

**MOTOR VEHICLE DEALER FILINGS**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: Wayne A. Harper**

AN ACT RELATING TO REVENUE AND TAXATION; AMENDING REGISTRATION PROCEDURES FOR VEHICLES SOLD BY LICENSED VEHICLE DEALERS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**59-12-107**, as last amended by Chapter 278, Laws of Utah 1994

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

Section 1. Section **59-12-107** is amended to read:

**59-12-107. Collection, remittance, and payment of tax by vendors and consumers -- Returns -- Direct payment by purchaser of vehicle -- Other liability for collection -- Credits -- Deposit and sale of security -- Penalties.**

(1) (a) Each vendor shall pay or collect and remit the sales and use taxes imposed by this chapter if within this state the vendor:

(i) has or utilizes an office, distribution house, sales house, warehouse, service enterprise, or other place of business;

(ii) maintains a stock of goods;

(iii) engages in regular or systematic solicitation of sale of tangible personal property, whether or not accepted in this state, by the distribution of catalogs, periodicals, advertising flyers, or other advertising by means of print, radio, or television, or by mail, telegraphy, telephone, computer data base, optic, microwave, or other communication system for the purpose of selling, at retail, tangible personal property;

(iv) regularly engages in the delivery of property in this state other than by common carrier or United States mail; or

(v) regularly engages in any activity in connection with the leasing or servicing of property located within this state.

(b) If none of the conditions listed under Subsection (1)(a) exist, the vendor is not

responsible for the collection of the use tax but each person storing, using, or consuming tangible personal property is responsible for remitting the use tax.

(c) Notwithstanding the provisions of Subsection (1)(a), 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, 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 [~~deemed~~] 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.

(2) (a) Each vendor shall collect the sales or use tax from the purchaser.

(b) A vendor may not collect as 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 vendor shall:

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

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

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

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

(e) Taxes collected by a vendor 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 vendor, during any reporting period, collects as a tax an amount in excess of the lawful state and local percentage of total taxable sales allowed under this part and Part 2, the vendor shall remit to the commission the full amount of the tax imposed under this part and Part 2 plus any excess.

(g) If the accounting methods regularly employed by the vendor in the transaction of the vendor'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 will, in its opinion, better suit the convenience of the taxpayer or vendor and will not jeopardize collection of the tax.

(3) Each person storing, using, or consuming tangible personal property under Subsection 59-12-103(1) is liable for the use tax imposed under this chapter.

(4) (a) Except as provided in Subsection (5) and in 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 calendar quarterly period.

(b) Each vendor shall, on or before the last day of the month next succeeding each calendar quarterly period, file with the commission a return for the preceding quarterly period. The vendor shall remit with the return the amount of the tax required under this chapter to be collected or paid for the period covered by the return.

(c) Each return shall contain information and be in a form the commission prescribes by rule.

(d) The sales tax as computed in the return shall be based upon the total nonexempt sales made during the period, including both cash and charge sales.

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

(f) The commission may by rule extend the time for making returns and paying the taxes. No extension may 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 it [~~deems~~] considers it necessary in order to ensure the payment of the tax imposed by this chapter.

(5) [~~(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. The commission shall collect the tax when the vehicle is titled or registered.

~~[(b) Upon application for title or registration of each vehicle sold by a regular licensed~~

~~vehicle dealer, the dealer shall certify to the commission whether or not the dealer is current in the payment and reporting of sales or use tax, as required by Subsection (4). Each vehicle dealer not in compliance with Subsection (4) shall remit the sales or use tax to the commission upon application for title or registration of the vehicle. Any violation of this subsection, or the falsification of any required information, is a class A misdemeanor.]~~

(6) If any sale of tangible personal property or any other taxable item or service under Subsection 59-12-103(1), is made by a wholesaler to a retailer, the wholesaler is not responsible for the collection or payment of the tax imposed on the sale if the retailer represents that the personal property is purchased by the retailer for resale and the personal property thereafter is not resold. Instead, the retailer is solely liable for the tax.

(7) 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 63, Chapter 51, Resource Development, or to a contractor or subcontractor of that person, the person to whom such payment or consideration is payable is not 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. Instead, the person prepaying the sales or use tax is solely liable for the tax.

(8) Credit is allowed for prepaid taxes and for taxes paid on that portion of an account determined to be worthless and actually charged off for income tax purposes or on the portion of the purchase price remaining unpaid at the time of a repossession made under the terms of a conditional sales contract.

(9) (a) The commission may require any person subject to the tax imposed under this chapter to deposit with it security as the commission determines, if the commission [~~deems~~] considers it necessary to ensure compliance with this chapter.

(b) The commission may sell the security at public sale if it becomes necessary to do so in order to recover any tax, interest, or penalty due.

(c) The commission shall serve notice of the sale upon the person who deposited the securities either personally or by mail. If the notice is by mail, notice sent to the last-known address

as it appears in the records of the commission is sufficient for the purposes of this requirement.

(d) The commission shall return to the person who deposited the security any amount of the sale proceeds that exceed the amounts due under this chapter.

(10) (a) ~~[It is unlawful for a]~~ A vendor may not, with intent to evade any tax, ~~[to]~~ fail to timely remit the full amount of tax required by this chapter. A violation of this section is punishable as provided in Section 59-1-401.

(b) Each person who 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 Sections 59-12-110 and 59-12-111, within the time required by this chapter, or who fails to file any return as required by this chapter, shall pay, in addition to the tax, penalties and interest as provided in Section 59-12-110.

(c) For purposes of prosecution under this section, each quarterly tax period in which a vendor, 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.