

29 **Penalties and interest.**

30 (1) As used in this section:

31 (a) "Ownership" means direct ownership or indirect ownership through a parent,
32 subsidiary, or affiliate.

33 (b) "Related seller" means a seller that:

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

35 (ii) delivers tangible personal property, a service, or a product transferred
36 electronically that is sold:37 (A) by a seller that does not meet one or more of the criteria described in
38 Subsection (2)(a)(i); and

39 (B) to a purchaser in the state.

40 (c) "Substantial ownership interest" means an ownership interest in a business entity if
41 that ownership interest is greater than the degree of ownership of equity interest
42 specified in 15 U.S.C. Sec. 78p, with respect to a person other than a director or an
43 officer.44 (2)(a) Except as provided in Subsection (2)(f), Section 59-12-107.1, or Section
45 59-12-123, and subject to Subsection (2)(g), each seller shall pay or collect and remit
46 the sales and use taxes imposed by this chapter if within this state the seller:

47 (i) has or utilizes:

48 (A) an office;

49 (B) a distribution house;

50 (C) a sales house;

51 (D) a warehouse;

52 (E) a service enterprise; or

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

54 (ii) maintains a stock of goods;

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

57 (A) advertising; or

58 (B) solicitation by:

59 (I) direct mail;

60 (II) electronic mail;

61 (III) the Internet;

62 (IV) telecommunications service; or

- 63 (V) a means similar to Subsection (2)(a)(iii)(A) or (B);
- 64 (iv) regularly engages in the delivery of property in the state other than by:
- 65 (A) common carrier; or
- 66 (B) United States mail; or
- 67 (v) regularly engages in an activity directly related to the leasing or servicing of
- 68 property located within the state.
- 69 (b) A seller is considered to be engaged in the business of selling tangible personal
- 70 property, a product transferred electronically, or a service for use in the state, and
- 71 shall pay or collect and remit the sales and use taxes imposed by this chapter if:
- 72 (i) the seller holds a substantial ownership interest in, or is owned in whole or in
- 73 substantial part by, a related seller; and
- 74 (ii)(A) the seller sells the same or a substantially similar line of products as the
- 75 related seller and does so under the same or a substantially similar business
- 76 name; or
- 77 (B) the place of business described in Subsection (2)(a)(i) of the related seller or
- 78 an in state employee of the related seller is used to advertise, promote, or
- 79 facilitate sales by the seller to a purchaser.
- 80 (c) Subject to Section 59-12-107.6, each seller that does not meet one or more of the
- 81 criteria provided for in Subsection (2)(a) or is not a seller required to pay or collect
- 82 and remit the sales and use taxes imposed by this chapter under Subsection (2)(b)
- 83 shall pay or collect and remit the sales and use tax imposed by this chapter if the
- 84 seller:
- 85 (i) sells tangible personal property, products transferred electronically, or services for
- 86 storage, use, or consumption in the state; and
- 87 (ii) in either the previous calendar year or the current calendar year[:]
- 88 [~~(A)~~] ~~receives gross revenue from the sale of tangible personal property, products~~
- 89 ~~transferred electronically, or services for storage, use, or consumption in the~~
- 90 ~~state of more than \$100,000[:~~or~~].~~
- 91 [~~(B)~~] ~~sells tangible personal property, products transferred electronically, or~~
- 92 ~~services for storage, use, or consumption in the state in 200 or more separate~~
- 93 ~~transactions.]~~
- 94 (d) A seller that does not meet one or more of the criteria provided for in Subsection
- 95 (2)(a) or is not a seller required to pay or collect and remit sales and use taxes under
- 96 Subsection (2)(b), Subsection (2)(c), or Section 59-12-107.6 may voluntarily:

- 97 (i) collect a tax on a transaction described in Subsection 59-12-103(1); and
98 (ii) remit the tax to the commission as provided in this part.
- 99 (e) The collection and remittance of a tax under this chapter by a seller that is registered
100 under the agreement may not be used as a factor in determining whether that seller is
101 required by this Subsection (2) to:
- 102 (i) pay a tax, fee, or charge under:
- 103 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
104 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
105 (C) Section 19-6-714;
106 (D) Section 19-6-805;
107 (E) Title 69, Chapter 2, Part 4, Prepaid Wireless Telecommunications Service
108 Charges; or
109 (F) this title; or
- 110 (ii) collect and remit a tax, fee, or charge under:
- 111 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
112 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
113 (C) Section 19-6-714;
114 (D) Section 19-6-805;
115 (E) Title 69, Chapter 2, Part 4, Prepaid Wireless Telecommunications Service
116 Charges; or
117 (F) this title.
- 118 (f) A person shall pay a use tax imposed by this chapter on a transaction described in
119 Subsection 59-12-103(1) if:
- 120 (i) the seller did not collect a tax imposed by this chapter on the transaction; and
121 (ii) the person:
- 122 (A) stores the tangible personal property or product transferred electronically in
123 the state;
124 (B) uses the tangible personal property or product transferred electronically in the
125 state; or
126 (C) consumes the tangible personal property or product transferred electronically
127 in the state.
- 128 (g) The ownership of property that is located at the premises of a printer's facility with
129 which the retailer has contracted for printing and that consists of the final printed
130 product, property that becomes a part of the final printed product, or copy from

131 which the printed product is produced, shall not result in the retailer being considered
132 to have or maintain an office, distribution house, sales house, warehouse, service
133 enterprise, or other place of business, or to maintain a stock of goods, within this
134 state.

135 (3)(a) Except as provided in Section 59-12-107.1, a seller shall collect a tax under this
136 chapter from a purchaser.

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

139 (c)(i) Each seller shall:

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

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

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

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

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

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

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

161 (h)(i) For a purchase paid with specie legal tender as defined in Section 59-1-1501.1,
162 and until such time as the commission accepts specie legal tender for the payment
163 of a tax under this chapter, if the commission requires a seller to remit a tax under
164 this chapter in legal tender other than specie legal tender, the seller shall state on

- 165 the seller's books and records and on an invoice, bill of sale, or similar document
166 provided to the purchaser:
- 167 (A) the purchase price in specie legal tender and in the legal tender the seller is
168 required to remit to the commission;
 - 169 (B) subject to Subsection (3)(h)(ii), the amount of tax due under this chapter in
170 specie legal tender and in the legal tender the seller is required to remit to the
171 commission;
 - 172 (C) the tax rate under this chapter applicable to the purchase; and
 - 173 (D) the date of the purchase.
- 174 (ii)(A) Subject to Subsection (3)(h)(ii)(B), for purposes of determining the amount
175 of tax due under Subsection (3)(h)(i), a seller shall use the most recent London
176 fixing price for the specie legal tender the purchaser paid.
- 177 (B) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
178 the commission may make rules for determining the amount of tax due under
179 Subsection (3)(h)(i) if the London fixing price is not available for a particular
180 day.
- 181 (4)(a) Except as provided in Subsections (5) through (7) and Section 59-12-108, the
182 sales or use tax imposed by this chapter is due and payable to the commission
183 quarterly on or before the last day of the month next succeeding each quarterly
184 calendar period.
- 185 (b)(i) Each seller shall, on or before the last day of the month next succeeding each
186 quarterly calendar period, file with the commission a return for the preceding
187 quarterly period.
- 188 (ii) The seller shall remit with the return under Subsection (4)(b)(i) the amount of the
189 tax required under this chapter to be collected or paid for the period covered by
190 the return.
- 191 (c) Except as provided in Subsection (5)(c), a return shall contain information and be in
192 a form the commission prescribes by rule.
- 193 (d)(i) Subject to Subsection (4)(d)(ii), the sales tax as computed in the return shall be
194 based on the total nonexempt sales made during the period for which the return is
195 filed, including both cash and charge sales.
- 196 (ii) For a sale that includes the delivery or installation of tangible personal property at
197 a location other than a seller's place of business described in Subsection (2)(a)(i),
198 if the delivery or installation is separately stated on an invoice or receipt, a seller

199 may compute the tax due on the sale for purposes of Subsection (4)(d)(i) based on
200 the amount the seller receives for that sale during each period for which the seller
201 receives payment for the sale.

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

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

209 (B) Subject to Subsections (4)(e)(ii)(C) and (D), a qualifying purchaser may remit
210 the taxes due under this chapter on tangible personal property for which the
211 qualifying purchaser claims an exemption as allowed under Subsection
212 59-12-104(23) or (25) based on the period in which the qualifying purchaser
213 receives payment, in accordance with Subsection (4)(e)(ii)(C), for the
214 conversion of the tangible personal property into real property.

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

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

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

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

232 (g) The commission may require returns and payment of the tax to be made for other

233 than quarterly periods if the commission considers it necessary in order to ensure the
234 payment of the tax imposed by this chapter.

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

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

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

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

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

245 (i) registered under the agreement;

246 (ii) described in Subsection (2)(d); and

247 (iii) not a:

248 (A) model 1 seller;

249 (B) model 2 seller; or

250 (C) model 3 seller.

251 (b)(i) Except as provided in Subsection (5)(b)(ii), a tax a voluntary seller collects in
252 accordance with Subsection (2)(d) is due and payable:

253 (A) to the commission;

254 (B) annually; and

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

257 (ii) The commission may require that a tax a voluntary seller collects in accordance
258 with Subsection (2)(d) be due and payable:

259 (A) to the commission; and

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

262 (c)(i) If a voluntary seller remits a tax to the commission in accordance with
263 Subsection (5)(b), the voluntary seller shall file a return:

264 (A) with the commission;

265 (B) with respect to the tax;

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

- 267 (D) on a form prescribed by the commission.
- 268 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
269 the commission shall make rules prescribing:
- 270 (A) the information required to be contained in a return described in Subsection
271 (5)(c)(i); and
- 272 (B) the form described in Subsection (5)(c)(i)(D).
- 273 (d) A tax a voluntary seller collects in accordance with this Subsection (5) shall be
274 calculated on the basis of the total amount of taxable transactions under Subsection
275 59-12-103(1) the voluntary seller completes, including:
- 276 (i) a cash transaction; and
277 (ii) a charge transaction.
- 278 (6)(a) Except as provided in Subsection (6)(b), a tax a seller that files a simplified
279 electronic return collects in accordance with this chapter is due and payable:
- 280 (i) monthly on or before the last day of the month immediately following the month
281 for which the seller collects a tax under this chapter; and
282 (ii) for the month for which the seller collects a tax under this chapter.
- 283 (b) A tax a voluntary seller that files a simplified electronic return collects in accordance
284 with this chapter is due and payable as provided in Subsection (5).
- 285 (7)(a) On each vehicle sale made by other than a regular licensed vehicle dealer, the
286 purchaser shall pay the sales or use tax directly to the commission if the vehicle is
287 subject to titling or registration under the laws of this state.
- 288 (b) The commission shall collect the tax described in Subsection (7)(a) when the vehicle
289 is titled or registered.
- 290 (8) If any sale of tangible personal property or any other taxable transaction under
291 Subsection 59-12-103(1), is made by a wholesaler to a retailer:
- 292 (a) the wholesaler is not responsible for the collection or payment of the tax imposed on
293 the sale; and
294 (b) the retailer is responsible for the collection or payment of the tax imposed on the sale
295 if:
- 296 (i) the retailer represents that the tangible personal property, product transferred
297 electronically, or service is purchased by the retailer for resale; and
298 (ii) the tangible personal property, product transferred electronically, or service is not
299 subsequently resold.
- 300 (9) If any sale of property or service subject to the tax is made to a person prepaying sales

301 or use tax in accordance with Title 63M, Chapter 5, Resource Development Act, or to a
302 contractor or subcontractor of that person:

- 303 (a) the person to whom such payment or consideration is payable is not responsible for
304 the collection or payment of the sales or use tax; and
305 (b) the person prepaying the sales or use tax is responsible for the collection or payment
306 of the sales or use tax if the person prepaying the sales or use tax represents that the
307 amount prepaid as sales or use tax has not been fully credited against sales or use tax
308 due and payable under the rules promulgated by the commission.

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

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

312 (ii) "Bad debt" does not include:

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

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

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

317 (B) a financing charge;

318 (C) interest;

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

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

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

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

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

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

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

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

334 (A) tax was remitted in accordance with Subsection (4)(e) on that tangible

- 335 personal property converted into real property;
- 336 (B) the qualifying purchaser's sale of that tangible personal property converted
- 337 into real property later becomes bad debt; and
- 338 (C) the books and records that the qualifying purchaser keeps in the qualifying
- 339 purchaser's regular course of business identify by reasonable and verifiable
- 340 standards that the tangible personal property was converted into real property.
- 341 (c) A seller may file a refund claim with the commission if:
- 342 (i) the amount of bad debt for the time period described in Subsection (10)(e) exceeds
- 343 the amount of the seller's sales that are subject to a tax under this chapter for that
- 344 same time period; and
- 345 (ii) as provided in Section 59-1-1410.
- 346 (d) A bad debt deduction under this section may not include interest.
- 347 (e) A bad debt may be deducted under this Subsection (10) on a return for the time
- 348 period during which the bad debt:
- 349 (i) is written off as uncollectible in the seller's books and records; and
- 350 (ii) would be eligible for a bad debt deduction:
- 351 (A) for federal income tax purposes; and
- 352 (B) if the seller were required to file a federal income tax return.
- 353 (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or
- 354 claims a refund under this Subsection (10), the seller shall report and remit a tax
- 355 under this chapter:
- 356 (i) on the portion of the bad debt the seller recovers; and
- 357 (ii) on a return filed for the time period for which the portion of the bad debt is
- 358 recovered.
- 359 (g) For purposes of reporting a recovery of a portion of bad debt under Subsection (10)(f),
- 360 a seller shall apply amounts received on the bad debt in the following order:
- 361 (i) in a proportional amount:
- 362 (A) to the purchase price of the tangible personal property, product transferred
- 363 electronically, or service; and
- 364 (B) to the tax due under this chapter on the tangible personal property, product
- 365 transferred electronically, or service; and
- 366 (ii) to:
- 367 (A) interest charges;
- 368 (B) service charges; and

- 369 (C) other charges.
- 370 (h) A seller's certified service provider may make a deduction or claim a refund for bad
371 debt on behalf of the seller:
- 372 (i) in accordance with this Subsection (10); and
- 373 (ii) if the certified service provider credits or refunds the entire amount of the bad
374 debt deduction or refund to the seller.
- 375 (i) A seller may allocate bad debt among the states that are members of the agreement if
376 the seller's books and records support that allocation.
- 377 (11)(a) A seller may not, with intent to evade any tax, fail to timely remit the full
378 amount of tax required by this chapter.
- 379 (b) A violation of this section is punishable as provided in Section 59-1-401.
- 380 (c) Each person that fails to pay any tax to the state or any amount of tax required to be
381 paid to the state, except amounts determined to be due by the commission under
382 Chapter 1, Part 14, Assessment, Collections, and Refunds Act, or Section 59-12-111,
383 within the time required by this chapter, or that fails to file any return as required by
384 this chapter, shall pay, in addition to the tax, penalties and interest as provided in
385 Sections 59-1-401 and 59-1-402.
- 386 (d) For purposes of prosecution under this section, each quarterly tax period in which a
387 seller, with intent to evade any tax, collects a tax and fails to timely remit the full
388 amount of the tax required to be remitted constitutes a separate offense.

389 Section 2. Section **59-12-107.6** is amended to read:

390 **59-12-107.6 . Marketplace facilitator collection, remittance, and payment of sales**
391 **tax obligation -- Marketplace seller collection, remittance, and payment of sales tax**
392 **obligation -- Liability for collection.**

- 393 (1) A marketplace facilitator shall pay or collect and remit taxes imposed by this chapter in
394 accordance with Section 59-12-107:
- 395 (a) if the marketplace facilitator meets one or more of the criteria provided for in
396 Subsection 59-12-107(2)(a) or (b); and
- 397 (b) on the sales the marketplace facilitator made on the marketplace facilitator's own
398 behalf.
- 399 (2)(a) A marketplace facilitator shall pay or collect and remit taxes imposed by this
400 chapter in accordance with Subsection (3) if the marketplace facilitator, in the
401 previous calendar year or the current calendar year, makes sales of tangible personal
402 property, products transferred electronically, or services on the marketplace

- 403 facilitator's own behalf or facilitates sales on behalf of one or more marketplace
404 sellers[;]
- 405 [~~(i)~~] _that exceed \$100,000[; ~~or~~] .
406 [~~(ii)~~ in 200 or more separate transactions.]
- 407 (b) For purposes of determining if a marketplace facilitator [~~meets or exceeds one or~~
408 ~~both thresholds~~] exceeds the threshold described in this Subsection (2), a marketplace
409 facilitator shall separately total:
- 410 (i) the marketplace facilitator's sales; and
411 (ii) any sales the marketplace facilitator makes or facilitates for a marketplace seller.
- 412 (c) A marketplace facilitator without a physical presence in this state shall begin
413 collecting and remitting the taxes imposed by this chapter no later than the first day
414 of the calendar quarter that is at least 60 days after the day on which the marketplace
415 facilitator [~~meets or exceeds either~~] exceeds the threshold described in Subsection
416 (2)(a).
- 417 (3) A marketplace facilitator described in Subsection (2) shall pay or collect and remit taxes
418 imposed by this chapter for each sale that the marketplace facilitator:
- 419 (a) makes on the marketplace facilitator's own behalf; or
420 (b) makes or facilitates on behalf of a marketplace seller, regardless of:
- 421 (i) whether the marketplace seller has an obligation to pay or collect and remit taxes
422 under Section 59-12-107;
- 423 (ii) whether the marketplace seller would have been required to pay or collect and
424 remit taxes under Section 59-12-107 if the marketplace facilitator had not
425 facilitated the sale; or
- 426 (iii) the amount of the sales price or the purchase price that accrues to or benefits the
427 marketplace facilitator, the marketplace seller, or any other person.
- 428 (4) A marketplace facilitator shall comply with the procedures and requirements in this
429 chapter and Chapter 1, General Taxation Policies, for sellers required to pay or collect
430 and remit taxes except that the marketplace facilitator shall segregate, in the marketplace
431 facilitator's books and records:
- 432 (a) the sales that the marketplace facilitator makes on the marketplace facilitator's own
433 behalf; and
- 434 (b) the sales that the marketplace facilitator makes or facilitates on behalf of one or more
435 marketplace sellers.
- 436 (5)(a) The commission may audit the marketplace facilitator for sales made or facilitated

437 through the marketplace facilitator's marketplace on behalf of one or more
438 marketplace sellers.

439 (b) The commission may not audit the marketplace seller for sales made or facilitated
440 through the marketplace facilitator's marketplace on the marketplace seller's behalf.

441 (6) Nothing in this section prohibits a marketplace facilitator from providing in a
442 marketplace facilitator's agreement with a marketplace seller for the recovery of taxes,
443 and any related interest or penalties to the extent that a tax, interest, or penalty is
444 assessed by the state in an audit of the marketplace facilitator on a retail sale:

445 (a) that a marketplace facilitator makes or facilitates on behalf of a marketplace seller;
446 and

447 (b) for which the marketplace facilitator relied on incorrect or incomplete information
448 provided by the marketplace seller.

449 [~~(7)(a) Subject to Subsections (7)(b) and (c), a marketplace facilitator is not liable for~~
450 ~~failing to collect the taxes under this chapter for a sale on which the marketplace~~
451 ~~facilitator failed to collect taxes if the marketplace facilitator demonstrates, to the~~
452 ~~satisfaction of the commission, that:]~~

453 [~~(i) the marketplace facilitator made or facilitated the sale through the marketplace~~
454 ~~facilitator's marketplace on or before December 31, 2022;]~~

455 [~~(ii) the marketplace facilitator made or facilitated the sale on behalf of a marketplace~~
456 ~~seller and not on behalf of the marketplace facilitator;]~~

457 [~~(iii) the marketplace facilitator and the marketplace seller are not affiliates; and]~~

458 [~~(iv) the failure to collect taxes was due to a good faith error other than an error in~~
459 ~~sourcing.]~~

460 [(b) For purposes of Subsection (7)(a):]

461 [(i) for sales made or facilitated during the 2019 or 2020 calendar year, the
462 marketplace facilitator is not liable for the amount the marketplace facilitator fails
463 to collect due to error that is equal to the error rate, but not to exceed a 7% error
464 rate;]

465 [(ii) for sales made or facilitated during the 2021 calendar year, the marketplace
466 facilitator is not liable for the amount the marketplace facilitator fails to collect
467 due to error that is equal to the error rate, but not to exceed a 5% error rate; and]

468 [(iii) for sales made or facilitated during the 2022 calendar year, the marketplace
469 facilitator is not liable for the amount the marketplace facilitator fails to collect
470 due to error that is equal to the error rate, but not to exceed a 3% error rate.]

- 471 ~~[(e) The commission shall calculate the percentages described in Subsection (7)(b):]~~
472 ~~[(i) using the total taxes due on sales that:]~~
473 ~~[(A) a marketplace facilitator made or facilitated in this state on behalf of one or~~
474 ~~more marketplace sellers during the calendar year that the sale for which the~~
475 ~~marketplace facilitator seeks relief was made or facilitated; and]~~
476 ~~[(B) are sourced to the state; and]~~
477 ~~[(ii) not including sales that the marketplace facilitator or the marketplace facilitator's~~
478 ~~affiliates directly made during the same calendar year.]~~
- 479 ~~[(8)]~~ (7) A marketplace seller shall pay or collect and remit taxes imposed by this chapter
480 for a sale of tangible personal property, a product transferred electronically, or a service
481 that the marketplace seller makes other than through a marketplace facilitator if:
482 (a) the sale is sourced to this state; and
483 (b) the marketplace seller's sales in this state, other than through a marketplace
484 facilitator, in the previous calendar year or the current calendar year~~[:]~~
485 ~~[(i)] exceed \$100,000[; or] .~~
486 ~~[(ii) occur in 200 or more separate transactions.]~~
- 487 ~~[(9)]~~ (8)(a) A marketplace seller may not pay or collect and remit taxes imposed by this
488 chapter for any sale for which a marketplace facilitator is required to pay or collect
489 and remit.
490 (b) A marketplace seller is not liable for a marketplace facilitator's failure to pay or
491 collect and remit, or the marketplace facilitator's underpayment of, taxes imposed by
492 this chapter for any sale for which a marketplace facilitator is required to pay or
493 collect and remit the taxes imposed by this chapter.
- 494 ~~[(10)]~~ (9)(a) A purchaser of tangible personal property, a product transferred
495 electronically, or a service may file a claim for a refund with the marketplace
496 facilitator if the purchaser overpaid taxes imposed under this chapter.
497 (b) No person may bring a class action against a marketplace facilitator in any court of
498 the state on behalf of purchasers arising from or in any way related to an
499 overpayment of taxes collected and remitted on sales made or facilitated by the
500 marketplace facilitator on behalf of a marketplace seller, regardless of whether such
501 claim is characterized as a tax refund claim.
- 502 ~~[(11)]~~ (10) Nothing in this section affects the obligation of a purchaser to remit the use tax
503 described in Subsection 59-12-107(2)(f) on any sale for which a marketplace facilitator
504 or marketplace seller failed to collect and remit a tax imposed by this chapter.

505 Section 3. **FY 2026 Appropriations.**

506 The following sums of money are appropriated for the fiscal year beginning July 1,
 507 2025, and ending June 30, 2026. These are additions to amounts previously appropriated for
 508 fiscal year 2026.

509 Subsection 3(a). **Operating and Capital Budgets**

510 Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the
 511 Legislature appropriates the following sums of money from the funds or accounts indicated for
 512 the use and support of the government of the state of Utah.

| | | | |
|-----|--------|---|-------------|
| 513 | ITEM 1 | To Utah State Tax Commission - Tax Administration | |
| 514 | | From General Fund | (3,280,000) |
| 515 | | From General Fund, One-time | 360,000 |
| 516 | | From General Fund Rest. - State Tax Commission | |
| 517 | | Administrative Charge Account | 3,280,000 |
| 518 | | From General Fund Rest. - State Tax Commission | |
| 519 | | Administrative Charge Account, One-time | (360,000) |

520 Section 4. **Effective Date.**

521 This bill takes effect on July 1, 2025.