

SB0110S01 compared with SB0110

~~deleted text~~ shows text that was in SB0110 but was deleted in SB0110S01.

Inserted text shows text that was not in SB0110 but was inserted into SB0110S01.

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Senator Curtis S. Bramble proposes the following substitute bill:

SALES TAX COLLECTION AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

Cosponsor:

Wayne A. Harper

LONG TITLE

General Description:

This bill amends provisions related to sales and use tax.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses the circumstances under which a seller may be required to collect and remit sales and use tax to the State Tax Commission;
- ▶ provides a legal process for determining the application of certain sales and use tax collection obligations;
- ▶ repeals a requirement that certain sales and use tax revenue be deposited into a

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restricted account;

- ▶ repeals the provision allowing a seller that voluntarily collects and remits sales and use tax to retain 18% of collections;
- ▶ makes technical and conforming changes; and
- ▶ contains a severability clause.

Money Appropriated in this Bill:

This bill appropriates in fiscal year 2017:

- ▶ to the General Fund, as a one-time appropriation:
 - from the Remote Sales Restricted Account, \$81,000.

Other Special Clauses:

This bill provides a severability clause.

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 2016, Chapters 184, 291, 348 and last amended by Coordination Clause, Laws of Utah 2016, Chapter 291

59-12-103.1, as last amended by Laws of Utah 2016, Chapter 135

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

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

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

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

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

78A-3-102, as last amended by Laws of Utah 2009, Chapter 344

REPEALS:

59-12-103.2, as last amended by Laws of Utah 2013, Chapter 150

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

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

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

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interest.

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

~~[(B)] (A) this title;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) if the person filing the return is not allowed by law an extension of time for filing the return, the day on which the return is due as provided by law; or

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

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

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

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

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

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

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

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

~~[(ii) if the return described in Subsection (2)(b) is filed with respect to an activated tax,~~

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~~fee, or charge, beginning on the activation date for the tax, fee, or charge:]~~

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

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

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

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

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

(i) an amended return; or

(ii) a return with no tax due.

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

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

(ii) the person:

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

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

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

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

(iv) the person:

(A) is mailed a notice of deficiency; and

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

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

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

(v) (A) the commission:

(I) issues an order constituting final agency action resulting from a timely filed petition

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for redetermination or a timely filed request for agency action; or

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

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

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

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

(vi) the person fails to pay the tax, fee, or charge within a 30-day period after the ~~[date of]~~ day on which a court issues a final judicial decision resulting from a timely filed petition for judicial review.

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

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

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

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

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

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

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

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

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

(4) (a) Beginning January 1, 1995, in the case of any underpayment of estimated tax or

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quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104, there shall be added a penalty in an amount determined by applying the interest rate provided under Section 59-1-402 plus four percentage points to the amount of the underpayment for the period of the underpayment.

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) \$20; or

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

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

(A) \$20; or

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

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

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

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

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

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

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

(i) The notice of proposed penalty shall:

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

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

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

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

or

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

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

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

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

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

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

(c) A seller that voluntarily collects a tax under Subsection 59-12-107[~~(2)(d)~~](5) is not subject to the penalty under Subsection (7)(a)(i) if on or after July 1, 2001:

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

(A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a) or is a seller required to pay or collect and remit sales and use taxes under Subsection 59-12-107[~~(2)(b)~~](3) or (4); and

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

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

(A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a) or is a seller required to pay or collect and remit sales and use taxes under Subsection 59-12-107[~~(2)(b)~~](3) or (4); and

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

(d) A seller that voluntarily collects a tax under Subsection 59-12-107[~~(2)(d)~~](5) is not subject to the penalty under Subsection (7)(a)(ii) if:

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

(I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)

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or is a seller required to pay or collect and remit sales and use taxes under Subsection 59-12-107[(2)(b)](3) or (4); and

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

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

(I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a) or is a seller required to pay or collect and remit sales and use taxes under Subsection 59-12-107[(2)(b)](3) or (4); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) a return;

(B) an affidavit;

(C) a claim; or

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

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

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

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

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

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

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

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

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

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

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

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

(i) shall be imposed by the commission;

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

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

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

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

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

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

(A) is required by this title or any laws the commission administers or regulates to register with or obtain a license or permit from the commission[~~;~~ ~~who~~]; and

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

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

(A) be less than \$500; or

(B) exceed \$1,000.

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

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

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

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

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

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penalty may not:

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

(B) exceed \$5,000.

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

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

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

(B) exceed \$25,000.

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

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

(I) a return;

(II) an affidavit;

(III) a claim; or

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

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

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

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

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

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

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

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

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

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

(F) assisting in the preparation or presentation of any portion of a document described

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in Subsection (12)(e)(i)(A); or

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

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

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

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

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

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

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

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

(B) exceed \$25,000.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) fails to file the form.

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

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

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

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

(a) retail sales of tangible personal property made within the state;

(b) amounts paid for:

(i) telecommunications service, other than mobile telecommunications service, that originates and terminates within the boundaries of this state;

(ii) mobile telecommunications service that originates and terminates within the boundaries of one state only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or

(iii) an ancillary service associated with a:

(A) telecommunications service described in Subsection (1)(b)(i); or

(B) mobile telecommunications service described in Subsection (1)(b)(ii);

(c) sales of the following for commercial use:

(i) gas;

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- (ii) electricity;
- (iii) heat;
- (iv) coal;
- (v) fuel oil; or
- (vi) other fuels;
- (d) sales of the following for residential use:

- (i) gas;
- (ii) electricity;
- (iii) heat;
- (iv) coal;
- (v) fuel oil; or
- (vi) other fuels;

(e) sales of prepared food;

(f) except as provided in Section 59-12-104, amounts paid or charged as admission or user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, horseback rides, sports activities, or any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity;

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

(i) the tangible personal property; and

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

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

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

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

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

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

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

(i) stored;

(ii) used; or

(iii) otherwise consumed;

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

(i) stored;

(ii) used; or

(iii) consumed; and

(m) amounts paid or charged for a sale:

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

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

(ii) regardless of whether the sale provides:

(A) a right of permanent use of the product; or

(B) a right to use the product that is less than a permanent use, including a right:

(I) for a definite or specified length of time; and

(II) that terminates upon the occurrence of a condition.

(2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax is imposed on a transaction described in Subsection (1) equal to the sum of:

(i) a state tax imposed on the transaction at a tax rate equal to the sum of:

(A) 4.70%; ~~and~~

(B) ~~[(f) the tax rate the state imposes in accordance with Part 18, Additional State Sales and Use Tax Act,]~~ if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional State Sales and Use Tax Act, the tax rate that the state imposes under that part; and

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~~[(H) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales and Use Tax Act,]~~

(C) if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act, the tax rate that the state imposes under that part; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(b) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed on a transaction described in Subsection (1)(d) equal to the sum of:

(i) a state tax imposed on the transaction at a tax rate of 2%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(c) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed on amounts paid or charged for food and food ingredients equal to the sum of:

(i) a state tax imposed on the amounts paid or charged for food and food ingredients at a tax rate of 1.75%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the amounts paid or charged for food and food ingredients under this chapter other than this part.

(d) (i) For a bundled transaction that is attributable to food and food ingredients and tangible personal property other than food and food ingredients, a state tax and a local tax is imposed on the entire bundled transaction equal to the sum of:

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

(I) the tax rate described in Subsection (2)(a)(i)(A); ~~[and]~~

(II) ~~[(Aa) the tax rate the state imposes in accordance with Part 18, Additional State Sales and Use Tax Act,]~~ if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional State Sales and Use Tax Act, the tax rate that the state imposes under that part; and

~~[(Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales and Use Tax Act,]~~

(III) if the location of the transaction as determined under Sections 59-12-211 through

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59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act, the tax rate that the state imposes under that part; and

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

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

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

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

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

(II) state or federal law provides otherwise; or

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

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

(II) state or federal law provides otherwise.

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

(e) (i) Except as otherwise provided in this chapter and subject to Subsections (2)(e)(ii)

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and (iii), if a transaction consists of the sale, lease, or rental of tangible personal property, a product, or a service that is subject to taxation under this chapter, and the sale, lease, or rental of tangible personal property, other property, a product, or a service that is not subject to taxation under this chapter, the entire transaction is subject to taxation under this chapter unless the seller, at the time of the transaction:

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

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

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

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

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

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

(f) (i) If the sales price of a transaction is attributable to two or more items of tangible personal property, products, or services that are subject to taxation under this chapter at different rates, the entire purchase is subject to taxation under this chapter at the higher tax rate unless the seller, at the time of the transaction:

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

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

(ii) For purposes of Subsection (2)(f)(i), books and records that a seller keeps in the

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seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

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

- (i) Subsection (2)(a)(i)(A);
- (ii) Subsection (2)(b)(i);
- (iii) Subsection (2)(c)(i); or
- (iv) Subsection (2)(d)(i)(A)(I).

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

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

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

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

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

- (A) on the first day of a calendar quarter; and
 - (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.
- (ii) Subsection (2)(i)(i) applies to the tax rates described in the following:

- (A) Subsection (2)(a)(i)(A);
- (B) Subsection (2)(b)(i);
- (C) Subsection (2)(c)(i); or

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

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

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

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

(ii) the tax imposed by Subsection (2)(b)(i);

(iii) the tax imposed by Subsection (2)(c)(i); or

(iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

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

(i) the tax imposed by Subsection (2)(a)(ii);

(ii) the tax imposed by Subsection (2)(b)(ii);

(iii) the tax imposed by Subsection (2)(c)(ii); and

(iv) the tax imposed by Subsection (2)(d)(i)(B).

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

(i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

(A) by a 1/16% tax rate on the transactions described in Subsection (1); and

(B) for the fiscal year; or

(ii) \$17,500,000.

(b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount described in Subsection (4)(a) shall be transferred each year as dedicated credits to the Department of Natural Resources to:

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

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

(ii) Money transferred to the Department of Natural Resources under Subsection (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other

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person to list or attempt to have listed a species as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

(iii) At the end of each fiscal year:

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

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

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

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

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

(ii) At the end of each fiscal year:

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

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

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

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

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

(A) conduct hydrologic and geotechnical investigations by the Division of Water Resources in a cooperative effort with other state, federal, or local entities, for the purpose of

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quantifying surface and ground water resources and describing the hydrologic systems of an area in sufficient detail so as to enable local and state resource managers to plan for and accommodate growth in water use without jeopardizing the resource;

(B) fund state required dam safety improvements; and

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

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

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

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

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

(iii) develop surface water sources.

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

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

(ii) \$17,500,000.

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

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

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

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

(c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the

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remaining difference described in Subsection (5)(a) shall be:

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

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

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

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

(i) preconstruction costs:

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

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

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

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

(iv) other uses authorized under Sections 73-10-24, 73-10-25.1, and 73-10-30, and Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

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

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

(6) Notwithstanding Subsection (3)(a) and for taxes listed under Subsection (3)(a), the

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amount of revenue generated by a 1/16% tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited as follows:

(a) for fiscal year 2016-17 only, 100% of the revenue described in this Subsection (6) shall be deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124;

(b) for fiscal year 2017-18 only:

(i) 80% of the revenue described in this Subsection (6) shall be deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124; and

(ii) 20% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103;

(c) for fiscal year 2018-19 only:

(i) 60% of the revenue described in this Subsection (6) shall be deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124; and

(ii) 40% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103;

(d) for fiscal year 2019-20 only:

(i) 40% of the revenue described in this Subsection (6) shall be deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124; and

(ii) 60% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103;

(e) for fiscal year 2020-21 only:

(i) 20% of the revenue described in this Subsection (6) shall be deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124; and

(ii) 80% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103; and

(f) for a fiscal year beginning on or after July 1, 2021, 100% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103.

(7) (a) Notwithstanding Subsection (3)(a), in addition to the amounts deposited in Subsection (6), and subject to Subsection (7)(b), for a fiscal year beginning on or after July 1, 2012, the Division of Finance shall deposit into the Transportation Investment Fund of 2005

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created by Section 72-2-124:

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

- (A) the tax imposed by Subsection (2)(a)(i)(A);
- (B) the tax imposed by Subsection (2)(b)(i);
- (C) the tax imposed by Subsection (2)(c)(i); and
- (D) the tax imposed by Subsection (2)(d)(i)(A)(I); plus

(ii) an amount equal to 30% of the growth in the amount of revenues collected in the current fiscal year from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) that exceeds the amount collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) in the 2010-11 fiscal year.

(b) (i) Subject to Subsections (7)(b)(ii) and (iii), in any fiscal year that the portion of the sales and use taxes deposited under Subsection (7)(a) represents an amount that is a total lower percentage of the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) generated in the current fiscal year than the total percentage of sales and use taxes deposited in the previous fiscal year, the Division of Finance shall deposit an amount under Subsection (7)(a) equal to the product of:

(A) the total percentage of sales and use taxes deposited under Subsection (7)(a) in the previous fiscal year; and

(B) the total sales and use tax revenue generated by the taxes described in Subsections (7)(a)(i)(A) through (D) in the current fiscal year.

(ii) In any fiscal year in which the portion of the sales and use taxes deposited under Subsection (7)(a) would exceed 17% of the revenues collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) in the current fiscal year, the Division of Finance shall deposit 17% of the revenues collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) for the current fiscal year under Subsection (7)(a).

(iii) In all subsequent fiscal years after a year in which 17% of the revenues collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) was deposited under Subsection (7)(a), the Division of Finance shall annually deposit 17% of the revenues

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collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) in the current fiscal year under Subsection (7)(a).

(8) (a) Notwithstanding Subsection (3)(a), and in addition to the amounts deposited under Subsections (6) and (7), for the 2016-17 fiscal year only, the Division of Finance shall deposit \$64,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund of 2005 created by Section 72-2-124.

(b) Notwithstanding Subsection (3)(a), and in addition to the amounts deposited under Subsections (6) and (7), for the 2017-18 fiscal year only, the Division of Finance shall deposit \$63,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund of 2005 created by Section 72-2-124.

(c) Notwithstanding Subsection (3)(a), and in addition to the amounts deposited under Subsections (6) and (7), for a fiscal year beginning on or after July 1, 2018, the Division of Finance shall annually deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes listed under Subsection (3)(a) in an amount equal to 3.68% of the revenues collected from the following taxes:

- (i) the tax imposed by Subsection (2)(a)(i)(A);
- (ii) the tax imposed by Subsection (2)(b)(i);
- (iii) the tax imposed by Subsection (2)(c)(i); and
- (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

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

(10) (a) Notwithstanding Subsection (3)(a), except as provided in Subsection (10)(c), in addition to any amounts deposited under Subsections (6), (7), and (8), and for the 2016-17 fiscal year only, the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the amount of tax revenue generated by a .05% tax rate on the transactions described in Subsection (1).

(b) Notwithstanding Subsection (3)(a), except as provided in Subsection (10)(c), and in addition to any amounts deposited under Subsections (6), (7), and (8), the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the amount of revenue described as follows:

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(i) for fiscal year 2017-18 only, 83.33% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1);

(ii) for fiscal year 2018-19 only, 66.67% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1);

(iii) for fiscal year 2019-20 only, 50% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1);

(iv) for fiscal year 2020-21 only, 33.33% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1); and

(v) for fiscal year 2021-22 only, 16.67% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1).

(c) For purposes of Subsections (10)(a) and (b), the Division of Finance may not deposit into the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or charged for food and food ingredients, except for tax revenue generated by a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients described in Subsection (2)(d).

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

(12) (a) Notwithstanding Subsection (3)(a), for the 2016-17 fiscal year only, the Division of Finance shall deposit \$26,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Throughput Infrastructure Fund created by Section 35A-8-308.

(b) Notwithstanding Subsection (3)(a), for the 2017-18 fiscal year only, the Division of Finance shall deposit \$27,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Throughput Infrastructure Fund created by Section 35A-8-308.

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

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

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

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

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

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

(ii) a seller that is not a seller required to pay or collect and remit sales and use taxes under Subsection 59-12-107[(2)(b)](3) or (4); or

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

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

(ii) a seller that is not a seller required to pay or collect and remit sales and use taxes under Subsection 59-12-107[(2)(b)](3) or (4).

(2) The commission shall:

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

(i) to the extent:

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

(B) permitted by Congress; and

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

(b) make a report to the Revenue and Taxation Interim Committee by electronic means:

(i) regarding the actions taken by:

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

(B) Congress; and

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

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

(c) report to the Revenue and Taxation Interim Committee at:

(i) the Revenue and Taxation Interim Committee meeting immediately following the day on which the actions of the Supreme Court of the United States or Congress become effective; and

(ii) any other meeting of the Revenue and Taxation Interim Committee as requested by the chairs of the committee.

(3) The Revenue and Taxation Interim Committee shall after receiving the commission's reports under Subsections (2)(b) and (c):

(a) review the actions taken by:

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

(ii) Congress;

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

(c) within a one-year period after the day on which the commission makes a report under Subsection (2)(c), make recommendations to the Legislative Management Committee[; (†)] regarding whether as a result of the actions of the Supreme Court of the United States or Congress any provisions of this chapter should be amended or repealed[; ~~and~~].

~~[(ii) within a one-year period after the day on which the commission makes a report under Subsection (2)(c).]~~

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

Section 4. Section **59-12-107** is amended to read:

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

~~[(1) As used in this section:]~~

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

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

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

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

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

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

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

~~(1) As used in this section:~~

~~(a) "Affiliate" means:~~

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

~~or~~

~~(ii) a pass-through entity or another type of entity that, regardless of how that entity is organized, has an ownership relationship with the seller that would make the entity a member of the same controlled group of corporations as the seller, if the entity and the seller were organized as corporations.~~

~~(b) "Controlled group of corporations" means the same as that term is defined in Section 1563, Internal Revenue Code.~~

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

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

~~(ii) during the 12-month period immediately preceding the current month, makes sales totaling \$10,000 or more of tangible personal property, products transferred electronically, or services:~~

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

~~(B) as a result of an agreement with one or more persons that meet one or more of the criteria described in Subsection (2)(a), under which the person or persons, for a commission or other consideration, directly or indirectly makes a referral to the noncollecting seller of a~~

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potential purchaser of tangible personal property, products transferred electronically, or services.

(d) "Pass-through entity" means the same as that term is defined in Section 59-10-1402.

(e) "Referral" means the act of sending a potential purchaser to a noncollecting seller by:

(i) an Internet-based link;

(ii) an Internet website;

(iii) telemarketing;

(iv) in-person marketing; or

(v) other means similar to the means described in Subsections (1)(e)(i) through (iv), as the commission may define by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(f) "Registered remitter" means a seller that is:

(i) registered under the agreement;

(ii) not required to pay or collect and remit sales and use tax under Subsection (2), (3), or (4); and

(iii) not a model 1 seller, model 2 seller, or model 3 seller.

(g) "Remote seller" means a seller that is not required to pay or collect and remit sales and use tax under Subsection (2)(a).

(h) "Service" means a service that is taxable under this chapter.

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

(2) (a) Except as provided in Subsection [~~(2)~~(e)] (6), Section 59-12-107.1, or Section 59-12-123, and subject to Subsection (2)[~~(f)~~](b), each seller shall pay or collect and remit the sales and use taxes imposed by this chapter if within this state the seller:

(i) [~~has or~~] utilizes:

(A) an office;

(B) a distribution house;

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- (C) a sales house;
- (D) a warehouse~~[;]~~ or other storage place; or
- ~~[(E) a service enterprise; or]~~
- ~~[(F)]~~ (E) a place of business similar to Subsections (2)(a)(i)(A) through ~~[(E)]~~ (D);
- (ii) maintains a stock of goods;
- (iii) regularly solicits orders, regardless of whether ~~[or not]~~ the orders are accepted in

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

- (A) advertising; or
- (B) solicitation by:
 - (I) direct mail;
 - (II) electronic mail;
 - (III) except as provided in Subsection (4)(d), the Internet;
 - (IV) telecommunications service; or
 - (V) a means similar to Subsection (2)(a)(iii)(A) or (B);
- (iv) regularly engages in the delivery of property in the state other than by:
 - (A) common carrier; or
 - (B) United States mail; or
 - (v) regularly engages in an activity directly related to the leasing or servicing of

property located within the state.

(b) The ownership of property that is located at the premises of a printer's facility with which the retailer has contracted for printing and that consists of final printed product, property that becomes part of the final printed product, or copy from which the printed product is produced does not result in the retailer being considered to ~~{have or maintain}~~ utilize an office, distribution house, sales house, warehouse or other storage place, or other place of business, or to maintain a stock of goods, within this state.

(3) (a) (i) Subject to Subsection (3)(a)(ii), beginning on October 1, 2017, each remote seller shall pay or collect and remit the sales and use tax imposed by this chapter if the remote seller:

(A) sells tangible personal property, products transferred electronically, or services for storage, use, or consumption in the state; and

(B) in either the previous calendar year or the current calendar year, receives gross

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revenue from the sale of tangible personal property, products transferred electronically, or services for storage, use, or consumption in the state of \$100,000 or more.

(ii) A remote seller's obligation to pay or collect and remit ~~remote~~ sales and use tax begins on the first day of the first calendar quarter after the remote seller meets the criteria described in Subsection (3)(a)(i).

(b) (i) Regardless of whether the commission initiates an audit or other tax collection procedure, the commission may request a declaratory judgment in any district court in this state against a remote seller that the commission believes meets the criteria described in Subsection (3)(a) to establish:

(A) that the remote seller meets the criteria described in Subsection (3)(a);

(B) that Subsection (3)(a) is valid under federal and state law; and

(C) if Subsections (3)(b)(i)(A) and (B) are satisfied, that the remote seller has an obligation to pay or collect and remit sales and use tax under this Subsection (3).

(ii) The court may not award attorney fees to the prevailing party in a declaratory judgment request made in accordance with this Subsection (3)(b).

(iii) If an aggrieved party wishes to appeal from the decision in a declaratory judgment request made in accordance with this Subsection (3)(b), the aggrieved party shall appeal to the Utah Supreme Court in accordance with Section 78A-3-102.

(c) (i) Except as provided in Subsection (3)(c)(ii), the filing of a request for a declaratory judgment under Subsection (3)(b)(i) operates as an injunction during the pendency of the action, and the state may not enforce the obligation to pay or collect and remit sales and use tax described in Subsection (3)(a) against a remote seller that is a party to the declaratory judgment action, unless the remote seller agrees to voluntarily pay or collect and remit sales and use tax during the pendency of the action.

(ii) The injunction described in Subsection (3)(c)(i) does not apply if there is a final, unappealable decision from a court of competent jurisdiction establishing the validity of the obligation described in Subsection (3)(a) with respect to the remote seller against which the commission seeks declaratory judgment.

(iii) After the injunction described in Subsection (3)(c)(i) lifts or otherwise dissolves, the state shall assess and apply the obligation to pay or collect and remit sales and use tax to a remote seller:

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(A) that was a party to the declaratory judgment action;

(B) that the court determined has a valid obligation to pay or collect and remit sales and use tax under this chapter; and

(C) prospectively beginning on the first day of the first calendar quarter after the day on which the injunction lifts or dissolves.

(d) (i) A remote seller that voluntarily complies with Subsection (3)(a) while covered by the injunction described in Subsection (3)(c) may not claim a refund of taxes, penalties, or interest on the basis that the remote seller did not meet one or more of the criteria described in Subsection (2)(a).

(ii) A remote seller complying with this Subsection (3) may request a refund of taxes, penalties, or interest on another basis by following the refund procedures described in Section 59-12-110.

(e) (i) If a court of competent jurisdiction issues a final, unappealable decision that this Subsection (3) is unenforceable, a remote seller that collects sales and use tax under this Subsection (3) is not liable to a purchaser that claims that the sales and use tax was overcollected.

(ii) Nothing in this Subsection (3) affects a person's obligation under Subsection (6) to pay a use tax.

(4) (a) This Subsection (4) does not apply unless a court of competent jurisdiction issues a final, unappealable decision that Subsection (3) is unenforceable.

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

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

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

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

[(iii) (A) [the seller] sells the same or a substantially similar line of products as the

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~~[related]~~ remote seller and does so under the same or a substantially similar business name as the remote seller; ~~[or]~~

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

~~[(c) A seller that does not meet one or more of the criteria provided for in Subsection (2)(a) or is not a seller required to pay or collect and remit sales and use taxes under Subsection (2)(b): (i) except as provided in Subsection (2)(c)(ii), may voluntarily.]~~

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

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

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

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

~~(c) A remote seller may rebut the presumption described in Subsection (4)(b) by proving that the in-state activities of the person that meets one or more of the criteria described in Subsection (2)(a) are not significantly associated with the remote seller's ability to establish and maintain a market in the state for the sale of tangible personal property, a product transferred electronically, or a service.~~

~~(d) (i) Subject to the other provisions of this Subsection (4)(d), there is a rebuttable presumption that a noncollecting seller is engaged in the business of selling tangible personal property, a product transferred electronically, or a service, for storage, use, or consumption in the state.~~

~~(ii) The presumption described in Subsection (4)(d)(i) arises if, after October 1, 2017, the noncollecting seller makes sales in the state using an agreement, with a person that meets~~

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one or more of the criteria described in Subsection (2)(a), regardless of the date on which the noncollecting seller enters the agreement and regardless of whether the 12-month period immediately preceding the current month includes any period of time that occurred before October 1, 2017.

(e) (i) (A) A noncollecting seller may rebut the presumption described in Subsection (4)(d) by proving that the person with which the noncollecting seller has an agreement has not engaged in an activity within the state that is significantly associated with the noncollecting seller's ability, during the preceding 12 months, to establish and maintain a market within the state for the sale of tangible personal property, a product transferred electronically, or a service.

(B) Proof to rebut the presumption described in Subsection (4)(d) may include a written sworn statement, made in good faith, from each person within the state with which the noncollecting seller has an agreement that the person, during the previous 12 months, did not engage in any solicitation of a potential purchaser in the state on behalf of the noncollecting seller for the sale of tangible personal property, a product transferred electronically, or a service.

(ii) A noncollecting seller that does not rebut, in accordance with Subsection (4)(e)(i), the presumption described in Subsection (4)(d) shall pay or collect and remit sales and use tax on any sale the noncollecting seller makes to a purchaser in the state.

(f) Nothing in this Subsection (4) affects a person's obligation under Subsection (6) to pay a use tax.

(5) (a) Except as provided in Subsection (5)(b), a seller that is not required to pay or collect and remit sales and use tax under Subsection (2)(a), (3), or (4), may register as a registered remitter to voluntarily:

~~[(A)]~~ (i) collect a tax on a transaction described in Subsection 59-12-103(1); and

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

~~[(ii) notwithstanding Subsection (2)(c)(i);]~~

(b) A seller that is not required to pay or collect and remit a sales and use tax under Subsection (2)(a), (3), or (4), shall collect a tax on a transaction described in Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to collect the tax.

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

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required by Subsection (2) to:

- (i) pay a tax, fee, or charge under:
 - (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
 - (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
 - (C) Section 19-6-714;
 - (D) Section 19-6-805;
 - (E) Section 69-2-5;
 - (F) Section 69-2-5.5;
 - (G) Section 69-2-5.6; or
 - (H) this title; or
- (ii) collect and remit a tax, fee, or charge under:
 - (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
 - (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
 - (C) Section 19-6-714;
 - (D) Section 19-6-805;
 - (E) Section 69-2-5;
 - (F) Section 69-2-5.5;
 - (G) Section 69-2-5.6; or
 - (H) this title.

~~[(e) A person shall pay a use tax imposed by this chapter on a transaction described in Subsection 59-12-103(1) if:]~~

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

~~[(ii) the person:]~~

~~[(A) stores the tangible personal property or product transferred electronically in the state;]~~

~~[(B) uses the tangible personal property or product transferred electronically in the state; or]~~

~~[(C) consumes the tangible personal property or product transferred electronically in the state.]~~

~~[(f) The ownership of property that is located at the premises of a printer's facility with which the retailer has contracted for printing and that consists of the final printed product,~~

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

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

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

(b) the person:

(i) stores the tangible personal property or product transferred electronically in the state;

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

or

(iii) consumes the tangible personal property or product transferred electronically in the state.

~~[(3)]~~ (7) (a) Except as provided in Section 59-12-107.1, a seller shall collect a tax due under this chapter ~~[shall be collected]~~ from a purchaser.

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

(c) (i) Each seller shall:

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

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

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

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

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

(f) If any seller, during any reporting period, collects as a tax an amount in excess of

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the lawful state and local percentage of total taxable sales allowed under this chapter, the seller shall remit to the commission the full amount of the tax imposed under this chapter, plus any excess.

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

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

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

(B) subject to Subsection ~~(3)~~ (7)(h)(ii), the amount of tax due under this chapter in specie legal tender and in the legal tender the seller is required to remit to the commission;

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

(D) the date of the purchase.

(ii) (A) Subject to Subsection ~~(3)~~ (7)(h)(ii)(B), for purposes of determining the amount of tax due under Subsection ~~(3)~~ (7)(h)(i), a seller shall use the most recent London fixing price for the specie legal tender the purchaser paid.

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

~~(4)~~ (8) (a) Except as provided in Subsections ~~(5)~~ (9) through ~~(7)~~ (11) and Section 59-12-108, the ~~sales or use~~ tax imposed by this chapter is due and payable to the commission quarterly on or before the last day of the month next succeeding each quarterly calendar ~~quarterly~~ period.

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

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quarterly period.

(ii) The seller shall remit with the return under Subsection [~~(4)~~] (8)(b)(i) the amount of the tax required under this chapter to be collected or paid for the period covered by the return.

(c) Except as provided in Subsection [~~(5)~~]~~(e)~~ (9)(b), a return shall contain information and be in a form the commission prescribes by rule.

(d) (i) Subject to Subsection [~~(4)~~] (8)(d)(ii), the sales tax as computed in the return shall be based on the total nonexempt sales made during the period for which the return is filed, including both cash and charge sales.

(ii) For a sale that includes the delivery or installation of tangible personal property at a location other than a seller's place of business described in Subsection (2)(a)(i), if the delivery or installation is separately stated on an invoice or receipt, a seller may compute the tax due [~~on the sale~~] for purposes of Subsection [~~(4)~~] (8)(d)(i) based on the amount the seller receives for that sale during each period for which the seller receives payment for the sale.

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

(ii) (A) As used in this Subsection [~~(4)~~] (8)(e)(ii), "qualifying purchaser" means a purchaser [~~who~~] that is required to remit taxes under this chapter[;] but is not required to remit taxes monthly in accordance with Section 59-12-108, and [~~who~~] that converts tangible personal property into real property.

(B) Subject to Subsections [~~(4)~~] (8)(e)(ii)(C) and (D), a qualifying purchaser may remit the taxes due under this chapter on tangible personal property for which the qualifying purchaser claims an exemption as allowed under Subsection 59-12-104(23) or (25) based on the period in which the qualifying purchaser receives payment, in accordance with Subsection [~~(4)~~] (8)(e)(ii)(C), for the conversion of the tangible personal property into real property.

(C) A qualifying purchaser remitting taxes due under this chapter in accordance with Subsection [~~(4)~~] (8)(e)(ii)(B) shall remit an amount equal to the total amount of tax due on the qualifying purchaser's purchase of the tangible personal property that was converted into real property multiplied by a fraction, the numerator of which is the payment received in the period for the qualifying purchaser's sale of the tangible personal property that was converted into real property and the denominator of which is the entire sales price for the qualifying purchaser's

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sale of the tangible personal property that was converted into real property.

(D) A qualifying purchaser may remit taxes due under this chapter in accordance with this Subsection ~~[(4)]~~ (8)(e)(ii) only if the books and records that the qualifying purchaser keeps in the qualifying purchaser's regular course of business identify by reasonable and verifiable standards that the tangible personal property was converted into real property.

(f) (i) Subject to Subsection ~~[(4)]~~ (8)(f)(ii) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule extend the time for making returns and paying the taxes.

(ii) An extension under Subsection ~~[(4)]~~ (8)(f)(i) may not be for more than 90 days.

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

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

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

(A) the information required to be included in the additional electronic report described in Subsection ~~[(4)]~~ (8)(h)(i); and

(B) one or more due dates for filing the additional electronic report described in Subsection ~~[(4)]~~ (8)(h)(i).

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

~~[(i) registered under the agreement;]~~

~~[(ii) described in Subsection (2)(c); and]~~

~~[(iii) not a:]~~

~~[(A) model 1 seller;]~~

~~[(B) model 2 seller; or]~~

~~[(C) model 3 seller.]~~

~~[(b)]~~ (9)(a)(i) Except as provided in Subsection ~~[(5)(b)]~~ (9)(a)(ii), a tax a ~~remote seller~~ registered remitter collects in accordance with Subsection ~~[(2)(c)]~~ (5)(a) is due and payable:

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- (A) to the commission;
- (B) annually; and
- (C) on or before the last day of the month immediately following the last day of each

calendar year.

(ii) The commission may require that a tax a ~~[remote seller]~~ registered remitter collects in accordance with Subsection ~~[(2)(c)]~~ (5)(a) be due and payable:

(A) to the commission; and

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

~~[(c)]~~ (b) (i) If a ~~[remote seller]~~ registered remitter remits a tax to the commission in accordance with Subsection ~~[(5)(b)]~~ (9)(a), the ~~[remote seller]~~ registered remitter shall file a return:

(A) with the commission;

(B) with respect to the tax;

(C) containing information prescribed by the commission; and

(D) on a form prescribed by the commission.

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

(A) the information required to be contained in a return described in Subsection ~~[(5)(c)]~~ (9)(b)(i); and

(B) the form described in Subsection ~~[(5)(c)]~~ (9)(b)(i)(D).

~~[(d)]~~ (c) A tax a ~~[remote seller]~~ registered remitter collects in accordance with this Subsection ~~[(5)]~~ (9) shall be calculated on the basis of the total amount of taxable transactions under Subsection 59-12-103(1) the ~~[remote seller]~~ registered remitter completes, including~~[-]~~ cash transactions and charge transactions.

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

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

~~[(6)]~~ (10) (a) Except as provided in Subsection ~~[(6)]~~ (10)(b), a tax a seller that files a simplified electronic return collects in accordance with this chapter is due and payable:

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

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

(b) A tax a ~~[remote seller]~~ registered remitter that files a simplified electronic return collects in accordance with this chapter is due and payable as provided in Subsection ~~[(5)]~~ (9).

~~[(7)]~~ (11) (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to titling or registration under the laws of this state.

(b) The commission shall collect the tax described in Subsection ~~[(7)]~~ (11)(a) when the vehicle is titled or registered.

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

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

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

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

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

~~[(9)]~~ (13) If any sale of property or service ~~[subject to the tax]~~ is made to a person prepaying sales or use tax in accordance with Title 63M, Chapter 5, Resource Development Act, or to a contractor or subcontractor of that person~~[-]~~:

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

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

~~[(10)]~~ (14) (a) For purposes of this Subsection ~~[(10)]~~ (14):

(i) Except as provided in Subsection ~~[(10)]~~ (14)(a)(ii), "bad debt" ~~[is as]~~ means the same as that term is defined in Section 166, Internal Revenue Code.

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

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

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

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

(B) a financing charge;

(C) interest;

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

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

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

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

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

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

(b) (i) To the extent an amount remitted in accordance with Subsection ~~[(4)(d)]~~ (8)(c) later becomes bad debt, a seller may deduct the bad debt from the total amount from which a tax under this chapter is calculated on a return.

(ii) A qualifying purchaser, as defined in Subsection ~~[(4)]~~ (8)(e)(ii)(A), may deduct from the total amount of taxes due under this chapter the amount of tax the qualifying purchaser paid on the qualifying purchaser's purchase of tangible personal property converted into real property to the extent that:

(A) tax was remitted in accordance with Subsection ~~[(4)]~~ (8)(e) on that tangible personal property converted into real property;

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

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

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

(i) the amount of bad debt for the time period described in Subsection ~~[(10)]~~ (14)(e) exceeds the amount of the seller's sales that are subject to a tax under this chapter for that same

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time period; and

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

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

(e) A bad debt may be deducted under this Subsection [~~(10)~~] (14) on a return for the time period during which the bad debt:

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

(ii) would be eligible for a bad debt deduction[~~-(A)~~], for federal income tax purposes[~~;~~ and (B)], if the seller were required to file a federal income tax return.

(f) If a seller recovers any portion of bad debt for which the seller makes a deduction or claims a refund under this Subsection [~~(10)~~] (14), the seller shall report and remit a tax under this chapter:

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

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

(g) For purposes of reporting a recovery of a portion of bad debt under Subsection [~~(10)~~] (14)(f), a seller shall apply amounts received on the bad debt in the following order:

(i) in a proportional amount:

(A) to the purchase price of the tangible personal property, product transferred electronically, or service; and

(B) to the tax due under this chapter on the tangible personal property, product transferred electronically, or service; and

(ii) to:

(A) interest charges;

(B) service charges; and

(C) other charges.

(h) A seller's certified service provider may make a deduction or claim a refund for bad debt on behalf of the seller[~~-(i)~~] in accordance with this Subsection [~~(10)~~; and (ii)] (14) if the certified service provider credits or refunds the entire amount of the bad debt deduction or refund to the seller.

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

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~~[(11)]~~ (15) (a) A seller may not, with intent to evade any tax, fail to timely remit the full amount of tax required by this chapter.

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

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

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

Section 5. Section **59-12-108** is amended to read:

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

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

(i) file a return with the commission:

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

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

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

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

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

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

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- (i) is required by Section 59-12-107 to file the return electronically; or
- (ii) (A) is required to collect and remit a tax under Section 59-12-107; and
(B) files a simplified electronic return.
- (c) Subsections (1)(a) and (b) apply to the following taxes, fees, or charges:
 - (i) a tax under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
 - (ii) a fee under Section 19-6-714;
 - (iii) a fee under Section 19-6-805;
 - (iv) a charge under Section 69-2-5;
 - (v) a charge under Section 69-2-5.5;
 - (vi) a charge under Section 69-2-5.6; ~~[or]~~ and
 - (vii) a tax under this chapter.

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

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

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

(b) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain each month 1.31% of any amounts the seller is required to remit to the commission:

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

- (A) Subsection 59-12-103(2)(a);
- (B) Subsection 59-12-103(2)(b); and
- (C) Subsection 59-12-103(2)(d); and
- (ii) for an agreement sales and use tax.

(c) (i) A seller subject to Subsection (1) or a seller described in Subsection (4) may

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retain each month the amount calculated under Subsection (2)(c)(ii) for a transaction described in Subsection 59-12-103(1) that is subject to the state tax and the local tax imposed in accordance with Subsection 59-12-103(2)(c).

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

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

(I) the state tax and the local tax imposed in accordance with Subsection 59-12-103(2)(c);

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

(III) an agreement sales and use tax; and

(B) 1.31% of the difference between:

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

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

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

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

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

(Aa) the state tax and the local tax imposed in accordance with Subsection 59-12-103(2)(c);

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

(Cc) an agreement sales and use tax.

(d) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain each month 1% of any amounts the seller is required to remit to the commission:

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

(ii) under:

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

(B) Subsection 59-12-603(1)(a)(i)(A); or

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(C) Subsection 59-12-603(1)(a)(i)(B).

(3) A state government entity that is required to remit taxes monthly in accordance with Subsection (1) may not retain any amount under Subsection (2).

(4) A seller that has a tax liability under this chapter for the previous calendar year of less than \$50,000 may:

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

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

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

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

~~[(ii) for:]~~

~~[(A) an agreement sales and use tax; and]~~

~~[(B) the time period for which the seller files a return in accordance with this section:]~~

~~[(b) If a seller retains an amount under this Subsection (5), the seller may not retain any other amount under this section:]~~

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

~~[(i) electronic means; or]~~

~~[(ii) a means other than electronic means:]~~

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

~~[(6) (5) Penalties for late payment shall be as provided in Section 59-1-401.~~

~~[(7) (6) (a) Except as provided in Subsection [(7)] (6)(c), for any amounts required to be remitted to the commission under this part, the commission shall each month calculate an amount equal to the difference between:~~

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

~~(ii) the total amount retained for that month by all sellers at the percentages listed~~

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under Subsections (2)(b) and (2)(c)(ii).

(b) The commission shall each month allocate the amount calculated under Subsection [~~(7)~~] (6)(a) to each county, city, and town on the basis of the proportion of agreement sales and use tax that the commission distributes to each county, city, and town for that month compared to the total agreement sales and use tax that the commission distributes for that month to all counties, cities, and towns.

(c) The amount the commission calculates under Subsection [~~(7)~~] (6)(a) may not include an amount collected from a tax that:

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

(ii) is not imposed within the entire state.

Section 6. Section **59-12-211** is amended to read:

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

(1) As used in this section:

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

(A) taking possession of tangible personal property;

(B) making first use of a service; or

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

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

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

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

(b) "Transportation equipment" means:

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

(ii) a truck or truck-tractor:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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- (i) the address is obtained during the consummation of the transaction; and
 - (ii) use of the address described in Subsection (5)(a)(i) does not constitute bad faith.
- (b) An address used under Subsection (5)(a) includes the address of a purchaser's

payment instrument if no other address is available.

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

(a) indicated by the address from which:

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

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

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

or

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

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

(ii) associated with the mobile telephone number.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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taxing jurisdiction within which the transaction is located under Subsection (10)(a).

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

(i) by:

(A) telegraph;

(B) telephone; or

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

(ii) for delivery to another place:

(A) in this state; or

(B) outside this state.

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

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

(i) define:

(A) "business location"; and

(B) "florist";

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

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

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

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

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

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

(14) This section does not apply to:

(a) amounts charged by a seller for:

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

(ii) the retail sale or transfer of:

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

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

(C) a watercraft;

(D) a modular home;

(E) a manufactured home; or

(F) a mobile home; or

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

(b) a tax a person pays in accordance with Subsection 59-12-107[(2)(e)](6); or

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

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

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

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

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

Section 7. Section **59-12-211.1** is amended to read:

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

(1) Subject to Subsection (2), a person that is required by Subsection 59-12-107[(2)(e)](6) to pay a use tax on a transaction shall report the location of that

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transaction at the person's location.

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

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

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

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

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

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

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

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

(A) be less than \$500; or

(B) exceed \$1,000.

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

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

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

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

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

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

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(B) exceed \$5,000.

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

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

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

(B) exceed \$25,000.

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

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

(I) a return;

(II) an affidavit;

(III) a claim; or

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

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

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

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

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

(A) preparing any portion of a document described in Subsection (1)(e)(i)(A);

(B) presenting any portion of a document described in Subsection (1)(e)(i)(A);

(C) procuring any portion of a document described in Subsection (1)(e)(i)(A);

(D) advising in the preparation or presentation of any portion of a document described in Subsection (1)(e)(i)(A);

(E) aiding in the preparation or presentation of any portion of a document described in Subsection (1)(e)(i)(A);

(F) assisting in the preparation or presentation of any portion of a document described in Subsection (1)(e)(i)(A); or

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(G) counseling in the preparation or presentation of any portion of a document described in Subsection (1)(e)(i)(A).

(iii) This Subsection (1)(e) applies:

(A) regardless of whether the person for which the document described in Subsection (1)(e)(i)(A) is prepared or presented:

(I) knew of the falsity of the document described in Subsection (1)(e)(i)(A); or

(II) consented to the falsity of the document described in Subsection (1)(e)(i)(A); and

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

(iv) Notwithstanding Section 76-3-301, for purposes of this Subsection (1)(e), the penalty may not:

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

(B) exceed \$25,000.

(v) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Tax Commission may make rules prescribing the documents that are similar to Subsections (1)(e)(i)(A)(I) through (III).

(2) The statute of limitations for prosecution for a violation of this section is the later of six years:

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

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

Section 9. Section **78A-3-102** is amended to read:

78A-3-102. Supreme Court jurisdiction.

(1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States.

(2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction.

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) a judgment of the Court of Appeals;

(b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals;

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- (c) discipline of lawyers;
 - (d) final orders of the Judicial Conduct Commission;
 - (e) final orders and decrees in formal adjudicative proceedings originating with:
 - (i) the Public Service Commission;
 - (ii) the State Tax Commission;
 - (iii) the School and Institutional Trust Lands Board of Trustees;
 - (iv) the Board of Oil, Gas, and Mining;
 - (v) the state engineer; or
 - (vi) the executive director of the Department of Natural Resources reviewing actions of the Division of Forestry, Fire, and State Lands;
 - (f) final orders and decrees of the district court review of informal adjudicative proceedings of agencies under Subsection (3)(e);
 - (g) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution;
 - (h) interlocutory appeals from any court of record involving a charge of a first degree or capital felony;
 - (i) appeals from the district court involving a conviction or charge of a first degree felony or capital felony;
 - (j) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction; ~~and~~
 - (k) appeals from the district court of orders, judgments, or decrees ruling on legislative subpoenas[-]; and
 - (l) appeals from a district court's decision on a declaratory judgment request under Subsection 59-12-107(3)(b).
- (4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except:
- (a) capital felony convictions or an appeal of an interlocutory order of a court of record involving a charge of a capital felony;
 - (b) election and voting contests;
 - (c) reapportionment of election districts;

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- (d) retention or removal of public officers;
- (e) matters involving legislative subpoenas; and
- (f) those matters described in Subsections (3)(a) through (d) and (l).

(5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review those cases certified to it by the Court of Appeals under Subsection (3)(b).

(6) The Supreme Court shall comply with the requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its review of agency adjudicative proceedings.

Section 10. **Appropriation.**

The following sums of money are appropriated for the fiscal year beginning July 1, 2016, and ending June 30, 2017. These are additions to amounts previously appropriated for fiscal year 2017. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 1

To the General Fund

<u>From Remote Sales Restricted Account, One-time</u>	<u>\$81,000</u>
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Schedule of Programs:

<u>General Fund, One-time</u>	<u>\$81,000</u>
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Section 11. **Severability clause.**

The provisions of this bill are severable. If any provision of this bill, or the application of any provision of this bill to any person or circumstance, is held invalid by a final, unappealable decision of a court of competent jurisdiction, the remainder of this bill shall be given effect without the invalid provision or application.

Section 12. **Repealer.**

This bill repeals:

Section 59-12-103.2, Definitions -- Remote Sales Restricted Account -- Creation -- Funding for account -- Interest -- Division of Finance accounting.

Section 13. **Effective date.**

(1) Except as provided in Subsection (2), this bill takes effect on May 9, 2017.

(2) The amendments to Section 59-12-108 take effect on October 1, 2017.

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Legislative Review Note

The Utah Legislature's Joint Rule 4-2-402 requires legislative general counsel to place a legislative review note on legislation. The Legislative Management Committee has further directed legislative general counsel to include legal analysis in the legislative review note only if legislative general counsel determines that there is a high probability that a court would declare the legislation to be unconstitutional under the Utah Constitution, the United States Constitution, or both. As explained in the legal analysis below, legislative general counsel has determined, based on applicable state and federal constitutional language and current interpretations of that language in state and federal court case law, that this legislation has a high probability of being declared unconstitutional by a court. The note is not written for the purpose of influencing whether the bill should become law but is written to provide information relevant to legislators' consideration of this bill. The note is not a substitute for the judgment of the judiciary, which has authority to determine the constitutionality of a law in the context of a specific case.

This bill requires sellers that have an economic presence, but that lack a physical presence (such as a business location), in the state to pay or collect and remit state and local sales and use taxes. Under this bill, economic presence, sufficient to trigger sales and use tax collection obligations, occurs if the seller's gross revenue from sales of tangible personal property, products transferred electronically, or services in the state exceeds \$100,000.

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

In evaluating a state statute under a dormant Commerce Clause challenge, the Supreme Court of the United States has held that a state may not require a seller to pay or collect and remit a sales and use tax unless the seller has a "substantial nexus" with the taxing state. *Quill*, 504 U.S. at 311. The Court has found that "a vendor whose only contacts with the taxing State are by mail or common carrier lacks the 'substantial nexus' required by the Commerce Clause." *Id.* (citing *National Bellas Hess, Inc. v. Department of Revenue of Illinois*, 368 U.S. 753, 758 (1967)). In *Quill*, the Supreme Court of the United States held that a seller has a substantial nexus with a state sufficient to allow the state to impose a sales and use tax collection obligation on the seller only if the seller has a physical presence in the state. *Id.* at 315 (noting that the ~~bright-line~~ bright-line rule means that "[w]hether or not a State may compel a vendor to collect a sales or use tax may turn on the presence in the taxing State of a small sales force, plant, or office."). In *Scripto v. Carson*, the Supreme Court of the United States found that independent contractors soliciting business within a state was sufficient presence for the state to impose sales and use tax collection obligations. *Scripto v. Carson*, 362 U.S. 207, 211 (1960).

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This bill raises the issue of the application of the *Quill* case and its substantial nexus standard to an increasingly interconnected economy that has seen significant technological and social changes as well as an evolution in the model for doing business. Indeed, Justice Kennedy, in a concurring opinion of the recent *Direct Marketing Association v. Brohl* decision, noted, "Given these changes in technology and consumer sophistication, it is unwise to delay any longer a reconsideration of the Court's holding in *Quill*. A case questionable even when decided, *Quill* now harms States to a degree far greater than could have been anticipated earlier." *Direct Marketing Ass'n v. Brohl*, 135 S.Ct. 1124, 1135 (2016) (Kennedy, J., concurring). Justice Kennedy then stated, "The legal system should find an appropriate case for this Court to reexamine *Quill* and [its predecessor] *Bellas Hess*." *Id.* In addition, in *Quill* itself, the Supreme Court of the United States noted that the issue of what constitutes substantial nexus is "one that Congress may be better qualified to resolve" and also "has the ultimate power to resolve." *Quill*, 504 U.S. at 318. Thus, it is also possible that Congress may act on this interstate commerce issue.

Both the courts and Congress have an opportunity to more clearly define and articulate the legal contours of what constitutes substantial nexus with a taxing state because relevant cases are moving through the judicial system and legislation on this question has been introduced in recent congressional sessions. It is impossible to predict the outcome of these actions and what changes, if any, they might have on the standards set forth in *Quill*. However, because current dormant Commerce Clause case law under *Quill* requires physical presence to satisfy the substantial nexus requirement, there is a high probability that, unless the United States Supreme Court overrules its holding in *Quill* or Congress takes action to redefine the substantial nexus requirement consistent with the provisions of this bill, a court that considers the constitutionality of the economic presence provisions of this bill will strike down those provisions.

Office of Legislative Research and General Counsel