

**AMENDMENTS TO TAXES, FEES, OR
CHARGES**

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Chief Sponsor: Wayne A. Harper

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill amends the Revenue and Taxation title, the Repeal Dates part, and enacts uncodified material.

Highlighted Provisions:

This bill:

- ▶ provides legislative intent regarding the implementation of certain provisions enacted during the 2003 General Session, 2004 General Session, and 2004 Third Special Session, relating to taxes, fees, and charges;
- ▶ addresses amnesty for sellers relating to certain taxes, fees, or charges;
- ▶ provides a repeal date for the legislative intent language;
- ▶ requires the Revenue and Taxation Interim Committee and the State Tax Commission to conduct a study; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2005.

This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

59-1-1201, as enacted by Chapter 1, Laws of Utah 2004, Third Special Session

59-12-121, as last amended by Chapter 1, Laws of Utah 2004, Third Special Session

63-55-259, as last amended by Chapter 1, Laws of Utah 2004, Third Special Session

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Section **59-1-1201** is amended to read:

Part 12. Legislative Intent

59-1-1201. Legislative intent.

It is the intent of the Legislature that the amendments, enactments, and repeals made by Chapter 312, Laws of Utah 2003, take effect as provided in Chapter 312, Laws of Utah 2003, and that the amendments, enactments, and repeals made by Chapter 255, Laws of Utah 2004, take effect as provided in Chapter 255, Laws of Utah 2004, except that it is the intent of the Legislature that:

~~[(1) (a) the amendments made by Section 7, Chapter 312, Laws of Utah 2003, and Section 10, Chapter 255, Laws of Utah 2004, providing for the following definitions in Section 59-12-102 take effect on July 1, 2005:]~~

~~[(i) "drug";]~~

~~[(ii) "durable medical equipment";]~~

~~[(iii) "lease";]~~

~~[(iv) "mobility enhancing equipment";]~~

~~[(v) "prosthetic device";]~~

~~[(vi) "purchase price";]~~

~~[(vii) "rental"; and]~~

~~[(viii) "sales price"; and]~~

~~[(b) beginning on July 1, 2004, through June 30, 2005, the following definitions in Section 59-12-102 that were deleted by Section 7, Chapter 312, Laws of Utah 2003, be interpreted to be reinstated:]~~

~~[(i) "home medical equipment and supplies";]~~

~~[(ii) "medicine"; and]~~

~~[(iii) "purchase price";]~~

~~[(2)]~~ (1) (a) the amendments made by Section 9, Chapter 312, Laws of Utah 2003, and Section 11, Chapter 255, Laws of Utah 2004, to Section 59-12-103 take effect on July 1, ~~[2005]~~ 2006, except that beginning on July 1, ~~[2005]~~ 2006, the dollar amount listed in Subsection 59-12-103(7)(b)(ii) in Section 11, Chapter 255, Laws of Utah 2004, shall be changed from \$8,779,673 to \$7,279,673; and

(b) subject to any amendments made to Section 59-12-103 during the 2005 General Session, 2006 General Session, or any special session of the Legislature that occurs on or before June 30, 2006, beginning on July 1, 2004, through June 30, ~~[2005]~~ 2006, Section 59-12-103 shall read as provided in Section 2 ~~[of this bill], Chapter 1, Laws of Utah 2004, Third Special Session;~~

~~[(3) the following amendments take effect on July 1, 2005:]~~

~~[(a) the amendments made by Section 12, Chapter 312, Laws of Utah 2003, to:]~~

~~[(i) Subsection 59-12-104(38) relating to sales or rentals of durable medical equipment or supplies;]~~

~~[(ii) Subsection 59-12-104(55) relating to sales or rentals of mobility enhancing equipment; and]~~

~~[(iii) Subsection 59-12-104(60) relating to sales of a prosthetic device; and]~~

~~[(b) the amendments made by Section 12, Chapter 312, Laws of Utah 2003, and Section 13, Chapter 255, Laws of Utah 2004, to Subsection 59-12-104(10) relating to:]~~

~~[(i) the deletion of the exemption for sales of medicine; and]~~

~~[(ii) the enactment of the exemption for amounts paid for a drug, syringe, or stoma supply;]~~

~~[(4)]~~ (2) the amendments made by Section 14, Chapter 255, Laws of Utah 2004, to the following take effect on July 1, ~~[2005]~~ 2006:

(a) Subsection 59-12-105(2) relating to reporting requirements for a seller that files a simplified electronic return;

(b) Subsection 59-12-105(3)(b) relating to a requirement that a seller that files a simplified electronic return file the report required by Subsection 59-12-105(2) electronically; and

(c) Subsection 59-12-105(5) relating to a penalty imposed on a seller that files a simplified electronic return if the seller fails to report the amounts required by Subsection 59-12-105(2);

~~[(5)(a)]~~ (3) the amendments made by Section 15, Chapter 255, Laws of Utah 2004, to Subsection 59-12-107(5) relating to a tax collected by a seller that files a simplified electronic return take effect on July 1, ~~[2005]~~ 2006; ~~[and]~~

~~[(b) (i) the amendments made by Section 17, Chapter 312, Laws of Utah 2003, to Subsection 59-12-107(8) relating to bad debt take effect on July 1, 2005; and]~~

~~[(ii) beginning on July 1, 2004, through June 30, 2005, Subsection 59-12-107(7) relating to bad debt, which was deleted by Section 17, Chapter 312, Laws of Utah 2003, shall be interpreted to be reinstated;]~~

~~[(6)]~~ (4) the enactment of Section 59-12-107.1 relating to direct payment permits made by Section 18, Chapter 312, Laws of Utah 2003, and the amendments to Section 59-12-107.1 relating to direct payment permits made by Section 16, Chapter 255, Laws of Utah 2004, take effect on July 1, ~~[2005]~~ 2006;

~~[(7)]~~ (5) the enactment of Section 59-12-107.2 relating to certain goods or services concurrently available for use in more than one location made by Section 19, Chapter 312, Laws of Utah 2003, and the amendments to Section 59-12-107.2 relating to certain goods or services concurrently available for use in more than one location made by Section 17, Chapter 255, Laws of Utah 2004, take effect on July 1, ~~[2005]~~ 2006;

~~[(8)]~~ (6) the enactment of Section 59-12-107.3 relating to the collection, remittance, and payment of taxes on direct mail made by Section 20, Chapter 312, Laws of Utah 2003, takes effect on July 1, ~~[2005]~~ 2006;

(7) the enactment of Section 59-12-122, relating to a monetary allowance for a seller registered under the Streamlined Sales and Use Tax Agreement made by Section 23, Chapter

255, Laws of Utah 2004, takes effect on July 1, 2006;

~~[(9)]~~ (8) (a) the amendments made by Section 28, Chapter 312, Laws of Utah 2003, to Section 59-12-204 take effect on July 1, ~~[2005]~~ 2006; and

(b) subject to any amendments made to Section 59-12-204 during the 2005 General Session, 2006 General Session, or any special session of the Legislature that occurs on or before June 30, 2006, beginning on July 1, 2004, through June 30, ~~[2005]~~ 2006, Section 59-12-204 shall read as provided in Section 5 ~~[of this bill]~~, Chapter 1, Laws of Utah 2004, Third Special Session;

~~[(10)]~~ (9) (a) the amendments made by Section 24, Chapter 255, Laws of Utah 2004, to Section 59-12-205 take effect on July 1, ~~[2005]~~ 2006; and

(b) subject to any amendments made to Section 59-12-205 during the 2005 General Session, 2006 General Session, or any special session of the Legislature that occurs on or before June 30, 2006, beginning on July 1, 2004, through June 30, ~~[2005]~~ 2006, Section 59-12-205 shall read as provided in Section 6 ~~[of this bill]~~, Chapter 1, Laws of Utah 2004, Third Special Session;

~~[(11)]~~ (10) (a) the repeal of Section 59-12-207 relating to the reporting and determination of the location of where a transaction is consummated made by Section 68, Chapter 312, Laws of Utah 2003, takes effect on July 1, ~~[2005]~~ 2006; and

(b) subject to any amendments made to Section 59-12-207 during the 2005 General Session, 2006 General Session, or any special session of the Legislature that occurs on or before June 30, 2006, beginning on July 1, 2004, through June 30, ~~[2005]~~ 2006, Section 59-12-207 shall read as provided in Section 7 ~~[of this bill]~~, Chapter 1, Laws of Utah 2004, Third Special Session;

~~[(12)]~~ (11) the enactment of Section 59-12-207.1 relating to determining the location of certain transactions, apportioning certain transactions, and making reports to the State Tax Commission on those transactions made by Section 30, Chapter 312, Laws of Utah 2003, and the amendments to Section 59-12-207.1 relating to determining the location of certain transactions made by Section 25, Chapter 255, Laws of Utah 2004, take effect on July 1, ~~[2005]~~ 2006;

~~[(13)]~~ (12) the enactment of Section 59-12-207.2 relating to determining the location of a transaction involving the sale of a motor vehicle, aircraft, watercraft, modular home, manufactured home, or mobile home made by Section 31, Chapter 312, Laws of Utah 2003,

takes effect on July 1, ~~[2005]~~ 2006;

~~[(14)]~~ (13) the enactment of Section 59-12-207.3 relating to determining the location of a transaction involving the lease or rental of certain tangible personal property made by Section 32, Chapter 312, Laws of Utah 2003, and the amendments to Section 59-12-207.3 relating to determining the location of a transaction involving the lease or rental of certain tangible personal property made by Section 26, Chapter 255, Laws of Utah 2004, take effect on July 1, ~~[2005]~~ 2006; and

~~[(15)]~~ (14) (a) beginning on July 1, 2004, through June 30, ~~[2005]~~ 2006, the following subsections relating to prohibiting a sales and use tax from being imposed on any amounts paid or charged by a vendor lacking certain contacts with the state, which were deleted by Chapter 312, Laws of Utah 2003 or Chapter 255, Laws of Utah 2004, shall be interpreted to be reinstated, except that the term "vendor" shall be interpreted to be changed to "seller" in those subsections:

- (i) Subsection 59-12-401(1)(b)(iv);
- (ii) Subsection 59-12-402(1)(b)(iv);
- (iii) Subsection 59-12-501(1)(a)(ii)(B);
- (iv) Subsection 59-12-502(1)(a)(ii)(B);
- (v) Subsection 59-12-703(1)(a)(ii)(B);
- (vi) Subsection 59-12-802(1)(b)(ii);
- (vii) Subsection 59-12-804(1)(b)(ii);
- (viii) Subsection 59-12-1001(1)(b)(ii);
- (ix) Subsection 59-12-1302(4)(b);
- (x) Subsection 59-12-1402(1)(a)(ii)(C); and
- (xi) Subsection 59-12-1503(1)(b)(ii);

(b) beginning on July 1, 2004, through June 30, ~~[2005]~~ 2006, Subsection 59-12-1102(1)(a)(ii)(B) relating to prohibiting a sales and use tax from being imposed on any amounts paid or charged by a vendor lacking certain contacts with the state unless all of the counties in the state impose a tax under Section 59-12-1102, which was deleted by Section 62, Chapter 312, Laws of Utah 2003, shall be interpreted to be reinstated, except that the term

"vendor" shall be interpreted to be changed to "seller" in that subsection;

(c) the following subsections relating to determining the location of a transaction, which were enacted by Chapter 312, Laws of Utah 2003 or Chapter 255, Laws of Utah 2004, shall take effect on July 1, [~~2005~~] 2006:

- (i) Subsection 59-12-401(1)(c);
- (ii) Subsection 59-12-402(1)(c);
- (iii) Subsection 59-12-501(1)(b);
- (iv) Subsection 59-12-502(1)(b);
- (v) Subsection 59-12-703(1)(b);
- (vi) Subsection 59-12-802(1)(c);
- (vii) Subsection 59-12-804(1)(c);
- (viii) Subsection 59-12-1001(1)(c);
- (ix) Subsection 59-12-1102(1)(b);
- (x) Subsection 59-12-1302(4)(b);
- (xi) Subsection 59-12-1402(1)(b); and
- (xii) Subsection 59-12-1503(1)(c); and

(d) beginning on July 1, 2004, through June 30, [~~2005~~] 2006, the following language shall be interpreted to be added as Subsection 59-12-1102(3)(e): "(e) Notwithstanding Subsections (3)(a) and (b), if a county imposes a tax under this section on any amounts paid or charged by a seller that collects a tax in accordance with Subsection 59-12-107(1)(b), the revenues generated by the tax shall be distributed as provided in Subsection 59-12-103(3)(c).".

Section 2. Section **59-12-121** is amended to read:

59-12-121. Amnesty.

(1) As used in this section, "amnesty" means that a seller is not required to pay the following amounts that the seller would otherwise be required to pay:

- (a) a tax, fee, or charge under:
 - (i) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
 - (ii) Section 19-6-714;

- (iii) Section 19-6-805;
 - (iv) Section 69-2-5.5; or
 - (v) this chapter;
 - (b) a penalty on a tax, fee, or charge described in Subsection (1)(a); or
 - (c) interest on a tax, fee, or charge described in Subsection (1)(a).
- (2) The commission shall grant a seller amnesty under this section if:
- (a) the seller was not licensed under Section 59-12-106 at any time during the 12-month period prior to July 1, [~~2005~~] 2006;
 - (b) the seller obtains a license under Section 59-12-106 within a 12-month period beginning on July 1, [~~2005~~] 2006; and
 - (c) the seller is registered under the agreement within a 12-month period beginning on July 1, [~~2005~~] 2006.
- (3) A seller may not receive amnesty under this section for a tax, fee, or charge:
- (a) collected by the seller;
 - (b) remitted to the commission by the seller;
 - (c) that the seller is required to remit to the commission on the seller's purchases; or
 - (d) arising from a transaction that occurred within a time period that is under audit by the commission if:
 - (i) the seller has received notice of the commencement of an audit prior to obtaining a license under Section 59-12-106; and
 - (ii) (A) the audit described in Subsection (3)(d)(i) has not been completed; or
(B) the seller has not exhausted all administrative and judicial remedies in connection with the audit described in Subsection (3)(d)(i).
- (4) (a) Except as provided in Subsection (4)(b), amnesty granted to a seller by the commission under this section:
- (i) applies to the time period during which a seller was not licensed under Section 59-12-106; and
 - (ii) remains in effect if, for a period of three years, the seller:

(A) remains registered under the agreement;
(B) collects a tax, fee, or charge on a transaction subject to a tax, fee, or charge described in Subsection (1)(a); and

(C) remits to the commission all taxes, fees, or charges described in Subsection (4)(a)(ii).

(b) Notwithstanding Subsection (4)(a), a seller may not be granted amnesty under this section if with respect to a tax, fee, or charge for which the seller would otherwise be granted amnesty under this section, the seller commits:

(i) fraud; or

(ii) an intentional misrepresentation of a material fact.

(5) (a) If a seller does not meet the requirements of Subsection (4)(a)(ii), the commission shall require the seller to pay the amounts described in Subsection (1) that the seller would have otherwise been required to pay.

(b) Notwithstanding Section 59-12-110, and for purposes of requiring a seller to pay an amount described in Subsection (5)(a), the time period for the commission to make an assessment under Section 59-12-110 shall be extended for an additional three years.

Section 3. Section **63-55-259** is amended to read:

63-55-259. Repeal dates, Title 59.

(1) Title 59, Chapter 1, Part 12, Legislative Intent, is repealed July 1, ~~2005~~ 2006.

(2) Section 59-10-530.5, Homeless Trust Account, is repealed July 1, 2007.

Section 4. **Revenue and Taxation Interim Committee and State Tax Commission study.**

(1) During the 2005 interim, the Revenue and Taxation Interim Committee and the State Tax Commission shall conduct a study to make findings and recommendations as to whether the Legislature should enact an earlier effective date for the provisions of this bill that take effect on July 1, 2006, as a result of:

(a) the existence of appropriate software that facilitates the sourcing requirements of the Streamlined Sales and Use Tax Agreement; or

(b) amendments to the Streamlined Sales and Use Tax Agreement that allow businesses

to easily comply with the sourcing requirements of the Streamlined Sales and Use Tax Agreement.

(2) For purposes of studying the existence of appropriate software as required by Subsection (1)(a), the Revenue and Taxation Interim Committee and the State Tax Commission shall study whether software exists that:

(a) is widely available;

(b) is compatible with current computer programs and hardware;

(c) is inexpensive;

(d) is user friendly; and

(e) allows small businesses to collect, source, and remit sales and use taxes in an efficient manner.

(3) If, as a result of the study required by Subsection (1), the Revenue and Taxation Interim Committee and the State Tax Commission recommend that the Legislature should enact an earlier effective date for the provisions of this bill that take effect on July 1, 2006, the Revenue and Taxation Interim Committee and the State Tax Commission shall:

(a) report their findings to the Legislative Management Committee; and

(b) recommend that the Legislative Management Committee request the governor to call a special session of the Legislature to enact an earlier effective date for the provisions of this bill that take effect on July 1, 2006.

Section 5. Effective date.

This bill takes effect on July 1, 2005.

Section 6. Coordinating H.B. 107 with S.B. 127.

If this H.B. 107 and S.B. 127, Tax, Fee, or Charge Amendments, both pass, including any subsequent amendment or substitute to S.B. 127, it is the intent of the Legislature that the Office of Legislative Research and General Counsel in preparing the Utah Code database for publication:

(1) include in the Section 59-12-103 in effect on July 1, 2005 the changes made by S.B. 127 to Section 59-12-103(Effective July 1, 2005);

(2) provide that:

(a) the enactment of Section 59-12-104.3 made by S.B. 127 takes effect on July 1, 2006;

and

(b) beginning on July 1, 2005, through June 30, 2006, Section 59-12-104.3 shall read as follows:

"59-12-104.3. Credit for certain repossessions of a motor vehicle.

(1) Subject to Subsection (2), a seller of a motor vehicle may claim a credit for a tax under this chapter:

(a) that the seller collected; and

(b) on a motor vehicle that:

(i) has been repossessed; and

(ii) that the seller resells.

(2) The amount of the credit allowed by Subsection (1) is equal to the product of:

(a) the portion of the motor vehicle's purchase price that:

(i) was subject to a tax under this chapter; and

(ii) remains unpaid at the time of the repossession of the motor vehicle; and

(b) the tax rate:

(i) (A) for a seller that collects a tax in accordance with Subsection 59-12-107(1)(b), described in Subsection 59-12-103(2)(b)(ii); or

(B) for a seller other than a seller described in Subsection (2)(b)(i)(A), described in Subsection 59-12-103(2)(a);

(ii) imposed on the motor vehicle's purchase price; and

(iii) imposed on the date the motor vehicle was purchased by the person that owns the motor vehicle at the time of the repossession.";

(3) provide that the amendments to Section 59-12-122 made by S.B. 127 take effect on July 1, 2006; and

(4) include in the Section 59-12-205 in effect on July 1, 2005 the changes made by S.B. 127 to Section 59-12-205."

