

Part 7
**County Option Funding for Botanical, Cultural,
Recreational, and Zoological Organizations or Facilities**

59-12-701 Purpose statement.

The Utah Legislature finds and declares that:

- (1) Recreational and zoological facilities and the botanical, cultural, and zoological organizations of the state of Utah enhance the quality of life of Utah's citizens, as well as the continuing growth of Utah's tourist, convention, and recreational industries.
- (2) Utah was the first state in this nation to create and financially support a state arts agency and remains committed to the nurturing and growth of cultural pursuits.
- (3) Utah has provided, and intends to continue, the financial support of recreational and zoological facilities and the botanical, cultural, and zoological organizations of this state.
- (4) The state's support of its recreational and zoological facilities and its botanical, cultural, and zoological organizations has not been sufficient to assure the continuing existence and growth of these facilities and organizations, and the Legislature believes that local government may wish to play a greater role in the support of these organizations.
- (5) Without jeopardizing the state's ongoing support of its recreational and zoological facilities and its botanical, cultural, and zoological organizations, the Legislature intends to permit the counties of the state of Utah to enhance public financial support of Utah's publicly owned or operated recreational and zoological facilities, and botanical, cultural, and zoological organizations owned or operated by institutions or private nonprofit organizations, through the imposition of a county sales and use tax.
- (6) In a county of the first class, it is necessary and appropriate to allocate a tax imposed under this part in a manner that provides adequate predictable support to a fixed number of botanical and cultural organizations and that gives the county legislative body discretion to allocate the tax revenues to other botanical and cultural organizations.

Amended by Chapter 419, 2020 General Session

59-12-702 Definitions.

As used in this part:

- (1) "Administrative unit" means a division of a private nonprofit organization or institution that:
 - (a) would, if it were a separate entity, be a botanical organization or cultural organization; and
 - (b) consistently maintains books and records separate from those of its parent organization.
- (2) "Aquarium" means a park or building where a collection of water animals and plants is kept for study, conservation, and public exhibition.
- (3) "Aviary" means a park or building where a collection of birds is kept for study, conservation, and public exhibition.
- (4) "Botanical organization" means:
 - (a) a private nonprofit organization or institution having as its primary purpose the advancement and preservation of plant science through horticultural display, botanical research, and community education; or
 - (b) an administrative unit.
- (5) "Cultural facility" means the same as that term is defined in Section 59-12-602.
- (6)
 - (a) "Cultural organization":

- (i) means:
 - (A) a private nonprofit organization or institution having as its primary purpose the advancement and preservation of:
 - (I) natural history;
 - (II) art;
 - (III) music;
 - (IV) theater;
 - (V) dance; or
 - (VI) cultural arts, including literature, a motion picture, or storytelling;
 - (B) an administrative unit; and
- (ii) includes, for purposes of Subsections 59-12-704(1)(d) and (6) only:
 - (A) a private nonprofit organization or institution having as its primary purpose the advancement and preservation of history; or
 - (B) a municipal or county cultural council having as its primary purpose the advancement and preservation of:
 - (I) history;
 - (II) natural history;
 - (III) art;
 - (IV) music;
 - (V) theater; or
 - (VI) dance.
- (b) "Cultural organization" does not include:
 - (i) an agency of the state;
 - (ii) except as provided in Subsection (6)(a)(ii)(B), a political subdivision of the state;
 - (iii) an educational institution whose annual revenues are directly derived more than 50% from state funds; or
 - (iv) in a county of the first or second class, a radio or television broadcasting network or station, cable communications system, newspaper, or magazine.
- (7) "Institution" means an institution of higher education listed in Subsection 53B-1-102(1)(a).
- (8) "Recreational facility" means a publicly owned or operated park, campground, marina, dock, golf course, playground, athletic field, gymnasium, swimming pool, trail system, or other facility used for recreational purposes.
- (9) "Rural radio station" means a nonprofit radio station based in a county of the third, fourth, fifth, or sixth class.
- (10) In a county of the first class, "zoological facility" means a public, public-private partnership, or private nonprofit building, exhibit, utility and infrastructure, walkway, pathway, roadway, office, administration facility, public service facility, educational facility, enclosure, public viewing area, animal barrier, animal housing, animal care facility, and veterinary and hospital facility related to the advancement, exhibition, or preservation of a mammal, bird, reptile, fish, or an amphibian.
- (11)
 - (a)
 - (i) Except as provided in Subsection (11)(a)(ii), "zoological organization" means a public, public-private partnership, or private nonprofit organization having as its primary purpose the advancement and preservation of zoology.
 - (ii) In a county of the first class, "zoological organization" means a nonprofit organization having as its primary purpose the advancement and exhibition of a mammal, bird, reptile, fish, or an amphibian to an audience of 75,000 or more persons annually.

- (b) "Zoological organization" does not include an agency of the state, educational institution, radio or television broadcasting network or station, cable communications system, newspaper, or magazine.
- (12) "Zoological park" means a park or garden where a collection of wild animals is kept for study, conservation, and public exhibition.

Amended by Chapter 382, 2017 General Session

59-12-703 Opinion question election -- Base -- Rate -- Imposition of tax -- Expenditure of revenues -- Administration -- Enactment or repeal of tax -- Effective date -- Notice requirements.

- (1)
 - (a) Subject to the other provisions of this section, a county legislative body may submit an opinion question to the residents of that county, by majority vote of all members of the legislative body, so that each resident of the county, except residents in municipalities that have already imposed a sales and use tax under Part 14, City or Town Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities, has an opportunity to express the resident's opinion on the imposition of a local sales and use tax of .1% on the transactions described in Subsection 59-12-103(1) located within the county, to:
 - (i) fund cultural facilities, recreational facilities, and zoological facilities, botanical organizations, cultural organizations, and zoological organizations, and rural radio stations, in that county; or
 - (ii) provide funding for a botanical organization, cultural organization, or zoological organization to pay for use of a bus or facility rental if that use of the bus or facility rental is in furtherance of the botanical organization's, cultural organization's, or zoological organization's primary purpose.
 - (b) The opinion question required by this section shall state:

"Shall (insert the name of the county), Utah, be authorized to impose a .1% sales and use tax for (list the purposes for which the revenue collected from the sales and use tax shall be expended)?"
 - (c) A county legislative body may not impose a tax under this section on:
 - (i) the sales and uses described in Section 59-12-104 to the extent the sales and uses are exempt from taxation under Section 59-12-104;
 - (ii) sales and uses within a municipality that has already imposed a sales and use tax under Part 14, City or Town Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities; and
 - (iii) except as provided in Subsection (1)(e), amounts paid or charged for food and food ingredients.
 - (d) For purposes of this Subsection (1), the location of a transaction shall be determined in accordance with Sections 59-12-211 through 59-12-215.
 - (e) A county legislative body imposing a tax under this section shall impose the tax on the purchase price or sales price for amounts paid or charged for food and food ingredients if the food and food ingredients are sold as part of a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients.
 - (f) The election shall follow the procedures outlined in Title 11, Chapter 14, Local Government Bonding Act.

(2)

- (a) If the county legislative body determines that a majority of the county's registered voters voting on the imposition of the tax have voted in favor of the imposition of the tax as prescribed in Subsection (1), the county legislative body may impose the tax by a majority vote of all members of the legislative body on the transactions:
 - (i) described in Subsection (1); and
 - (ii) within the county, including the cities and towns located in the county, except those cities and towns that have already imposed a sales and use tax under Part 14, City or Town Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities.
- (b) A county legislative body may revise county ordinances to reflect statutory changes to the distribution formula or eligible recipients of revenue generated from a tax imposed under Subsection (2)(a) without submitting an opinion question to residents of the county.
- (3) Subject to Section 59-12-704, revenue collected from a tax imposed under Subsection (2) shall be expended:
 - (a) to fund cultural facilities, recreational facilities, and zoological facilities located within the county or a city or town located in the county, except a city or town that has already imposed a sales and use tax under Part 14, City or Town Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities;
 - (b) to fund ongoing operating expenses of:
 - (i) recreational facilities described in Subsection (3)(a);
 - (ii) botanical organizations, cultural organizations, and zoological organizations within the county; and
 - (iii) rural radio stations within the county; and
 - (c) as stated in the opinion question described in Subsection (1).
- (4)
 - (a) A tax authorized under this part shall be:
 - (i) except as provided in Subsection (4)(b), administered, collected, and enforced in accordance with:
 - (A) the same procedures used to administer, collect, and enforce the tax under:
 - (I) Part 1, Tax Collection; or
 - (II) Part 2, Local Sales and Use Tax Act; and
 - (B) Chapter 1, General Taxation Policies; and
 - (ii) levied for a period of 10 years and may be reauthorized at the end of the ten-year period in accordance with this section.
 - (b) A tax under this part is not subject to Subsections 59-12-205(2) through (5).
- (5)
 - (a) For purposes of this Subsection (5):
 - (i) "Annexation" means an annexation to a county under Title 17, Chapter 2, Part 2, County Annexation.
 - (ii) "Annexing area" means an area that is annexed into a county.
 - (b)
 - (i) Except as provided in Subsection (5)(c) or (d), if, on or after July 1, 2004, a county enacts or repeals a tax under this part, the enactment or repeal shall take effect:
 - (A) on the first day of a calendar quarter; and
 - (B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (5)(b)(ii) from the county.
 - (ii) The notice described in Subsection (5)(b)(i)(B) shall state:
 - (A) that the county will enact or repeal a tax under this part;

- (B) the statutory authority for the tax described in Subsection (5)(b)(ii)(A);
- (C) the effective date of the tax described in Subsection (5)(b)(ii)(A); and
- (D) if the county enacts the tax described in Subsection (5)(b)(ii)(A), the rate of the tax.

(c)

- (i) If the billing period for a transaction begins before the effective date of the enactment of the tax under this section, the enactment of the tax takes effect on the first day of the first billing period that begins on or after the effective date of the enactment of the tax.
- (ii) The repeal of a tax applies to a billing period if the billing statement for the billing period is produced on or after the effective date of the repeal of the tax imposed under this section.

(d)

- (i) If a tax due under this chapter on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment or repeal of a tax described in Subsection (5)(b)(i) takes effect:
 - (A) on the first day of a calendar quarter; and
 - (B) beginning 60 days after the effective date of the enactment or repeal under Subsection (5)(b)(i).
- (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

(e)

- (i) Except as provided in Subsection (5)(f) or (g), if, for an annexation that occurs on or after July 1, 2004, the annexation will result in the enactment or repeal of a tax under this part for an annexing area, the enactment or repeal shall take effect:
 - (A) on the first day of a calendar quarter; and
 - (B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (5)(e)(ii) from the county that annexes the annexing area.
- (ii) The notice described in Subsection (5)(e)(i)(B) shall state:
 - (A) that the annexation described in Subsection (5)(e)(i) will result in an enactment or repeal of a tax under this part for the annexing area;
 - (B) the statutory authority for the tax described in Subsection (5)(e)(ii)(A);
 - (C) the effective date of the tax described in Subsection (5)(e)(ii)(A); and
 - (D) the rate of the tax described in Subsection (5)(e)(ii)(A).

(f)

- (i) If the billing period for a transaction begins before the effective date of the enactment of the tax under this section, the enactment of the tax takes effect on the first day of the first billing period that begins on or after the effective date of the enactment of the tax.
- (ii) The repeal of a tax applies to a billing period if the billing statement for the billing period is produced on or after the effective date of the repeal of the tax imposed under this section.

(g)

- (i) If a tax due under this chapter on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment or repeal of a tax described in Subsection (5)(e)(i) takes effect:
 - (A) on the first day of a calendar quarter; and
 - (B) beginning 60 days after the effective date of the enactment or repeal under Subsection (5)(e)(i).
- (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

59-12-704 Distribution of revenues -- Advisory board creation -- Determining operating expenses -- Administrative charge.

- (1) Except as provided in Subsections (3)(b) and (5), and subject to the requirements of this section, any revenues collected by a county of the first class under this part shall be distributed annually by the county legislative body to support cultural facilities, recreational facilities, and zoological facilities and botanical organizations, cultural organizations, and zoological organizations within that first class county as follows:
- (a) 30% of the revenue collected by the county under this section shall be distributed by the county legislative body to support cultural facilities and recreational facilities located within the county;
- (b)
- (i) subject to Subsection (1)(b)(ii) and except as provided in Subsection (1)(b)(iii), 16% of the revenue collected by the county under this section shall be distributed by the county legislative body to support no more than three zoological facilities and zoological organizations located within the county, having average annual operating expenses of \$1,500,000 or more as determined under Subsection (3), with:
- (A) 63.5% of that revenue being distributed to support a zoological organization having as its primary purpose the operation of a zoological park, or a zoological facility that is part of or integrated with a zoological park;
- (B) 28.25% of that revenue being distributed to support a zoological organization having as its primary purpose the operation of an aquarium, or a zoological facility that is part of or integrated with an aquarium; and
- (C) 8.25% of that revenue being distributed to support a zoological organization having as its primary purpose the operation of an aviary, or a zoological facility that is part of or integrated with an aviary;
- (ii) if more than one zoological organization or zoological facility qualifies to receive the money described in Subsection (1)(b)(i)(A), (B), or (C), the county legislative body shall distribute the money described in the subsection for which more than one zoological organization or zoological facility qualifies to whichever zoological organization or zoological facility the county legislative body determines is most appropriate, except that a zoological organization or zoological facility may not receive money under more than one subsection under Subsection (1)(b)(i); and
- (iii) if no zoological organization or zoological facility qualifies to receive money described in Subsection (1)(b)(i)(A), (B), or (C), the county legislative body shall distribute the money described in the subsection for which no zoological organization or zoological facility qualifies among the zoological organizations or zoological facilities qualifying for and receiving money under the other subsections in proportion to the zoological organizations' or zoological facilities' average annual operating expenses as determined under Subsection (3);
- (c)
- (i) 45% of the revenue collected by the county under this section shall be distributed to no more than 22 botanical organizations and cultural organizations:
- (A) each of which has average annual operating expenses of more than \$250,000 as determined under Subsection (3); and
- (B) whose activities impact all or a significant region of the county or state;
- (ii) subject to Subsection (1)(c)(iii), the county legislative body shall distribute the money described in Subsection (1)(c)(i) among the botanical organizations and cultural

- organizations in proportion to their average annual operating expenses as determined under Subsection (3); and
- (iii) the amount distributed to any botanical organization or cultural organization described in Subsection (1)(c)(i) may not exceed 35% of the botanical organization's or cultural organization's operating budget; and
- (d)
 - (i) 9% of the revenue collected by the county under this section shall be distributed to botanical organizations and cultural organizations that do not receive revenue under Subsection (1)(c)(i) in communities throughout the county; and
 - (ii) the county legislative body shall determine how the money shall be distributed among the botanical organizations and cultural organizations described in Subsection (1)(d)(i).
- (2)
 - (a) The county legislative body of each county shall create an advisory board to advise the county legislative body on disbursement of funds to botanical organizations and cultural organizations under Subsection (1)(c)(i).
 - (b)
 - (i) The advisory board under Subsection (2)(a) shall consist of seven members appointed by the county legislative body.
 - (ii) In a county of the first class, two of the seven members of the advisory board under Subsection (2)(a) shall be appointed by the Division of Arts and Museums created in Section 9-6-201.
- (3)
 - (a) Except as provided in Subsection (3)(b), to be eligible to receive money collected by the county under this part, a botanical organization, cultural organization, zoological organization, and zoological facility located within a county of the first class shall, every year:
 - (i) calculate its average annual operating expenses based upon audited operating expenses for three preceding fiscal years; and
 - (ii) submit to the appropriate county legislative body:
 - (A) a verified audit of annual operating expenses for each of those three preceding fiscal years; and
 - (B) the average annual operating expenses as calculated under Subsection (3)(a)(i).
 - (b) The county legislative body may waive the operating expenses reporting requirements under Subsection (3)(a) for organizations described in Subsection (1)(d)(i).
- (4) When calculating average annual operating expenses as described in Subsection (3), each botanical organization, cultural organization, and zoological organization shall use the same three-year fiscal period as determined by the county legislative body.
- (5)
 - (a) By July 1 of each year, the county legislative body of a first class county may index the threshold amount in Subsections (1)(c) and (d).
 - (b) Any change under Subsection (5)(a) shall be rounded off to the nearest \$100.
- (6)
 - (a) In a county except for a county of the first class, the county legislative body shall by ordinance provide for the distribution of the entire amount of the revenues generated by the tax imposed by this section:
 - (i) as provided in this Subsection (6); and
 - (ii) as stated in the opinion question described in Subsection 59-12-703(1).

- (b) Pursuant to an interlocal agreement established in accordance with Title 11, Chapter 13, Interlocal Cooperation Act, a county described in Subsection (6)(a) may distribute to a city, town, or political subdivision within the county revenues generated by a tax under this part.
- (c) The revenues distributed under Subsection (6)(a) or (b) shall be used for one or more organizations or facilities defined in Section 59-12-702 regardless of whether the revenues are distributed:
 - (i) directly by the county described in Subsection (6)(a) to be used for an organization or facility defined in Section 59-12-702; or
 - (ii) in accordance with an interlocal agreement described in Subsection (6)(b).
- (7) A county legislative body may retain up to 1.5% of the proceeds from a tax under this part for the cost of administering this part.
- (8) The commission shall retain and deposit an administrative charge in accordance with Section 59-1-306 from the revenues the commission collects from a tax under this part.

Amended by Chapter 396, 2021 General Session

59-12-705 Free or reduced admission day available to all state residents.

Each botanical organization, cultural organization, or zoological organization that receives money from a tax imposed under this part and that periodically offers a waived or discounted admission fee shall make the waived or discounted admission fee available to all residents of the state.

Amended by Chapter 416, 2011 General Session

59-12-707 Seller or certified service provider reliance on commission information.

A seller or certified service provider is not liable for failing to collect a tax at a tax rate imposed under this part if the seller's or certified service provider's failure to collect the tax is as a result of the seller's or certified service provider's reliance on incorrect data provided by the commission in a database created by the commission:

- (1) containing tax rates, boundaries, or local taxing jurisdiction assignments; or
- (2) indicating the taxability of tangible personal property, a product transferred electronically, or a service.

Amended by Chapter 203, 2009 General Session

59-12-708 Certified service provider or model 2 seller reliance on commission certified software.

- (1) Except as provided in Subsection (2) and subject to Subsection (4), a certified service provider or model 2 seller is not liable for failing to collect a tax required under this part if:
 - (a) the certified service provider or model 2 seller relies on software the commission certifies; and
 - (b) the certified service provider's or model 2 seller's failure to collect a tax required under this part is as a result of the seller's or certified service provider's reliance on incorrect data:
 - (i) provided by the commission; or
 - (ii) in the software the commission certifies.
- (2) The relief from liability described in Subsection (1) does not apply if a certified service provider or model 2 seller incorrectly classifies an item or transaction into a product category the commission certifies.

- (3) If the taxability of a product category is incorrectly classified in software the commission certifies, the commission shall:
 - (a) notify a certified service provider or model 2 seller of the incorrect classification of the taxability of a product category in software the commission certifies; and
 - (b) state in the notice required by Subsection (3)(a) that the certified service provider or model 2 seller is liable for failing to collect the correct amount of tax under this part on the incorrectly classified product category if the certified service provider or model 2 seller fails to correct the taxability of the item or transaction within 10 days after the day on which the certified service provider or model 2 seller receives the notice.
- (4) If a certified service provider or model 2 seller fails to correct the taxability of an item or transaction within 10 days after the day on which the certified service provider or model 2 seller receives the notice described in Subsection (3), the certified service provider or model 2 seller is liable for failing to collect the correct amount of tax under this part on the item or transaction.

Enacted by Chapter 384, 2008 General Session

59-12-709 Purchaser relief from liability.

- (1)
 - (a) Except as provided in Subsection (1)(b), a purchaser is relieved from a penalty under Section 59-1-401 for failure to pay a tax due under this part or an underpayment if:
 - (i) the purchaser's seller or certified service provider relies on incorrect data provided by the commission:
 - (A) on a tax rate;
 - (B) on a boundary;
 - (C) on a taxing jurisdiction; or
 - (D) in the taxability matrix the commission provides in accordance with the agreement; or
 - (ii) the purchaser, regardless of whether the purchaser holds a direct payment permit in accordance with Section 59-12-107.1, relies on incorrect data provided by the commission:
 - (A) on a tax rate;
 - (B) on a boundary;
 - (C) on a taxing jurisdiction; or
 - (D) in the taxability matrix the commission provides in accordance with the agreement.
 - (b) For purposes of Subsection (1)(a), a purchaser is not relieved from a penalty under Section 59-1-401 for failure to pay a tax due under this part or an underpayment if the purchaser's, the purchaser's seller's, or the purchaser's certified service provider's reliance on incorrect data provided by the commission is as a result of conduct that is:
 - (i) fraudulent;
 - (ii) intentional; or
 - (iii) willful.
- (2) In addition to the relief from a penalty described in Subsection (1), a purchaser is not liable for a tax or interest under Section 59-1-402 for failure to pay a tax due under this part or an underpayment if:
 - (a) the purchaser's seller or certified service provider relies on:
 - (i) incorrect data provided by the commission:
 - (A) on a tax rate;
 - (B) on a boundary; or
 - (C) on a taxing jurisdiction; or
 - (ii) an erroneous classification by the commission:

- (A) in the taxability matrix the commission provides in accordance with the agreement; and
- (B) with respect to a term:
 - (I) in the library of definitions; and
 - (II) that is:
 - (Aa) listed as taxable or exempt;
 - (Bb) included in or excluded from "sales price"; or
 - (Cc) included in or excluded from a definition; or
- (b) the purchaser, regardless of whether the purchaser holds a direct payment permit in accordance with Section 59-12-107.1, relies on:
 - (i) incorrect data provided by the commission:
 - (A) on a tax rate;
 - (B) on a boundary; or
 - (C) on a taxing jurisdiction; or
 - (ii) an erroneous classification by the commission:
 - (A) in the taxability matrix the commission provides in accordance with the agreement; and
 - (B) with respect to a term:
 - (I) in the library of definitions; and
 - (II) that is:
 - (Aa) listed as taxable or exempt;
 - (Bb) included in or excluded from "sales price"; or
 - (Cc) included in or excluded from a definition.

Enacted by Chapter 384, 2008 General Session