

1 **TAX COMMISSION BOND REQUIREMENT AMENDMENTS**

2 2021 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: Steve Eliason

7 **LONG TITLE**

8 **Committee Note:**

9 The Revenue and Taxation Interim Committee recommended this bill.

10 Legislative Vote: 14 voting for 0 voting against 5 absent

11 **General Description:**

12 This bill modifies provisions related to bond requirements for certain tax licensees.

13 **Highlighted Provisions:**

14 This bill:

15 ▶ allows the State Tax Commission to waive the bond requirement for a person whose
16 withholding tax license or sales and use tax license was revoked for a delinquency,
17 if the person is in compliance with a payment agreement approved by the
18 commission; and

19 ▶ makes technical and conforming changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **59-10-405.5**, as last amended by Laws of Utah 2008, Chapter 382

27 **59-12-106**, as last amended by Laws of Utah 2020, Chapter 284



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

Section 1. Section **59-10-405.5** is amended to read:

59-10-405.5. Definitions -- Withholding tax license requirements -- Penalty -- Application process and requirements -- Fee not required -- Bonds.

(1) As used in this section:

(a) "applicant" means a person that:

(i) is required by this section to obtain a license; and

(ii) submits an application:

(A) to the commission; and

(B) for a license under this section;

(b) "application" means an application for a license under this section;

(c) "fiduciary of the applicant" means a person that:

(i) is required to collect, truthfully account for, and pay over an amount under this part for an applicant; and

(ii) (A) is a corporate officer of the applicant described in Subsection (1)(c)(i);

(B) is a director of the applicant described in Subsection (1)(c)(i);

(C) is an employee of the applicant described in Subsection (1)(c)(i);

(D) is a partner of the applicant described in Subsection (1)(c)(i);

(E) is a trustee of the applicant described in Subsection (1)(c)(i); or

(F) has a relationship to the applicant described in Subsection (1)(c)(i) that is similar to a relationship described in Subsections (1)(c)(ii)(A) through (E) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(d) "fiduciary of the licensee" means a person that:

(i) is required to collect, truthfully account for, and pay over an amount under this part for a licensee; and

(ii) (A) is a corporate officer of the licensee described in Subsection (1)(d)(i);

(B) is a director of the licensee described in Subsection (1)(d)(i);

(C) is an employee of the licensee described in Subsection (1)(d)(i);

(D) is a partner of the licensee described in Subsection (1)(d)(i);

59 (E) is a trustee of the licensee described in Subsection (1)(d)(i); or

60 (F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to

61 a relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the

62 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative

63 Rulemaking Act;

64 (e) "license" means a license under this section; and

65 (f) "licensee" means a person that is licensed under this section by the commission.

66 (2) The following persons are guilty of a criminal violation as provided in Section

67 [59-1-401](#):

68 (a) a person that:

69 (i) is required to withhold, report, or remit any amounts under this part; and

70 (ii) engages in business within the state before obtaining a license under this section; or

71 (b) a person that:

72 (i) pays wages under this part; and

73 (ii) engages in business within the state before obtaining a license under this section.

74 (3) The license described in Subsection (2):

75 (a) shall be granted and issued:

76 (i) by the commission in accordance with this section;

77 (ii) without a license fee; and

78 (iii) if:

79 (A) an applicant:

80 (I) states the applicant's name and address in the application; and

81 (II) provides other information in the application that the commission may require; and

82 (B) the person meets the requirements of this section to be granted a license as

83 determined by the commission;

84 (b) may not be assigned to another person; and

85 (c) is valid:

86 (i) only for the person named on the license; and

87 (ii) until:

88 (A) the person described in Subsection (3)(c)(i):

89 (I) ceases to do business; or

90 (II) changes that person's business address; or

91 (B) the commission revokes the license.

92 (4) The commission shall review an application and determine whether:

93 (a) the applicant meets the requirements of this section to be issued a license; and

94 (b) a bond is required to be posted with the commission in accordance with

95 Subsections (5) and (6) before the applicant may be issued a license.

96 (5) (a) ~~Am~~ Except as provided in Subsection (5)(c), an applicant shall post a bond
97 with the commission before the commission may issue the applicant a license if:

98 (i) a license under this section was revoked for a delinquency under this part for:

99 (A) the applicant;

100 (B) a fiduciary of the applicant; or

101 (C) a person for which the applicant or the fiduciary of the applicant is required to

102 collect, truthfully account for, and pay over an amount under this part; or

103 (ii) there is a delinquency in withholding, reporting, or remitting any amount under this
104 part for:

105 (A) an applicant;

106 (B) a fiduciary of the applicant; or

107 (C) a person for which the applicant or the fiduciary of the applicant is required to

108 collect, truthfully account for, and pay over an amount under this part.

109 (b) If the commission determines it is necessary to ensure compliance with this part,
110 the commission may require a licensee to:

111 (i) for a licensee that has not posted a bond under this section with the commission,
112 post a bond with the commission in accordance with Subsection (6); or

113 (ii) for a licensee that has posted a bond under this section with the commission,
114 increase the amount of the bond posted with the commission.

115 (c) The commission may waive the bond requirement described in Subsection (5)(a), if
116 the applicant is in compliance with a payment agreement that:

117 (i) relates to the delinquency; and

118 (ii) is approved by the commission.

119 (6) (a) A bond required by Subsection (5) shall be:

120 (i) executed by:

- 121 (A) for an applicant, the applicant as principal, with a corporate surety; or
- 122 (B) for a licensee, the licensee as principal, with a corporate surety; and
- 123 (ii) payable to the commission conditioned upon the faithful performance of all of the
- 124 requirements of this part including:
 - 125 (A) the withholding or remitting of any amount under this part;
 - 126 (B) the payment of any:
 - 127 (I) penalty as provided in Section 59-1-401; or
 - 128 (II) interest as provided in Section 59-1-402; or
 - 129 (C) any other obligation of the:
 - 130 (I) applicant under this part; or
 - 131 (II) licensee under this part.
 - 132 (b) Except as provided in Subsection (6)(d), the commission shall calculate the amount
 - 133 of a bond required by Subsection (5) on the basis of:
 - 134 (i) commission estimates of:
 - 135 (A) for an applicant, any amounts the applicant withholds, reports, or remits under this
 - 136 part; or
 - 137 (B) for a licensee, any amounts the licensee withholds, reports, or remits under this
 - 138 part; and
 - 139 (ii) any amount of a delinquency described in Subsection (6)(c).
 - 140 (c) Except as provided in Subsection (6)(d), for purposes of Subsection (6)(b)(ii):
 - 141 (i) for an applicant, the amount of the delinquency is the sum of:
 - 142 (A) the amount of any delinquency that served as a basis for revoking the license under
 - 143 this section of:
 - 144 (I) the applicant;
 - 145 (II) a fiduciary of the applicant; or
 - 146 (III) a person for which the applicant or the fiduciary of the applicant is required to
 - 147 collect, truthfully account for, and pay over an amount under this part; or
 - 148 (B) the amount that any of the following owe under this part:
 - 149 (I) the applicant;
 - 150 (II) a fiduciary of the applicant; and
 - 151 (III) a person for which the applicant or the fiduciary of the applicant is required to

152 collect, truthfully account for, and pay over an amount under this part; or
153 (ii) for a licensee, the amount of the delinquency is the sum of:
154 (A) the amount of any delinquency that served as a basis for revoking the license under
155 this section of:
156 (I) the licensee;
157 (II) a fiduciary of the licensee; or
158 (III) a person for which the licensee or the fiduciary of the licensee is required to
159 collect, truthfully account for, and pay over an amount under this part; or
160 (B) the amount that any of the following owe under this part:
161 (I) the licensee;
162 (II) a fiduciary of the licensee; and
163 (III) a person for which the licensee or the fiduciary of the licensee is required to
164 collect, truthfully account for, and pay over an amount under this part.
165 (d) Notwithstanding Subsection (6)(b) or (c), a bond required by Subsection (5) may
166 not:
167 (i) be less than \$25,000; or
168 (ii) exceed \$500,000.
169 (7) (a) The commission shall revoke a license under this section if:
170 (i) a licensee violates any provision of this part; and
171 (ii) before the commission revokes the license the commission provides the licensee:
172 (A) reasonable notice; and
173 (B) a hearing.
174 (b) If the commission revokes a licensee's license in accordance with Subsection (7)(a),
175 the commission may not issue another license to that licensee until that licensee complies with
176 the requirements of this part, including:
177 (i) paying any:
178 (A) amounts due under this part;
179 (B) penalty as provided in Section 59-1-401; or
180 (C) interest as provided in Section 59-1-402; and
181 (ii) posting a bond in accordance with Subsections (5) and (6).
182 Section 2. Section **59-12-106** is amended to read:

183 **59-12-106. Definitions -- Sales and use tax license requirements -- Penalty --**
184 **Application process and requirements -- No fee -- Bonds -- Presumption of taxability --**
185 **Exemption certificates -- Exemption certificate license number to accompany contract**
186 **bids.**

187 (1) As used in this section:

188 (a) "Applicant" means a person that:

189 (i) is required by this section to obtain a license; and

190 (ii) submits an application:

191 (A) to the commission; and

192 (B) for a license under this section.

193 (b) "Application" means an application for a license under this section.

194 (c) "Fiduciary of the applicant" means a person that:

195 (i) is required to collect, truthfully account for, and pay over a tax under this chapter

196 for an applicant; and

197 (ii) (A) is a corporate officer of the applicant described in Subsection (1)(c)(i);

198 (B) is a director of the applicant described in Subsection (1)(c)(i);

199 (C) is an employee of the applicant described in Subsection (1)(c)(i);

200 (D) is a partner of the applicant described in Subsection (1)(c)(i);

201 (E) is a trustee of the applicant described in Subsection (1)(c)(i); or

202 (F) has a relationship to the applicant described in Subsection (1)(c)(i) that is similar to

203 a relationship described in Subsections (1)(c)(ii)(A) through (E) as determined by the

204 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative

205 Rulemaking Act.

206 (d) "Fiduciary of the licensee" means a person that:

207 (i) is required to collect, truthfully account for, and pay over a tax under this chapter

208 for a licensee; and

209 (ii) (A) is a corporate officer of the licensee described in Subsection (1)(d)(i);

210 (B) is a director of the licensee described in Subsection (1)(d)(i);

211 (C) is an employee of the licensee described in Subsection (1)(d)(i);

212 (D) is a partner of the licensee described in Subsection (1)(d)(i);

213 (E) is a trustee of the licensee described in Subsection (1)(d)(i); or

214 (F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to
215 a relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the
216 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
217 Rulemaking Act.

218 (e) "License" means a license under this section.

219 (f) "Licensee" means a person that is licensed under this section by the commission.

220 (g) "Special event" means an event that lasts six months or less where taxable sales
221 occur.

222 (2) (a) It is unlawful for any person required to collect a tax under this chapter to
223 engage in business within the state without first having obtained a license to do so.

224 (b) The license described in Subsection (2)(a):

225 (i) shall be granted and issued by the commission;

226 (ii) is not assignable;

227 (iii) is valid only for the person in whose name the license is issued;

228 (iv) is valid until:

229 (A) the person described in Subsection (2)(b)(iii):

230 (I) ceases to do business; or

231 (II) changes that person's business address; or

232 (B) the license is revoked by the commission; and

233 (v) subject to Subsection (2)(d), shall be granted by the commission only upon an
234 application that:

235 (A) states the name and address of the applicant; and

236 (B) provides other information the commission may require.

237 (c) At the time an applicant makes an application under Subsection (2)(b)(v), the
238 commission shall notify the applicant of the responsibilities and liability of a business owner
239 successor under Section [59-12-112](#).

240 (d) The commission shall review an application and determine whether the applicant:

241 (i) meets the requirements of this section to be issued a license; and

242 (ii) is required to post a bond with the commission in accordance with Subsections
243 (2)(e) and (f) before the applicant may be issued a license.

244 (e) (i) ~~[An]~~ Except as provided in Subsection (2)(e)(iii), an applicant shall post a bond

- 245 with the commission before the commission may issue the applicant a license if:
- 246 (A) a license under this section was revoked for a delinquency under this chapter for:
- 247 (I) the applicant;
- 248 (II) a fiduciary of the applicant; or
- 249 (III) a person for which the applicant or the fiduciary of the applicant is required to
- 250 collect, truthfully account for, and pay over a tax under this chapter; or
- 251 (B) there is a delinquency in paying a tax under this chapter for:
- 252 (I) the applicant;
- 253 (II) a fiduciary of the applicant; or
- 254 (III) a person for which the applicant or the fiduciary of the applicant is required to
- 255 collect, truthfully account for, and pay over a tax under this chapter.
- 256 (ii) If the commission determines it is necessary to ensure compliance with this
- 257 chapter, the commission may require a licensee to:
- 258 (A) for a licensee that has not posted a bond under this section with the commission,
- 259 post a bond with the commission in accordance with Subsection (2)(f); or
- 260 (B) for a licensee that has posted a bond under this section with the commission,
- 261 increase the amount of the bond posted with the commission.
- 262 (iii) The commission may waive the bond requirement described in Subsection
- 263 (2)(e)(i), if the applicant is in compliance with a payment agreement that:
- 264 (A) relates to the delinquency; and
- 265 (B) is approved by the commission.
- 266 (f) (i) A bond required by Subsection (2)(e) shall be:
- 267 (A) executed by:
- 268 (I) for an applicant, the applicant as principal, with a corporate surety; or
- 269 (II) for a licensee, the licensee as principal, with a corporate surety; and
- 270 (B) payable to the commission conditioned upon the faithful performance of all of the
- 271 requirements of this chapter including:
- 272 (I) the payment of any tax under this chapter;
- 273 (II) the payment of any:
- 274 (Aa) penalty as provided in Section 59-1-401; or
- 275 (Bb) interest as provided in Section 59-1-402; or

276 (III) any other obligation of the:
277 (Aa) applicant under this chapter; or
278 (Bb) licensee under this chapter.
279 (ii) Except as provided in Subsection (2)(f)(iv), the commission shall calculate the
280 amount of a bond required by Subsection (2)(e) on the basis of:
281 (A) commission estimates of:
282 (I) an applicant's tax liability under this chapter; or
283 (II) a licensee's tax liability under this chapter; and
284 (B) any amount of a delinquency described in Subsection (2)(f)(iii).
285 (iii) Except as provided in Subsection (2)(f)(iv), for purposes of Subsection
286 (2)(f)(ii)(B):
287 (A) for an applicant, the amount of the delinquency is the sum of:
288 (I) the amount of any delinquency that served as a basis for revoking the license under
289 this section of:
290 (Aa) the applicant;
291 (Bb) a fiduciary of the applicant; or
292 (Cc) a person for which the applicant or the fiduciary of the applicant is required to
293 collect, truthfully account for, and pay over a tax under this chapter; or
294 (II) the amount of tax that any of the following owe under this chapter:
295 (Aa) the applicant;
296 (Bb) a fiduciary of the applicant; and
297 (Cc) a person for which the applicant or the fiduciary of the applicant is required to
298 collect, truthfully account for, and pay over a tax under this chapter; or
299 (B) for a licensee, the amount of the delinquency is the sum of:
300 (I) the amount of any delinquency that served as a basis for revoking the license under
301 this section of:
302 (Aa) the licensee;
303 (Bb) a fiduciary of the licensee; or
304 (Cc) a person for which the licensee or the fiduciary of the licensee is required to
305 collect, truthfully account for, and pay over a tax under this chapter; or
306 (II) the amount of tax that any of the following owe under this chapter:

- 307 (Aa) the licensee;
- 308 (Bb) a fiduciary of the licensee; and
- 309 (Cc) a person for which the licensee or the fiduciary of the licensee is required to
- 310 collect, truthfully account for, and pay over a tax under this chapter.
- 311 (iv) Notwithstanding Subsection (2)(f)(ii) or (2)(f)(iii), a bond required by Subsection
- 312 (2)(e) may not:
- 313 (A) be less than \$25,000; or
- 314 (B) exceed \$500,000.
- 315 (g) Subject to Subsection (2)(h), if business is transacted at two or more separate places
- 316 by one person, a separate license for each place of business is required.
- 317 (h) A license is not required for any person that is:
- 318 (i) engaged exclusively in the business of selling commodities that are exempt from
- 319 taxation under this chapter; or
- 320 (ii) exempt from collecting sales and use tax under Section 59-12-104 and the place of
- 321 business is a special event.
- 322 (i) (i) The commission shall, on a reasonable notice and after a hearing, revoke the
- 323 license of any licensee violating any provisions of this chapter.
- 324 (ii) A license may not be issued to a licensee described in Subsection (2)(i)(i) until the
- 325 licensee has complied with the requirements of this chapter, including:
- 326 (A) paying any:
- 327 (I) tax due under this chapter;
- 328 (II) penalty as provided in Section 59-1-401; or
- 329 (III) interest as provided in Section 59-1-402; and
- 330 (B) posting a bond in accordance with Subsections (2)(e) and (f).
- 331 (j) Any person required to collect a tax under this chapter within this state without
- 332 having secured a license to do so is guilty of a criminal violation as provided in Section
- 333 59-1-401.
- 334 (k) A license shall be issued to the person by the commission without a license fee.
- 335 (l) (i) The commission shall include on an application for a temporary sales tax license
- 336 and special event sales tax return the following statement:
- 337 "You are not required to complete or return this form or to collect sales and use tax if

338 you are not regularly engaged in the business of selling the items you are offering at this event
339 or all of the items that you are selling at this event are exempt from sales and use tax under
340 Section 59-12-104."

341 (ii) The notice described in Subsection (2)(l)(i) shall be in bold font no smaller than the
342 font of the main content and shall appear at the top of the application form.

343 (3) (a) For the purpose of the proper administration of this chapter and to prevent
344 evasion of the tax and the duty to collect the tax, it shall be presumed that tangible personal
345 property or any other taxable transaction under Subsection 59-12-103(1) sold by any person for
346 delivery in this state is sold for storage, use, or other consumption in this state unless the
347 person selling the property, item, or service has taken from the purchaser an exemption
348 certificate:

349 (i) bearing the name and address of the purchaser; and

350 (ii) providing that the property, item, or service was exempted under Section
351 59-12-104.

352 (b) An exemption certificate described in Subsection (3)(a):

353 (i) shall contain information as prescribed by the commission; and

354 (ii) if a paper exemption certificate is used, shall be signed by the purchaser.

355 (c) (i) Subject to Subsection (3)(c)(ii), a seller or certified service provider is not liable
356 to collect a tax under this chapter if the seller or certified service provider obtains within 90
357 days after a transaction is complete:

358 (A) an exemption certificate containing the information required by Subsections (3)(a)
359 and (b); or

360 (B) the information required by Subsections (3)(a) and (b).

361 (ii) A seller or certified service provider that does not obtain the exemption certificate
362 or information described in Subsection (3)(c)(i) with respect to a transaction is allowed 120
363 days after the commission requests the seller or certified service provider to substantiate the
364 exemption to:

365 (A) establish that the transaction is not subject to taxation under this chapter by a
366 means other than providing an exemption certificate containing the information required by
367 Subsections (3)(a) and (b); or

368 (B) subject to Subsection (3)(c)(iii), obtain an exemption certificate containing the

369 information required by Subsections (3)(a) and (b), taken in good faith.

370 (iii) For purposes of Subsection (3)(c)(ii)(B), an exemption certificate is taken in good
371 faith if the exemption certificate claims an exemption that:

372 (A) was allowed by statute on the date of the transaction in the jurisdiction of the
373 location of the transaction;

374 (B) could be applicable to that transaction; and

375 (C) is reasonable for the purchaser's type of business.

376 (d) Except as provided in Subsection (3)(e), a seller or certified service provider that
377 takes an exemption certificate from a purchaser in accordance with this Subsection (3) with
378 respect to a transaction is not liable to collect a tax under this chapter on that transaction.

379 (e) Subsection (3)(d) does not apply to a seller or certified service provider if the
380 commission establishes through an audit that the seller or certified service provider:

381 (i) knew or had reason to know at the time the purchaser provided the seller or certified
382 service provider the information described in Subsection (3)(a) or (b) that the information
383 related to the exemption claimed was materially false; or

384 (ii) otherwise knowingly participated in activity intended to purposefully evade the tax
385 due on the transaction.

386 (f) (i) Subject to Subsection (3)(f)(ii) and except as provided in Subsection (3)(f)(iii), if
387 there is a recurring business relationship between a seller or certified service provider and a
388 purchaser, the commission may not require the seller or certified service provider to:

389 (A) renew an exemption certificate;

390 (B) update an exemption certificate; or

391 (C) update a data element of an exemption certificate.

392 (ii) For purposes of Subsection (3)(f)(i), a recurring business relationship exists if no
393 more than a 12-month period elapses between transactions between a seller or certified service
394 provider and a purchaser.

395 (iii) If there is a recurring business relationship between a seller or certified service
396 provider and a purchaser, the commission shall require an exemption certificate the seller or
397 certified service provider takes from the purchaser to meet the requirements of Subsections
398 (3)(a) and (b).

399 (4) A person filing a contract bid with the state or a political subdivision of the state for

400 the sale of tangible personal property or any other taxable transaction under Subsection
401 [59-12-103](#)(1) shall include with the bid the number of the license issued to that person under
402 Subsection (2).