

**STATE TAX COMMISSION COLLECTION AND
LICENSING PRACTICES**

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill modifies the Revenue and Taxation title to address State Tax Commission collection and licensing practices.

Highlighted Provisions:

This bill:

- ▶ provides that certain penalty provisions apply with respect to:
 - a tax under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
 - a tax under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; and
 - a tax under Title 59, Chapter 12, Sales and Use Tax Act, except for the tax refund for qualified emergency food agencies;
- ▶ requires certain persons to be licensed by the State Tax Commission;
- ▶ provides procedures and requirements for licensing by the State Tax Commission;
- ▶ addresses bonding requirements for certain persons; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 59-1-302, as last amended by Chapter 255, Laws of Utah 2004
- 59-10-406, as last amended by Chapter 94, Laws of Utah 2001
- 59-12-106, as last amended by Chapter 312, Laws of Utah 2003
- 59-12-107, as last amended by Chapter 255, Laws of Utah 2004
- 59-13-209, as last amended by Chapter 1, Laws of Utah 1993, Second Special Session
- 59-13-302, as last amended by Chapter 271, Laws of Utah 1997
- 59-13-303, as last amended by Chapters 7 and 268, Laws of Utah 2003
- 59-13-305, as last amended by Chapter 7, Laws of Utah 2003
- 59-13-308, as last amended by Chapter 271, Laws of Utah 1997

ENACTS:

- 59-10-405.5, Utah Code Annotated 1953
- 59-13-203.1, Utah Code Annotated 1953

REPEALS:

- 59-13-203, as last amended by Chapters 53 and 313, Laws of Utah 1994

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

Section 1. Section 59-1-302 is amended to read:

59-1-302. Penalty for nonpayment of certain taxes -- Jeopardy proceedings.

(1) [~~The provisions of this~~] This section [apply] applies to the following [~~taxes in this title~~]:

- (a) a tax under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- (b) a tax under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax

Act;

[~~(a)~~] (c) a tax under Chapter 10, Part 4, Withholding of Tax;

[~~(b) a tax under Chapter 12, Part 1, Tax Collection;~~]

[~~(c) a tax under Chapter 12, Part 2, Local Sales and Use Tax Act;~~]

[~~(d) a tax under Chapter 12, Part 3, Transient Room Tax;~~]

~~[(e) a tax under Chapter 12, Part 4, Resort Communities Tax;]~~

~~[(f) a tax under Chapter 12, Part 5, Public Transit Tax;]~~

~~[(g) a tax under Chapter 12, Part 6, Tourism, Recreation, Cultural, and Convention Facilities Tax;]~~

(d) (i) except as provided in Subsection (1)(d)(ii), a tax under Chapter 12, Sales and Use Tax Act; and

(ii) notwithstanding Subsection (1)(d)(i), this section does not apply to Chapter 12, Part 9, Sales Tax Refund for Qualified Emergency Food Agencies;

~~[(h)] (e) a tax under Chapter 13, Part 2, Motor Fuel;~~

~~[(i)] (f) a tax under Chapter 13, Part 3, Special Fuel; and~~

~~[(j)] (g) a tax under Chapter 13, Part 4, Aviation Fuel.~~

(2) Any person required to collect, truthfully account for, and pay over any tax listed in Subsection (1) who willfully fails to collect the tax, fails to truthfully account for and pay over the tax, or attempts in any manner to evade or defeat any tax or the payment of the tax, shall be liable for a penalty equal to the total amount of the tax evaded, not collected, not accounted for, or not paid over. This penalty is in addition to other penalties provided by law.

(3) (a) If the commission determines in accordance with Subsection (2) that a person is liable for the penalty, the commission shall notify the taxpayer of the proposed penalty.

(b) The notice of proposed penalty shall:

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

(ii) be mailed by ~~[registered]~~ certified mail~~[- postage prepaid;]~~ to the person's last-known address.

(4) 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).

(5) Any person against whom a penalty has been proposed in accordance with Subsections (2) and (3) may contest the proposed penalty by filing a petition for an adjudicative

proceeding with the commission.

(6) If the commission determines that the collection of the penalty is in jeopardy, nothing in this section may prevent the immediate collection of the penalty in accordance with the procedures and requirements for emergency proceedings in Title 63, Chapter 46b, Administrative Procedures Act.

(7) (a) In any hearing before the commission and in any judicial review of the hearing, the commission and the court shall consider any inference and evidence that a person has willfully failed to collect, truthfully account for, or pay over any tax listed in Subsection (1).

(b) It is prima facie evidence that a person has willfully failed to collect, truthfully account for, or pay over any of the taxes listed in Subsection (1) if the commission or a court finds that the person charged with the responsibility of collecting, accounting for, or paying over the taxes:

(i) made a voluntary, conscious, and intentional decision to prefer other creditors over the state government or utilize the tax money for personal purposes;

(ii) recklessly disregarded obvious or known risks, which resulted in the failure to collect, account for, or pay over the tax; or

(iii) failed to investigate or to correct mismanagement, having notice that the tax was not or is not being collected, accounted for, or paid over as provided by law.

(c) The commission or court need not find a bad motive or specific intent to defraud the government or deprive it of revenue to establish willfulness under this section.

(d) (i) If the commission determines that a person is liable for the penalty under Subsection (2), the commission shall assess the penalty and give notice and demand for payment.

(ii) The notice and demand for payment described in Subsection (7)(d)(i) shall be mailed by [~~registered~~] certified mail[~~, postage prepaid,~~] to the person's last-known address.

Section 2. Section **59-10-405.5** is enacted to read:

59-10-405.5. Definitions -- Withholding tax license requirements -- Penalty -- Application process and requirements -- Fee not required -- Bonds.

(1) As used in this section:

(a) "agent" means a person that:

(i) withholds, reports, or remits any amounts under this part for:

(A) an applicant; or

(B) a licensee; and

(ii) in accordance with an agreement between the person and the applicant or licensee described in Subsection (1)(a)(i), is required to collect, truthfully account for, and pay over an amount under this part for the:

(A) applicant; or

(B) licensee;

(b) "applicant" means a person that:

(i) is required by this section to obtain a license; and

(ii) submits an application:

(A) to the commission; and

(B) for a license under this section;

(c) "application" means an application for a license under this section;

(d) "fiduciary of the applicant" means a person that:

(i) is required to collect, truthfully account for, and pay over an amount under this part for an applicant;

(ii) is not an agent of the applicant described in Subsection (1)(d)(i); and

(iii) (A) is a corporate officer of the applicant described in Subsection (1)(d)(i);

(B) is a director of the applicant described in Subsection (1)(d)(i);

(C) is an employee of the applicant described in Subsection (1)(d)(i);

(D) is a partner of the applicant described in Subsection (1)(d)(i);

(E) is a trustee of the applicant described in Subsection (1)(d)(i); or

(F) has a relationship to the applicant described in Subsection (1)(d)(i) that is similar to a relationship described in Subsections (1)(d)(iii)(A) through (E) as determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(e) "fiduciary of the licensee" means a person that:

(i) is required to collect, truthfully account for, and pay over an amount under this part for a licensee;

(ii) is not an agent of the licensee described in Subsection (1)(e)(i); and

(iii) (A) is a corporate officer of the licensee described in Subsection (1)(e)(i);

(B) is a director of the licensee described in Subsection (1)(e)(i);

(C) is an employee of the licensee described in Subsection (1)(e)(i);

(D) is a partner of the licensee described in Subsection (1)(e)(i);

(E) is a trustee of the licensee described in Subsection (1)(e)(i); or

(F) has a relationship to the licensee described in Subsection (1)(e)(i) that is similar to a relationship described in Subsections (1)(e)(iii)(A) through (E) as determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(f) "license" means a license under this section; and

(g) "licensee" means a person that is licensed under this section by the commission.

(2) The following persons are guilty of a criminal violation as provided in Section 59-1-401:

(a) a person that:

(i) is required to withhold, report, or remit any amounts under this part; and

(ii) engages in business within the state before obtaining a license under this section;

(b) a person that:

(i) pays wages under this part; and

(ii) engages in business within the state before obtaining a license under this section; or

(c) an agent that:

(i) is required to withhold, report, or remit any amounts under this part; and

(ii) takes the action described in Subsection (2)(c)(i) before obtaining a license under this section.

(3) The license described in Subsection (2):

(a) shall be granted and issued:

(i) by the commission in accordance with this section;

(ii) without a license fee; and

(iii) if:

(A) an applicant:

(I) states the applicant's name and address in the application; and

(II) provides other information in the application that the commission may require; and

(B) the person meets the requirements of this section to be granted a license as

determined by the commission;

(b) may not be assigned to another person; and

(c) is valid:

(i) only for the person named on the license; and

(ii) until:

(A) the person described in Subsection (3)(c)(i):

(I) ceases to do business; or

(II) changes that person's business address; or

(B) the commission revokes the license.

(4) The commission shall review an application and determine whether:

(a) the applicant meets the requirements of this section to be issued a license; and

(b) a bond is required to be posted with the commission in accordance with Subsections

(5) and (6) before the applicant may be issued a license.

(5) (a) An applicant shall post a bond with the commission before the commission may issue the applicant a license if:

(i) a license under this section was revoked for a delinquency under this part for:

(A) the applicant;

(B) a fiduciary of the applicant; or

(C) a person for which the applicant or the fiduciary of the applicant is required to

collect, truthfully account for, and pay over an amount under this part; or

(ii) there is a delinquency in withholding, reporting, or remitting any amount under this part for:

(A) an applicant;

(B) a fiduciary of the applicant; or

(C) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over an amount under this part.

(b) If the commission determines it is necessary to ensure compliance with this part, the commission may require a licensee to:

(i) for a licensee that has not posted a bond under this section with the commission, post a bond with the commission in accordance with Subsection (6); or

(ii) for a licensee that has posted a bond under this section with the commission, increase the amount of the bond posted with the commission.

(c) An agent shall post a bond with the commission before the commission may issue the agent a license under this section.

(6) (a) A bond required by Subsection (5) shall be:

(i) executed by:

(A) for an applicant, the applicant as principal, with a corporate surety;

(B) for a licensee, the licensee as principal, with a corporate surety; or

(C) for an agent, the agent as principal, with a corporate surety; and

(ii) payable to the commission conditioned upon the faithful performance of all of the requirements of this part including:

(A) the withholding or remitting of any amount under this part;

(B) the payment of any:

(I) penalty as provided in Section 59-1-401; or

(II) interest as provided in Section 59-1-402; or

(C) any other obligation of the:

(I) applicant under this part;

(II) licensee under this part; or

(III) agent under this part.

(b) Except as provided in Subsection (6)(d), the commission shall calculate the amount

of a bond required by Subsection (5) on the basis of:

(i) commission estimates of:

(A) for an applicant, any amounts the applicant withholds, reports, or remits under this part;

(B) for a licensee, any amounts the licensee withholds, reports, or remits under this part;

or

(C) for an agent, any amounts the agent withholds, reports, or remits under this part; and

(ii) any amount of a delinquency described in Subsection (6)(c).

(c) Except as provided in Subsection (6)(d), for purposes of Subsection (6)(b)(ii):

(i) for an applicant, the amount of the delinquency is the sum of:

(A) the amount of any delinquency that served as a basis for revoking the license under this section of:

(I) the applicant;

(II) a fiduciary of the applicant; or

(III) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over an amount under this part; or

(B) the amount that any of the following owe under this part:

(I) the applicant;

(II) a fiduciary of the applicant; and

(III) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over an amount under this part;

(ii) for a licensee, the amount of the delinquency is the sum of:

(A) the amount of any delinquency that served as a basis for revoking the license under this section of:

(I) the licensee;

(II) a fiduciary of the licensee; or

(III) a person for which the licensee or the fiduciary of the licensee is required to collect, truthfully account for, and pay over an amount under this part; or

(B) the amount that any of the following owe under this part:

(I) the licensee;

(II) a fiduciary of the licensee; and

(III) a person for which the licensee or the fiduciary of the licensee is required to collect, truthfully account for, and pay over an amount under this part; or

(iii) for an agent, the amount of the delinquency is the sum of:

(A) the amount of any delinquency that served as a basis for revoking the agent's license under this section; or

(B) the amount that the agent owes under this part.

(d) Notwithstanding Subsection (6)(b) or (c), a bond required by Subsection (5) may not:

(i) be less than \$50,000; or

(ii) exceed \$500,000.

(7) (a) The commission shall revoke a license under this section if:

(i) a licensee violates any provision of this part; and

(ii) before the commission revokes the license the commission provides the licensee:

(A) reasonable notice; and

(B) a hearing.

(b) If the commission revokes a licensee's license in accordance with Subsection (7)(a), the commission may not issue another license to that licensee until that licensee complies with the requirements of this part, including:

(i) paying any:

(A) amounts due under this part;

(B) penalty as provided in Section 59-1-401; or

(C) interest as provided in Section 59-1-402; and

(ii) posting a bond in accordance with Subsections (5) and (6).

Section 3. Section **59-10-406** is amended to read:

59-10-406. Collection and payment of tax.

(1) (a) Each employer shall, on or before the last day of April, July, October, and

January, pay to the commission the amount required to be deducted and withheld from wages paid to any employee during the preceding calendar quarter under this part.

(b) The commission may change the time or period for making reports and payments if:

(i) in its opinion, the tax is in jeopardy; or

(ii) a different time or period will facilitate the collection and payment of the tax by the employer.

(2) Each employer shall file a return, in a form the commission prescribes, with each payment of the amount deducted and withheld under this part showing:

(a) the total amount of wages paid to his employees;

(b) the amount of federal income tax deducted and withheld;

(c) the amount of tax under this part deducted and withheld; and

(d) any other information the commission may require.

(3) (a) Each employer shall file an annual return, in a form the commission prescribes, summarizing:

(i) the total compensation paid;

(ii) the federal income tax deducted and withheld; and

(iii) the state tax deducted and withheld for each employee during the calendar year.

(b) This return shall be filed with the commission on or before February 28 of the year following that for which the report is made.

(4) (a) Each employer shall also, in accordance with rules prescribed by the commission, provide each employee from whom state income tax has been withheld with a statement of the amounts of total compensation paid and the amounts deducted and withheld for that employee during the preceding calendar year in accordance with this part.

(b) The statement shall be made available to each ~~[entitled]~~ employee described in Subsection (4)(a) on or before January 31 of the year following that for which the report is made.

(5) (a) The employer is liable to the commission for the payment of the tax required to be deducted and withheld under this part. ~~[The]~~

(b) If an employer pays the tax required to be deducted and withheld under this part:

(i) an employee of the employer is not ~~[thereafter]~~ liable for the amount of any ~~[such]~~ payment~~[, nor is]~~ described in Subsection (5)(a); and

(ii) the employer is not liable to any person or to any employee for the amount of any such payment described in Subsection (5)(a).

~~[(b)]~~ (c) For the purpose of making penal provisions of this title applicable, any amount deducted or required to be deducted and remitted to the commission under this part is considered to be the tax of the employer and with respect to such amounts [he] the employer is considered to be the taxpayer.

(6) (a) Each employer ~~[who]~~ that deducts and withholds any amount under this part shall hold the amount in trust for the state ~~[of Utah]~~ for the payment of ~~[it]~~ the amount to the commission in the manner and at the time provided for in this part.

(b) So long as any delinquency continues, the state ~~[of Utah]~~ shall have a lien to secure the payment of any amounts withheld, and not remitted as provided under this section, upon all of the assets of the employer and all property owned or used by the employer in the conduct of ~~[his]~~ the employer's business, including stock-in-trade, business fixtures, and equipment. ~~[This]~~

(c) The lien described in Subsection (6)(b) shall be prior to any lien of any kind, including existing liens for taxes.

~~[(7) As a condition precedent to doing business in Utah, the commission may require an employer to post with it a corporate bond in an amount reasonably calculated to ensure the payment to the state of taxes deducted and withheld from wages, but not to exceed \$5,000.]~~

~~[(8)]~~ (7) To the extent consistent with this section, the commission may use all the provisions of this chapter relating to records, penalties, interest, deficiencies, redetermination of deficiencies, overpayments, refunds, assessments, and venue to enforce this section.

~~[(9)]~~ (8) For all ~~[tax]~~ taxable years beginning on or after January 1, 2001, an employer that is required to file a federal Form W-2 in an electronic format with the Federal Department of the Treasury Internal Revenue Service shall file each Form W-2 that is required to be filed with the commission in an electronic format approved by the commission.

Section 4. Section **59-12-106** is amended to read:

59-12-106. Definitions -- Sales and use tax license requirements -- Penalty -- Application process and requirements -- No fee -- Bonds -- Presumption of taxability -- Exemption certificates -- Exemption certificate license number to accompany contract bids.

(1) As used in this section:

(a) "agent" means a person that:

(i) remits a tax under this chapter for:

(A) an applicant; or

(B) a licensee; and

(ii) in accordance with an agreement between the person and the applicant or licensee described in Subsection (1)(a)(i), is required to collect, truthfully account for, and pay over a tax under this chapter for the:

(A) applicant; or

(B) licensee;

(b) "applicant" means a person that:

(i) is required by this section to obtain a license; and

(ii) submits an application:

(A) to the commission; and

(B) for a license under this section;

(c) "application" means an application for a license under this section;

(d) "fiduciary of the applicant" means a person that:

(i) is required to collect, truthfully account for, and pay over a tax under this chapter for an applicant;

(ii) is not an agent of the applicant described in Subsection (1)(d)(i); and

(iii) (A) is a corporate officer of the applicant described in Subsection (1)(d)(i);

(B) is a director of the applicant described in Subsection (1)(d)(i);

(C) is an employee of the applicant described in Subsection (1)(d)(i);

(D) is a partner of the applicant described in Subsection (1)(d)(i);

(E) is a trustee of the applicant described in Subsection (1)(d)(i); or

(F) has a relationship to the applicant described in Subsection (1)(d)(i) that is similar to a relationship described in Subsections (1)(d)(iii)(A) through (E) as determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(e) "fiduciary of the licensee" means a person that:

(i) is required to collect, truthfully account for, and pay over a tax under this chapter for a licensee;

(ii) is not an agent of the licensee described in Subsection (1)(e)(i); and

(iii) (A) is a corporate officer of the licensee described in Subsection (1)(e)(i);

(B) is a director of the licensee described in Subsection (1)(e)(i);

(C) is an employee of the licensee described in Subsection (1)(e)(i);

(D) is a partner of the licensee described in Subsection (1)(e)(i);

(E) is a trustee of the licensee described in Subsection (1)(e)(i); or

(F) has a relationship to the licensee described in Subsection (1)(e)(i) that is similar to a relationship described in Subsections (1)(e)(iii)(A) through (E) as determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(f) "license" means a license under this section; and

(g) "licensee" means a person that is licensed under this section by the commission.

[+] (2) (a) It is unlawful for any person required to collect a tax under this chapter to engage in business within the state without first having obtained a license to do so.

(b) The license described in Subsection [+] (2)(a):

(i) shall be granted and issued by the commission;

(ii) is not assignable;

(iii) is valid only for the person in whose name the license is issued;

(iv) is valid until:

(A) the person described in Subsection [+] (2)(b)(iii):

(I) ceases to do business; or

(II) changes that person's business address; or

(B) the license is revoked by the commission; and

(v) subject to Subsection (2)(d), shall be granted by the commission only upon an application that:

- (A) states the name and address of the applicant; and
- (B) provides other information the commission may require.

(c) At the time [~~a person~~] an applicant makes an application under Subsection [~~(2)~~](2)(b)(v), the commission shall notify the applicant of the responsibilities and liability of a business owner successor under Section 59-12-112.

(d) The commission shall review an application and determine whether the applicant:

- (i) meets the requirements of this section to be issued a license; and
- (ii) is required to post a bond with the commission in accordance with Subsections (2)(e)

and (f) before the applicant may be issued a license.

(e) (i) An applicant shall post a bond with the commission before the commission may issue the applicant a license if:

(A) a license under this section was revoked for a delinquency under this chapter for:

- (I) the applicant;
- (II) a fiduciary of the applicant; or

(III) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over a tax under this chapter; or

(B) there is a delinquency in paying a tax under this chapter for:

- (I) the applicant;
- (II) a fiduciary of the applicant; or

(III) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over a tax under this chapter.

(ii) If the commission determines it is necessary to ensure compliance with this chapter, the commission may require a licensee to:

(A) for a licensee that has not posted a bond under this section with the commission, post a bond with the commission in accordance with Subsection (2)(f); or

(B) for a licensee that has posted a bond under this section with the commission, increase

the amount of the bond posted with the commission.

(f) (i) A bond required by Subsection (2)(e) shall be:

(A) executed by:

(I) for an applicant, the applicant as principal, with a corporate surety; or

(II) for a licensee, the licensee as principal, with a corporate surety; and

(B) payable to the commission conditioned upon the faithful performance of all of the

requirements of this chapter including:

(I) the payment of any tax under this chapter;

(II) the payment of any:

(Aa) penalty as provided in Section 59-1-401; or

(Bb) interest as provided in Section 59-1-402; or

(III) any other obligation of the:

(Aa) applicant under this chapter; or

(Bb) licensee under this chapter.

(ii) Except as provided in Subsection (2)(f)(iv), the commission shall calculate the amount of a bond required by Subsection (2)(e) on the basis of:

(A) commission estimates of:

(I) an applicant's tax liability under this chapter; or

(II) a licensee's tax liability under this chapter; and

(B) any amount of a delinquency described in Subsection (2)(f)(iii).

(iii) Except as provided in Subsection (2)(f)(iv), for purposes of Subsection (2)(f)(ii)(B):

(A) for an applicant, the amount of the delinquency is the sum of:

(I) the amount of any delinquency that served as a basis for revoking the license under

this section of:

(Aa) the applicant;

(Bb) a fiduciary of the applicant; or

(Cc) a person for which the applicant or the fiduciary of the applicant is required to

collect, truthfully account for, and pay over a tax under this chapter; or

(II) the amount of tax that any of the following owe under this chapter:

(Aa) the applicant;

(Bb) a fiduciary of the applicant; and

(Cc) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over a tax under this chapter; or

(B) for a licensee, the amount of the delinquency is the sum of:

(I) the amount of any delinquency that served as a basis for revoking the license under this section of:

(Aa) the licensee;

(Bb) a fiduciary of the licensee; or

(Cc) a person for which the licensee or the fiduciary of the licensee is required to collect, truthfully account for, and pay over a tax under this chapter; or

(II) the amount of tax that any of the following owe under this chapter:

(Aa) the licensee;

(Bb) a fiduciary of the licensee; and

(Cc) a person for which the licensee or the fiduciary of the licensee is required to collect, truthfully account for, and pay over a tax under this chapter.

(iv) Notwithstanding Subsection (2)(f)(ii) or (2)(f)(iii), a bond required by Subsection (2)(e) may not:

(A) be less than \$50,000; or

(B) exceed \$500,000.

~~(g)~~ (g) If business is transacted at two or more separate places by one person, a separate license for each place of business is required.

~~(h)~~ (h) (i) The commission shall, on a reasonable notice and after a hearing, revoke the license of any ~~person~~ licensee violating any provisions of this chapter.

(ii) A license may not be issued to a ~~person~~ licensee described in Subsection ~~(1)(e)(i)~~ (2)(h)(i) until the ~~person~~ licensee has complied with the requirements of this chapter~~[-]~~.

including:

(A) paying any:

(I) tax due under this chapter;

(II) penalty as provided in Section 59-1-401; or

(III) interest as provided in Section 59-1-402; and

(B) posting a bond in accordance with Subsections (2)(e) and (f).

~~[(f)]~~ (i) Any person required to collect a tax under this chapter within this state without having secured a license to do so is guilty of a criminal violation as provided in Section 59-1-401.

~~[(g)]~~ (j) A license:

(i) is not required for any person engaged exclusively in the business of selling commodities that are exempt from taxation under this chapter; and

(ii) shall be issued to the person by the commission without a license fee.

~~[(2)]~~ (3) (a) For the purpose of the proper administration of this chapter and to prevent evasion of the tax and the duty to collect the tax, it shall be presumed that tangible personal property or any other taxable transaction under Subsection 59-12-103(1) sold by any person for delivery in this state is sold for storage, use, or other consumption in this state unless the person selling the property, item, or service has taken from the purchaser an exemption certificate:

(i) bearing the name and address of the purchaser; and

(ii) providing that the property, item, or service was exempted under Section 59-12-104.

(b) An exemption certificate described in Subsection ~~[(2)]~~ (3)(a):

(i) shall contain information as prescribed by the commission; and

(ii) if a paper exemption certificate is used, shall be signed by the purchaser.

(c) Except as provided in Subsection ~~[(2)]~~ (3)(d), a seller that has taken an exemption certificate from a purchaser in accordance with this Subsection ~~[(2)]~~ (3) with respect to a transaction is not liable to collect a tax under this chapter:

(i) on that transaction; and

(ii) if the commission or a court of competent jurisdiction subsequently determines that the purchaser improperly claimed the exemption.

(d) Notwithstanding Subsection [~~(2)~~] (3)(c), Subsection [~~(2)~~] (3)(c) does not apply to a seller that:

- (i) fraudulently fails to collect a tax under this chapter; or
- (ii) solicits a purchaser to participate in improperly claiming an exemption from a tax under this chapter.

[~~(3)~~] (4) A person filing a contract bid with the state or a political subdivision of the state for the sale of tangible personal property or any other taxable transaction under Subsection 59-12-103(1) shall include with the bid the number of the license issued to that person under Subsection [~~(1)~~] (2).

Section 5. Section **59-12-107** is amended to read:

59-12-107. Collection, remittance, and payment of tax by sellers or other persons -- Collection of tax by a seller registered under the agreement may not be used as a factor in determining whether the seller is required to pay certain taxes, fees, or charges -- Returns -- Direct payment by purchaser of vehicle -- Other liability for collection -- Rulemaking authority -- Credits -- Treatment of bad debt -- Penalties.

(1) (a) Except as provided in Subsection (1)(e) or Sections 59-12-107.1 through 59-12-107.4 and subject to Subsection (1)(f), each seller shall pay or collect and remit the sales and use taxes imposed by this chapter if within this state the seller:

- (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 seller'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~~ Subsection (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) A seller that does not meet one or more of the criteria provided for in Subsection (1)(a):

- (i) except as provided in Subsection (1)(b)(ii), may voluntarily:
 - (A) collect a tax 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 on a transaction described in

Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to collect the tax.

(c) The collection and remittance of a tax under this chapter by a seller that is registered under the agreement may not be used as a factor in determining whether that seller is required by Subsection (1)(a) to:

- (i) pay a tax, fee, or charge under:
 - (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
 - (B) Section 19-6-716;
 - (C) Section 19-6-805;
 - (D) Section 69-2-5.5; or
 - (E) this title; or

(ii) collect and remit a tax, fee, or charge under:

(A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

(B) Section 19-6-716;

(C) Section 19-6-805;

(D) Section 69-2-5.5; or

(E) this title.

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

(i) the seller did not collect a 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.

(e) Notwithstanding 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.

(f) (i) As used in this Subsection (1)(f):

(A) "affiliated group" is as defined in Section 59-7-101, except that "affiliated group" includes a corporation that is qualified to do business but is not otherwise doing business in this state;

(B) "common ownership" is as defined in Section 59-7-101;

(C) "related seller" means a seller that:

(I) is not required to pay or collect and remit sales and use taxes under Subsection (1)(a) or Section 59-12-103.1;

(II) is:

(Aa) related to a seller that is required to pay or collect and remit sales and use taxes under Subsection (1)(a) as part of an affiliated group or because of common ownership; or

(Bb) a limited liability company owned by the parent corporation of an affiliated group if that parent corporation of the affiliated group is required to pay or collect and remit sales and use taxes under Subsection (1)(a); and

(III) does not voluntarily collect and remit a tax under Subsection (1)(b)(i).

(ii) A seller is not required to pay or collect and remit sales and use taxes under Subsection (1)(a):

(A) if the seller is a related seller;

(B) if the seller to which the related seller is related does not engage in any of the following activities on behalf of the related seller:

(I) advertising;

(II) marketing;

(III) sales; or

(IV) other services; and

(C) if the seller to which the related seller is related accepts the return of an item sold by the related seller, the seller to which the related seller is related accepts the return of that item:

(I) sold by a seller that is not a related seller; and

(II) on the same terms as the return of an item sold by that seller to which the related seller is related.

(2) (a) Except as provided in Sections 59-12-107.1 through 59-12-107.4, a tax under this chapter shall be collected from a purchaser.

(b) A seller 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 seller shall:

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

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

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

(d) A seller 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 seller 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 seller, 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 chapter, the seller shall remit to the commission the full amount of the tax imposed under this chapter, plus any excess.

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

(3) (a) Except as provided in Subsections (4) through (6) 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 seller 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 seller 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) (i) Except as provided in Subsections (3)(c)(ii) and (4)(b)(i)(C), each return shall contain information and be in a form the commission prescribes by rule.

(ii) Notwithstanding Subsection (3)(c)(i), a seller described in Subsection (1)(b) that is registered under the agreement shall file a return required by this section electronically.

(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 and purchases for storage, use, or other consumption in this state made during the period, including both by cash and by charge.

(f) (i) Subject to Subsection (3)(f)(ii) and in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may by rule extend the time for making returns and paying the taxes.

(ii) An extension under Subsection (3)(f)(i) may not 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 the commission considers it necessary in order to ensure the payment of the tax imposed by this chapter.

(4) (a) (i) Notwithstanding Subsection (3) and except as provided in Subsection (4)(a)(ii), a tax collected in accordance with Subsection (1)(b) by a seller described in Subsection (4)(d) shall be due and payable:

(A) to the commission;

(B) annually; and

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

(ii) Notwithstanding Subsection (4)(a)(i), the commission may require that a tax collected in accordance with Subsection (1)(b) by a seller described in Subsection (4)(d) be due and payable:

(A) to the commission; and

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

(b) (i) A tax remitted to the commission under Subsection (4)(a) shall be accompanied by a return that:

(A) contains information prescribed by the commission;

(B) is in a form prescribed by the commission; and

(C) notwithstanding Subsection (3)(c)(i), is filed electronically as required by Subsection

(3)(c)(ii).

(ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules prescribing:

(A) the information required to be contained in a return described in Subsection (4)(b)(i);

and

(B) the form of the return described in Subsection (4)(b)(i).

(c) The tax collected in accordance with this Subsection (4) calculated in the return described in Subsection (4)(b) shall be calculated on the basis of the total amount of taxable transactions described in Subsection 59-12-103(1) conducted by a seller described in Subsection (4)(d), including:

(i) a cash transaction; and

(ii) a charge transaction.

(d) This Subsection (4) applies to a seller that is:

(i) registered under the agreement;

(ii) described in Subsection (1)(b); and

(iii) not a:

(A) model 1 seller;

(B) model 2 seller; or

(C) model 3 seller.

(5) (a) Notwithstanding Subsection (3) and except as provided in Subsection (5)(b), a tax collected in accordance with this chapter by a seller that files a simplified electronic return shall be due and payable:

(i) monthly on or before the last day of the month immediately following the month for which the seller collects a tax under this chapter; and

(ii) for the month for which the seller collects a tax under this chapter.

(b) Notwithstanding Subsection (5)(a), a tax collected in accordance with Subsection (1)(b) by a seller described in Subsection (4)(d) that files a simplified electronic return, shall be due and payable as provided in Subsection (4)(a).

(6) (a) Notwithstanding Subsection (3), 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.

(b) The commission shall collect the tax described in Subsection (6)(a) when the vehicle is titled or registered.

(7) 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 and the retailer is responsible for the collection or payment of the tax imposed on the sale if:

(a) the retailer represents that the personal property is purchased by the retailer for resale; and

(b) the personal property is not subsequently resold.

(8) 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 and the person prepaying the sales or use tax is 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.

(9) (a) For purposes of this Subsection (9):

(i) Except as provided in Subsection (9)(a)(ii), "bad debt" is as defined in Section 166, Internal Revenue Code.

(ii) Notwithstanding Subsection (9)(a)(i), "bad debt" does not include:

(A) an amount included in the purchase price of tangible personal property or a service that is:

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

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

- (B) a financing charge;
 - (C) interest;
 - (D) a tax imposed under this chapter on the purchase price of tangible personal property or a service;
 - (E) an uncollectible amount on tangible personal property that:
 - (I) is subject to a tax under this chapter; and
 - (II) remains in the possession of a seller until the full purchase price is paid;
 - (F) an expense incurred in attempting to collect any debt; or
 - (G) an amount that a seller does not collect on repossessed property.
- (b) A seller may deduct bad debt from the total amount from which a tax under this chapter is calculated on a return.
- (c) A seller may file a refund claim with the commission if:
- (i) the amount of bad debt for the time period described in Subsection (9)(e) exceeds the amount of the seller's sales that are subject to a tax under this chapter for that same time period; and
 - (ii) as provided in Section 59-12-110.
- (d) A bad debt deduction under this section may not include interest.
- (e) A bad debt may be deducted under this Subsection (9) on a return for the time period during which the bad debt:
- (i) is written off as uncollectible in the seller's books and records; and
 - (ii) would be eligible for a bad debt deduction:
 - (A) for federal income tax purposes; and
 - (B) if the seller were required to file a federal income tax return.
 - (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or claims a refund under this Subsection (9), the seller shall report and remit a tax under this chapter:
 - (i) on the portion of the bad debt the seller recovers; and
 - (ii) on a return filed for the time period for which the portion of the bad debt is

recovered.

(g) For purposes of reporting a recovery of a portion of bad debt under Subsection (9)(f), a seller shall apply amounts received on the bad debt in the following order:

(i) in a proportional amount:

(A) to the purchase price of the tangible personal property or service; and

(B) to the tax due under this chapter on the tangible personal property or service; and

(ii) to:

(A) interest charges;

(B) service charges; and

(C) other charges.

(h) A seller's certified service provider may make a deduction or claim a refund for bad debt on behalf of the seller:

(i) in accordance with this Subsection (9); and

(ii) if the certified service provider credits or refunds the full amount of the bad debt deduction or refund to the seller.

(i) A bad debt may be allocated among the states that are members of the agreement if a seller's books and records support that allocation.

~~[(10)(a) The commission may require any person subject to the tax imposed under this chapter to deposit with the commission 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 (10)(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.]~~

~~[(H)]~~ (10) (a) A seller 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 seller, 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 6. Section **59-13-203.1** is enacted to read:

59-13-203.1. Definitions -- License requirements -- Penalty -- Application process and requirements -- Fee not required -- Bonds.

(1) As used in this section:

(a) "agent" means a person that:

(i) remits a tax under this part for:

(A) an applicant; or

(B) a licensee; and

(ii) in accordance with an agreement between the person and the applicant or licensee described in Subsection (1)(a)(i), is required to collect, truthfully account for, and pay over a tax under this part for the:

(A) applicant; or

(B) licensee;

(b) "applicant" means a person that:

(i) is required by this section to obtain a license; and

(ii) submits an application:

(A) to the commission; and

(B) for a license under this section;

(c) "application" means an application for a license under this section;

(d) "fiduciary of the applicant" means a person that:

(i) is required to collect, truthfully account for, and pay over a tax under this part for an applicant;

(ii) is not an agent of the applicant described in Subsection (1)(d)(i); and

(iii) (A) is a corporate officer of the applicant described in Subsection (1)(d)(i);

(B) is a director of the applicant described in Subsection (1)(d)(i);

(C) is an employee of the applicant described in Subsection (1)(d)(i);

(D) is a partner of the applicant described in Subsection (1)(d)(i);

(E) is a trustee of the applicant described in Subsection (1)(d)(i); or

(F) has a relationship to the applicant described in Subsection (1)(d)(i) that is similar to a relationship described in Subsections (1)(d)(iii)(A) through (E) as determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(e) "fiduciary of the licensee" means a person that:

(i) is required to collect, truthfully account for, and pay over a tax under this part for a licensee;

(ii) is not an agent of the licensee described in Subsection (1)(e)(i); and

(iii) (A) is a corporate officer of the licensee described in Subsection (1)(e)(i);

(B) is a director of the licensee described in Subsection (1)(e)(i);

(C) is an employee of the licensee described in Subsection (1)(e)(i);

(D) is a partner of the licensee described in Subsection (1)(e)(i);

(E) is a trustee of the licensee described in Subsection (1)(e)(i); or

(F) has a relationship to the licensee described in Subsection (1)(e)(i) that is similar to a relationship described in Subsections (1)(e)(iii)(A) through (E) as determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(f) "license" means a license under this section; and

(g) "licensee" means a person that is licensed under this section by the commission.

(2) A person that is required to collect a tax under this part is guilty of a criminal violation as provided in Section 59-1-401 if before obtaining a license under this section that person engages in business within the state.

(3) The license described in Subsection (2):

(a) shall be granted and issued:

(i) by the commission in accordance with this section;

(ii) without a license fee; and

(iii) if:

(A) an applicant:

(I) states the applicant's name and address in the application; and

(II) provides other information in the application that the commission may require; and

(B) the person meets the requirements of this section to be granted a license as determined by the commission;

(b) may not be assigned to another person; and

(c) is valid:

(i) only for the person named on the license; and

(ii) until:

(A) the person described in Subsection (3)(c)(i):

(I) ceases to do business; or

(II) changes that person's business address; or

(B) the commission revokes the license.

(4) The commission shall review an application and determine whether the applicant meets the requirements of this section to be issued a license.

(5) (a) An applicant shall post a bond with the commission before the commission may issue the applicant a license.

(b) If the commission determines it is necessary to ensure compliance with this part, the commission may require a licensee to increase the amount of a bond posted with the commission.

(c) A bond under this Subsection (5) shall be:

(i) executed by:

(A) for an applicant, the applicant as principal, with a corporate surety; or

(B) for a licensee, the licensee as principal, with a corporate surety; and

(ii) payable to the commission conditioned upon the faithful performance of all of the requirements of this part including:

(A) the payment of all taxes under this part;

(B) the payment of any:

(I) penalty as provided in Section 59-1-401; or

(II) interest as provided in Section 59-1-402; or

(C) any other obligation of the:

(I) applicant under this part; or

(II) licensee under this part.

(d) Except as provided in Subsection (5)(f), the commission shall calculate the amount of a bond under this Subsection (5) on the basis of:

(i) commission estimates of:

(A) an applicant's tax liability under this part; or

(B) a licensee's tax liability under this part; and

(ii) the amount of a delinquency described in Subsection (5)(e) if:

(A) a license under this section was revoked for a delinquency under this part for:

(I) (Aa) an applicant; or

(Bb) a licensee;

(II) a fiduciary of the:

(Aa) applicant; or

(Bb) licensee; or

(III) a person for which the applicant, licensee, fiduciary of the applicant, or fiduciary of the licensee is required to collect, truthfully account for, and pay over a tax under this part; or

(B) there is a delinquency in paying a tax under this part for:

(I) (Aa) an applicant; or

(Bb) a licensee;

(II) a fiduciary of the:

(Aa) applicant; or

(Bb) licensee; or

(III) a person for which the applicant, licensee, fiduciary of the applicant, or fiduciary of the licensee is required to collect, truthfully account for, and pay over a tax under this part.

(e) Except as provided in Subsection (5)(f), for purposes of Subsection (5)(d)(ii):

(i) for an applicant, the amount of the delinquency is the sum of:

(A) the amount of any delinquency that served as a basis for revoking the license under this section of:

(I) the applicant;

(II) a fiduciary of the applicant; or

(III) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over a tax under this part; or

(B) the amount of tax that any of the following owe under this part:

(I) the applicant;

(II) a fiduciary of the applicant; and

(III) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over a tax under this part; or

(ii) for a licensee, the amount of the delinquency is the sum of:

(A) the amount of any delinquency that served as a basis for revoking the license under this section of:

(I) the licensee;

(II) a fiduciary of the licensee; or

(III) a person for which the licensee or the fiduciary of the licensee is required to collect, truthfully account for, and pay over a tax under this part; or

(B) the amount of tax that any of the following owe under this part:

(I) the licensee;

(II) a fiduciary of the licensee; and

(III) a person for which the licensee or the fiduciary of the licensee is required to collect, truthfully account for, and pay over a tax under this part.

(f) Notwithstanding Subsection (5)(d) or (e), a bond required by this Subsection (5) may not:

(i) be less than \$50,000; or

(ii) exceed \$500,000.

(6) (a) The commission shall revoke a license under this section if:

(i) a licensee violates any provision of this part; and

(ii) before the commission revokes the license the commission provides the licensee:

(A) reasonable notice; and

(B) a hearing.

(b) If the commission revokes a licensee's license in accordance with Subsection (6)(a), the commission may not issue another license to that licensee until that licensee complies with the requirements of this part, including:

(i) paying any:

(A) tax due under this part;

(B) penalty as provided in Section 59-1-401; or

(C) interest as provided in Section 59-1-402; and

(ii) posting a bond in accordance with Subsection (5).

Section 7. Section **59-13-209** is amended to read:

59-13-209. Due date -- Delinquency -- Penalties -- Interest.

(1) The motor fuel tax is due and payable by the distributor on or before the last day of each month to the commission for the number of gallons of motor fuel sold, used, or received for sale or use by the distributor during the preceding calendar month. The commission shall receipt the distributor for taxes paid and shall promptly deposit all revenue with the state treasurer.

(2) If any distributor fails or refuses to pay any tax when it becomes due and payable, the tax is delinquent. If a distributor is delinquent in tax payments, the commission shall ~~revoke the~~

distributor's license and] impose a penalty as provided under Section 59-1-401. The amount of the tax shall bear interest at the rate and in the manner prescribed in Section 59-1-402.

(3) No report or payment of tax is considered delinquent if the envelope in which the report or remittance is enclosed bears a post office cancellation mark dated on or before the date on which the report or payment was due. The commission, upon receipt of the report or remittance, shall treat the report or payment as if it had been received on the date it was due.

(4) If any part of the tax due is deficient or delinquent because of negligence or disregard of this part, or in the case of false or fraudulent monthly reports, or intent to evade the tax, a penalty shall be added to the tax due as provided in Section 59-1-401.

(5) A tax due and unpaid under this part constitutes a debt due the state and may be collected, together with interest, penalty, and costs, by appropriate judicial proceeding. This remedy is in addition to all other remedies. If the tax imposed by this part is not paid when it is due, collection may be made as provided in Sections 59-7-526 and 59-7-527.

~~[(6) No license may be issued to any distributor who has permitted any tax levied and imposed by this part to become delinquent until the tax, penalty, and interest have been fully paid.]~~

Section 8. Section **59-13-302** is amended to read:

59-13-302. Definitions -- License requirements -- Penalty -- Application process and requirements -- Fee not required -- Bonds -- Discontinuance of business -- Liens upon property.

~~[(1) Each supplier of diesel fuel shall first obtain from the commission a supplier's license and shall pay a license fee determined by the commission pursuant to Section 63-38-3.2. The license shall be valid until the holder of the license ceases to act as a supplier, unless the commission has reasonable cause to terminate the license at an earlier date. The license issued by the commission is not assignable and is valid only for the supplier in whose name it is issued.]~~

~~[(2) The supplier license application shall state:]~~

~~[(a) the places of business and locations from which delivery or removal are made;]~~

~~[(b) the name and address of the managing agent; and]~~

~~[(c) the names and addresses of the persons constituting the firm, association, or partnership, if a firm, association, or partnership, and if a corporation, the corporate name under which it is authorized to transact business and the names and addresses of its principal officers, resident general agent, and attorney in fact.]~~

~~[(3) (a) (i) A supplier may not be granted a license until the commission is furnished a bond in an amount two times the estimated monthly tax not to exceed \$100,000, but no less than \$35,000, in a form prescribed by the commission.]~~

~~[(ii) The bond shall be executed by the applicant as principal, with a corporate surety, and shall be payable to the commission conditioned upon the faithful performance of all the requirements of this part, including the payment of all taxes, penalties, interest, and other obligations of the applicant arising under this part and under Section 59-1-401.]~~

~~[(b) (i) In lieu of the bond, the applicant may deposit with the commission, under terms and conditions prescribed by the commission, either a like amount of lawful money of the United States or bonds or other obligations satisfactory to the commission and which shall, at all times, be of an actual market value not less than the amount fixed by the commission.]~~

~~[(ii) Any license obtained by depositing bonds or other obligations shall automatically be revoked upon the failure of the holder, within 15 days after written notice from the commission, to deposit the additional bonds or other securities sufficient to offset any diminution of the actual market value of the deposited bonds or other obligations.]~~

~~[(4) (a) The commission may cancel the license of a supplier and notify that supplier of the cancellation if that supplier:]~~

~~[(i) files a false monthly report of the data or information required by this part;]~~

~~[(ii) fails, refuses, or neglects to file the monthly report as required by this part;]~~

~~[(iii) fails to pay the full amount of the tax as required by this part; or]~~

~~[(iv) fails to keep accurate records of quantities of fuel received, produced, refined, manufactured, compounded, or used in this state.]~~

~~[(b) The commission may also cancel any license issued to any supplier upon the written request of the supplier.]~~

(1) As used in this section:

(a) "agent" means a person that:

(i) remits any amounts under this part for:

(A) an applicant; or

(B) a licensee; and

(ii) in accordance with an agreement between the person and the applicant or licensee described in Subsection (1)(a)(i), is required to collect, truthfully account for, and pay over an amount under this part for the:

(A) applicant; or

(B) licensee;

(b) "applicant" means a person that:

(i) is required by this section to obtain a license; and

(ii) submits an application:

(A) to the commission; and

(B) for a license under this section;

(c) "application" means an application for a license under this section;

(d) "fiduciary of the applicant" means a person that:

(i) is required to collect, truthfully account for, and pay over an amount under this part for an applicant;

(ii) is not an agent of the applicant described in Subsection (1)(d)(i); and

(iii) (A) is a corporate officer of the applicant described in Subsection (1)(d)(i);

(B) is a director of the applicant described in Subsection (1)(d)(i);

(C) is an employee of the applicant described in Subsection (1)(d)(i);

(D) is a partner of the applicant described in Subsection (1)(d)(i);

(E) is a trustee of the applicant described in Subsection (1)(d)(i); or

(F) has a relationship to the applicant described in Subsection (1)(d)(i) that is similar to a relationship described in Subsections (1)(d)(iii)(A) through (E) as determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(e) "fiduciary of the licensee" means a person that:

(i) is required to collect, truthfully account for, and pay over an amount under this part for a licensee;

(ii) is not an agent of the licensee described in Subsection (1)(e)(i); and

(iii) (A) is a corporate officer of the licensee described in Subsection (1)(e)(i);

(B) is a director of the licensee described in Subsection (1)(e)(i);

(C) is an employee of the licensee described in Subsection (1)(e)(i);

(D) is a partner of the licensee described in Subsection (1)(e)(i);

(E) is a trustee of the licensee described in Subsection (1)(e)(i); or

(F) has a relationship to the licensee described in Subsection (1)(e)(i) that is similar to a relationship described in Subsections (1)(e)(iii)(A) through (E) as determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(f) "license" means a license under this section; and

(g) "licensee" means a person that is licensed under this section by the commission.

(2) A person that is required to collect an amount under this part is guilty of a criminal violation as provided in Section 59-1-401 if before obtaining a license under this section that person engages in business within the state.

(3) The license described in Subsection (2):

(a) shall be granted and issued:

(i) by the commission in accordance with this section;

(ii) without a license fee; and

(iii) if:

(A) an applicant:

(I) states the applicant's name and address in the application; and

(II) provides other information in the application that the commission may require; and

(B) the person meets the requirements of this section to be granted a license as determined by the commission;

(b) may not be assigned to another person; and

(c) is valid:

(i) only for the person named on the license; and

(ii) until:

(A) the person described in Subsection (3)(c)(i):

(I) ceases to do business; or

(II) changes that person's business address; or

(B) the commission revokes the license.

(4) The commission shall review an application and determine whether the applicant meets the requirements of this section to be issued a license.

(5) (a) An applicant shall post a bond with the commission before the commission may issue the applicant a license.

(b) If the commission determines it is necessary to ensure compliance with this part, the commission may require a licensee to increase the amount of a bond posted with the commission.

(c) A bond under this Subsection (5) shall be:

(i) executed by:

(A) for an applicant, the applicant as principal, with a corporate surety; or

(B) for a licensee, the licensee as principal, with a corporate surety; and

(ii) payable to the commission conditioned upon the faithful performance of all of the requirements of this part including:

(A) the payment of all amounts under this part;

(B) the payment of any:

(I) penalty as provided in Section 59-1-401; or

(II) interest as provided in Section 59-1-402; or

(C) any other obligation of the:

(I) applicant under this part; or

(II) licensee under this part.

(d) Except as provided in Subsection (5)(f), the commission shall calculate the amount of a bond under this Subsection (5) on the basis of:

(i) commission estimates of:

(A) an applicant's liability for any amount under this part; or

(B) a licensee's liability for any amount under this part; and

(ii) the amount of a delinquency described in Subsection (5)(e) if:

(A) a license under this section was revoked for a delinquency under this part for:

(I) (Aa) an applicant; or

(Bb) a licensee;

(II) a fiduciary of the:

(Aa) applicant; or

(Bb) licensee; or

(III) a person for which the applicant, licensee, fiduciary of the applicant, or fiduciary of the licensee is required to collect, truthfully account for, and pay over an amount under this part;

or

(B) there is a delinquency in paying an amount under this part for:

(I) (Aa) an applicant; or

(Bb) a licensee;

(II) a fiduciary of the:

(Aa) applicant; or

(Bb) licensee; or

(III) a person for which the applicant, licensee, fiduciary of the applicant, or fiduciary of the licensee is required to collect, truthfully account for, and pay over an amount under this part.

(e) Except as provided in Subsection (5)(f), for purposes of Subsection (5)(d)(ii):

(i) for an applicant, the amount of the delinquency is the sum of:

(A) the amount of any delinquency that served as a basis for revoking the license under this section of:

(I) the applicant;

(II) a fiduciary of the applicant; or

(III) a person for which the applicant or the fiduciary of the applicant is required to

collect, truthfully account for, and pay over an amount under this part; or

(B) the amount that any of the following owe under this part:

(I) the applicant;

(II) a fiduciary of the applicant; and

(III) a person for which the applicant or the fiduciary of the applicant is required to

collect, truthfully account for, and pay over an amount under this part; or

(ii) for a licensee, the amount of the delinquency is the sum of:

(A) the amount of any delinquency that served as a basis for revoking the license under this section of:

(I) the licensee;

(II) a fiduciary of the licensee; or

(III) a person for which the licensee or the fiduciary of the licensee is required to collect,

truthfully account for, and pay over an amount under this part; or

(B) the amount that any of the following owe under this part:

(I) the licensee;

(II) a fiduciary of the licensee; and

(III) a person for which the licensee or the fiduciary of the licensee is required to collect,

truthfully account for, and pay over an amount under this part.

(f) Notwithstanding Subsection (5)(d) or (e), a bond required by this Subsection (5) may not:

(i) be less than \$50,000; or

(ii) exceed \$500,000.

(6) (a) The commission shall revoke a license under this section if:

(i) a licensee violates any provision of this part; and

(ii) before the commission revokes the license the commission provides the licensee:

(A) reasonable notice; and

(B) a hearing.

(b) If the commission revokes a licensee's license in accordance with Subsection (6)(a),

the commission may not issue another license to that licensee until that licensee complies with the requirements of this part, including:

(i) paying any:

(A) amounts due under this part;

(B) penalty as provided in Section 59-1-401; or

(C) interest as provided in Section 59-1-402; and

(ii) posting a bond in accordance with Subsection (5).

~~[(5)]~~ (7) (a) If any person ceases to be a supplier within the state by reason of the discontinuance, sale, or transfer of the person's business, the supplier shall notify the commission in writing at the time the discontinuance, sale, or transfer takes effect.

(b) The notice shall give the date of discontinuance and, in the event of a sale, the date of the sale and the name and address of the purchaser or transferee.

(c) Taxes on all special fuel delivery or removal made prior to the discontinuance, sale, or transfer, shall become due and payable on the date of discontinuance, sale, or transfer.

(d) The supplier shall make a report and pay all taxes, interest, and penalties and surrender to the commission the license certificate that was issued to the supplier by the commission.

~~[(6)]~~ (8) (a) The tax imposed by this part shall be a lien upon the property of any supplier liable for an amount of tax that is required to be collected, if the supplier sells the business, stock of goods, or quits business, and if the supplier fails to make a final return and payment within 15 days after the date of selling or quitting business.

(b) The successor or assigns, if any, shall be required to withhold a sufficient amount of the purchase money to cover the amount of the taxes that are required to be collected and interest or penalties due and paid under Sections 59-1-401 and 59-1-402 until the former owner produces a receipt from the commission showing that the taxes have been paid or a certificate stating that no amount of tax is due. If the purchaser of a business or stock of goods fails to withhold sufficient purchase money, the purchaser shall be personally liable for the payment of the amount that is due.

Section 9. Section **59-13-303** is amended to read:

59-13-303. Special fuel user permits -- Application -- Revocation of permits under certain circumstances.

~~[(1) The commission may require a user to furnish a bond.]~~

~~[(2)]~~ (1) (a) Except as provided in Subsection ~~[(2)]~~ (1)(b), each user shall, prior to the use of the fuel in a qualified motor vehicle, apply to the commission on forms prescribed by the commission for a special fuel user permit. When the application is approved by the commission, a single special fuel user permit shall be issued to the user.

(b) In place of the special fuel user permit issued under Subsection ~~[(2)]~~ (1)(a), a user may purchase a special fuel user trip permit. A special fuel user trip permit is valid for 96 hours or until the qualified vehicle leaves the state, whichever occurs first.

(c) The fee for the special fuel user trip permit is \$25.

~~[(3)]~~ (2) A special fuel user permit number shall be assigned to each licensed user and is nontransferable and valid until surrendered by the user for nonuse or until revoked by the commission.

~~[(4)]~~ (3) The special fuel user permit expires December 31 of each year. Special fuel user permits for the calendar year shall be honored until February 28 of the following year. An application shall be filed with the commission each year for a new special fuel user permit for vehicles operated by a licensed user.

~~[(5)]~~ (4) (a) The special fuel user permit shall be kept in the passenger compartment of each vehicle, or as otherwise authorized by the commission.

(b) A user that does not comply with the requirements of this section may be required to purchase a special fuel user trip permit.

~~[(6)]~~ (5) The commission may revoke the special fuel user permit issued under this section from any person refusing or neglecting to comply with this part.

~~[(7)]~~ (6) Any user reporting Utah special fuel tax liability under Part 5, Interstate Agreements, is exempted from the permit requirements of this section.

Section 10. Section **59-13-305** is amended to read:

59-13-305. User report required -- Contents of report -- Signature -- Penalties -- Exemptions from requirements -- Change of exemption status -- Duty to notify commission.

(1) Unless exempted by Subsection (5), each user shall file with the commission, on or before the last day of the month following the end of a reporting period, a report on forms prescribed by the commission showing:

(a) the amount of fuel purchased and the amount of fuel used during the preceding reporting period by that user in the state; and

(b) any other information the commission may require to carry out the purposes of this part.

(2) The report shall be signed by the user or a responsible representative. This signature need not be notarized, but when signed is considered to have been made under oath.

(3) A penalty is imposed under Section 59-1-401 for failure to file reports as provided in this section for each report not filed, regardless of the imposition of other penalties under this part.

(4) (a) Each user that has a registered special fuel-powered motor vehicle other than a qualified motor vehicle and has facilities for bulk storage of special fuels shall declare special fuel tax liability for any nonqualified motor vehicle on the user report required by Subsection (1).

(b) Credit shall be given on the report for any special fuel taxes paid on purchases for any nonqualified vehicle. Purchase records must be maintained to substantiate the amount of any credit claimed.

(5) (a) The following users are exempt from the filing requirements of Subsections (1) and (2) for the motor vehicles specified:

(i) a user who purchases a special fuel user trip permit for all of its operations for qualified vehicles for the reporting period, except a user having a special fuel user permit under Subsection 59-13-303[~~(2)~~] (1)(a);

(ii) a user that has a registered special fuel-powered motor vehicle other than a qualified motor vehicle and does not have facilities for bulk storage of special fuels;

(iii) a user of special fuel, for which the tax imposed by this chapter has already been

paid; or

(iv) a user that has a motor vehicle powered by special fuel for which the tax is paid under an interstate fuel tax agreement under Section 59-13-502.

(b) (i) The exemption under Subsection (5)(a)(iii) applies only when the user retains records verifying that all special fuel purchases for the exempt vehicle were taxed as required under this part.

(ii) The commission may at the time of application or renewal of a special fuel user permit under Section 59-13-303 require that the user certify:

(A) that the user qualifies for an exemption under Subsection (5)(a)(iii); and

(B) whether the user has facilities for bulk storage of special fuel.

~~[(c) A user of a motor vehicle that qualifies for an exemption under Subsections (5)(a)(ii) and (iii) is also exempt from the requirements of Subsection 59-13-303(1) for that motor vehicle.]~~

Section 11. Section **59-13-308** is amended to read:

59-13-308. Delinquency -- Penalties -- Interest.

If any user ~~[or supplier]~~ becomes delinquent in tax payments under this part, all licenses or permits issued under this part are automatically revoked. In addition, the commission shall impose a penalty determined under Section 59-1-401. The amount of the delinquent tax and the penalty shall bear interest at the rate and in the manner prescribed in Section 59-1-402.

Section 12. **Repealer.**

This bill repeals:

Section **59-13-203, Distributor licensing requirements -- Fees -- Application -- Bond requirement or substitute -- Additional bonds.**