:

1008 (i) that makes a sale of tangible personal property, a product transferred electronically,  
1009 or a service;

1010 (ii) that meets one or more of the criteria described in Subsection (2)(a); and

1011 (iii) with which a noncollecting seller enters an arrangement.

1012 (i) "Remote seller" means a seller that is not required to pay or collect and remit sales  
1013 and use taxes under Subsection (2)(a).

1014 (j) "Solicitation" means a communication directly or indirectly to a specific person  
1015 within the state in a manner that is intended to and calculated to incite the person to purchase  
1016 tangible personal property, a service, or a product transferred electronically from a specific  
1017 seller.

1018 (2) (a) Except as provided in Subsection (2)~~(e)~~(i), Section 59-12-107.1, or Section  
1019 59-12-123, and subject to ~~Subsection (2)(f)~~ Subsections (2)(e) and (h), each seller shall pay or  
1020 collect and remit the sales and use taxes imposed by this chapter if within this state the seller:

1021 (i) ~~has or~~ utilizes:

1022 (A) an office;

1023 (B) a distribution house;

1024 (C) a sales house;

1025 (D) a warehouse~~;~~ or other storage place; or

1026 ~~[(E) a service enterprise; or]~~

1027 ~~[(F)]~~ (E) a place of business similar to Subsections (2)(a)(i)(A) through ~~[(E)]~~ (D);

1028 (ii) maintains a stock of goods;

1029 (iii) regularly solicits orders, regardless of whether ~~or not~~ the orders are accepted in  
1030 the state, unless the seller's only activity in the state is:

1031 (A) advertising; or

1032 (B) solicitation by:

1033 (I) direct mail;

1034 (II) electronic mail;

1035 (III) except as provided in Subsection (2)(d), the Internet;

1036 (IV) telecommunications service; or

1037 (V) a means similar to Subsection (2)(a)(iii)(A) or (B);

1038 (iv) regularly engages in the delivery of property in the state other than by:

1039 (A) common carrier; or

1040 (B) United States mail; or

1041 (v) regularly engages in an activity directly related to the leasing or servicing of  
1042 property located within the state.

1043 (b) ~~[A]~~ There is a rebuttable presumption that a remote seller is ~~[considered to be]~~  
1044 engaged, in the state, in the business of selling tangible personal property, ~~[a service, or]~~ a  
1045 product transferred electronically, or a service for storage, use ~~[in the state],~~ or consumption,  
1046 and shall pay or collect and remit the sales and use taxes imposed by this chapter if:

1047 ~~[(i) the seller holds a substantial ownership interest in, or is owned in whole or in~~  
1048 substantial part by, a related seller; and]

1049 (i) a person who meets one or more of the criteria described in Subsection (2)(a) is an  
 1050 affiliate of the remote seller; or

1051 (ii) any person, other than a person acting in the capacity of a common carrier, that  
 1052 meets one or more of the criteria described in Subsection (2)(a):

1053 [(it)] (A) [~~the seller~~] sells the same or a substantially similar line of products as the  
 1054 [related] seller and does so under the same or a substantially similar business name as the  
 1055 remote seller; [~~or~~]

1056 (B) [~~the~~] maintains a place of business described in Subsection (2)(a)(i) [~~of the related~~  
 1057 seller] or provides an [in-state] in-state employee [~~of the related seller is used~~] to advertise,  
 1058 promote, deliver, or facilitate sales by the remote seller to a purchaser[-];

1059 (C) uses trademarks, service marks, or trade names in the state that are the same or  
 1060 substantially similar to those used by the remote seller;

1061 (D) delivers, installs, assembles, or performs maintenance service for the remote  
 1062 seller's purchaser within the state;

1063 (E) facilitates the remote seller's delivery of tangible personal property to a purchaser  
 1064 in the state by allowing the purchaser to pick up tangible personal property sold by the remote  
 1065 seller at an in-state office, distribution house, sales house, warehouse or other storage place, or  
 1066 similar place of business that is maintained by the person that meets one or more of the criteria  
 1067 described in Subsection (2)(a); or

1068 (F) conducts any other activity in the state that is significantly associated with the  
 1069 remote seller's ability to establish and maintain a market in the state for the remote seller's sales  
 1070 of tangible personal property, a product transferred electronically, or a service.

1070a **H→ (c)(i) Notwithstanding Subsection (2)(b)(ii), the activities of a person that enters into an**  
 1070b **agreement with a remote seller, for a commission or other consideration, to make a referral to**  
 1070c **the remote seller for the sale of tangible personal property, products transferred electronically,**  
 1070d **or services do not trigger the presumption described in Subsection (2)(b) if the person's**  
 1070e **activities under the agreement do not result in the remote seller making \$50,000 or more in**  
 1070f **sales to purchasers in the state during the 12-month period immediately preceding the current**  
 1070g **month.**

1071 [(e)] (ii) ←H A remote seller may rebut the presumption described in Subsection  
 1071a (2)(b) by  
 1072 proving that the in-state activities of the person that meets one or more of the criteria described  
 1073 in Subsection (2)(a) are not significantly associated with the remote seller's ability to establish  
 1074 and maintain a market in the state for the seller's sales of tangible personal property, a service,

1075 or a product transferred electronically.

1076 (d) (i) (A) Subject to the other provisions of this Subsection (2)(d), there is a rebuttable

1077 presumption that a noncollecting seller is engaged, in the state, in the business of selling

1078 tangible personal property, a product transferred electronically, or a service, for storage, use, or

1079 consumption.

1080 (B) When the presumption arises, the noncollecting seller shall pay or collect and remit  
1081 sales and use tax on any sale the noncollecting seller makes, through an arrangement, to a  
1082 purchaser in the state.

1083 (ii) (A) The presumption described in Subsection (2)(d)(i) arises if the noncollecting  
1084 seller makes sales in the state using a referring seller after January 1, 2017, regardless of the  
1085 date when the noncollecting seller and the referring seller enter the arrangement and regardless  
1086 of whether the 12-month period immediately preceding the current month includes any period  
1087 of time that occurred before January 1, 2017.

1088 (B) If the presumption described in Subsection (2)(d)(i) arises, a noncollecting seller's  
1089 obligation to collect and remit sales and use taxes begins on April 1, 2017.

1090 (iii) A noncollecting seller may rebut the presumption described in Subsection (2)(d)(i)  
1091 by proving that a referring seller has not engaged in an activity within the state that is  
1092 significantly associated with the noncollecting seller's ability, during the preceding 12 months,  
1093 to establish and maintain a market within the state for the sale of tangible personal property, a  
1094 product transferred electronically, or a service.

1095 (iv) (A) Proof to rebut the presumption described in Subsection (2)(d)(i) includes a  
1096 written sworn statement from each referring seller that the referring seller did not engage in any  
1097 solicitation of a potential purchaser in the state on behalf of the noncollecting seller for the sale  
1098 of tangible personal property, a product transferred electronically, or a service.

1099 (B) A referring seller must make the written sworn statement described in Subsection  
1100 (2)(d)(iv)(A) in good faith.

1101 (e) Unless the remote seller owns or leases the computer, a remote seller's use of a  
1102 computer located in this state to create, maintain, or take an order through an Internet web  
1103 page, an Internet website, an Internet post, an Internet listing, or an online marketplace may not  
1104 be used as a factor in determining whether a remote seller is required to pay or collect and  
1105 remit sales and use taxes under this Subsection (2).

1106 ~~[(c) A] (f) (i) Except as provided in Subsection (2)(f)(ii), a remote seller [that does not~~  
1107 ~~meet one or more of the criteria provided for in Subsection (2)(a) or is not a seller required to~~  
1108 ~~pay or collect and remit sales and use taxes under Subsection (2)(b): (i) except as provided in~~  
1109 ~~Subsection (2)(c)(ii);] that is not subject to the presumption described in Subsection (2)(b) or~~  
1110 (d) may voluntarily:

- 1111 (A) collect a tax on a transaction described in Subsection 59-12-103(1); and
- 1112 (B) remit the tax to the commission as provided in this part~~[-or]~~.
- 1113 (ii) ~~[notwithstanding Subsection (2)(c)(i);]~~ A remote seller shall collect a tax on a
- 1114 transaction described in Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to
- 1115 collect the tax.
- 1116 ~~[(d)]~~ (g) The collection and remittance of a tax under this chapter by a seller that is
- 1117 registered under the agreement may not be used as a factor in determining whether that seller is
- 1118 required by Subsection (2) to:
  - 1119 (i) pay a tax, fee, or charge under:
    - 1120 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
    - 1121 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
    - 1122 (C) Section 19-6-714;
    - 1123 (D) Section 19-6-805;
    - 1124 (E) Section 69-2-5;
    - 1125 (F) Section 69-2-5.5;
    - 1126 (G) Section 69-2-5.6; or
    - 1127 (H) this title; or
  - 1128 (ii) collect and remit a tax, fee, or charge under:
    - 1129 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
    - 1130 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
    - 1131 (C) Section 19-6-714;
    - 1132 (D) Section 19-6-805;
    - 1133 (E) Section 69-2-5;
    - 1134 (F) Section 69-2-5.5;
    - 1135 (G) Section 69-2-5.6; or
    - 1136 (H) this title.
- 1137 ~~[(e) A person shall pay a use tax imposed by this chapter on a transaction described in~~
- 1138 ~~Subsection 59-12-103(1) if:]~~
- 1139 ~~[(i) the seller did not collect a tax imposed by this chapter on the transaction; and]~~
- 1140 ~~[(ii) the person:]~~
- 1141 ~~[(A) stores the tangible personal property or product transferred electronically in the~~

1142 state;]

1143 [~~(B)~~ uses the tangible personal property or product transferred electronically in the

1144 state; or]

1145 [~~(C)~~ consumes the tangible personal property or product transferred electronically in

1146 the state.]

1147 [~~(f)~~ (h) The ownership of property that is located at the premises of a printer's facility

1148 with which the retailer has contracted for printing and that consists of the final printed product,

1149 property that becomes a part of the final printed product, or copy from which the printed

1150 product is produced, shall not result in the retailer being considered to have or maintain an

1151 office, distribution house, sales house, warehouse, service enterprise, or other place of

1152 business, or to maintain a stock of goods, within this state.

1153 (i) A person shall pay a use tax imposed by this chapter on a transaction described in

1154 Subsection 59-12-103(1) if:

1155 (i) the seller did not collect a tax imposed under this chapter on the transaction; and

1156 (ii) the person:

1157 (A) stores the tangible personal property or product transferred electronically in the

1158 state;

1159 (B) uses the tangible personal property or product transferred electronically in the state;

1160 or

1161 (C) consumes the tangible personal property or product transferred electronically in the

1162 state.

1163 (3) (a) Except as provided in Section 59-12-107.1, a seller shall collect a tax due under

1164 this chapter [~~shall be collected~~] from a purchaser.

1165 (b) A seller may not collect as a tax an amount, without regard to fractional parts of

1166 one cent, in excess of the tax computed at the rates prescribed by this chapter.

1167 (c) (i) Each seller shall:

1168 (A) give the purchaser a receipt for the tax collected; or

1169 (B) bill the tax as a separate item and declare the name of this state and the seller's

1170 sales and use tax license number on the invoice for the sale.

1171 (ii) The receipt or invoice is prima facie evidence that the seller has collected the tax

1172 and relieves the purchaser of the liability for reporting the tax to the commission as a

1173 consumer.

1174 (d) A seller is not required to maintain a separate account for the tax collected[;] but is  
1175 considered to be a person charged with receipt, safekeeping, and transfer of public money.

1176 (e) Taxes collected by a seller pursuant to this chapter shall be held in trust for the  
1177 benefit of the state and for payment to the commission in the manner and at the time provided  
1178 for in this chapter.

1179 (f) If any seller, during any reporting period, collects as a tax an amount in excess of  
1180 the lawful state and local percentage of total taxable sales allowed under this chapter, the seller  
1181 shall remit to the commission the full amount of the tax imposed under this chapter, plus any  
1182 excess.

1183 (g) If the accounting methods regularly employed by the seller in the transaction of the  
1184 seller's business are such that reports of sales made during a calendar month or quarterly period  
1185 will impose unnecessary hardships, the commission may accept reports at intervals that, in the  
1186 commission's opinion, will[~~, in the commission's opinion,~~] better suit the convenience of the  
1187 taxpayer or seller and will not jeopardize collection of the tax.

1188 (h) (i) For a purchase paid with specie legal tender as defined in Section [59-1-1501.1](#),  
1189 and until such time as the commission accepts specie legal tender for the payment of a tax  
1190 under this chapter, if the commission requires a seller to remit a tax under this chapter in legal  
1191 tender other than specie legal tender, the seller shall state on the seller's books and records and  
1192 on an invoice, bill of sale, or similar document provided to the purchaser:

1193 (A) the purchase price in specie legal tender and in the legal tender the seller is  
1194 required to remit to the commission;

1195 (B) subject to Subsection (3)(h)(ii), the amount of tax due under this chapter in specie  
1196 legal tender and in the legal tender the seller is required to remit to the commission;

1197 (C) the tax rate under this chapter applicable to the purchase; and

1198 (D) the date of the purchase.

1199 (ii) (A) Subject to Subsection (3)(h)(ii)(B), for purposes of determining the amount of  
1200 tax due under Subsection (3)(h)(i), a seller shall use the most recent London fixing price for the  
1201 specie legal tender the purchaser paid.

1202 (B) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1203 commission may make rules for determining the amount of tax due under Subsection (3)(h)(i)



1204 if the London fixing price is not available for a particular day.

1205 (4) (a) Except as provided in Subsections (5) through (7) and Section 59-12-108, the  
1206 [~~sales or use~~] tax imposed by this chapter is due and payable to the commission quarterly on or  
1207 before the last day of the month next succeeding each quarterly calendar [~~quarterly~~] period.

1208 (b) (i) Each seller shall, on or before the last day of the month next succeeding each  
1209 quarterly calendar [~~quarterly~~] period, file with the commission a return for the preceding  
1210 quarterly period.

1211 (ii) The seller shall remit with the return under Subsection (4)(b)(i) the amount of the  
1212 tax required under this chapter to be collected or paid for the period covered by the return.

1213 (c) Except as provided in Subsection (5)(c), a return shall contain information and be in  
1214 a form the commission prescribes by rule.

1215 (d) (i) Subject to Subsection (4)(d)(ii), the sales tax as computed in the return shall be  
1216 based on the total nonexempt sales made during the period for which the return is filed,  
1217 including both cash and charge sales.

1218 (ii) For a sale that includes the delivery or installation of tangible personal property at a  
1219 location other than a seller's place of business described in Subsection (2)(a)(i), if the delivery  
1220 or installation is separately stated on an invoice or receipt, a seller may compute the tax due [~~on~~  
1221 ~~the sale~~] for purposes of Subsection (4)(d)(i) based on the amount the seller receives for that  
1222 sale during each period for which the seller receives payment for the sale.

1223 (e) (i) The use tax as computed in the return shall be based on the total amount of  
1224 purchases for storage, use, or other consumption in this state made during the period for which  
1225 the return is filed, including both cash and charge purchases.

1226 (ii) (A) As used in this Subsection (4)(e)(ii), "qualifying purchaser" means a purchaser  
1227 who is required to remit taxes under this chapter[;] but is not required to remit taxes monthly in  
1228 accordance with Section 59-12-108, and who converts tangible personal property into real  
1229 property.

1230 (B) Subject to Subsections (4)(e)(ii)(C) and (D), a qualifying purchaser may remit the  
1231 taxes due under this chapter on tangible personal property for which the qualifying purchaser  
1232 claims an exemption as allowed under Subsection 59-12-104(23) or (25) based on the period in  
1233 which the qualifying purchaser receives payment, in accordance with Subsection (4)(e)(ii)(C),  
1234 for the conversion of the tangible personal property into real property.

1235 (C) A qualifying purchaser remitting taxes due under this chapter in accordance with  
1236 Subsection (4)(e)(ii)(B) shall remit an amount equal to the total amount of tax due on the  
1237 qualifying purchaser's purchase of the tangible personal property that was converted into real  
1238 property multiplied by a fraction, the numerator of which is the payment received in the period  
1239 for the qualifying purchaser's sale of the tangible personal property that was converted into real  
1240 property and the denominator of which is the entire sales price for the qualifying purchaser's  
1241 sale of the tangible personal property that was converted into real property.

1242 (D) A qualifying purchaser may remit taxes due under this chapter in accordance with  
1243 this Subsection (4)(e)(ii) only if the books and records that the qualifying purchaser keeps in  
1244 the qualifying purchaser's regular course of business identify by reasonable and verifiable  
1245 standards that the tangible personal property was converted into real property.

1246 (f) (i) Subject to Subsection (4)(f)(ii) and in accordance with Title 63G, Chapter 3,  
1247 Utah Administrative Rulemaking Act, the commission may by rule extend the time for making  
1248 returns and paying the taxes.

1249 (ii) An extension under Subsection (4)(f)(i) may not be for more than 90 days.

1250 (g) The commission may require returns and payment of the tax to be made for other  
1251 than quarterly periods if the commission considers it necessary in order to ensure the payment  
1252 of the tax imposed by this chapter.

1253 (h) (i) The commission may require a seller that files a simplified electronic return with  
1254 the commission to file an additional electronic report with the commission.

1255 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1256 commission may make rules providing:

1257 (A) the information required to be included in the additional electronic report described  
1258 in Subsection (4)(h)(i); and

1259 (B) one or more due dates for filing the additional electronic report described in  
1260 Subsection (4)(h)(i).

1261 (5) (a) As used in this Subsection (5) and Subsection (6)(b), [~~"remote seller"~~]  
1262 "registered remitter" means a seller that is:

1263 (i) registered under the agreement;

1264 (ii) described in Subsection (2)(c); and

1265 (iii) not a:

- 1266 (A) model 1 seller;
- 1267 (B) model 2 seller; or
- 1268 (C) model 3 seller.
- 1269 (b) (i) Except as provided in Subsection (5)(b)(ii), a tax a ~~[remote seller]~~ registered
- 1270 remitter collects in accordance with Subsection (2)(c) is due and payable:
- 1271 (A) to the commission;
- 1272 (B) annually; and
- 1273 (C) on or before the last day of the month immediately following the last day of each
- 1274 calendar year.
- 1275 (ii) The commission may require that a tax a ~~[remote seller]~~ registered remitter collects
- 1276 in accordance with Subsection (2)(c) be due and payable:
- 1277 (A) to the commission; and
- 1278 (B) on the last day of the month immediately following any month in which the ~~[seller]~~
- 1279 registered remitter accumulates a total of at least \$1,000 in agreement sales and use tax.
- 1280 (c) (i) If a remote seller remits a tax to the commission in accordance with Subsection
- 1281 (5)(b), the ~~[remote seller]~~ registered remitter shall file a return:
- 1282 (A) with the commission;
- 1283 (B) with respect to the tax;
- 1284 (C) containing information prescribed by the commission; and
- 1285 (D) on a form prescribed by the commission.
- 1286 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1287 commission shall make rules prescribing:
- 1288 (A) the information required to be contained in a return described in Subsection
- 1289 (5)(c)(i); and
- 1290 (B) the form described in Subsection (5)(c)(i)(D).
- 1291 (d) A tax a ~~[remote seller]~~ registered remitter collects in accordance with this
- 1292 Subsection (5) shall be calculated on the basis of the total amount of taxable transactions under
- 1293 Subsection 59-12-103(1) the ~~[remote seller]~~ registered remitter completes, including[:] cash
- 1294 transactions and charge transactions.
- 1295 [~~(i) a cash transaction; and~~]
- 1296 [~~(ii) a charge transaction.~~]

1297 (6) (a) Except as provided in Subsection (6)(b), a tax a seller that files a simplified  
1298 electronic return collects in accordance with this chapter is due and payable:

1299 (i) monthly on or before the last day of the month immediately following the month for  
1300 which the seller collects a tax under this chapter; and

1301 (ii) for the month for which the seller collects a tax under this chapter.

1302 (b) A tax a remote seller that files a simplified electronic return collects in accordance  
1303 with this chapter is due and payable as provided in Subsection (5).

1304 (7) (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the  
1305 purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to  
1306 titling or registration under the laws of this state.

1307 (b) The commission shall collect the tax described in Subsection (7)(a) when the  
1308 vehicle is titled or registered.

1309 (8) If any sale of tangible personal property or any other taxable transaction under  
1310 Subsection 59-12-103(1), is made by a wholesaler to a retailer[;]:

1311 (a) the wholesaler is not responsible for the collection or payment of the tax imposed  
1312 on the sale; and

1313 (b) the retailer is responsible for the collection or payment of the tax imposed on the  
1314 sale if:

1315 ~~(a)~~ (i) the retailer represents that the tangible personal property, product transferred  
1316 electronically, or service is purchased by the retailer for resale; and

1317 ~~(b)~~ (ii) the tangible personal property, product transferred electronically, or service is  
1318 not subsequently resold.

1319 (9) If any sale of property or service subject to the tax is made to a person prepaying  
1320 sales or use tax in accordance with Title 63M, Chapter 5, Resource Development Act, or to a  
1321 contractor or subcontractor of that person[;]:

1322 (a) the person to whom such payment or consideration is payable is not responsible for  
1323 the collection or payment of the sales or use tax; and

1324 (b) the person prepaying the sales or use tax is responsible for the collection or  
1325 payment of the sales or use tax if the person prepaying the sales or use tax represents that the  
1326 amount prepaid as sales or use tax has not been fully credited against sales or use tax due and  
1327 payable under the rules promulgated by the commission.

- 1328 (10) (a) For purposes of this Subsection (10):
- 1329 (i) Except as provided in Subsection (10)(a)(ii), "bad debt" ~~[is as]~~ means the same as
- 1330 that term is defined in Section 166, Internal Revenue Code.
- 1331 (ii) ~~[Notwithstanding Subsection (10)(a)(i), "bad]~~ Bad debt does not include:
- 1332 (A) an amount included in the purchase price of tangible personal property, a product
- 1333 transferred electronically, or a service that is:
- 1334 (I) not a transaction described in Subsection 59-12-103(1); or
- 1335 (II) exempt under Section 59-12-104;
- 1336 (B) a financing charge;
- 1337 (C) interest;
- 1338 (D) a tax imposed under this chapter on the purchase price of tangible personal
- 1339 property, a product transferred electronically, or a service;
- 1340 (E) an uncollectible amount on tangible personal property or a product transferred
- 1341 electronically that:
- 1342 (I) is subject to a tax under this chapter; and
- 1343 (II) remains in the possession of a seller until the full purchase price is paid;
- 1344 (F) an expense incurred in attempting to collect any debt; or
- 1345 (G) an amount that a seller does not collect on repossessed property.
- 1346 (b) (i) To the extent an amount remitted in accordance with Subsection (4)(d) later
- 1347 becomes bad debt, a seller may deduct the bad debt from the total amount from which a tax
- 1348 under this chapter is calculated on a return.
- 1349 (ii) A qualifying purchaser, as defined in Subsection (4)(e)(ii)(A), may deduct from the
- 1350 total amount of taxes due under this chapter the amount of tax the qualifying purchaser paid on
- 1351 the qualifying purchaser's purchase of tangible personal property converted into real property to
- 1352 the extent that:
- 1353 (A) tax was remitted in accordance with Subsection (4)(e) on that tangible personal
- 1354 property converted into real property;
- 1355 (B) the qualifying purchaser's sale of that tangible personal property converted into real
- 1356 property later becomes bad debt; and
- 1357 (C) the books and records that the qualifying purchaser keeps in the qualifying
- 1358 purchaser's regular course of business identify by reasonable and verifiable standards that the

- 1359 tangible personal property was converted into real property.
- 1360 (c) A seller may file a refund claim with the commission if:
- 1361 (i) the amount of bad debt for the time period described in Subsection (10)(e) exceeds
- 1362 the amount of the seller's sales that are subject to a tax under this chapter for that same time
- 1363 period; and
- 1364 (ii) as provided in Section [59-1-1410](#).
- 1365 (d) A bad debt deduction under this section may not include interest.
- 1366 (e) A bad debt may be deducted under this Subsection (10) on a return for the time
- 1367 period during which the bad debt:
- 1368 (i) is written off as uncollectible in the seller's books and records; and
- 1369 (ii) would be eligible for a bad debt deduction:
- 1370 (A) for federal income tax purposes; and
- 1371 (B) if the seller were required to file a federal income tax return.
- 1372 (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or
- 1373 claims a refund under this Subsection (10), the seller shall report and remit a tax under this
- 1374 chapter:
- 1375 (i) on the portion of the bad debt the seller recovers; and
- 1376 (ii) on a return filed for the time period for which the portion of the bad debt is
- 1377 recovered.
- 1378 (g) For purposes of reporting a recovery of a portion of bad debt under Subsection
- 1379 (10)(f), a seller shall apply amounts received on the bad debt in the following order:
- 1380 (i) in a proportional amount:
- 1381 (A) to the purchase price of the tangible personal property, product transferred
- 1382 electronically, or service; and
- 1383 (B) to the tax due under this chapter on the tangible personal property, product
- 1384 transferred electronically, or service; and
- 1385 (ii) to:
- 1386 (A) interest charges;
- 1387 (B) service charges; and
- 1388 (C) other charges.
- 1389 (h) A seller's certified service provider may make a deduction or claim a refund for bad

1390 debt on behalf of the seller:

1391 (i) in accordance with this Subsection (10); and

1392 (ii) if the certified service provider credits or refunds the entire amount of the bad debt  
1393 deduction or refund to the seller.

1394 (i) A seller may allocate bad debt among the states that are members of the agreement  
1395 if the seller's books and records support that allocation.

1396 (11) (a) A seller may not, with intent to evade any tax, fail to timely remit the full  
1397 amount of tax required by this chapter.

1398 (b) A violation of this section is punishable as provided in Section 59-1-401.

1399 (c) Each person who fails to pay any tax to the state or any amount of tax required to be  
1400 paid to the state, except amounts determined to be due by the commission under Chapter 1,  
1401 Part 14, Assessment, Collections, and Refunds Act, or Section 59-12-111, within the time  
1402 required by this chapter, or who fails to file any return as required by this chapter, shall pay, in  
1403 addition to the tax, penalties and interest as provided in Sections 59-1-401 and 59-1-402.

1404 (d) For purposes of prosecution under this section, each quarterly tax period in which a  
1405 seller, with intent to evade any tax, collects a tax and fails to timely remit the full amount of the  
1406 tax required to be remitted, constitutes a separate offense.

1407 (12) The provisions of this section are severable. If any provision of this section or the  
1408 application of any provision of this section to any person or circumstance is held invalid by a  
1409 final, unappealable decision of a court of competent jurisdiction, the remainder of this section  
1410 shall be given effect without the invalid provision or application.

1411 Section 6. Section 59-12-108 is amended to read:

1412 **59-12-108. Monthly payment -- Amount of tax a seller may retain -- Penalty --**  
1413 **Certain amounts allocated to local taxing jurisdictions.**

1414 (1) (a) Notwithstanding Section 59-12-107, a seller that has a tax liability under this  
1415 chapter of \$50,000 or more for the previous calendar year shall:

1416 (i) file a return with the commission:

1417 (A) monthly on or before the last day of the month immediately following the month  
1418 for which the seller collects a tax under this chapter; and

1419 (B) for the month for which the seller collects a tax under this chapter; and

1420 (ii) except as provided in Subsection (1)(b), remit, with the return required by

1421 Subsection (1)(a)(i), the amount [~~the person is required to remit to the commission for each tax,~~  
1422 ~~fee, or charge~~] described in Subsection (1)(c) as follows:

1423 (A) if that seller's tax liability under this chapter for the previous calendar year is less  
1424 than \$96,000, by any method permitted by the commission; or

1425 (B) if that seller's tax liability under this chapter for the previous calendar year is  
1426 \$96,000 or more, by electronic funds transfer.

1427 (b) A seller shall remit electronically with the return required by Subsection (1)(a)(i)  
1428 the amount the seller is required to remit to the commission for each tax, fee, or charge  
1429 described in Subsection (1)(c) if that seller:

1430 (i) is required by Section 59-12-107 to file the return electronically; or

1431 (ii) (A) is required to collect and remit a tax under Section 59-12-107; and

1432 (B) files a simplified electronic return.

1433 (c) Subsections (1)(a) and (b) apply to the following taxes, fees, or charges:

1434 (i) a tax under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

1435 (ii) a fee under Section 19-6-714;

1436 (iii) a fee under Section 19-6-805;

1437 (iv) a charge under Section 69-2-5;

1438 (v) a charge under Section 69-2-5.5;

1439 (vi) a charge under Section 69-2-5.6; [~~or~~] and

1440 (vii) a tax under this chapter.

1441 (d) Notwithstanding [~~Subsection~~] Subsections (1)(a)(ii) and (b) and in accordance with  
1442 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules  
1443 providing for a method for making same-day payments other than by electronic funds transfer  
1444 if making payments by electronic funds transfer fails.

1445 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1446 commission shall establish by rule procedures and requirements for determining the amount a  
1447 seller is required to remit to the commission under this Subsection (1).

1448 (2) (a) Except as provided in Subsection (3), a seller subject to Subsection (1) or a  
1449 seller described in Subsection (4) may retain each month the amount allowed by this  
1450 Subsection (2).

1451 (b) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain



1452 each month 1.31% of any amounts the seller is required to remit to the commission:

1453 (i) for a transaction described in Subsection 59-12-103(1) that is subject to a state tax  
1454 and a local tax imposed in accordance with the following, for the month for which the seller is  
1455 filing a return in accordance with Subsection (1):

1456 (A) Subsection 59-12-103(2)(a);

1457 (B) Subsection 59-12-103(2)(b); and

1458 (C) Subsection 59-12-103(2)(d); and

1459 (ii) for an agreement sales and use tax.

1460 (c) (i) A seller subject to Subsection (1) or a seller described in Subsection (4) may  
1461 retain each month the amount calculated under Subsection (2)(c)(ii) for a transaction described  
1462 in Subsection 59-12-103(1) that is subject to the state tax and the local tax imposed in  
1463 accordance with Subsection 59-12-103(2)(c).

1464 (ii) For purposes of Subsection (2)(c)(i), the amount a seller may retain is an amount  
1465 equal to the sum of:

1466 (A) 1.31% of any amounts the seller is required to remit to the commission for:

1467 (I) the state tax and the local tax imposed in accordance with Subsection

1468 59-12-103(2)(c);

1469 (II) the month for which the seller is filing a return in accordance with Subsection (1);

1470 and

1471 (III) an agreement sales and use tax; and

1472 (B) 1.31% of the difference between:

1473 (I) the amounts the seller would have been required to remit to the commission:

1474 (Aa) in accordance with Subsection 59-12-103(2)(a) if the transaction had been subject  
1475 to the state tax and the local tax imposed in accordance with Subsection 59-12-103(2)(a);

1476 (Bb) for the month for which the seller is filing a return in accordance with Subsection  
1477 (1); and

1478 (Cc) for an agreement sales and use tax; and

1479 (II) the amounts the seller is required to remit to the commission for:

1480 (Aa) the state tax and the local tax imposed in accordance with Subsection

1481 59-12-103(2)(c);

1482 (Bb) the month for which the seller is filing a return in accordance with Subsection (1);

1483 and  
1484 (Cc) an agreement sales and use tax.  
1485 (d) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain  
1486 each month 1% of any amounts the seller is required to remit to the commission:  
1487 (i) for the month for which the seller is filing a return in accordance with Subsection  
1488 (1); and  
1489 (ii) under:  
1490 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;  
1491 (B) Subsection 59-12-603(1)(a)(i)(A); or  
1492 (C) Subsection 59-12-603(1)(a)(i)(B).  
1493 (3) A state government entity that is required to remit taxes monthly in accordance  
1494 with Subsection (1) may not retain any amount under Subsection (2).  
1495 (4) A seller that has a tax liability under this chapter for the previous calendar year of  
1496 less than \$50,000 may:  
1497 (a) voluntarily meet the requirements of Subsection (1); and  
1498 (b) if the seller voluntarily meets the requirements of Subsection (1), retain the  
1499 amounts allowed by Subsection (2).  
1500 (5) (a) Subject to Subsections (5)(b) through (d), a seller that voluntarily collects and  
1501 remits a tax in accordance with Subsection 59-12-107(2)(~~e~~)(f)(i) may retain an amount equal  
1502 to 18% of any amounts the seller would otherwise remit to the commission:  
1503 (i) if the seller obtains a license under Section 59-12-106 for the first time on or after  
1504 January 1, 2014; and  
1505 (ii) for:  
1506 (A) an agreement sales and use tax; and  
1507 (B) the time period for which the seller files a return in accordance with this section.  
1508 (b) If a seller retains an amount under this Subsection (5), the seller may not retain any  
1509 other amount under this section.  
1510 (c) If a seller retains an amount under this Subsection (5), the commission may require  
1511 the seller to file a return by:  
1512 (i) electronic means; or  
1513 (ii) a means other than electronic means.

1514 (d) A seller may not retain an amount under this Subsection (5) if the seller is required  
1515 to collect or remit a tax under this section in accordance with Section 59-12-103.1.

1516 (6) Penalties for late payment shall be as provided in Section 59-1-401.

1517 (7) (a) Except as provided in Subsection (7)(c), for any amounts required to be remitted  
1518 to the commission under this part, the commission shall each month calculate an amount equal  
1519 to the difference between:

1520 (i) the total amount retained for that month by all sellers had the percentages listed  
1521 under Subsections (2)(b) and (2)(c)(ii) been 1.5%; and

1522 (ii) the total amount retained for that month by all sellers at the percentages listed  
1523 under Subsections (2)(b) and (2)(c)(ii).

1524 (b) The commission shall each month allocate the amount calculated under Subsection  
1525 (7)(a) to each county, city, and town on the basis of the proportion of agreement sales and use  
1526 tax that the commission distributes to each county, city, and town for that month compared to  
1527 the total agreement sales and use tax that the commission distributes for that month to all  
1528 counties, cities, and towns.

1529 (c) The amount the commission calculates under Subsection (7)(a) may not include an  
1530 amount collected from a tax that:

1531 (i) the state imposes within a county, city, or town, including the unincorporated area  
1532 of a county; and

1533 (ii) is not imposed within the entire state.

1534 Section 7. Section 59-12-211 is amended to read:

1535 **59-12-211. Definitions -- Location of certain transactions -- Reports to**  
1536 **commission -- Direct payment provision for a seller making certain purchases --**  
1537 **Exceptions.**

1538 (1) As used in this section:

1539 (a) (i) "Receipt" and "receive" mean:

1540 (A) taking possession of tangible personal property;

1541 (B) making first use of a service; or

1542 (C) for a product transferred electronically, the earlier of:

1543 (I) taking possession of the product transferred electronically; or

1544 (II) making first use of the product transferred electronically.

1545 (ii) "Receipt" and "receive" do not include possession by a shipping company on behalf  
1546 of a purchaser.

1547 (b) "Transportation equipment" means:

1548 (i) a locomotive or rail car that is used to carry a person or property in interstate  
1549 commerce;

1550 (ii) a truck or truck-tractor:

1551 (A) with a gross vehicle weight rating of 10,001 pounds or ~~[more]~~ greater;

1552 (B) registered under Section 41-1a-301; and

1553 (C) operated under the authority of a carrier authorized and certificated:

1554 (I) by the United States Department of Transportation or another federal authority; and

1555 (II) to engage in carrying a person or property in interstate commerce;

1556 (iii) a trailer, semitrailer, or passenger bus that is:

1557 (A) registered under Section 41-1a-301; and

1558 (B) operated under the authority of a carrier authorized and certificated:

1559 (I) by the United States Department of Transportation or another federal authority; and

1560 (II) to engage in carrying a person or property in interstate commerce;

1561 (iv) an aircraft that is operated by an air carrier authorized and certificated:

1562 (A) by the United States Department of Transportation or another federal or foreign  
1563 authority; and

1564 (B) to engage in carrying a person or property in interstate commerce; or

1565 (v) a container designed for use on, or a component part attached or secured on, an  
1566 item of equipment listed in Subsections (1)(b)(i) through (iv).

1567 (2) Except as provided in Subsections (8) and (14), if tangible personal property, a  
1568 product transferred electronically, or a service that is subject to taxation under this chapter is  
1569 received by a purchaser at a business location of a seller, the location of the transaction is the  
1570 business location of the seller.

1571 (3) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),  
1572 and (14), if tangible personal property, a product transferred electronically, or a service that is  
1573 subject to taxation under this chapter is not received by a purchaser at a business location of a  
1574 seller, the location of the transaction is the location where the purchaser takes receipt of the  
1575 tangible personal property or service.

1576 (4) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),  
1577 and (14), if Subsection (2) or (3) does not apply, the location of the transaction is the location  
1578 indicated by an address for or other information on the purchaser if:

1579 (a) the address or other information is available from the seller's business records; and  
1580 (b) use of the address or other information from the seller's records does not constitute  
1581 bad faith.

1582 (5) (a) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9),  
1583 (11), and (14), if Subsection (2), (3), or (4) does not apply, the location of the transaction is the  
1584 location indicated by an address for the purchaser if:

1585 (i) the address is obtained during the consummation of the transaction; and  
1586 (ii) use of the address described in Subsection (5)(a)(i) does not constitute bad faith.  
1587 (b) An address used under Subsection (5)(a) includes the address of a purchaser's  
1588 payment instrument if no other address is available.

1589 (6) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),  
1590 and (14), if Subsection (2), (3), (4), or (5) does not apply or if a seller does not have sufficient  
1591 information to apply Subsection (2), (3), (4), or (5), the location of the transaction is the  
1592 location:

1593 (a) indicated by the address from which:  
1594 (i) except as provided in Subsection (6)(a)(ii), for tangible personal property that is  
1595 subject to taxation under this chapter, the tangible personal property is shipped;  
1596 (ii) for computer software delivered electronically or for a product transferred  
1597 electronically that is subject to taxation under this chapter, the computer software or product  
1598 transferred electronically is first available for transmission by the seller; or  
1599 (iii) for a service that is subject to taxation under this chapter, the service is provided;

1600 or

1601 (b) as determined by the seller with respect to a prepaid wireless calling service:

1602 (i) provided in Subsection (6)(a)(iii); or  
1603 (ii) associated with the mobile telephone number.

1604 (7) (a) For purposes of this Subsection (7), "shared ZIP Code" means a nine-digit ZIP  
1605 Code that is located within two or more local taxing jurisdictions.

1606 (b) If the location of a transaction determined under Subsections (3) through (6) is in a

1607 shared ZIP Code, the location of the transaction is:

1608 (i) if there is only one local taxing jurisdiction that imposes the lowest agreement  
1609 combined tax rate for the shared ZIP Code, the local taxing jurisdiction that imposes the lowest  
1610 agreement combined tax rate; or

1611 (ii) if two or more local taxing jurisdictions impose the lowest agreement combined tax  
1612 rate for the shared ZIP Code, the local taxing jurisdiction that:

1613 (A) imposes the lowest agreement combined tax rate for the shared ZIP Code; and

1614 (B) has located within the local taxing jurisdiction the largest number of street  
1615 addresses within the shared ZIP Code.

1616 (c) Notwithstanding any provision under this chapter authorizing or requiring the  
1617 imposition of a sales and use tax, for purposes of Subsection (7)(b), a seller shall collect a sales  
1618 and use tax imposed under this chapter at the lowest agreement combined tax rate imposed  
1619 within the local taxing jurisdiction in which the transaction is located under Subsection (7)(b).

1620 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1621 commission may make rules:

1622 (i) providing for the circumstances under which a seller has exercised due diligence in  
1623 determining the nine-digit ZIP Code for an address; or

1624 (ii) notwithstanding Subsection (7)(b), for determining the local taxing jurisdiction  
1625 within which a transaction is located if a seller is unable to determine the local taxing  
1626 jurisdiction within which the transaction is located under Subsection (7)(b).

1627 (8) The location of a transaction made with a direct payment permit described in  
1628 Section [59-12-107.1](#) is the location where receipt of the tangible personal property, product  
1629 transferred electronically, or service by the purchaser occurs.

1630 (9) The location of a purchase of direct mail is the location determined in accordance  
1631 with Section [59-12-123](#).

1632 (10) (a) Except as provided in Subsection (10)(b), the location of a transaction  
1633 determined under Subsections (3) through (6), (8), or (9), is the local taxing jurisdiction within  
1634 which:

1635 (i) the nine-digit ZIP Code assigned to the location determined under Subsections (3)  
1636 through (6), (8), or (9) is located; or

1637 (ii) the five-digit ZIP Code assigned to the location determined under Subsections (3)

1638 through (6), (8), or (9) is located if:

1639 (A) a nine-digit ZIP Code is not available for the location determined under  
1640 Subsections (3) through (6), (8), or (9); or

1641 (B) after exercising due diligence, a seller or certified service provider is unable to  
1642 determine a nine-digit ZIP Code for the location determined under Subsections (3) through (6),  
1643 (8), or (9).

1644 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1645 commission may make rules for determining the local taxing jurisdiction within which a  
1646 transaction is located if a seller or certified service provider is unable to determine the local  
1647 taxing jurisdiction within which the transaction is located under Subsection (10)(a).

1648 (11) (a) As used in this Subsection (11), "florist delivery transaction" means a  
1649 transaction commenced by a florist that transmits an order:

1650 (i) by:

1651 (A) telegraph;

1652 (B) telephone; or

1653 (C) a means of communication similar to Subsection (11)(a)(i)(A) or (B); and

1654 (ii) for delivery to another place:

1655 (A) in this state; or

1656 (B) outside this state.

1657 ~~[(b) Notwithstanding Subsections (3) through (6), beginning on January 1, 2009, and~~  
1658 ~~ending on December 31, 2009, the location of a florist delivery transaction is the business~~  
1659 ~~location of the florist that commences the florist delivery transaction.]~~

1660 ~~[(c)]~~ (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking  
1661 Act, the commission may by rule:

1662 (i) define:

1663 (A) "business location"; and

1664 (B) "florist";

1665 (ii) define what constitutes a means of communication similar to Subsection  
1666 (11)(a)(i)(A) or (B); and

1667 (iii) provide procedures for determining when a transaction is commenced.

1668 (12) (a) Notwithstanding any other provision of this section and except as provided in

1669 Subsection (12)(b), if a purchaser uses computer software and there is not a transfer of a copy  
1670 of that software to the purchaser, the location of the transaction is determined in accordance  
1671 with Subsections (4) and (5).

1672 (b) If a purchaser uses computer software described in Subsection (12)(a) at more than  
1673 one location, the location of the transaction shall be determined in accordance with rules made  
1674 by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking  
1675 Act.

1676 (13) (a) A tax collected under this chapter shall be reported to the commission on a  
1677 form that identifies the location of each transaction that occurs during the return filing period.

1678 (b) The form described in Subsection (13)(a) shall be filed with the commission as  
1679 required under this chapter.

1680 (14) This section does not apply to:

1681 (a) amounts charged by a seller for:

1682 (i) telecommunications service except for a prepaid calling service or a prepaid  
1683 wireless calling service as provided in Subsection (6)(b) or Section 59-12-215; or

1684 (ii) the retail sale or transfer of:

1685 (A) a motor vehicle other than a motor vehicle that is transportation equipment;

1686 (B) an aircraft other than an aircraft that is transportation equipment;

1687 (C) a watercraft;

1688 (D) a modular home;

1689 (E) a manufactured home; or

1690 (F) a mobile home; or

1691 (iii) except as provided in Section 59-12-214, the lease or rental of tangible personal  
1692 property other than tangible personal property that is transportation equipment;

1693 (b) a tax a person pays in accordance with Subsection 59-12-107(2)(~~e~~)(h); or

1694 (c) a retail sale of tangible personal property or a product transferred electronically if:

1695 (i) the seller receives the order for the tangible personal property or product transferred  
1696 electronically in this state;

1697 (ii) receipt of the tangible personal property or product transferred electronically by the  
1698 purchaser or the purchaser's donee occurs in this state;

1699 (iii) the location where receipt of the tangible personal property or product transferred



1700 electronically by the purchaser occurs is determined in accordance with Subsections (3)  
1701 through (5); and

1702 (iv) at the time the seller receives the order, the record keeping system that the seller  
1703 uses to calculate the proper amount of tax imposed under this chapter captures the location  
1704 where the order is received.

1705 Section 8. Section **59-12-211.1** is amended to read:

1706 **59-12-211.1. Location of a transaction that is subject to a use tax.**

1707 (1) Subject to Subsection (2), a person that is required by Subsection  
1708 **59-12-107(2)(e)(i)** to pay a use tax on a transaction shall report the location of that transaction  
1709 at the person's location.

1710 (2) For purposes of Subsection (1), if a person has more than one location in this state,  
1711 the person shall report the location of the transaction at the location at which tangible personal  
1712 property, a product transferred electronically, or a service is received.

1713 Section 9. Section **76-8-1101** is amended to read:

1714 **76-8-1101. Criminal offenses and penalties relating to revenue and taxation --**  
1715 **Rulemaking authority -- Statute of limitations.**

1716 (1) (a) As provided in Section **59-1-401**, criminal offenses and penalties are as  
1717 provided in Subsections (1)(b) through (e).

1718 (b) (i) ~~Any~~ A person [who] is guilty of a class B misdemeanor if the person:

1719 (A) is required by Title 59, Revenue and Taxation, or any laws the State Tax  
1720 Commission administers or regulates, to register with or obtain a license or permit from the  
1721 State Tax Commission[; who]; and

1722 (B) operates without having registered or secured a license or permit[;] or [who]  
1723 operates when the registration, license, or permit is expired or not current[; is guilty of a class  
1724 B misdemeanor].

1725 (ii) Notwithstanding Section **76-3-301**, for purposes of Subsection (1)(b)(i), the  
1726 penalty may not:

1727 (A) be less than \$500; or

1728 (B) exceed \$1,000.

1729 (c) (i) With respect to a tax, fee, or charge as defined in Section **59-1-401**, ~~any~~ a  
1730 person [who] is guilty of a third degree felony if the person:

1731 (A) knowingly and intentionally, and without a reasonable good faith basis, fails to  
1732 make, render, sign, or verify any return within the time required by law or to supply any  
1733 information within the time required by law~~[-or who]~~;

1734 (B) makes, renders, signs, or verifies any false or fraudulent return or statement~~[-]~~; or  
1735 ~~[who]~~

1736 (C) supplies any false or fraudulent information~~[-is guilty of a third degree felony]~~.

1737 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(c)(i), the penalty  
1738 may not:

1739 (A) be less than \$1,000; or

1740 (B) exceed \$5,000.

1741 (d) (i) Any person who intentionally or willfully attempts to evade or defeat any tax,  
1742 fee, or charge as defined in Section 59-1-401 or the payment of a tax, fee, or charge as defined  
1743 in Section 59-1-401 is, in addition to other penalties provided by law, guilty of a second degree  
1744 felony.

1745 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(d)(i), the penalty  
1746 may not:

1747 (A) be less than \$1,500; or

1748 (B) exceed \$25,000.

1749 (e) (i) A person is guilty of a second degree felony if that person commits an act:

1750 (A) described in Subsection (1)(e)(ii) with respect to one or more of the following  
1751 documents:

1752 (I) a return;

1753 (II) an affidavit;

1754 (III) a claim; or

1755 (IV) a document similar to Subsections (1)(e)(i)(A)(I) through (III); and

1756 (B) subject to Subsection (1)(e)(iii), with knowledge that the document described in  
1757 Subsection (1)(e)(i)(A):

1758 (I) is false or fraudulent as to any material matter; and

1759 (II) could be used in connection with any material matter administered by the State Tax  
1760 Commission.

1761 (ii) The following acts apply to Subsection (1)(e)(i):

- 1762 (A) preparing any portion of a document described in Subsection (1)(e)(i)(A);  
1763 (B) presenting any portion of a document described in Subsection (1)(e)(i)(A);  
1764 (C) procuring any portion of a document described in Subsection (1)(e)(i)(A);  
1765 (D) advising in the preparation or presentation of any portion of a document described  
1766 in Subsection (1)(e)(i)(A);  
1767 (E) aiding in the preparation or presentation of any portion of a document described in  
1768 Subsection (1)(e)(i)(A);  
1769 (F) assisting in the preparation or presentation of any portion of a document described  
1770 in Subsection (1)(e)(i)(A); or  
1771 (G) counseling in the preparation or presentation of any portion of a document  
1772 described in Subsection (1)(e)(i)(A).  
1773 (iii) This Subsection (1)(e) applies:  
1774 (A) regardless of whether the person for which the document described in Subsection  
1775 (1)(e)(i)(A) is prepared or presented:  
1776 (I) knew of the falsity of the document described in Subsection (1)(e)(i)(A); or  
1777 (II) consented to the falsity of the document described in Subsection (1)(e)(i)(A); and  
1778 (B) in addition to any other penalty provided by law.  
1779 (iv) Notwithstanding Section 76-3-301, for purposes of this Subsection (1)(e), the  
1780 penalty may not:  
1781 (A) be less than \$1,500; or  
1782 (B) exceed \$25,000.  
1783 (v) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1784 State Tax Commission may make rules prescribing the documents that are similar to  
1785 Subsections (1)(e)(i)(A)(I) through (III).  
1786 (2) The statute of limitations for prosecution for a violation of this section is the later  
1787 of six years:  
1788 (a) from the date the tax should have been remitted; or  
1789 (b) after the day on which the person commits the criminal offense.  
1790 Section 10. **Effective date.**  
1791 This bill takes effect on January 1, 2017.