SALES AND USE TAX - UNIFORM SALES AND USE TAX ADMINISTRATION ACT AND SALES AND USE TAX REVISIONS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

This act authorizes certain delegates to enter into multistate discussions regarding a Streamlined Sales and Use Tax Agreement, including particularly whether the state should enter into the Streamlined Sales and Use Tax Agreement with one or more other states. The act provides definitions, prescribes reporting requirements for the delegates, and provides requirements for the Streamlined Sales and Use Tax Agreement. The act authorizes the Utah State Tax Commission to enter into the Streamlined Sales and Use Tax Agreement under certain circumstances. This act clarifies the relationship between the Streamlined Sales and Use Tax Agreement and state law, clarifies the relationship between the states that are entering into or considering whether to enter into the Streamlined Sales and Use Tax Agreement, and clarifies the binding and beneficial effect of the Streamlined Sales and Use Tax Agreement. The act clarifies statutes pertaining to the collection of sales and use taxes by remote vendors, including particularly the application of penalties to remote vendors, the distribution to counties, cities, and towns of sales and use taxes collected by remote vendors, and the amount of revenues to be deposited into the Remote Sales Restricted Account. The act clarifies the application of certain local option sales and use taxes and sales tax refunds, and makes technical changes. This act provides an immediate effective date for the uncodified sections of this act, and provides a July 1, 2001 effective date for the codified sections of the act. The uncodified sections of this act are repealed June 30, 2003.

AMENDS:

59-1-401 (Effective 07/01/01), as last amended by Chapter 253, Laws of Utah 2000

59-12-103 (Effective 07/01/01), as last amended by Chapters 147, 253 and 325, Laws of Utah 2000

59-12-103.2 (Effective 07/01/01), as enacted by Chapter 253, Laws of Utah 2000

59-12-107 (Effective 07/01/01), as last amended by Chapters 86 and 253, Laws of Utah 2000

59-12-802 (Effective 07/01/01), as last amended by Chapter 253, Laws of Utah 2000

59-12-804 (Effective 07/01/01), as last amended by Chapter 253, Laws of Utah 2000

59-12-902 (Effective 07/01/01), as last amended by Chapters 253 and 325, Laws of Utah 2000

This act enacts uncodified material.

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

Section 1. Section **59-1-401 (Effective 07/01/01)** is amended to read:

59-1-401 (Effective 07/01/01). Penalties.

(1) (a) The penalty for failure to file a tax return within the time prescribed by law including extensions is the greater of $20 or 10% of the unpaid tax due on the return.

(b) Subsection (1) does not apply to amended returns.

(2) The penalty for failure to pay tax due shall be the greater of $20 or 10% of the unpaid tax for:

(a) failure to pay any tax, as reported on a timely filed return;

(b) failure to pay any tax within 90 days of the due date of the return, if there was a late filed return subject to the penalty provided under Subsection (1)(a);

(c) failure to pay any tax within 30 days of the date of mailing any notice of deficiency of tax unless a petition for redetermination or a request for agency action is filed within 30 days of the date of mailing the notice of deficiency;

(d) failure to pay any tax within 30 days after the date the commission's order constituting final agency action resulting from a timely filed petition for redetermination or request for agency action is issued or is considered to have been [~~issued~~] denied under Subsection 63-46b-13(3)(b); and

(e) failure to pay any tax within 30 days after the date of a final judicial decision resulting from a timely filed petition for judicial review.

(3) (a) Beginning January 1, 1995, in the case of any underpayment of estimated tax or quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104, there shall

be added a penalty in an amount determined by applying the interest rate provided under Section 59-1-402 plus four percentage points to the amount of the underpayment for the period of the underpayment.

(b) (i) For purposes of Subsection (3)(a), the amount of the underpayment shall be the excess of the required installment over the amount, if any, of the installment paid on or before the due date for the installment.

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

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

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

(iii) For purposes of this Subsection (3), a payment of estimated tax shall be credited against unpaid required installments in the order in which the installments are required to be paid.

(4) (a) In case of an extension of time to file an individual income tax or corporate franchise tax return, if the lesser of 90% of the total tax reported on the tax return or 100% of the prior year's tax is not paid by the due date of the return, not including extensions, a 2% per month penalty shall apply on the unpaid tax during the period of extension.

(b) If a return is not filed within the extension time period as provided in Section 59-7-505 or 59-10-516, penalties as provided in Subsection (1) and Subsection (2)(b) shall be added in lieu of the penalty assessed under this Subsection (4) as if no extension of time for filing a return had been granted.

(5) (a) Additional penalties for underpayments of tax are as provided in Subsections (5)(a)(i) through (iv).

(i) Except as provided in Subsection (5)(c), if any underpayment of tax is due to negligence, the penalty is 10% of the underpayment.

(ii) Except as provided in Subsection (5)(d), if any underpayment of tax is due to intentional disregard of law or rule, the penalty is 15% of the underpayment.

(iii) For intent to evade the tax, the penalty is the greater of $500 per period or 50% of the tax due.

(iv) If the underpayment is due to fraud with intent to evade the tax, the penalty is the greater of $500 per period or 100% of the underpayment.

(b) If the commission determines that a person is liable for a penalty imposed under Subsection (5)(a)(ii), (iii), or (iv), the commission shall notify the taxpayer of the proposed penalty.

(i) The notice of proposed penalty shall:

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

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

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

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

(B) proceed in accordance with the review procedures of Subsection (5)(b)(iii).

(iii) Any person against whom a penalty has been proposed in accordance with this Subsection (5) may contest the proposed penalty by filing a petition for an adjudicative proceeding with the commission.

(iv) If the commission determines that a person is liable for a penalty under this Subsection (5), the commission shall assess the penalty and give notice and demand for payment. The notice and demand for payment shall be mailed by registered mail, postage prepaid, to the person's last-known address.

(c) Notwithstanding Subsection (5)(a)(i), a vendor that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not subject to the penalty under Subsection (5)(a)(i) if on or after July 1, 2001:

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

(A) the vendor meets one or more of the criteria described in Subsection 59-12-107(1)(a); and

(B) the commission or a county, city, or town may require the vendor to collect a tax under Subsection 59-12-103(2)(a) or (b); or

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

(A) the vendor meets one or more of the criteria described in Subsection 59-12-107(1)(a); and

(B) the commission or a county, city, or town may require the vendor to collect a tax under Subsection 59-12-103(2)(a) or (b).

(d) Notwithstanding Subsection (5)(a)(ii), a vendor that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not subject to the penalty under Subsection (5)(a)(ii) if:

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

(I) the vendor meets one or more of the criteria described in Subsection 59-12-107(1)(a); and

(II) the commission or a county, city, or town may require the vendor to collect a tax under Subsection 59-12-103(2)(a) or (b); or

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

(I) the vendor meets one or more of the criteria described in Subsection 59-12-107(1)(a); and

(II) the commission or a county, city, or town may require the vendor to collect a tax under Subsection 59-12-103(2)(a) or (b); and

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

(6) The penalty for failure to file an information return or a complete supporting schedule is $50 for each return or schedule up to a maximum of $1,000.

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

(8) For monthly payment of sales and use taxes under Section 59-12-108, in addition to any other penalties for late payment, a vendor may not retain a percentage of sales and use taxes collected as otherwise allowable under Section 59-12-108.

(9) As provided in Section 76-8-1101, the following are criminal penalties:

(a) Any person who is required by this title or any laws the commission administers or regulates to register with or obtain a license or permit from the commission, or who operates without having registered or secured a license or permit, or who operates when the registration, license, or permit is expired or not current, is guilty of a class B misdemeanor, except that, notwithstanding Section 76-3-301, the fine is not less than $500 nor more than $1,000.

(b) Any person who, with intent to evade any tax or requirement of this title or any lawful requirement of the commission, fails to make, render, sign, or verify any return or to supply any information within the time required under this title, or who makes, renders, signs, or verifies any false or fraudulent return or statement, or who supplies any false or fraudulent information, is guilty of a third degree felony, except that, notwithstanding Section 76-3-301, the fine is not less than $1,000 nor more than $5,000.

(c) Any person who willfully attempts to evade or defeat any tax or the payment thereof is, in addition to other penalties provided by law, guilty of a second degree felony, except that, notwithstanding Section 76-3-301, the fine is not less than $1,500 nor more than $25,000.

(d) The statute of limitations for prosecution for a violation of this section is six years from the date the tax should have been remitted.

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

Section 2. Section **59-12-103 (Effective 07/01/01)** is amended to read:

59-12-103 (Effective 07/01/01). Sales and use tax base -- Rate -- Use of sales and use tax revenues.

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

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

(b) amounts paid to common carriers or to telephone or telegraph corporations, whether the corporations are municipally or privately owned, for:

(i) all transportation;

(ii) intrastate telephone service; or

(iii) telegraph service;

(c) sales of the following for commercial use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(d) sales of the following for residential use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(e) sales of meals;

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

(g) amounts paid or charged for services:

(i) for repairs or renovations of tangible personal property; or

(ii) to install tangible personal property in connection with other tangible personal property;

(h) except as provided in Subsection 59-12-104(7), amounts paid or charged for cleaning or

washing of tangible personal property;

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

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

(k) amounts paid or charged for leases or rentals of tangible personal property if:

(i) the tangible personal property's situs is in this state;

(ii) the lessee took possession of the tangible personal property in this state; or

(iii) within this state the tangible personal property is:

(A) stored;

(B) used; or

(C) otherwise consumed;

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

(i) stored;

(ii) used; or

(iii) consumed; and

(m) amounts paid or charged for prepaid telephone calling cards.

(2) (a) Except as provided in Subsections (2)(b) and (c), beginning on July 1, 2001, a state tax and a local tax is imposed on a transaction described in Subsection (1) equal to the sum of:

(i) a state tax imposed on the transaction at a rate of 4.75%; and

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

(b) Notwithstanding Subsection (2)(a), beginning on July 1, 2001, a state tax and a local tax is imposed on a transaction described in Subsection (1)(d) equal to the sum of:

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

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

(c) Notwithstanding Subsections (2)(a) and (b), beginning on July 1, 2001, if a vendor

collects a tax under Subsection 59-12-107(1)(b) on a transaction described in Subsection (1), a state tax and a local tax is imposed on the transaction equal to the sum of:

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

(A) 4.75% for a transaction other than a transaction described in Subsection (1)(d); or

(B) 2% for a transaction described in Subsection (1)(d); and

(ii) except as provided in Subsection (2)(d), a local tax imposed on the transaction at a rate equal to the sum of the following tax rates:

(A) (I) the lowest tax rate imposed by a county, city, or town under Section 59-12-204, but only if all of the counties, cities, and towns in the state impose the tax under Section 59-12-204; or

[~~(B)~~] (II) the lowest tax rate imposed by a county, city, or town under Section 59-12-205, but only if all of the counties, cities, and towns in the state impose the tax under Section 59-12-205; and

[~~(C)~~] (B) the tax rate authorized by Section 59-12-1102, but only if all of the counties in the state impose the tax under Section 59-12-1102.

(d) Tax rates authorized under the following do not apply to Subsection (2)(c)(ii):

(i) Subsection (2)(a)(i);

(ii) Subsection (2)(b)(i);

(iii) Subsection (2)(c)(i);

(iv) Section 59-12-301;

(v) Section 59-12-352;

(vi) Section 59-12-353;

(vii) Section 59-12-401;

(viii) Section 59-12-402;

(ix) Section 59-12-501;

(x) Section 59-12-502;

(xi) Section 59-12-603;

(xii) Section 59-12-703;

(xiii) Section 59-12-802;

(xiv) Section 59-12-804;

(xv) Section 59-12-1001;

(xvi) Section 59-12-1201; or

(xvii) Section 59-12-1302.

(3) (a) Except as provided in Subsections (4) through (9), the state taxes described in Subsections (2)(a)(i), (2)(b)(i), and (2)(c)(i) shall be deposited into the General Fund.

(b) The local taxes described in Subsections (2)(a)(ii) and (2)(b)(ii) shall be distributed to a county, city, or town as provided in this chapter.

(c) (i) Notwithstanding any provision of this chapter, each county, city, or town in the state shall receive the county's, city's, or town's proportionate share of the revenues generated by the local tax described in Subsection (2)(c)(ii) as provided in Subsection (3)(c)(ii).

(ii) The commission shall determine a county's, city's, or town's proportionate share of the revenues under Subsection (3)(c)(i) by:

(A) [~~dividing the population of the county, city, or town by~~] calculating an amount equal to:

(I) the population of the county, city, or town; divided by

(II) the total population of the state; and

(B) multiplying the [~~percentage~~] amount determined under Subsection (3)(c)(ii)(A) by the total amount of revenues generated by the local tax under Subsection (2)(c)(ii) for all counties, cities, and towns.

(iii) (A) Except as provided in Subsection (3)(c)(iii)(B), population figures for purposes of this section shall be derived from the most recent official census or census estimate of the United States Census Bureau.

(B) Notwithstanding Subsection (3)(c)(iii)(A), if a needed population estimate is not available from the United States Census Bureau, population figures shall be derived from the estimate from the Utah Population Estimates Committee created by executive order of the governor.

(C) For purposes of this section, the population of a county may only include the population of the unincorporated areas of the county.

(4) (a)Notwithstanding Subsection (3)(a), there shall be deposited in an Olympics special

revenue fund or funds as determined by the Division of Finance under Section 51-5-4, for the use of the Utah Sports Authority created under Title 63A, Chapter 7, Utah Sports Authority Act:

(i) from January 1, 1990, through December 31, 1999, the amount of sales and use tax generated by a 1/64% tax rate on the taxable transactions under Subsection (1);

(ii) from January 1, 1990, through June 30, 1999, the amount of revenue generated by a 1/64% tax rate under Section 59-12-204 or Section 59-12-205 on the taxable transactions under Subsection (1); and

(iii) interest earned on the amounts under Subsections (4)(a)(i) and (ii).

(b) These funds shall be used:

(i) by the Utah Sports Authority as follows:

(A) to the extent funds are available, to transfer directly to a debt service fund or to otherwise reimburse to the state any amount expended on debt service or any other cost of any bonds issued by the state to construct any public sports facility as defined in Section 63A-7-103;

(B) to pay for the actual and necessary operating, administrative, legal, and other expenses of the Utah Sports Authority, but not including protocol expenses for seeking and obtaining the right to host the Winter Olympic Games;

(C) as otherwise appropriated by the Legislature; and

(D) unless the Legislature appropriates additional funds from the Olympics Special Revenue Fund to the Utah Sports Authority, the Utah Sports Authority may not expend, loan, or pledge in the aggregate more than:

(I) $59,000,000 of sales and use tax deposited into the Olympics Special Revenue Fund under Subsection (4)(a);

(II) the interest earned on the amount described in Subsection (4)(b)(i)(D)(I); and

(III) the revenues deposited into the Olympics Special Revenue Fund that are not sales and use taxes deposited under Subsection (4)(a) or interest on the sales and use taxes;

(ii) to pay salary, benefits, or administrative costs associated with the State Olympic Officer under Subsection 63A-10-103(3), except that the salary, benefits, or administrative costs may not be paid from the sales and use tax revenues generated by municipalities or counties and deposited

under Subsection (4)(a)(ii).

(c) A payment of salary, benefits, or administrative costs under Subsection 63A-10-103(3) is not considered an expenditure of the Utah Sports Authority.

(d) If the Legislature appropriates additional funds under Subsection (4)(b)(i)(D), the authority may not expend, loan, pledge, or enter into any agreement to expend, loan, or pledge the appropriated funds unless the authority:

(i) contracts in writing for the full reimbursement of the monies to the Olympics Special Revenue Fund by a public sports entity or other person benefitting from the expenditure; and

(ii) obtains a security interest that secures payment or performance of the obligation to reimburse.

(e) A contract or agreement entered into in violation of Subsection (4)(d) is void.

(5) (a) Notwithstanding Subsection (3)(a), beginning on July 1, 2001, the amount of sales and use tax generated annually by a 1/16% tax rate on the taxable transactions under Subsection (1) shall be used as provided in Subsections (5)(b) through (g).

(b) (i) Beginning on July 1, 2001, $2,300,000 each year shall be transferred as dedicated credits to the Department of Natural Resources to:

(A) implement the measures described in Subsections 63-34-14(4)(a) through (d) to protect sensitive plant and animal species; or

(B) award grants, up to the amount authorized by the Legislature in an appropriations act, to political subdivisions of the state to implement the measures described in Subsections 63-34-14(4)(a) through (d) to protect sensitive plant and animal species.

(ii) Money transferred to the Department of Natural Resources under Subsection (5)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other person to list or attempt to have listed a species as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

(iii) At the end of each fiscal year:

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

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

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

(c) Five hundred thousand dollars each year shall be deposited in the Agriculture Resource Development Fund created in Section 4-18-6.

(d) (i) One hundred thousand dollars each year shall be transferred as dedicated credits to the Division of Water Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of water rights.

(ii) At the end of each fiscal year:

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

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

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

(e) Fifty percent of the remaining amount generated by the 1/16% tax rate shall be deposited in the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources. In addition to the uses allowed of the fund under Section 73-10-24, the fund may also be used to:

(i) provide a portion of the local cost share, not to exceed in any fiscal year 50% of the funds made available to the Division of Water Resources under this section, of potential project features of the Central Utah Project;

(ii) conduct hydrologic and geotechnical investigations by the Department of Natural Resources in a cooperative effort with other state, federal, or local entities, for the purpose of quantifying surface and ground water resources and describing the hydrologic systems of an area in sufficient detail so as to enable local and state resource managers to plan for and accommodate growth in water use without jeopardizing the resource;

(iii) fund state required dam safety improvements; and

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

(f) Twenty-five percent of the remaining amount generated by the 1/16% tax rate shall be deposited in the Utah Wastewater Loan Program subaccount created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects as defined in Section 73-10b-2.

(g) Twenty-five percent of the remaining amount generated by the 1/16% tax rate shall be deposited in the Drinking Water Loan Program subaccount created in Section 73-10c-5 for use by the Division of Drinking Water to:

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

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

(iii) develop surface water sources.

(6) (a) Notwithstanding Subsection (3)(a), beginning on July 1, 2001, the amount of sales and use tax generated annually by a 1/16% tax rate on the taxable transactions under Subsection (1) shall be used as provided in Subsections (6)(b) through (d).

(b) (i) Five hundred thousand dollars each year shall be deposited in the Transportation Corridor Preservation Revolving Loan Fund created in Section 72-2-117.

(ii) At least 50% of the money deposited in the Transportation Corridor Preservation Revolving Loan Fund under Subsection (6)(b)(i) shall be used to fund loan applications made by the Department of Transportation at the request of local governments.

(c) From July 1, 1997, through June 30, 2006, $500,000 each year shall be transferred as nonlapsing dedicated credits to the Department of Transportation for the State Park Access Highways Improvement Program created in Section 72-3-207.

(d) The remaining amount generated by the 1/16% tax rate shall be deposited in the class B and class C roads account to be expended as provided in Title 72, Chapter 2, Transportation Finances Act, for the use of class B and C roads.

(7) (a) Notwithstanding Subsection (3)(a), beginning on January 1, 2000, the Division of

Finance shall deposit into the Centennial Highway Fund created in Section 72-2-118 a portion of the state sales and use tax under Subsection (2) equal to the revenues generated by a 1/64% tax rate on the taxable transactions under Subsection (1).

(b) Except for sales and use taxes deposited under Subsection (8), beginning on July 1, 1999, the revenues generated by the 1/64% tax rate:

(i) retained under Subsection 59-12-204(7)(a) shall be retained by the counties, cities, or towns as provided in Section 59-12-204; and

(ii) retained under Subsection 59-12-205(4)(a) shall be distributed to each county, city, and town as provided in Section 59-12-205.

(8) Notwithstanding Subsection (3)(a), beginning on July 1, 1999, the commission shall deposit into the Airport to University of Utah Light Rail Restricted Account created in Section 17A-2-1064 the portion of the sales and use tax under Sections 59-12-204 and 59-12-205 that is:

(a) generated by a city or town that will have constructed within its boundaries the Airport to University of Utah Light Rail described in the Transportation Equity Act for the 21st Century, Pub. L. No. 105-178, Sec. 3030(c)(2)(B)(i)(II), 112 Stat. 107; and

(b) equal to the revenues generated by a 1/64% tax rate on the taxable items and services under Subsection (1).

(9) (a) Notwithstanding Subsection (3)(a), for fiscal years beginning on or after fiscal year 2002-03, the commission shall on or before September 30 of each year deposit the difference described in Subsection (9)(b) into the Remote Sales Restricted Account created in Section 59-12-103.2 if that difference is greater than $0.

(b) The difference described in Subsection (9)(a) is equal to the difference between:

(i) the total amount of revenues under Subsection (2)(c)(i) the commission received from vendors collecting a tax under Subsection 59-12-107(1)(b) for the [~~previous~~] fiscal year immediately preceding the September 30 described in Subsection (9)(a); and

(ii) the total amount of revenues under Subsection (2)(c)(i) the commission estimates that the commission received from vendors [~~collecting a tax under~~] described in Subsection 59-12-107(1)(b) for fiscal year 2000-01.

(10) (a) For purposes of amounts paid or charged as admission or user fees relating to the Olympic Winter Games of 2002, the amounts are considered to be paid or charged on the day on which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 or a person designated by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 sends a purchaser confirmation of the purchase of an admission or user fee described in Subsection (1)(f).

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules defining what constitutes sending a purchaser confirmation under Subsection (10)(a).

Section 3. Section **59-12-103.2 (Effective 07/01/01)** is amended to read:

59-12-103.2 (Effective 07/01/01). Remote Sales Restricted Account -- Creation.

(1) There is created within the General Fund a restricted account known as the "Remote Sales Restricted Account."

(2) The account shall be funded from the portion of the sales and use tax deposited by the commission as provided in Subsection 59-12-103[~~(8)~~](9).

Section 4. Section **59-12-107 (Effective 07/01/01)** is amended to read:

59-12-107 (Effective 07/01/01). Collection, remittance, and payment of tax by vendors or other persons -- 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:

(A) an office;

(B) a distribution house;

(C) a sales house;

(D) a warehouse;

(E) a service enterprise; or

(F) a place of business similar to Subsections (1)(a)(i)(A) through (E);

(ii) maintains a stock of goods;

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

(A) advertising; or

(B) solicitation by:

(I) direct mail;

(II) electronic mail;

(III) the Internet;

(IV) telephone; or

(V) a means similar to Subsections (1)(a)(iii)(A) or (B);

(iv) regularly engages in the delivery of property in the state other than by:

(A) common carrier; or

(B) United States mail; or

(v) regularly engages in an activity directly related to the leasing or servicing of property located within the state.

(b) If a vendor does not meet one or more of the criteria provided for in Subsection (1)(a), the vendor:

(i) except as provided in Subsection (1)(b)(ii), may voluntarily:

(A) collect a tax as provided in Subsection 59-12-103(2)(c) on a transaction described in Subsection 59-12-103(1); and

(B) remit the tax to the commission as provided in this part; or

(ii) notwithstanding Subsection (1)(b)(i), shall collect a tax as provided in Subsection 59-12-103(2)(c) on a transaction described in Subsection 59-12-103(1) if Section 59-12-103.1 requires the vendor to collect the tax.

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

(i) the vendor did not collect a use tax imposed by this chapter on the transaction; and

(ii) the person:

(A) stores the tangible personal property in the state;

(B) uses the tangible personal property in the state; or

(C) consumes the tangible personal property in the state.

(d) 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 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 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, Local Sales and Use Tax Act, the vendor shall remit to the commission the full amount of the tax imposed under this part and Part 2, Local Sales and Use Tax Act, 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) (a) Except as provided in Subsection (4) 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) (i) 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.

(ii) The vendor shall remit with the return under Subsection (3)(b)(i) 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 considers it necessary in order to ensure the payment of the tax imposed by this chapter.

(4) 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.

(5) If any sale of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), is made by a wholesaler to a retailer, 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.

(6) 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.

(7) 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.

(8) (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 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) (i) The commission shall serve notice of the sale upon the person who deposited the securities.

(ii) Notice under Subsection (8)(c)(i) 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.

(9) (a) A vendor may not, with intent to evade any tax, fail to timely remit the full amount of tax required by this chapter.

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

(c) Each person who 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.

(d) 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.

Section 5. Section **59-12-802 (Effective 07/01/01)** is amended to read:

59-12-802 (Effective 07/01/01). Imposition of rural county health care facilities tax -- Base -- Rate.

(1) (a) A county legislative body may impose a sales and use tax of up to 1%:

(i) except as provided in Subsection (1)(b), on the transactions described in Subsection 59-12-103(1); and

(ii) to fund rural county health care facilities in that county.

(b) Notwithstanding Subsection (1)(a)(i), 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; and

(ii) any amounts paid or charged by a vendor that collects a tax under Subsection 59-12-107(1)(b).

(2) (a) Before imposing [~~or increasing~~] a tax under Subsection (1)(a), a county legislative body shall obtain approval to impose [~~or increase~~] the tax from a majority of the:

(i) members of the county's legislative body; and

(ii) county's registered voters voting on the imposition of the tax.

(b) The county legislative body shall conduct the election according to the procedures and requirements of Title 11, Chapter 14, Utah Municipal Bond Act.

(3) The monies generated by a tax imposed under Subsection (1) may only be used for the financing of:

(a) ongoing operating expenses of a rural county health care facility;

(b) the acquisition of land for a rural county health care facility; or

(c) the design, construction, equipping, or furnishing of a rural county health care facility.

(4) Taxes imposed under this section shall be:

(a) levied at the same time and collected in the same manner as provided in Part 2, Local Sales and Use Tax Act, except that the collection and distribution of the tax revenue is not subject to Subsection 59-12-205(2); and

(b) levied for a period of ten years and may be reauthorized at the end of the ten-year period by the county legislative body as provided in Subsection (1).

(5) The commission may retain an amount not to exceed 1-1/2% of the tax collected under this section for the cost of administering this tax.

Section 6. Section **59-12-804 (Effective 07/01/01)** is amended to read:

59-12-804 (Effective 07/01/01). Imposition of rural city hospital tax -- Base -- Rate.

(1) (a) A city legislative body may impose a sales and use tax of up to 1%:

(i) except as provided in Subsection (1)(b), on the transactions described in Subsection 59-12-103(1); and

(ii) to fund rural city hospitals in that city.

(b) Notwithstanding Subsection (1)(a)(i), a city 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; and

(ii) any amounts paid or charged by a vendor that collects a tax under Subsection 59-12-107(1)(b).

(2) (a) Before imposing [~~or increasing~~] a tax under Subsection (1)(a), a city legislative body shall obtain approval to impose the tax from a majority of the:

(i) members of the city legislative body; and

(ii) city's registered voters voting on the imposition of the tax.

(b) The city legislative body shall conduct the election according to the procedures and requirements of Title 11, Chapter 14, Utah Municipal Bond Act.

(3) The monies generated by a tax imposed under Subsection (1) may only be used for the financing of:

(a) ongoing operating expenses of a rural city hospital;

(b) the acquisition of land for a rural city hospital; or

(c) the design, construction, equipping, or furnishing of a rural city hospital.

(4) Taxes imposed under this section shall be:

(a) levied at the same time and collected in the same manner as provided in Part 2, Local Sales and Use Tax Act, except that the collection and distribution of the tax revenue is not subject to Subsection 59-12-205; and

(b) levied for a period of ten years and may be reauthorized at the end of the ten-year period by the city legislative body as provided in Subsection (1).

(5) The commission may retain an amount not to exceed 1-1/2% of the tax collected under this section for the cost of administering the tax.

Section 7. Section **59-12-902 (Effective 07/01/01)** is amended to read:

59-12-902 (Effective 07/01/01). Sales tax refund for qualified emergency food agencies -- Administration -- Rulemaking authority.

(1) Beginning on January 1, 1998, a qualified emergency food agency may claim a sales tax refund as provided in this section on the pounds of food donated to the qualified emergency food agency.

(2) (a) Subject to the adjustments provided for in Subsection (2)(b), a qualified emergency food agency may claim a refund in an amount equal to the pounds of food donated to the qualified emergency food agency multiplied by:

(i) $1.70; and

(ii) the sum of:

(A) 4.75%; and

(B) except as provided in Subsection (2)(c), the sum of the tax rates provided for in Subsection (2)(b).

(b) Tax rates authorized under the following apply to Subsection (2)(a)(ii)(B):

(i) (A) the lowest tax rate imposed by a county, city, or town under Section 59-12-204, but only if all of the counties, cities, and towns in the state impose the tax under Section 59-12-204; or

[~~(ii)~~] (B) the lowest tax rate imposed by a county, city, or town under Section 59-12-205, but only if all of the counties, cities, and towns in the state impose the tax under Section 59-12-205;

[~~(iii)~~] (ii) the tax rate authorized by Section 59-12-501 or Section 59-12-1001, but only if all of the counties, cities, and towns in the state impose the tax:

(A) under Section 59-12-501; or

(B) under Section 59-12-1001;

[~~(iv)~~] (iii) the tax rate authorized by Section 59-12-502, but only if all of the counties, cities, and towns in the state impose the tax under Section 59-12-502;

[~~(v)~~] (iv) the tax rate authorized by Section 59-12-703, but only if all of the counties in the state impose the tax under Section 59-12-703; and

[~~(vi)~~] (v) the tax rate authorized by Section 59-12-1102, but only if all of the counties in the state impose the tax under Section 59-12-1102.

(c) Tax rates authorized under the following do not apply to Subsection (2)(a)(ii)(B):

(i) Subsection 59-12-103(2)(a)(i);

(ii) Subsection 59-12-103(2)(b)(i);

(iii) Subsection 59-12-103(2)(c)(i);

(iv) Section 59-12-301;

(v) Section 59-12-352;

(vi) Section 59-12-353;

(vii) Section 59-12-401;

(viii) Section 59-12-402;

(ix) Section 59-12-603;

(x) Section 59-12-802;

(xi) Section 59-12-804;

(xii) Section 59-12-1201; or

(xiii) Section 59-12-1302.

(d) Beginning on January 1, 1999, the commission shall annually adjust on or before the second Monday of February the $1.70 provided in Subsection (2)(a)(i) by a percentage equal to the percentage difference between the food at home category of the Consumer Price Index for:

(i) the preceding calendar year; and

(ii) calendar year 1997.

(3) To claim a sales tax refund under this section, a qualified emergency food agency shall file an application with the commission.

(4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules providing procedures for implementing the sales tax refund under this section, including:

(a) procedures for an organization to apply for recognition as a qualified emergency food agency;

(b) standards for determining and verifying the amount of the sales tax refund; and

(c) procedures for a qualified emergency food agency to apply for a sales tax refund, including the frequency with which a qualified emergency food agency may apply for a sales tax refund.

(5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the Division of Community Development may establish rules providing for the certification of emergency food agencies to claim a refund under this part.

Section 8. **Title.**

The uncodified sections of this act are known as the "Uniform Sales and Use Tax Administration Act."

Section 9. **Definitions.**

As used in the uncodified sections of this act:

(1) "Agreement" means the Streamlined Sales and Use Tax Agreement.

(2) "Certified automated system" means software certified jointly by the states that are members of the Agreement to:

(a) calculate the tax imposed by each taxing jurisdiction:

(i) on a transaction; and

(ii) in the states that are members of the Agreement;

(b) determine the amount of tax to remit to the appropriate state; and

(c) maintain a record of the transaction.

(3) "Certified service provider" means an agent certified:

(a) jointly by the states that are members of the Agreement; and

(b) to perform all of a seller's sales tax functions.

(4) "Person" means:

(a) an individual;

(b) a trust;

(c) an estate;

(d) a fiduciary;

(e) a partnership;

(f) a limited liability company;

(g) a limited liability partnership;

(h) a corporation; or

(i) any other legal entity similar to Subsections (4)(a) through (h).

(5) "Sales and use tax" means a tax imposed under Title 59, Chapter 12, Sales and Use Tax Act.

(6) "Seller" means a person making a sale, lease, or rental of:

(a) personal property; or

(b) a service.

(7) "State" means:

(a) a state of the United States; or

(b) the District of Columbia.

Section 10. **Participation in multistate discussions.**

(1) As provided in this section, delegates shall enter into multistate discussions to address the following issues:

(a) to consider whether the state should enter into the Agreement described in Section 13 with one or more other states to:

(i) simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce;

(ii) establish standards for certification of a:

(A) certified service provider; and

(B) certified automated system; and

(iii) establish performance standards for multistate sellers; and

(b) (i) to consider whether to review the Agreement described in Section 13; or

(ii) to consider whether to amend the Agreement described in Section 13.

(2) For purposes of Subsection (1), delegates shall be appointed as follows:

(a) one delegate shall be a member of the House of Representatives appointed by the speaker of the House of Representatives;

(b) one delegate shall be a member of the Senate appointed by the president of the Senate; and

(c) two delegates shall be appointed by the governor, at least one of whom shall be from the Utah State Tax Commission.

(3) The delegates described in Subsection (2) shall:

(a) report to the Utah Tax Review Commission as requested by the Utah Tax Review Commission;

(b) make recommendations to the Utah Tax Review Commission regarding:

(i) the issues the delegates are required to consider in accordance with Subsection (1); and

(ii) any other issue the Utah Tax Review Commission requests the delegates to consider.

(4) If the Utah Tax Review Commission determines that the state should enter into the Agreement described in Section 13 with one or more other states, the Utah Tax Review Commission shall request that legislation be prepared:

(a) amending Title 59, Chapter 12, Sales and Use Tax Act, or other statutes to bring the state into substantial compliance with:

(i) the Agreement described in Section 13; and

(ii) any amendments made to the Agreement described in Section 13 as a result of multistate discussions required by this section; and

(b) for consideration by the:

(i) Revenue and Taxation Interim Committee on or before the November 2002 interim meeting; and

(ii) Legislature on or before the 2003 General Session.

Section 11. **Authority to enter into Agreement.**

If on or before the 2003 General Session the Legislature passes legislation to bring the state into substantial compliance with the Agreement described in Section 13, the Legislature may:

(1) authorize and direct the Utah State Tax Commission to:

(a) enter into the Agreement with one or more states to:

(i) simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce;

(ii) establish standards for certification of a:

(A) certified service provider; and

(B) certified automated system; and

(iii) act jointly with other states that are members of the Agreement to establish performance standards for multistate sellers; and

(b) take other actions reasonably required to implement the provisions of this Uniform Sales and Use Tax Administration Act including:

(i) adopting administrative rules; and

(ii) in furtherance of the Agreement, jointly procuring goods and services with other states that are members of the Agreement; and

(2) authorize the Utah State Tax Commission or a designee of the Utah State Tax Commission to represent the state before the other states that are members of the Agreement.

Section 12. **Relationship to state law.**

(1) A provision of the Agreement described in Section 13 in whole or in part may not

invalidate or amend any provision of the law of this state.

(2) Adoption of the Agreement described in Section 13 by this state does not amend or modify any law of this state.

(3) Implementation of any condition of the Agreement described in Section 13 in this state shall be by action of this state regardless of whether the condition is adopted:

(a) before membership of this state in the Agreement;

(b) at the time of membership of this state in the Agreement; or

(c) after membership of this state in the Agreement.

Section 13. **Agreement requirements.**

The Legislature may not authorize and direct the Utah State Tax Commission to enter into the Agreement unless the Agreement requires each state to abide by the following requirements:

(1) the Agreement shall set restrictions to achieve over time more uniform state tax rates by:

(a) limiting the number of state rates;

(b) limiting the application of maximums on the amount of state tax that is due on a transaction; and

(c) limiting the application of thresholds on the application of state tax.

(2) the Agreement shall establish uniform standards for the following:

(a) the sourcing of transactions to taxing jurisdictions;

(b) the administration of exempt sales;

(c) the allowance a seller may take for bad debts; and

(d) sales and use tax returns and remittances;

(3) the Agreement shall require states to develop and adopt uniform definitions:

(a) of sales and use tax terms; and

(b) that enable each state to preserve the state's ability to make policy choices consistent with the uniform definitions;

(4) the Agreement shall provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all states that are members of the Agreement;

(5) the Agreement shall provide that the following may not be used as a factor in determining

whether the seller has nexus with a state for any tax:

(a) registration with the central registration system; or

(b) the collection of sales and use taxes in the states that are members of the Agreement;

(6) the Agreement shall provide for a reduction of the burdens of complying with local sales and use taxes by:

(a) restricting variances between the state and local tax bases;

(b) requiring states to administer any sales and use taxes imposed by local jurisdictions within the state so that a seller collecting and remitting the sales and use taxes will not have to:

(i) register with local taxing jurisdictions;

(ii) file returns with local taxing jurisdictions;

(iii) remit funds to local taxing jurisdictions; or

(iv) be subject to independent audits from local taxing jurisdictions;

(c) restricting the frequency of changes in local sales and use tax rates;

(d) setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and

(e) providing notice of changes in:

(i) local sales and use tax rates; and

(ii) the boundaries of local taxing jurisdictions;

(7) the Agreement shall outline any monetary allowances that are to be provided by the states to sellers or certified service providers;

(8) the Agreement shall require each state entering into the Agreement to:

(a) certify compliance with the terms of the Agreement prior to entering into the Agreement; and

(b) maintain compliance with all of the provisions of the Agreement:

(i) during the time period that the state is a member of the Agreement; and

(ii) under the laws of the state entering into the Agreement;

(9) the Agreement shall require each state to adopt a uniform policy for certified service providers that:

(a) protects the privacy of consumers; and

(b) maintains the confidentiality of tax information;

(10) the Agreement shall provide for the appointment of an advisory council consisting of:

(a) private sector representatives to consult with in the administration of the Agreement; and

(b) nonmember state representatives to consult with in the administration of the Agreement; and

(11) the Agreement shall adopt provisions regarding seller and third party liability consistent with Section 16.

Section 14. **Cooperating sovereigns.**

(1) The Agreement described in Section 13 is an accord among individual cooperating sovereigns in furtherance of their governmental functions.

(2) The Agreement described in Section 13 provides a mechanism among the states that are members of the Agreement to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under laws adopted by each state that is a member of the Agreement.

Section 15. **Limited binding and beneficial effect.**

(1) (a) If the Legislature authorizes and directs the Utah State Tax Commission to enter into the Agreement described in Section 13, the Agreement binds and inures only to the benefit of this state and other states that are members of the Agreement.

(b) No person, other than a state that is a member of the Agreement, is an intended beneficiary of the Agreement.

(c) Any benefit to a person other than a state is established by the law of this state and the laws of other states that are members of the Agreement and not by the terms of the Agreement.

(2) (a) Consistent with Subsection (1), a person may not have any cause of action or defense:

(i) under the Agreement; or

(ii) by virtue of this state's approval of the Agreement.

(b) A person may not challenge, in any action brought under any provision of law, an action or inaction:

(i) by:

(A) a department;

(B) an agency;

(C) a commission;

(D) an instrumentality of the state other than Subsections (2)(b)(i)(A) through (C); or

(E) a political subdivision of the state; and

(ii) on the ground that the action or inaction is inconsistent with the Agreement.

(c) A law of this state, or the application of a law of this state, may not be declared invalid as to any person or circumstance on the ground that the law or application is inconsistent with the Agreement.

Section 16. **Seller and third party liability.**

(1) In accordance with Section 13, the Legislature may not authorize and direct the Utah State Tax Commission to enter into the Agreement unless the Agreement requires each state to abide by the requirements of Subsections (2) through (5).

(2) (a) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes.

(b) Except as provided in this section, the certified service provider that is the seller's agent is liable for sales and use tax due:

(i) each state that is a member of the Agreement; and

(ii) on all sales or use transactions the certified service provider processes for the seller.

(3) (a) A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller:

(i) misrepresented the type of items the seller sells; or

(ii) committed fraud.

(b) In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider.

(c) A seller is subject to audit for transactions not processed by the certified service provider.

(d) The states that are members of the Agreement acting jointly may:

(i) perform a system check of the seller; and

(ii) review the seller's procedures to determine:

(A) if the certified service provider's system is functioning properly; and

(B) the extent to which the seller's transactions are being processed by the certified service provider.

(4) (a) A person that provides a certified automated system is:

(i) responsible for the proper functioning of that system; and

(ii) liable to the state for underpayments of sales and use tax attributable to errors in the functioning of the certified automated system.

(b) A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting sales and use tax.

(5) A seller that has a proprietary system for determining the amount of sales and use tax due on transactions and has signed an agreement with the Utah State Tax Commission establishing a performance standard for that proprietary system is liable for the failure of the proprietary system to meet the performance standard.

Section 17. **Effective date.**

(1) If approved by two-thirds of all the members elected to each house, the uncodified sections of this act take effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

(2) Sections 59-1-401, 59-12-103, 59-12-103.2, 59-12-107, 59-12-802, 59-12-804, and 59-12-902 take effect on July 1, 2001.

Section 18. **Repeal date.**

The uncodified sections of this act are repealed on June 30, 2003.