

1 **SALES AND USE TAX COMPLIANCE AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Wayne A. Harper**

5 House Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to sales and use taxes.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ defines terms;

13 ▶ addresses the circumstances under which a person may be required to collect and
14 remit sales and use taxes to the State Tax Commission; and

15 ▶ makes technical and conforming changes.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 This bill provides a special effective date.

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **59-1-401**, as last amended by Laws of Utah 2015, Chapter 369

23 **59-12-103.1**, as last amended by Laws of Utah 2013, Chapter 150

24 **59-12-107**, as last amended by Laws of Utah 2012, Chapters 178, 312, and 399

25 **59-12-108**, as last amended by Laws of Utah 2013, Chapter 50

26 **59-12-211**, as last amended by Laws of Utah 2012, Chapter 312

27 **59-12-211.1**, as last amended by Laws of Utah 2012, Chapter 312



28 **76-8-1101**, as last amended by Laws of Utah 2014, Chapter 52

29
30 *Be it enacted by the Legislature of the state of Utah:*

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

32 **59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute**
33 **of limitations -- Commission authority to waive, reduce, or compromise penalty or**
34 **interest.**

35 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

59 ~~[(F)]~~ (A) this title;

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

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

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

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

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

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

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

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

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

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

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

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

72 section.

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

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

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

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

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

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

79 ~~[(d) "Unactivated tax, fee, or charge" means a tax, fee, or charge except for an~~

80 ~~activated tax, fee, or charge.]~~

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

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

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

84 (ii) if the person filing the return is allowed by law an extension of time for filing the

85 return, the earlier of:

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

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

88 (b) A penalty in the amount described in Subsection (2)(c) is imposed if a person files a

89 return after the due date described in Subsection (2)(a).

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

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

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

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

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

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

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

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

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

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

106 (i) an amended return; or

107 (ii) a return with no tax due.

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

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

112 (ii) the person:

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

114 (B) fails to pay the tax, fee, or charge due on a return within a 90-day period after the
115 due date for filing a return described in Subsection (2)(a);

116 (iii) (A) the person is subject to a penalty under Subsection (2)(b); and

117 (B) the commission estimates an amount of tax due for that person in accordance with
118 Subsection 59-1-1406(2);

119 (iv) the person:

120 (A) is mailed a notice of deficiency; and

121 (B) within a 30-day period after the day on which the notice of deficiency described in
122 Subsection (3)(a)(iv)(A) is mailed:

123 (I) does not file a petition for redetermination or a request for agency action; and

124 (II) fails to pay the tax, fee, or charge due on a return;

125 (v) (A) the commission:

126 (I) issues an order constituting final agency action resulting from a timely filed petition
127 for redetermination or a timely filed request for agency action; or

128 (II) is considered to have denied a request for reconsideration under Subsection
129 ~~63G-4-302~~(3)(b) resulting from a timely filed petition for redetermination or a timely filed
130 request for agency action; and

131 (B) the person fails to pay the tax, fee, or charge due on a return within a 30-day period
132 after the date the commission:

133 (I) issues the order constituting final agency action described in Subsection
134 (3)(a)(v)(A)(I); or

135 (II) is considered to have denied the request for reconsideration described in
136 Subsection (3)(a)(v)(A)(II); or

137 (vi) the person fails to pay the tax, fee, or charge within a 30-day period after the date
138 of a final judicial decision resulting from a timely filed petition for judicial review.

139 (b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:

140 ~~[(i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with
141 respect to an unactivated tax, fee, or charge:]~~

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

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

144 ~~[(ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with
145 respect to an activated tax, fee, or charge, beginning on the activation date:]~~

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

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

150 ~~[(F)]~~ (B) 5% of the unpaid ~~[activated]~~ tax, fee, or charge due on the return if the
151 activated tax, fee, or charge due on the return is paid more than five days after the due date for

152 filing a return described in Subsection (2)(a) but no later than 15 days after that due date; or
153 ~~[(H)]~~ (C) 10% of the unpaid ~~[activated]~~ tax, fee, or charge due on the return if the
154 ~~[activated]~~ tax, fee, or charge due on the return is paid more than 15 days after the due date for
155 filing a return described in Subsection (2)(a).

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

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

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

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

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

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

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

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

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

182 (b) For purposes of Subsection (5)(a), the penalty per month during the period of the

183 extension of time for filing the return is an amount equal to 2% of the tax due on the return,
184 unpaid as of the day on which the return is due as provided by law.

185 (6) If a person does not file a return within an extension of time allowed by Section
186 59-7-505 or 59-10-516, the person:

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

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

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

190 (A) \$20; or

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

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

194 (A) \$20; or

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

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

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

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

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

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

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

212 (i) The notice of proposed penalty shall:

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

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

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

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

218 or

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

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

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

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

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

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

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

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

234 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
235 or is a seller required to pay or collect and remit sales and use taxes under Subsection
236 59-12-107(2)(b) or (d); and

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

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

240 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
241 or is a seller required to pay or collect and remit sales and use taxes under Subsection
242 59-12-107(2)(b) or (d); and

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

245 (d) A seller that voluntarily collects a tax under Subsection 59-12-107(2)(~~(d)~~)(c)(i) is
246 not subject to the penalty under Subsection (7)(a)(ii) if:

247 (i) (A) a court of competent jurisdiction issues a final, unappealable judgment or order
248 determining that:

249 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
250 or is a seller required to pay or collect and remit sales and use taxes under Subsection
251 59-12-107(2)(b) or (d); and

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

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

255 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
256 or is a seller required to pay or collect and remit sales and use taxes under Subsection
257 59-12-107(2)(b) or (d); and

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

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

263 (8) (a) Subject to Subsections (8)(b) and (c), the penalty for failure to file an
264 information return, information report, or a complete supporting schedule is \$50 for each
265 information return, information report, or supporting schedule up to a maximum of \$1,000.

266 (b) If an employer is subject to a penalty under Subsection (13), the employer may not
267 be subject to a penalty under Subsection (8)(a).

268 (c) If an employer is subject to a penalty under this Subsection (8) for failure to file a
269 return in accordance with Subsection 59-10-406(3) on or before the due date described in
270 Subsection 59-10-406(3)(b)(ii), the commission may not impose a penalty under this
271 Subsection (8) unless the return is filed more than 14 days after the due date described in
272 Subsection 59-10-406(3)(b)(ii).

273 (9) If a person, in furtherance of a frivolous position, has a prima facie intent to delay
274 or impede administration of a law relating to a tax, fee, or charge and files a purported return
275 that fails to contain information from which the correctness of reported tax, fee, or charge

276 liability can be determined or that clearly indicates that the tax, fee, or charge liability shown is
277 substantially incorrect, the penalty is \$500.

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

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

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

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

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

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

291 (A) a return;

292 (B) an affidavit;

293 (C) a claim; or

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

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

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

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

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

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

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

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

306 (v) aiding in the preparation or presentation of any portion of a document described in

307 Subsection (11)(a)(i);
308 (vi) assisting in the preparation or presentation of any portion of a document described
309 in Subsection (11)(a)(i); or
310 (vii) counseling in the preparation or presentation of any portion of a document
311 described in Subsection (11)(a)(i).
312 (c) For purposes of Subsection (11)(a), the penalty:
313 (i) shall be imposed by the commission;
314 (ii) is \$500 for each document described in Subsection (11)(a)(i) with respect to which
315 the person described in Subsection (11)(a) meets the requirements of Subsection (11)(a); and
316 (iii) is in addition to any other penalty provided by law.
317 (d) The commission may seek a court order to enjoin a person from engaging in
318 conduct that is subject to a penalty under this Subsection (11).
319 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
320 commission may make rules prescribing the documents that are similar to Subsections
321 (11)(a)(i)(A) through (C).
322 (12) (a) As provided in Section 76-8-1101, criminal offenses and penalties are as
323 provided in Subsections (12)(b) through (e).
324 (b) (i) A person ~~[who]~~ is guilty of a class B misdemeanor if the person:
325 (A) is required by this title or any laws the commission administers or regulates to
326 register with or obtain a license or permit from the commission~~[-who]; and~~
327 (B) operates without having registered or secured a license or permit~~[-];~~ or ~~[who]~~
328 operates when the registration, license, or permit is expired or not current~~[-is guilty of a class~~
329 B misdemeanor].
330 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(b)(i), the
331 penalty may not:
332 (A) be less than \$500; or
333 (B) exceed \$1,000.
334 (c) (i) With respect to a tax, fee, or charge, a person ~~[who]~~ is guilty of a third degree
335 felony if the person:
336 (A) knowingly and intentionally, and without a reasonable good faith basis, fails to
337 make, render, sign, or verify a return within the time required by law or to supply information

338 within the time required by law~~[, or who]~~;

339 (B) makes, renders, signs, or verifies a false or fraudulent return or statement~~[-]~~; or

340 ~~[who]~~

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

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

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

345 (B) exceed \$5,000.

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

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

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

352 (B) exceed \$25,000.

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

354 (A) described in Subsection (12)(e)(ii) with respect to one or more of the following
355 documents:

356 (I) a return;

357 (II) an affidavit;

358 (III) a claim; or

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

360 (B) subject to Subsection (12)(e)(iii), with knowledge that the document described in
361 Subsection (12)(e)(i)(A):

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

363 (II) could be used in connection with any material matter administered by the
364 commission.

365 (ii) The following acts apply to Subsection (12)(e)(i):

366 (A) preparing any portion of a document described in Subsection (12)(e)(i)(A);

367 (B) presenting any portion of a document described in Subsection (12)(e)(i)(A);

368 (C) procuring any portion of a document described in Subsection (12)(e)(i)(A);

369 (D) advising in the preparation or presentation of any portion of a document described
370 in Subsection (12)(e)(i)(A);

371 (E) aiding in the preparation or presentation of any portion of a document described in
372 Subsection (12)(e)(i)(A);

373 (F) assisting in the preparation or presentation of any portion of a document described
374 in Subsection (12)(e)(i)(A); or

375 (G) counseling in the preparation or presentation of any portion of a document
376 described in Subsection (12)(e)(i)(A).

377 (iii) This Subsection (12)(e) applies:

378 (A) regardless of whether the person for which the document described in Subsection
379 (12)(e)(i)(A) is prepared or presented:

380 (I) knew of the falsity of the document described in Subsection (12)(e)(i)(A); or

381 (II) consented to the falsity of the document described in Subsection (12)(e)(i)(A); and

382 (B) in addition to any other penalty provided by law.

383 (iv) Notwithstanding Section 76-3-301, for purposes of this Subsection (12)(e), the
384 penalty may not:

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

386 (B) exceed \$25,000.

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

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

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

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

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

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

399 (i) fails to file the form with the commission in an electronic format approved by the

400 commission as required by Subsection 59-10-406(8);

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

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

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

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

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

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

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

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

415 (B) fails to file the form.

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

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

420 **59-12-103.1. Action by Supreme Court of the United States authorizing or action**
421 **by Congress permitting a state to require certain sellers to collect a sales or use tax --**
422 **Collection of tax by commission -- Commission report to Revenue and Taxation Interim**
423 **Committee -- Revenue and Taxation Interim Committee study -- Division of Finance**
424 **requirement to make certain deposits.**

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

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

429 (i) a seller that does not meet one or more of the criteria described in Subsection
430 59-12-107(2)(a); or

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

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

435 (i) a seller that does not meet one or more of the criteria described in Subsection
436 59-12-107(2)(a); or

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

439 (2) The commission shall:

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

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

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

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

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

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

447 (i) regarding the actions taken by:

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

449 (B) Congress;

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

451 and

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

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

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

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

460 (i) to the extent:

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

462 (B) permitted by Congress; and
463 (ii) beginning on the first day of a calendar quarter as prescribed by the Revenue and
464 Taxation Interim Committee.

465 (3) The Revenue and Taxation Interim Committee shall after hearing the commission's
466 report under Subsection (2)(b):

467 (a) review the actions taken by:

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

469 (ii) Congress;

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

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

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

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

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

479 Section 3. Section **59-12-107** is amended to read:

480 **59-12-107. Definitions -- Collection, remittance, and payment of tax by sellers or**
481 **other persons -- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other**
482 **liability for collection -- Rulemaking authority -- Credits -- Treatment of bad debt --**
483 **Penalties and interest.**

484 (1) As used in this section:

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

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

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

490 (ii) "Advertising" includes online advertising.

491 (b) (i) "Arrangement" means an agreement between a noncollecting seller and a
492 referring seller, under which the referring seller, for a commission or other consideration,

493 directly or indirectly makes a referral to the noncollecting seller of a potential purchaser of
494 tangible personal property, a product transferred electronically, or a service.

495 (ii) "Arrangement" does not include an agreement under which a noncollecting seller
496 purchases advertising from a person in the state, unless the person in the state enters into the
497 agreement with the noncollecting seller and directs a solicitation toward one or more potential
498 purchasers in the state.

499 (c) "Noncollecting seller" means a remote seller that:

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

501 (ii) during the 12-month period immediately preceding the current month, sells
502 \$10,000 or more in tangible personal property, products transferred electronically, or services:

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

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

505 (d) (i) "Online advertising" means advertising delivered through the Internet.

506 (ii) "Online advertising" includes:

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

509 (B) a banner announcement;

510 (C) a cost-per-action advertisement; or

511 (D) an online advertising service similar to Subsections (1)(d)(ii)(A) through (C), as
512 the commission may define by rule made in accordance with Title 63G, Chapter 3, Utah
513 Administrative Rulemaking Act.

514 [(a)] (e) "Ownership" means direct ownership or indirect ownership through a parent,
515 subsidiary, or affiliate.

516 (f) (i) "Referral" means the act of sending a potential purchaser to a noncollecting seller
517 by:

518 (A) an Internet-based link;

519 (B) an Internet website; or

520 (C) other means similar to Subsection (1)(f)(i)(A) or (B).

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

522 (g) "Referring seller" means a person:

523 (i) that makes a sale of tangible personal property, a product transferred electronically,

524 or a service;

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

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

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

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

529 (ii) delivers tangible personal property, ~~[a service, or]~~ a product transferred

530 electronically, or a service that is sold:

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

532 (2)(a)(i); and

533 (B) to a purchaser in the state.

534 (i) "Remote seller" means a seller that is not required to collect and remit a sales and

535 use tax under Subsection (2)(a) or (b).

536 (j) "Solicitation" means a direct or indirect communication to a specific person within

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

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

539 ~~[(e)]~~ (k) "Substantial ownership interest" means an ownership interest in a business

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

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

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

543 [59-12-123](#), and subject to Subsection (2)~~[(f)]~~(g), each seller shall pay or collect and remit the

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

545 (i) has or utilizes:

546 (A) an office;

547 (B) a distribution house;

548 (C) a sales house;

549 (D) a warehouse;

550 (E) a service enterprise; or

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

552 (ii) maintains a stock of goods;

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

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

- 555 (A) advertising; or
 556 (B) solicitation by:
 557 (I) direct mail;
 558 (II) electronic mail;
 559 (III) the Internet;
 560 (IV) telecommunications service; or
 561 (V) a means similar to Subsection (2)(a)(iii)(A) or (B);
 562 (iv) regularly engages in the delivery of property in the state other than by:
 563 (A) common carrier; or
 564 (B) United States mail; or
 565 (v) regularly engages in an activity directly related to the leasing or servicing of
 566 property located within the state.

567 (b) A seller is considered to be engaged, in the state, in the business of selling tangible
 568 personal property, ~~[a service, or]~~ a product transferred electronically, or a service, for storage,
 569 use ~~[in the state]~~, or consumption, and shall pay or collect and remit the sales and use taxes
 570 imposed by this chapter if:

571 (i) the seller holds a substantial ownership interest in, or is owned in whole or in
 572 substantial part by, a related seller; and

573 (ii) (A) the seller sells the same or a substantially similar line of products as the related
 574 seller and does so under the same or a substantially similar business name as the related seller;
 575 or

576 (B) the place of business described in Subsection (2)(a)(i) of the related seller or an in
 577 state employee of the related seller is used to advertise, promote, or facilitate sales by the seller
 578 to a purchaser.

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

583 ~~[(i) except as provided in Subsection (2)(c)(ii), may voluntarily:]~~

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

585 (B) remit the tax to the commission as provided in this part~~[-or]~~.

586 (ii) [~~notwithstanding Subsection (2)(c)(i),~~] A remote seller shall collect a tax on a
587 transaction described in Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to
588 collect the tax.

589 (d) (i) There is a rebuttable presumption that a noncollecting seller is engaged, in the
590 state, in the business of selling tangible personal property, a product transferred electronically,
591 or a service, for storage, use, or consumption.

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

597 (iii) For purposes of Subsection (2)(d)(ii), proof to rebut the presumption includes a
598 written sworn statement from each of the noncollecting seller's referring sellers stating that:

599 (A) the referring seller has not engaged in an activity within the state that is
600 significantly associated with the noncollecting seller's ability, during the preceding 12 months,
601 to establish and maintain a market within the state for the sale of tangible personal property, a
602 product transferred electronically, or a service; and

603 (B) the referring seller, within the preceding 12 months, did not engage in any
604 solicitation of a potential purchaser in the state on behalf of the noncollecting seller for the sale
605 of tangible personal property, a product transferred electronically, or a service.

606 ~~[(d)]~~ (e) The collection and remittance of a tax under this chapter by a seller that is
607 registered under the agreement may not be used as a factor in determining whether that seller is
608 required by Subsection (2) to:

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

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

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

612 (C) Section 19-6-714;

613 (D) Section 19-6-805;

614 (E) Section 69-2-5;

615 (F) Section 69-2-5.5;

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

- 617 (H) this title; or
- 618 (ii) collect and remit a tax, fee, or charge under:
- 619 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 620 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 621 (C) Section 19-6-714;
- 622 (D) Section 19-6-805;
- 623 (E) Section 69-2-5;
- 624 (F) Section 69-2-5.5;
- 625 (G) Section 69-2-5.6; or
- 626 (H) this title.
- 627 ~~[(e) A person shall pay a use tax imposed by this chapter on a transaction described in~~
- 628 ~~Subsection 59-12-103(1) if:]~~
- 629 ~~[(i) the seller did not collect a tax imposed by this chapter on the transaction; and]~~
- 630 ~~[(ii) the person:]~~
- 631 ~~[(A) stores the tangible personal property or product transferred electronically in the~~
- 632 ~~state;]~~
- 633 ~~[(B) uses the tangible personal property or product transferred electronically in the~~
- 634 ~~state; or]~~
- 635 ~~[(C) consumes the tangible personal property or product transferred electronically in~~
- 636 ~~the state.]~~
- 637 (f) Unless the seller owns or leases the computer, the use of a computer located in the
- 638 state by a seller to create, maintain, or take an order through an Internet web page, Internet
- 639 website, Internet post, Internet listing, or online marketplace may not be used as a factor in
- 640 determining whether a seller is required to pay or collect and remit sales and use taxes under
- 641 this Subsection (2).
- 642 ~~[(f)]~~ (g) The ownership of property that is located at the premises of a printer's facility
- 643 with which the retailer has contracted for printing and that consists of the final printed product,
- 644 property that becomes a part of the final printed product, or copy from which the printed
- 645 product is produced, shall not result in the retailer being considered to have or maintain an
- 646 office, distribution house, sales house, warehouse, service enterprise, or other place of
- 647 business, or to maintain a stock of goods, within this state.

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

650 (i) the seller did not collect a tax imposed by this chapter on the transaction from the
651 purchaser; and

652 (ii) the person:

653 (A) stores the tangible personal property or product transferred electronically in the
654 state;

655 (B) uses the tangible personal property, product transferred electronically, or service in
656 the state; or

657 (C) consumes the tangible personal property, product transferred electronically, or
658 service in the state.

659 (3) (a) Except as provided in Section 59-12-107.1, a seller shall collect a tax due under
660 this chapter [~~shall be collected~~] from a purchaser.

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

663 (c) (i) Each seller shall:

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

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

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

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

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

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

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

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

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

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

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

694 (D) the date of the purchase.

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

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

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

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

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

709 (c) Except as provided in Subsection (5)(c), a return shall contain information and be in

710 a form the commission prescribes by rule.

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

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

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

722 (ii) (A) As used in this Subsection (4)(e)(ii) and in Subsection (10)(b)(ii), "qualifying
723 purchaser" means a purchaser who is required to remit taxes under this chapter[;] but is not
724 required to remit taxes monthly in accordance with Section 59-12-108, and who converts
725 tangible personal property into real property.

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

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

738 (D) A qualifying purchaser may remit taxes due under this chapter in accordance with
739 this Subsection (4)(e)(ii) only if the books and records that the qualifying purchaser keeps in
740 the qualifying purchaser's regular course of business identify by reasonable and verifiable

741 standards that the tangible personal property was converted into real property.

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

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

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

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

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

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

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

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

759 (i) registered under the agreement;

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

761 (iii) not a:

762 (A) model 1 seller;

763 (B) model 2 seller; or

764 (C) model 3 seller.

765 (b) (i) Except as provided in Subsection (5)(b)(ii), a tax a [~~remote seller~~] registered
766 remitter collects in accordance with Subsection (2)(c) is due and payable:

767 (A) to the commission;

768 (B) annually; and

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

771 (ii) The commission may require that a tax a [~~remote seller~~] registered remitter collects

772 in accordance with Subsection (2)(c) be due and payable:

773 (A) to the commission; and

774 (B) on the last day of the month immediately following any month in which the [seller]
775 registered remitter accumulates a total of at least \$1,000 in agreement sales and use tax.

776 (c) (i) If a [~~remote seller~~] registered remitter remits a tax to the commission in
777 accordance with Subsection (5)(b), the [~~remote seller~~] registered remitter shall file a return:

778 (A) with the commission;

779 (B) with respect to the tax;

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

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

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

784 (A) the information required to be contained in a return described in Subsection
785 (5)(c)(i); and

786 (B) the form described in Subsection (5)(c)(i)(D).

787 (d) A tax a [~~remote seller~~] registered remitter collects in accordance with this
788 Subsection (5) shall be calculated on the basis of the total amount of taxable transactions under
789 Subsection [59-12-103\(1\)](#) the [~~remote seller~~] registered remitter completes, including[:] cash
790 transactions and charge transactions.

791 [~~(i) a cash transaction; and~~]

792 [~~(ii) a charge transaction.~~]

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

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

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

798 (b) A tax a [~~remote seller~~] registered remitter that files a simplified electronic return
799 collects in accordance with this chapter is due and payable as provided in Subsection (5).

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

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

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

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

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

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

813 ~~[(b)]~~ (ii) the tangible personal property, product transferred electronically, or service is
814 not subsequently resold.

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

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

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

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

825 (i) Except as provided in Subsection (10)(a)(ii), "bad debt" ~~[is as]~~ means the same as
826 that term is defined in Section 166, Internal Revenue Code.

827 (ii) ~~[Notwithstanding Subsection (10)(a)(i);]~~ "Bad debt" does not include:

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

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

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

832 (B) a financing charge;

833 (C) interest;

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

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

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

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

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

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

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

845 (ii) A qualifying purchaser, as defined in Subsection (4)(e)(ii)(A), may deduct from the
846 total amount of taxes due under this chapter the amount of tax the qualifying purchaser paid on
847 the qualifying purchaser's purchase of tangible personal property converted into real property to
848 the extent that:

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

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

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

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

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

860 (ii) as provided in Section [59-1-1410](#).

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

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

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

- 865 (ii) would be eligible for a bad debt deduction:
- 866 (A) for federal income tax purposes; and
- 867 (B) if the seller were required to file a federal income tax return.
- 868 (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or
- 869 claims a refund under this Subsection (10), the seller shall report and remit a tax under this
- 870 chapter:
- 871 (i) on the portion of the bad debt the seller recovers; and
- 872 (ii) on a return filed for the time period for which the portion of the bad debt is
- 873 recovered.
- 874 (g) For purposes of reporting a recovery of a portion of bad debt under Subsection
- 875 (10)(f), a seller shall apply amounts received on the bad debt in the following order:
- 876 (i) in a proportional amount:
- 877 (A) to the purchase price of the tangible personal property, product transferred
- 878 electronically, or service; and
- 879 (B) to the tax due under this chapter on the tangible personal property, product
- 880 transferred electronically, or service; and
- 881 (ii) to:
- 882 (A) interest charges;
- 883 (B) service charges; and
- 884 (C) other charges.
- 885 (h) A seller's certified service provider may make a deduction or claim a refund for bad
- 886 debt on behalf of the seller:
- 887 (i) in accordance with this Subsection (10); and
- 888 (ii) if the certified service provider credits or refunds the entire amount of the bad debt
- 889 deduction or refund to the seller.
- 890 (i) A seller may allocate bad debt among the states that are members of the agreement
- 891 if the seller's books and records support that allocation.
- 892 (11) (a) A seller may not, with intent to evade any tax, fail to timely remit the full
- 893 amount of tax required by this chapter.
- 894 (b) A violation of this section is punishable as provided in Section [59-1-401](#).
- 895 (c) Each person who fails to pay any tax to the state or any amount of tax required to be

896 paid to the state, except amounts determined to be due by the commission under Chapter 1,
 897 Part 14, Assessment, Collections, and Refunds Act, or Section 59-12-111, within the time
 898 required by this chapter, or who fails to file any return as required by this chapter, shall pay, in
 899 addition to the tax, penalties and interest as provided in Sections 59-1-401 and 59-1-402.

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

903 Section 4. Section 59-12-108 is amended to read:

904 **59-12-108. Monthly payment -- Amount of tax a seller may retain -- Penalty --**
 905 **Certain amounts allocated to local taxing jurisdictions.**

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

908 (i) file a return with the commission:

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

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

912 (ii) except as provided in Subsection (1)(b), remit₂ with the return required by
 913 Subsection (1)(a)(i)₂ the amount [~~the person is required to remit to the commission for each tax,~~
 914 ~~fee, or charge~~] described in Subsection (1)(c) as follows:

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

917 (B) if that seller's tax liability under this chapter for the previous calendar year is
 918 \$96,000 or more, by electronic funds transfer.

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

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

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

924 (B) files a simplified electronic return.

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

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

- 927 (ii) a fee under Section 19-6-714;
- 928 (iii) a fee under Section 19-6-805;
- 929 (iv) a charge under Section 69-2-5;
- 930 (v) a charge under Section 69-2-5.5;
- 931 (vi) a charge under Section 69-2-5.6; ~~[or]~~ and
- 932 (vii) a tax under this chapter.
- 933 (d) Notwithstanding ~~[Subsection]~~ Subsections (1)(a)(ii) and (b) and in accordance with
- 934 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules
- 935 providing for a method for making same-day payments other than by electronic funds transfer
- 936 if making payments by electronic funds transfer fails.
- 937 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 938 commission shall establish by rule procedures and requirements for determining the amount a
- 939 seller is required to remit to the commission under this Subsection (1).
- 940 (2) (a) Except as provided in Subsection (3), a seller subject to Subsection (1) or a
- 941 seller described in Subsection (4) may retain each month the amount allowed by this
- 942 Subsection (2).
- 943 (b) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain
- 944 each month 1.31% of any amounts the seller is required to remit to the commission:
- 945 (i) for a transaction described in Subsection 59-12-103(1) that is subject to a state tax
- 946 and a local tax imposed in accordance with the following, for the month for which the seller is
- 947 filing a return in accordance with Subsection (1):
- 948 (A) Subsection 59-12-103(2)(a);
- 949 (B) Subsection 59-12-103(2)(b); and
- 950 (C) Subsection 59-12-103(2)(d); and
- 951 (ii) for an agreement sales and use tax.
- 952 (c) (i) A seller subject to Subsection (1) or a seller described in Subsection (4) may
- 953 retain each month the amount calculated under Subsection (2)(c)(ii) for a transaction described
- 954 in Subsection 59-12-103(1) that is subject to the state tax and the local tax imposed in
- 955 accordance with Subsection 59-12-103(2)(c).
- 956 (ii) For purposes of Subsection (2)(c)(i), the amount a seller may retain is an amount
- 957 equal to the sum of:

958 (A) 1.31% of any amounts the seller is required to remit to the commission for:
959 (I) the state tax and the local tax imposed in accordance with Subsection
960 59-12-103(2)(c);
961 (II) the month for which the seller is filing a return in accordance with Subsection (1);
962 and
963 (III) an agreement sales and use tax; and
964 (B) 1.31% of the difference between:
965 (I) the amounts the seller would have been required to remit to the commission:
966 (Aa) in accordance with Subsection 59-12-103(2)(a) if the transaction had been subject
967 to the state tax and the local tax imposed in accordance with Subsection 59-12-103(2)(a);
968 (Bb) for the month for which the seller is filing a return in accordance with Subsection
969 (1); and
970 (Cc) for an agreement sales and use tax; and
971 (II) the amounts the seller is required to remit to the commission for:
972 (Aa) the state tax and the local tax imposed in accordance with Subsection
973 59-12-103(2)(c);
974 (Bb) the month for which the seller is filing a return in accordance with Subsection (1);
975 and
976 (Cc) an agreement sales and use tax.
977 (d) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain
978 each month 1% of any amounts the seller is required to remit to the commission:
979 (i) for the month for which the seller is filing a return in accordance with Subsection
980 (1); and
981 (ii) under:
982 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
983 (B) Subsection 59-12-603(1)(a)(i)(A); or
984 (C) Subsection 59-12-603(1)(a)(i)(B).
985 (3) A state government entity that is required to remit taxes monthly in accordance
986 with Subsection (1) may not retain any amount under Subsection (2).
987 (4) A seller that has a tax liability under this chapter for the previous calendar year of
988 less than \$50,000 may:

989 (a) voluntarily meet the requirements of Subsection (1); and

990 (b) if the seller voluntarily meets the requirements of Subsection (1), retain the
991 amounts allowed by Subsection (2).

992 (5) (a) Subject to Subsections (5)(b) through (d), a seller that voluntarily collects and
993 remits a tax in accordance with Subsection 59-12-107(2)(c)(i) may retain an amount equal to
994 18% of any amounts the seller would otherwise remit to the commission:

995 (i) if the seller obtains a license under Section 59-12-106 for the first time on or after
996 January 1, 2014; and

997 (ii) for:

998 (A) an agreement sales and use tax; and

999 (B) the time period for which the seller files a return in accordance with this section.

1000 (b) If a seller retains an amount under this Subsection (5), the seller may not retain any
1001 other amount under this section.

1002 (c) If a seller retains an amount under this Subsection (5), the commission may require
1003 the seller to file a return by:

1004 (i) electronic means; or

1005 (ii) a means other than electronic means.

1006 (d) A seller may not retain an amount under this Subsection (5) if the seller is required
1007 to collect or remit a tax under this section in accordance with Section 59-12-103.1.

1008 (6) Penalties for late payment shall be as provided in Section 59-1-401.

1009 (7) (a) Except as provided in Subsection (7)(c), for any amounts required to be remitted
1010 to the commission under this part, the commission shall each month calculate an amount equal
1011 to the difference between:

1012 (i) the total amount retained for that month by all sellers had the percentages listed
1013 under Subsections (2)(b) and (2)(c)(ii) been 1.5%; and

1014 (ii) the total amount retained for that month by all sellers at the percentages listed
1015 under Subsections (2)(b) and (2)(c)(ii).

1016 (b) The commission shall each month allocate the amount calculated under Subsection
1017 (7)(a) to each county, city, and town on the basis of the proportion of agreement sales and use
1018 tax that the commission distributes to each county, city, and town for that month compared to
1019 the total agreement sales and use tax that the commission distributes for that month to all

1020 counties, cities, and towns.

1021 (c) The amount the commission calculates under Subsection (7)(a) may not include an
1022 amount collected from a tax that:

1023 (i) the state imposes within a county, city, or town, including the unincorporated area
1024 of a county; and

1025 (ii) is not imposed within the entire state.

1026 Section 5. Section **59-12-211** is amended to read:

1027 **59-12-211. Definitions -- Location of certain transactions -- Reports to**
1028 **commission -- Direct payment provision for a seller making certain purchases --**
1029 **Exceptions.**

1030 (1) As used in this section:

1031 (a) (i) "Receipt" and "receive" mean:

1032 (A) taking possession of tangible personal property;

1033 (B) making first use of a service; or

1034 (C) for a product transferred electronically, the earlier of:

1035 (I) taking possession of the product transferred electronically; or

1036 (II) making first use of the product transferred electronically.

1037 (ii) "Receipt" and "receive" do not include possession by a shipping company on behalf
1038 of a purchaser.

1039 (b) "Transportation equipment" means:

1040 (i) a locomotive or rail car that is used to carry a person or property in interstate
1041 commerce;

1042 (ii) a truck or truck-tractor:

1043 (A) with a gross vehicle weight rating of 10,001 pounds or ~~more~~ greater;

1044 (B) registered under Section [41-1a-301](#); and

1045 (C) operated under the authority of a carrier authorized and certificated:

1046 (I) by the United States Department of Transportation or another federal authority; and

1047 (II) to engage in carrying a person or property in interstate commerce;

1048 (iii) a trailer, semitrailer, or passenger bus that is:

1049 (A) registered under Section [41-1a-301](#); and

1050 (B) operated under the authority of a carrier authorized and certificated:

1051 (I) by the United States Department of Transportation or another federal authority; and
1052 (II) to engage in carrying a person or property in interstate commerce;
1053 (iv) an aircraft that is operated by an air carrier authorized and certificated:

1054 (A) by the United States Department of Transportation or another federal or foreign
1055 authority; and

1056 (B) to engage in carrying a person or property in interstate commerce; or

1057 (v) a container designed for use on, or a component part attached or secured on, an
1058 item of equipment listed in Subsections (1)(b)(i) through (iv).

1059 (2) Except as provided in Subsections (8) and (14), if tangible personal property, a
1060 product transferred electronically, or a service that is subject to taxation under this chapter is
1061 received by a purchaser at a business location of a seller, the location of the transaction is the
1062 business location of the seller.

1063 (3) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
1064 and (14), if tangible personal property, a product transferred electronically, or a service that is
1065 subject to taxation under this chapter is not received by a purchaser at a business location of a
1066 seller, the location of the transaction is the location where the purchaser takes receipt of the
1067 tangible personal property or service.

1068 (4) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
1069 and (14), if Subsection (2) or (3) does not apply, the location of the transaction is the location
1070 indicated by an address for or other information on the purchaser if:

1071 (a) the address or other information is available from the seller's business records; and

1072 (b) use of the address or other information from the seller's records does not constitute
1073 bad faith.

1074 (5) (a) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9),
1075 (11), and (14), if Subsection (2), (3), or (4) does not apply, the location of the transaction is the
1076 location indicated by an address for the purchaser if:

1077 (i) the address is obtained during the consummation of the transaction; and

1078 (ii) use of the address described in Subsection (5)(a)(i) does not constitute bad faith.

1079 (b) An address used under Subsection (5)(a) includes the address of a purchaser's
1080 payment instrument if no other address is available.

1081 (6) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),

1082 and (14), if Subsection (2), (3), (4), or (5) does not apply or if a seller does not have sufficient
1083 information to apply Subsection (2), (3), (4), or (5), the location of the transaction is the
1084 location:

1085 (a) indicated by the address from which:

1086 (i) except as provided in Subsection (6)(a)(ii), for tangible personal property that is
1087 subject to taxation under this chapter, the tangible personal property is shipped;

1088 (ii) for computer software delivered electronically or for a product transferred
1089 electronically that is subject to taxation under this chapter, the computer software or product
1090 transferred electronically is first available for transmission by the seller; or

1091 (iii) for a service that is subject to taxation under this chapter, the service is provided;

1092 or

1093 (b) as determined by the seller with respect to a prepaid wireless calling service:

1094 (i) provided in Subsection (6)(a)(iii); or

1095 (ii) associated with the mobile telephone number.

1096 (7) (a) For purposes of this Subsection (7), "shared ZIP Code" means a nine-digit ZIP
1097 Code that is located within two or more local taxing jurisdictions.

1098 (b) If the location of a transaction determined under Subsections (3) through (6) is in a
1099 shared ZIP Code, the location of the transaction is:

1100 (i) if there is only one local taxing jurisdiction that imposes the lowest agreement
1101 combined tax rate for the shared ZIP Code, the local taxing jurisdiction that imposes the lowest
1102 agreement combined tax rate; or

1103 (ii) if two or more local taxing jurisdictions impose the lowest agreement combined tax
1104 rate for the shared ZIP Code, the local taxing jurisdiction that:

1105 (A) imposes the lowest agreement combined tax rate for the shared ZIP Code; and

1106 (B) has located within the local taxing jurisdiction the largest number of street
1107 addresses within the shared ZIP Code.

1108 (c) Notwithstanding any provision under this chapter authorizing or requiring the
1109 imposition of a sales and use tax, for purposes of Subsection (7)(b), a seller shall collect a sales
1110 and use tax imposed under this chapter at the lowest agreement combined tax rate imposed
1111 within the local taxing jurisdiction in which the transaction is located under Subsection (7)(b).

1112 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1113 commission may make rules:

1114 (i) providing for the circumstances under which a seller has exercised due diligence in
1115 determining the nine-digit ZIP Code for an address; or

1116 (ii) notwithstanding Subsection (7)(b), for determining the local taxing jurisdiction
1117 within which a transaction is located if a seller is unable to determine the local taxing
1118 jurisdiction within which the transaction is located under Subsection (7)(b).

1119 (8) The location of a transaction made with a direct payment permit described in
1120 Section [59-12-107.1](#) is the location where receipt of the tangible personal property, product
1121 transferred electronically, or service by the purchaser occurs.

1122 (9) The location of a purchase of direct mail is the location determined in accordance
1123 with Section [59-12-123](#).

1124 (10) (a) Except as provided in Subsection (10)(b), the location of a transaction
1125 determined under Subsections (3) through (6), (8), or (9), is the local taxing jurisdiction within
1126 which:

1127 (i) the nine-digit ZIP Code assigned to the location determined under Subsections (3)
1128 through (6), (8), or (9) is located; or

1129 (ii) the five-digit ZIP Code assigned to the location determined under Subsections (3)
1130 through (6), (8), or (9) is located if:

1131 (A) a nine-digit ZIP Code is not available for the location determined under
1132 Subsections (3) through (6), (8), or (9); or

1133 (B) after exercising due diligence, a seller or certified service provider is unable to
1134 determine a nine-digit ZIP Code for the location determined under Subsections (3) through (6),
1135 (8), or (9).

1136 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1137 commission may make rules for determining the local taxing jurisdiction within which a
1138 transaction is located if a seller or certified service provider is unable to determine the local
1139 taxing jurisdiction within which the transaction is located under Subsection (10)(a).

1140 (11) (a) As used in this Subsection (11), "florist delivery transaction" means a
1141 transaction commenced by a florist that transmits an order:

1142 (i) by:

1143 (A) telegraph;

1144 (B) telephone; or
1145 (C) a means of communication similar to Subsection (11)(a)(i)(A) or (B); and
1146 (ii) for delivery to another place:
1147 (A) in this state; or
1148 (B) outside this state.
1149 ~~[(b) Notwithstanding Subsections (3) through (6), beginning on January 1, 2009, and~~
1150 ~~ending on December 31, 2009, the location of a florist delivery transaction is the business~~
1151 ~~location of the florist that commences the florist delivery transaction.]~~

1152 ~~[(c)]~~ (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
1153 Act, the commission may by rule:

1154 (i) define:
1155 (A) "business location"; and
1156 (B) "florist";
1157 (ii) define what constitutes a means of communication similar to Subsection
1158 (11)(a)(i)(A) or (B); and
1159 (iii) provide procedures for determining when a transaction is commenced.

1160 (12) (a) Notwithstanding any other provision of this section and except as provided in
1161 Subsection (12)(b), if a purchaser uses computer software and there is not a transfer of a copy
1162 of that software to the purchaser, the location of the transaction is determined in accordance
1163 with Subsections (4) and (5).

1164 (b) If a purchaser uses computer software described in Subsection (12)(a) at more than
1165 one location, the location of the transaction shall be determined in accordance with rules made
1166 by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
1167 Act.

1168 (13) (a) A tax collected under this chapter shall be reported to the commission on a
1169 form that identifies the location of each transaction that occurs during the return filing period.

1170 (b) The form described in Subsection (13)(a) shall be filed with the commission as
1171 required under this chapter.

1172 (14) This section does not apply to:
1173 (a) amounts charged by a seller for:
1174 (i) telecommunications service except for a prepaid calling service or a prepaid

- 1175 wireless calling service as provided in Subsection (6)(b) or Section 59-12-215; or
- 1176 (ii) the retail sale or transfer of:
- 1177 (A) a motor vehicle other than a motor vehicle that is transportation equipment;
- 1178 (B) an aircraft other than an aircraft that is transportation equipment;
- 1179 (C) a watercraft;
- 1180 (D) a modular home;
- 1181 (E) a manufactured home; or
- 1182 (F) a mobile home; or
- 1183 (iii) except as provided in Section 59-12-214, the lease or rental of tangible personal
- 1184 property other than tangible personal property that is transportation equipment;
- 1185 (b) a tax a person pays in accordance with Subsection 59-12-107(2)[(e)](h); or
- 1186 (c) a retail sale of tangible personal property or a product transferred electronically if:
- 1187 (i) the seller receives the order for the tangible personal property or product transferred
- 1188 electronically in this state;
- 1189 (ii) receipt of the tangible personal property or product transferred electronically by the
- 1190 purchaser or the purchaser's donee occurs in this state;
- 1191 (iii) the location where receipt of the tangible personal property or product transferred
- 1192 electronically by the purchaser occurs is determined in accordance with Subsections (3)
- 1193 through (5); and
- 1194 (iv) at the time the seller receives the order, the record keeping system that the seller
- 1195 uses to calculate the proper amount of tax imposed under this chapter captures the location
- 1196 where the order is received.

1197 Section 6. Section 59-12-211.1 is amended to read:

1198 **59-12-211.1. Location of a transaction that is subject to a use tax.**

1199 (1) Subject to Subsection (2), a person that is required by Subsection

1200 59-12-107(2)[(e)](h) to pay a use tax on a transaction shall report the location of that

1201 transaction at the person's location.

1202 (2) For purposes of Subsection (1), if a person has more than one location in this state,

1203 the person shall report the location of the transaction at the location at which tangible personal

1204 property, a product transferred electronically, or a service is received.

1205 Section 7. Section 76-8-1101 is amended to read:

1206 **76-8-1101. Criminal offenses and penalties relating to revenue and taxation --**
1207 **Rulemaking authority -- Statute of limitations.**

1208 (1) (a) As provided in Section 59-1-401, criminal offenses and penalties are as
1209 provided in Subsections (1)(b) through (e).

1210 (b) (i) ~~[Any]~~ A person [who] is guilty of a class B misdemeanor if the person:

1211 (A) is required by Title 59, Revenue and Taxation, or any laws the State Tax
1212 Commission administers or regulates, to register with or obtain a license or permit from the
1213 State Tax Commission[~~, who~~]; and

1214 (B) operates without having registered or secured a license or permit, or [who] operates
1215 when the registration, license, or permit is expired or not current[~~, is guilty of a class B~~
1216 misdemeanor].

1217 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(b)(i), the
1218 penalty may not:

1219 (A) be less than \$500; or

1220 (B) exceed \$1,000.

1221 (c) (i) With respect to a tax, fee, or charge as defined in Section 59-1-401, ~~[any]~~ a
1222 person [who] is guilty of a third degree felony if the person:

1223 (A) knowingly and intentionally, and without a reasonable good faith basis, fails to
1224 make, render, sign, or verify any return within the time required by law or to supply any
1225 information within the time required by law[~~, or who~~];

1226 (B) makes, renders, signs, or verifies any false or fraudulent return or statement[~~, or~~
1227 who]; or

1228 (C) supplies any false or fraudulent information[~~, is guilty of a third degree felony].~~

1229 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(c)(i), the penalty
1230 may not:

1231 (A) be less than \$1,000; or

1232 (B) exceed \$5,000.

1233 (d) (i) Any person who intentionally or willfully attempts to evade or defeat any tax,
1234 fee, or charge as defined in Section 59-1-401 or the payment of a tax, fee, or charge as defined
1235 in Section 59-1-401 is, in addition to other penalties provided by law, guilty of a second degree
1236 felony.

- 1237 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(d)(i), the penalty
1238 may not:
- 1239 (A) be less than \$1,500; or
 - 1240 (B) exceed \$25,000.
- 1241 (e) (i) A person is guilty of a second degree felony if that person commits an act:
- 1242 (A) described in Subsection (1)(e)(ii) with respect to one or more of the following
1243 documents:
 - 1244 (I) a return;
 - 1245 (II) an affidavit;
 - 1246 (III) a claim; or
 - 1247 (IV) a document similar to Subsections (1)(e)(i)(A)(I) through (III); and
 - 1248 (B) subject to Subsection (1)(e)(iii), with knowledge that the document described in
1249 Subsection (1)(e)(i)(A):
 - 1250 (I) is false or fraudulent as to any material matter; and
 - 1251 (II) could be used in connection with any material matter administered by the State Tax
1252 Commission.
- 1253 (ii) The following acts apply to Subsection (1)(e)(i):
- 1254 (A) preparing any portion of a document described in Subsection (1)(e)(i)(A);
 - 1255 (B) presenting any portion of a document described in Subsection (1)(e)(i)(A);
 - 1256 (C) procuring any portion of a document described in Subsection (1)(e)(i)(A);
 - 1257 (D) advising in the preparation or presentation of any portion of a document described
1258 in Subsection (1)(e)(i)(A);
 - 1259 (E) aiding in the preparation or presentation of any portion of a document described in
1260 Subsection (1)(e)(i)(A);
 - 1261 (F) assisting in the preparation or presentation of any portion of a document described
1262 in Subsection (1)(e)(i)(A); or
 - 1263 (G) counseling in the preparation or presentation of any portion of a document
1264 described in Subsection (1)(e)(i)(A).
- 1265 (iii) This Subsection (1)(e) applies:
- 1266 (A) regardless of whether the person for which the document described in Subsection
1267 (1)(e)(i)(A) is prepared or presented:

1268 (I) knew of the falsity of the document described in Subsection (1)(e)(i)(A); or
1269 (II) consented to the falsity of the document described in Subsection (1)(e)(i)(A); and
1270 (B) in addition to any other penalty provided by law.
1271 (iv) Notwithstanding Section [76-3-301](#), for purposes of this Subsection (1)(e), the
1272 penalty may not:
1273 (A) be less than \$1,500; or
1274 (B) exceed \$25,000.
1275 (v) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1276 State Tax Commission may make rules prescribing the documents that are similar to
1277 Subsections (1)(e)(i)(A)(I) through (III).
1278 (2) The statute of limitations for prosecution for a violation of this section is the later
1279 of six years:
1280 (a) from the date the tax should have been remitted; or
1281 (b) after the day on which the person commits the criminal offense.
1282 Section 8. **Effective date.**
1283 This bill takes effect on July 1, 2016.

Legislative Review Note
Office of Legislative Research and General Counsel