

**STATE TAX COMMISSION COLLECTION AND  
LICENSING PRACTICES**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Curtis S. Bramble**

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**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



28 **Utah Code Sections Affected:**

29 AMENDS:

- 30 **59-1-302**, as last amended by Chapter 255, Laws of Utah 2004
- 31 **59-10-406**, as last amended by Chapter 94, Laws of Utah 2001
- 32 **59-12-106**, as last amended by Chapter 312, Laws of Utah 2003
- 33 **59-12-107**, as last amended by Chapter 255, Laws of Utah 2004
- 34 **59-13-209**, as last amended by Chapter 1, Laws of Utah 1993, Second Special Session
- 35 **59-13-302**, as last amended by Chapter 271, Laws of Utah 1997
- 36 **59-13-303**, as last amended by Chapters 7 and 268, Laws of Utah 2003
- 37 **59-13-305**, as last amended by Chapter 7, Laws of Utah 2003
- 38 **59-13-308**, as last amended by Chapter 271, Laws of Utah 1997

39 ENACTS:

- 40 **59-10-405.5**, Utah Code Annotated 1953
- 41 **59-13-203.1**, Utah Code Annotated 1953

42 REPEALS:

- 43 **59-13-203**, as last amended by Chapters 53 and 313, Laws of Utah 1994

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

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

47 **59-1-302. Penalty for nonpayment of certain taxes -- Jeopardy proceedings.**

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

50 (a) a tax under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

51 (b) a tax under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax

52 Act;

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

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

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

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

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

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

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

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

63 (ii) notwithstanding Subsection (1)(d)(i), this section does not apply to Chapter 12, Part  
 64 9, Sales Tax Refund for Qualified Emergency Food Agencies;

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

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

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

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

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

75 (b) The notice of proposed penalty shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

111 **59-10-405.5. Definitions -- Withholding tax license requirements -- Penalty --**

112 **Application process and requirements -- Fee not required -- Bonds.**

113 (1) As used in this section:

114 (a) "agent" means a person that:

115 (i) withholds, reports, or remits any amounts under this part for an applicant; and

116 (ii) in accordance with an agreement between the person and the applicant described in

117 Subsection (1)(a)(i), is required to collect, truthfully account for, and pay over an amount under  
118 this part for the applicant;

119 (b) "applicant" means a person that:

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

- 121 (ii) submits an application:  
122 (A) to the commission; and  
123 (B) for a license under this section;  
124 (c) "application" means an application for a license under this section;  
125 (d) "fiduciary" means a person that:  
126 (i) is required to collect, truthfully account for, and pay over an amount under this part  
127 for an applicant;  
128 (ii) is not an agent of the applicant described in Subsection (1)(d)(i); and  
129 (iii) (A) is a corporate officer of the applicant described in Subsection (1)(d)(i);  
130 (B) is a director of the applicant described in Subsection (1)(d)(i);  
131 (C) is an employee of the applicant described in Subsection (1)(d)(i);  
132 (D) is a partner of an applicant described in Subsection (1)(d)(i);  
133 (E) is a trustee of an applicant described in Subsection (1)(d)(i); or  
134 (F) has a relationship to the applicant described in Subsection (1)(d)(i) that is similar to  
135 a relationship described in Subsections (1)(d)(iii)(A) through (E) as determined by the  
136 commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative  
137 Rulemaking Act; and  
138 (e) "license" means a license under this section.  
139 (2) The following persons are guilty of a criminal violation as provided in Section  
140 59-1-401:  
141 (a) a person that:  
142 (i) is required to withhold, report, or remit any amounts under this part; and  
143 (ii) engages in business within the state before obtaining a license under this section; or  
144 (b) a person that:  
145 (i) pays wages under this part; and  
146 (ii) engages in business within the state before obtaining a license under this section; or  
147 (c) an agent that:  
148 (i) is required to withhold, report, or remit any amounts under this part; and  
149 (ii) takes the action described in Subsection (2)(c)(i) before obtaining a license under  
150 this section.  
151 (3) The license described in Subsection (2):

- 152 (a) shall be granted and issued:
- 153 (i) by the commission in accordance with this section;
- 154 (ii) without a license fee; and
- 155 (iii) if:
- 156 (A) an applicant:
- 157 (I) states the applicant's name and address in the application; and
- 158 (II) provides other information in the application that the commission may require; and
- 159 (B) the person meets the requirements of this section to be granted a license as
- 160 determined by the commission;
- 161 (b) may not be assigned to another person; and
- 162 (c) is valid:
- 163 (i) only for the person named on the license; and
- 164 (ii) until:
- 165 (A) the person described in Subsection (3)(c)(i):
- 166 (I) ceases to do business; or
- 167 (II) changes that person's business address; or
- 168 (B) the commission revokes the license.
- 169 (4) The commission shall review an application and determine whether:
- 170 (a) the applicant meets the requirements of this section to be issued a license; and
- 171 (b) a bond is required to be posted with the commission in accordance with
- 172 Subsections (5) and (6) before the applicant may be issued a license.
- 173 (5) (a) An applicant shall post a bond with the commission before the commission may
- 174 issue the applicant a license if:
- 175 (i) a license under this section was revoked for a delinquency under this part for:
- 176 (A) an applicant;
- 177 (B) a fiduciary; or
- 178 (C) a person for which the applicant or the fiduciary is required to collect, truthfully
- 179 account for, and pay over an amount under this part; or
- 180 (ii) there is a delinquency in withholding, reporting, or remitting any amount under this
- 181 part for:
- 182 (A) an applicant;

183           (B) a fiduciary; or  
184           (C) a person for which the applicant or the fiduciary is required to collect, truthfully  
185 account for, and pay over an amount under this part.  
186           (b) An agent shall post a bond with the commission before the commission may issue  
187 the agent a license under this section.  
188           (6) (a) A bond required by Subsection (5) shall be:  
189           (i) executed by the applicant as principal, with a corporate surety; and  
190           (ii) payable to the commission conditioned upon the faithful performance of all of the  
191 requirements of this part including:  
192           (A) the withholding or remitting of any amount under this part;  
193           (B) the payment of any:  
194           (I) penalty as provided in Section 59-1-401; or  
195           (II) interest as provided in Section 59-1-402; or  
196           (C) any other obligation of the applicant under this part.  
197           (b) Except as provided in Subsection (6)(d), the commission shall calculate the amount  
198 of a bond required by Subsection (5) on the basis of:  
199           (i) commission estimates of any amounts an applicant withholds, reports, or remits  
200 under this part; and  
201           (ii) any amount of a delinquency described in Subsection (6)(c).  
202           (c) Except as provided in Subsection (6)(d), for purposes of Subsection (6)(b)(ii), the  
203 amount of the delinquency is the sum of:  
204           (i) the amount of any delinquency that served as a basis for revoking the license of a  
205 person described in Subsection (5)(a)(i) under this part; and  
206           (ii) any amount a person described in Subsection (5)(a)(ii) owes under this part.  
207           (d) Notwithstanding Subsection (6)(b) or (c), a bond required by Subsection (5) may  
208 not:  
209           (i) be less than \$50,000; or  
210           (ii) exceed \$500,000.  
211           (7) (a) The commission shall revoke a license under this section if:  
212           (i) a person that has been issued the license violates any provision of this part; and  
213           (ii) before the commission revokes the license the commission provides the person

214 described in Subsection (7)(a)(i):

215 (A) reasonable notice; and

216 (B) a hearing.

217 (b) If the commission revokes a person's license in accordance with Subsection (7)(a),

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

220 (i) paying any:

221 (A) amounts due under this part;

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

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

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

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

226 **59-10-406. Collection and payment of tax.**

227 (1) (a) Each employer shall, on or before the last day of April, July, October, and  
228 January, pay to the commission the amount required to be deducted and withheld from wages  
229 paid to any employee during the preceding calendar quarter under this part.

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

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

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

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

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

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

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

240 (d) any other information the commission may require.

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

243 (i) the total compensation paid;

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



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

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

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

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

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

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

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

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

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

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

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

273 ~~[This]~~

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

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

279 [(8)] (7) To the extent consistent with this section, the commission may use all the  
 280 provisions of this chapter relating to records, penalties, interest, deficiencies, redetermination  
 281 of deficiencies, overpayments, refunds, assessments, and venue to enforce this section.

282 [(9)] (8) For all [tax] taxable years beginning on or after January 1, 2001, an employer  
 283 that is required to file a federal Form W-2 in an electronic format with the Federal Department  
 284 of the Treasury Internal Revenue Service shall file each Form W-2 that is required to be filed  
 285 with the commission in an electronic format approved by the commission.

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

287 **59-12-106. Definitions -- Sales and use tax license -- No fee -- Bonds --**  
 288 **Presumption of taxability -- Exemption certificates -- Exemption certificate license**  
 289 **number to accompany contract bids.**

290 (1) As used in this section:

291 (a) "agent" means a person that:

292 (i) remits a tax under this chapter for an applicant; and

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

296 (b) "applicant" means a person that:

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

298 (ii) submits an application:

299 (A) to the commission; and

300 (B) for a license under this section;

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

302 (d) "fiduciary" means a person that:

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

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

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

307 (B) is a director of the applicant described in Subsection (1)(d)(i);  
 308 (C) is an employee of the applicant described in Subsection (1)(d)(i);  
 309 (D) is a partner of an applicant described in Subsection (1)(d)(i);  
 310 (E) is a trustee of an applicant described in Subsection (1)(d)(i); or  
 311 (F) has a relationship to the applicant described in Subsection (1)(d)(i) that is similar to  
 312 a relationship described in Subsections (1)(d)(iii)(A) through (E) as determined by the  
 313 commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative  
 314 Rulemaking Act; and

315 (e) "license" means a license under this section.

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

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

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

320 (ii) is not assignable;

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

322 (iv) is valid until:

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

324 (I) ceases to do business; or

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

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

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

329 (A) states the name and address of the applicant; and

330 (B) provides other information the commission may require.

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

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

335 (i) meets the requirements of this section to be issued a license; and  
 336 (ii) is required to post a bond with the commission in accordance with Subsections  
 337 (2)(e) and (f) before the applicant may be issued a license.

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

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

341 (A) an applicant;

342 (B) a fiduciary; or

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

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

346 (A) an applicant;

347 (B) a fiduciary; or

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

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

351 (A) executed by the applicant as principal, with a corporate surety; and

352 (B) payable to the commission conditioned upon the faithful performance of all of the  
353 requirements of this chapter including:

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

355 (II) the payment of any:

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

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

358 (III) any other obligation of the applicant under this chapter.

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

361 (A) commission estimates of an applicant's tax liability under this chapter; and

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

363 (iii) Except as provided in Subsection (2)(f)(iv), for purposes of Subsection  
364 (2)(f)(ii)(B), the amount of the delinquency is the sum of:

365 (A) the amount of any delinquency that served as a basis for revoking the license of a  
366 person described in Subsection (2)(e)(i) under this part; and

367 (B) any amount a person described in Subsection (2)(e)(ii) owes under this part.

368 (iv) Notwithstanding Subsection (2)(f)(ii) or (2)(f)(iii), a bond required by Subsection

369 (2)(e) may not:

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

371 (B) exceed \$500,000.

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

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

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

378 (A) paying any:

379 (I) tax due under this chapter;

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

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

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

383 [~~(f)~~] (i) Any person required to collect a tax under this chapter within this state without  
384 having secured a license to do so is guilty of a criminal violation as provided in Section  
385 59-1-401.

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

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

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

390 [~~(2)~~] (3) (a) For the purpose of the proper administration of this chapter and to prevent  
391 evasion of the tax and the duty to collect the tax, it shall be presumed that tangible personal  
392 property or any other taxable transaction under Subsection 59-12-103(1) sold by any person for  
393 delivery in this state is sold for storage, use, or other consumption in this state unless the  
394 person selling the property, item, or service has taken from the purchaser an exemption  
395 certificate:

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

397 (ii) providing that the property, item, or service was exempted under Section  
398 59-12-104.

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

- 400 (i) shall contain information as prescribed by the commission; and
- 401 (ii) if a paper exemption certificate is used, shall be signed by the purchaser.
- 402 (c) Except as provided in Subsection [~~(2)~~] (3)(d), a seller that has taken an exemption
- 403 certificate from a purchaser in accordance with this Subsection [~~(2)~~] (3) with respect to a
- 404 transaction is not liable to collect a tax under this chapter:
- 405 (i) on that transaction; and
- 406 (ii) if the commission or a court of competent jurisdiction subsequently determines that
- 407 the purchaser improperly claimed the exemption.
- 408 (d) Notwithstanding Subsection [~~(2)~~] (3)(c), Subsection [~~(2)~~] (3)(c) does not apply to a
- 409 seller that:
- 410 (i) fraudulently fails to collect a tax under this chapter; or
- 411 (ii) solicits a purchaser to participate in improperly claiming an exemption from a tax
- 412 under this chapter.
- 413 [~~(3)~~] (4) A person filing a contract bid with the state or a political subdivision of the
- 414 state for the sale of tangible personal property or any other taxable transaction under
- 415 Subsection 59-12-103(1) shall include with the bid the number of the license issued to that
- 416 person under Subsection [~~(1)~~] (2).
- 417 Section 5. Section **59-12-107** is amended to read:
- 418 **59-12-107. Collection, remittance, and payment of tax by sellers or other persons**
- 419 **-- Collection of tax by a seller registered under the agreement may not be used as a factor**
- 420 **in determining whether the seller is required to pay certain taxes, fees, or charges --**
- 421 **Returns -- Direct payment by purchaser of vehicle -- Other liability for collection --**
- 422 **Rulemaking authority -- Credits -- Treatment of bad debt -- Penalties.**
- 423 (1) (a) Except as provided in Subsection (1)(e) or Sections 59-12-107.1 through
- 424 59-12-107.4 and subject to Subsection (1)(f), each seller shall pay or collect and remit the sales
- 425 and use taxes imposed by this chapter if within this state the seller:
- 426 (i) has or utilizes:
- 427 (A) an office;
- 428 (B) a distribution house;
- 429 (C) a sales house;
- 430 (D) a warehouse;

- 431 (E) a service enterprise; or
- 432 (F) a place of business similar to Subsections (1)(a)(i)(A) through (E);
- 433 (ii) maintains a stock of goods;
- 434 (iii) regularly solicits orders, regardless of whether or not the orders are accepted in the
- 435 state, unless the seller's only activity in the state is:
- 436 (A) advertising; or
- 437 (B) solicitation by:
- 438 (I) direct mail;
- 439 (II) electronic mail;
- 440 (III) the Internet;
- 441 (IV) telephone; or
- 442 (V) a means similar to [~~Subsections~~] Subsection (1)(a)(iii)(A) or (B);
- 443 (iv) regularly engages in the delivery of property in the state other than by:
- 444 (A) common carrier; or
- 445 (B) United States mail; or
- 446 (v) regularly engages in an activity directly related to the leasing or servicing of
- 447 property located within the state.
- 448 (b) A seller that does not meet one or more of the criteria provided for in Subsection
- 449 (1)(a):
- 450 (i) except as provided in Subsection (1)(b)(ii), may voluntarily:
- 451 (A) collect a tax on a transaction described in Subsection 59-12-103(1); and
- 452 (B) remit the tax to the commission as provided in this part; or
- 453 (ii) notwithstanding Subsection (1)(b)(i), shall collect a tax on a transaction described
- 454 in Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to collect the tax.
- 455 (c) The collection and remittance of a tax under this chapter by a seller that is
- 456 registered under the agreement may not be used as a factor in determining whether that seller is
- 457 required by Subsection (1)(a) to:
- 458 (i) pay a tax, fee, or charge under:
- 459 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 460 (B) Section 19-6-716;
- 461 (C) Section 19-6-805;

462 (D) Section 69-2-5.5; or

463 (E) this title; or

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

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

466 (B) Section 19-6-716;

467 (C) Section 19-6-805;

468 (D) Section 69-2-5.5; or

469 (E) this title.

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

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

473 (ii) the person:

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

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

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

477 (e) Notwithstanding Subsection (1)(a), the ownership of property that is located at the  
478 premises of a printer's facility with which the retailer has contracted for printing and that  
479 consists of the final printed product, property that becomes a part of the final printed product,  
480 or copy from which the printed product is produced, shall not result in the retailer being  
481 considered to have or maintain an office, distribution house, sales house, warehouse, service  
482 enterprise, or other place of business, or to maintain a stock of goods, within this state.

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

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

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

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

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

491 (II) is:

492 (Aa) related to a seller that is required to pay or collect and remit sales and use taxes



493 under Subsection (1)(a) as part of an affiliated group or because of common ownership; or  
494 (Bb) a limited liability company owned by the parent corporation of an affiliated group  
495 if that parent corporation of the affiliated group is required to pay or collect and remit sales and  
496 use taxes under Subsection (1)(a); and  
497 (III) does not voluntarily collect and remit a tax under Subsection (1)(b)(i).  
498 (ii) A seller is not required to pay or collect and remit sales and use taxes under  
499 Subsection (1)(a):  
500 (A) if the seller is a related seller;  
501 (B) if the seller to which the related seller is related does not engage in any of the  
502 following activities on behalf of the related seller:  
503 (I) advertising;  
504 (II) marketing;  
505 (III) sales; or  
506 (IV) other services; and  
507 (C) if the seller to which the related seller is related accepts the return of an item sold  
508 by the related seller, the seller to which the related seller is related accepts the return of that  
509 item:  
510 (I) sold by a seller that is not a related seller; and  
511 (II) on the same terms as the return of an item sold by that seller to which the related  
512 seller is related.  
513 (2) (a) Except as provided in Sections 59-12-107.1 through 59-12-107.4, a tax under  
514 this chapter shall be collected from a purchaser.  
515 (b) A seller may not collect as tax an amount, without regard to fractional parts of one  
516 cent, in excess of the tax computed at the rates prescribed by this chapter.  
517 (c) (i) Each seller shall:  
518 (A) give the purchaser a receipt for the tax collected; or  
519 (B) bill the tax as a separate item and declare the name of this state and the seller's  
520 sales and use tax license number on the invoice for the sale.  
521 (ii) The receipt or invoice is prima facie evidence that the seller has collected the tax  
522 and relieves the purchaser of the liability for reporting the tax to the commission as a  
523 consumer.

524 (d) A seller is not required to maintain a separate account for the tax collected, but is  
525 considered to be a person charged with receipt, safekeeping, and transfer of public moneys.

526 (e) Taxes collected by a seller pursuant to this chapter shall be held in trust for the  
527 benefit of the state and for payment to the commission in the manner and at the time provided  
528 for in this chapter.

529 (f) If any seller, during any reporting period, collects as a tax an amount in excess of  
530 the lawful state and local percentage of total taxable sales allowed under this chapter, the seller  
531 shall remit to the commission the full amount of the tax imposed under this chapter, plus any  
532 excess.

533 (g) If the accounting methods regularly employed by the seller in the transaction of the  
534 seller's business are such that reports of sales made during a calendar month or quarterly period  
535 will impose unnecessary hardships, the commission may accept reports at intervals that will, in  
536 the commission's opinion, better suit the convenience of the taxpayer or seller and will not  
537 jeopardize collection of the tax.

538 (3) (a) Except as provided in Subsections (4) through (6) and in Section 59-12-108, the  
539 sales or use tax imposed by this chapter is due and payable to the commission quarterly on or  
540 before the last day of the month next succeeding each calendar quarterly period.

541 (b) (i) Each seller shall, on or before the last day of the month next succeeding each  
542 calendar quarterly period, file with the commission a return for the preceding quarterly period.

543 (ii) The seller shall remit with the return under Subsection (3)(b)(i) the amount of the  
544 tax required under this chapter to be collected or paid for the period covered by the return.

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

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

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

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

554 (f) (i) Subject to Subsection (3)(f)(ii) and in accordance with Title 63, Chapter 46a,

555 Utah Administrative Rulemaking Act, the commission may by rule extend the time for making  
556 returns and paying the taxes.

557 (ii) An extension under Subsection (3)(f)(i) may not be for more than 90 days.

558 (g) The commission may require returns and payment of the tax to be made for other  
559 than quarterly periods if the commission considers it necessary in order to ensure the payment  
560 of the tax imposed by this chapter.

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

564 (A) to the commission;

565 (B) annually; and

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

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

571 (A) to the commission; and

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

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

576 (A) contains information prescribed by the commission;

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

578 (C) notwithstanding Subsection (3)(c)(i), is filed electronically as required by  
579 Subsection (3)(c)(ii).

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

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

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

585 (c) The tax collected in accordance with this Subsection (4) calculated in the return

586 described in Subsection (4)(b) shall be calculated on the basis of the total amount of taxable  
587 transactions described in Subsection 59-12-103(1) conducted by a seller described in  
588 Subsection (4)(d), including:

- 589 (i) a cash transaction; and
- 590 (ii) a charge transaction.
- 591 (d) This Subsection (4) applies to a seller that is:
  - 592 (i) registered under the agreement;
  - 593 (ii) described in Subsection (1)(b); and
  - 594 (iii) not a:
    - 595 (A) model 1 seller;
    - 596 (B) model 2 seller; or
    - 597 (C) model 3 seller.

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

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

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

607 (6) (a) Notwithstanding Subsection (3), on each vehicle sale made by other than a  
608 regular licensed vehicle dealer, the purchaser shall pay the sales or use tax directly to the  
609 commission if the vehicle is subject to titling or registration under the laws of this state.

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

612 (7) If any sale of tangible personal property or any other taxable transaction under  
613 Subsection 59-12-103(1), is made by a wholesaler to a retailer, the wholesaler is not  
614 responsible for the collection or payment of the tax imposed on the sale and the retailer is  
615 responsible for the collection or payment of the tax imposed on the sale if:

- 616 (a) the retailer represents that the personal property is purchased by the retailer for

617 resale; and

618 (b) the personal property is not subsequently resold.

619 (8) If any sale of property or service subject to the tax is made to a person prepaying  
620 sales or use tax in accordance with Title 63, Chapter 51, Resource Development, or to a  
621 contractor or subcontractor of that person, the person to whom such payment or consideration  
622 is payable is not responsible for the collection or payment of the sales or use tax and the person  
623 prepaying the sales or use tax is responsible for the collection or payment of the sales or use tax  
624 if the person prepaying the sales or use tax represents that the amount prepaid as sales or use  
625 tax has not been fully credited against sales or use tax due and payable under the rules  
626 promulgated by the commission.

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

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

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

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

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

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

635 (B) a financing charge;

636 (C) interest;

637 (D) a tax imposed under this chapter on the purchase price of tangible personal  
638 property or a service;

639 (E) an uncollectible amount on tangible personal property that:

640 (I) is subject to a tax under this chapter; and

641 (II) remains in the possession of a seller until the full purchase price is paid;

642 (F) an expense incurred in attempting to collect any debt; or

643 (G) an amount that a seller does not collect on repossessed property.

644 (b) A seller may deduct bad debt from the total amount from which a tax under this  
645 chapter is calculated on a return.

646 (c) A seller may file a refund claim with the commission if:

647 (i) the amount of bad debt for the time period described in Subsection (9)(e) exceeds

648 the amount of the seller's sales that are subject to a tax under this chapter for that same time  
649 period; and

650 (ii) as provided in Section 59-12-110.

651 (d) A bad debt deduction under this section may not include interest.

652 (e) A bad debt may be deducted under this Subsection (9) on a return for the time  
653 period during which the bad debt:

654 (i) is written off as uncollectible in the seller's books and records; and

655 (ii) would be eligible for a bad debt deduction:

656 (A) for federal income tax purposes; and

657 (B) if the seller were required to file a federal income tax return.

658 (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or  
659 claims a refund under this Subsection (9), the seller shall report and remit a tax under this  
660 chapter:

661 (i) on the portion of the bad debt the seller recovers; and

662 (ii) on a return filed for the time period for which the portion of the bad debt is  
663 recovered.

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

666 (i) in a proportional amount:

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

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

669 (ii) to:

670 (A) interest charges;

671 (B) service charges; and

672 (C) other charges.

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

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

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

678 (i) A bad debt may be allocated among the states that are members of the agreement if

679 a seller's books and records support that allocation.

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

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

685 ~~[(c) (i) The commission shall serve notice of the sale upon the person who deposited~~  
686 ~~the securities.]~~

687 ~~[(ii) Notice under Subsection (10)(c)(i) sent to the last-known address as it appears in~~  
688 ~~the records of the commission is sufficient for the purposes of this requirement.]~~

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

691 [(H)] (10) (a) A seller may not, with intent to evade any tax, fail to timely remit the  
692 full amount of tax required by this chapter.

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

694 (c) Each person who fails to pay any tax to the state or any amount of tax required to be  
695 paid to the state, except amounts determined to be due by the commission under Sections  
696 59-12-110 and 59-12-111, within the time required by this chapter, or who fails to file any  
697 return as required by this chapter, shall pay, in addition to the tax, penalties and interest as  
698 provided in Section 59-12-110.

699 (d) For purposes of prosecution under this section, each quarterly tax period in which a  
700 seller, with intent to evade any tax, collects a tax and fails to timely remit the full amount of the  
701 tax required to be remitted, constitutes a separate offense.

702 Section 6. Section **59-13-203.1** is enacted to read:

703 **59-13-203.1. Definitions -- License requirements -- Penalty -- Application process**  
704 **and requirements -- Fee not required -- Bonds.**

705 (1) As used in this section:

706 (a) "agent" means a person that:

707 (i) remits a tax under this part for an applicant; and

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

710 part for the applicant;  
711 (b) "applicant" means a person that:  
712 (i) is required by this section to obtain a license; and  
713 (ii) submits an application:  
714 (A) to the commission; and  
715 (B) for a license under this section;  
716 (c) "application" means an application for a license under this section; and  
717 (d) "fiduciary" means a person that:  
718 (i) is required to collect, truthfully account for, and pay over a tax under this part for an  
719 applicant;  
720 (ii) is not an agent of the applicant described in Subsection (1)(d)(i); and  
721 (iii) (A) is a corporate officer of the applicant described in Subsection (1)(d)(i);  
722 (B) is a director of the applicant described in Subsection (1)(d)(i);  
723 (C) is an employee of the applicant described in Subsection (1)(d)(i);  
724 (D) is a partner of an applicant described in Subsection (1)(d)(i);  
725 (E) is a trustee of an applicant described in Subsection (1)(d)(i); or  
726 (F) has a relationship to the applicant described in Subsection (1)(d)(i) that is similar to  
727 a relationship described in Subsections (1)(d)(iii)(A) through (E) as determined by the  
728 commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative  
729 Rulemaking Act; and  
730 (e) "license" means a license under this section.  
731 (2) A person that is required to collect a tax under this part is guilty of a criminal  
732 violation as provided in Section 59-1-401 if before obtaining a license under this section that  
733 person engages in business within the state.  
734 (3) The license described in Subsection (2):  
735 (a) shall be granted and issued:  
736 (i) by the commission in accordance with this section;  
737 (ii) without a license fee; and  
738 (iii) if:  
739 (A) an applicant:  
740 (I) states the applicant's name and address in the application; and



741 (II) provides other information in the application that the commission may require; and  
742 (B) the person meets the requirements of this section to be granted a license as  
743 determined by the commission;

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

745 (c) is valid:

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

747 (ii) until:

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

749 (I) ceases to do business; or

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

751 (B) the commission revokes the license.

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

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

756 (b) A bond under this Subsection (5) shall be:

757 (i) executed by the applicant as principal, with a corporate surety; and

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

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

761 (B) the payment of any:

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

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

764 (C) any other obligation of the applicant under this part.

765 (c) Except as provided in Subsection (5)(e), the commission shall calculate the amount  
766 of a bond under this Subsection (5) on the basis of:

767 (i) commission estimates of the applicant's tax liability under this part; and

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

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

770 (I) an applicant;

771 (II) a fiduciary; or

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

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

775 (I) an applicant;

776 (II) a fiduciary; or

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

779 (d) Except as provided in Subsection (5)(e), for purposes of Subsection (5)(c)(ii), the  
780 amount of the delinquency is the sum of:

781 (i) the amount of any delinquency that served as a basis for revoking the license of a  
782 person described in Subsection (5)(c)(ii)(A) under this part; and

783 (ii) any amount a person described in Subsection (5)(c)(ii)(B) owes under this part.

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

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

787 (ii) exceed \$500,000.

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

789 (i) a person that has been issued the license violates any provision of this part; and

790 (ii) before the commission revokes the license the commission provides the person  
791 described in Subsection (6)(a)(i):

792 (A) reasonable notice; and

793 (B) a hearing.

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

797 (i) paying any:

798 (A) tax due under this part;

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

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

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

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

803 **59-13-209. Due date -- Delinquency -- Penalties -- Interest.**

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

809 (2) If any distributor fails or refuses to pay any tax when it becomes due and payable,  
810 the tax is delinquent. If a distributor is delinquent in tax payments, the commission shall  
811 ~~[revoke the distributor's license and]~~ impose a penalty as provided under Section 59-1-401.  
812 The amount of the tax shall bear interest at the rate and in the manner prescribed in Section  
813 59-1-402.

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

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

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

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

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

829 **59-13-302. Definitions -- License requirements -- Penalty -- Application process**  
830 **and requirements -- Fee not required -- Bonds -- Discontinuance of business -- Liens upon**  
831 **property.**

832 ~~[(1) Each supplier of diesel fuel shall first obtain from the commission a supplier's  
833 license and shall pay a license fee determined by the commission pursuant to Section~~

834 ~~63-38-3.2. The license shall be valid until the holder of the license ceases to act as a supplier,~~  
835 ~~unless the commission has reasonable cause to terminate the license at an earlier date. The~~  
836 ~~license issued by the commission is not assignable and is valid only for the supplier in whose~~  
837 ~~name it is issued.]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

869 (1) As used in this section:

870 (a) "agent" means a person that:

871 (i) remits any amounts under this part for an applicant; and

872 (ii) in accordance with an agreement between the person and the applicant described in

873 Subsection (1)(a)(i), is required to collect, truthfully account for, and pay over an amount under  
874 this part for the applicant;

875 (b) "applicant" means a person that:

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

877 (ii) submits an application:

878 (A) to the commission; and

879 (B) for a license under this section;

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

881 (d) "fiduciary" means a person that:

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

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

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

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

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

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

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

890 (F) has a relationship to the applicant described in Subsection (1)(d)(i) that is similar to

891 a relationship described in Subsections (1)(d)(iii)(A) through (E) as determined by the

892 commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative

893 Rulemaking Act; and

894 (e) "license" means a license under this section.

895 (2) A person that is required to collect an amount under this part is guilty of a criminal

896 violation as provided in Section 59-1-401 if before obtaining a license under this section that  
897 person engages in business within the state.

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

899 (a) shall be granted and issued:

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

901 (ii) without a license fee; and

902 (iii) if:

903 (A) an applicant:

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

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

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

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

909 (c) is valid:

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

911 (ii) until:

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

913 (I) ceases to do business; or

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

915 (B) the commission revokes the license.

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

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

920 (b) A bond under this Subsection (5) shall be:

921 (i) executed by the applicant as principal, with a corporate surety; and

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

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

925 (B) the payment of any:

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

- 927 (II) interest as provided in Section 59-1-402; or  
928 (C) any other obligation of the applicant under this part.  
929 (c) Except as provided in Subsection (5)(e), the commission shall calculate the amount  
930 of a bond under this Subsection (5) on the basis of:  
931 (i) commission estimates of the applicant's liability for any amount under this part; and  
932 (ii) the amount of a delinquency described in Subsection (5)(d) if:  
933 (A) a license under this section was revoked for a delinquency under this part for:  
934 (I) an applicant;  
935 (II) a fiduciary; or  
936 (III) a person for which the applicant or the fiduciary is required to collect, truthfully  
937 account for, and pay over an amount under this part; or  
938 (B) there is a delinquency in paying an amount under this part for:  
939 (I) an applicant;  
940 (II) a fiduciary; or  
941 (III) a person for which the applicant or the fiduciary is required to collect, truthfully  
942 account for, and pay over an amount under this part.  
943 (d) For purposes of Subsection (5)(c)(ii), the amount of the delinquency is the sum of:  
944 (i) the amount of any delinquency that served as a basis for revoking the license of a  
945 person described in Subsection (5)(c)(ii)(A) under this part; and  
946 (ii) any amount a person described in Subsection (5)(c)(ii)(B) owes under this part.  
947 (e) Notwithstanding Subsection (5)(c) or (d), a bond required by this Subsection (5)  
948 may not:  
949 (i) be less than \$50,000; or  
950 (ii) exceed \$500,000.  
951 (6) (a) The commission shall revoke a license under this section if:  
952 (i) a person that has been issued the license violates any provision of this part; and  
953 (ii) before the commission revokes the license the commission provides the person  
954 described in Subsection (6)(a)(i):  
955 (A) reasonable notice; and  
956 (B) a hearing.  
957 (b) If the commission revokes a person's license in accordance with Subsection (6)(a),

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

960 (i) paying any:

961 (A) amounts due under this part;

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

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

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

965 [~~5~~] (7) (a) If any person ceases to be a supplier within the state by reason of the  
966 discontinuance, sale, or transfer of the person's business, the supplier shall notify the  
967 commission in writing at the time the discontinuance, sale, or transfer takes effect.

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

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

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

975 [~~6~~] (8) (a) The tax imposed by this part shall be a lien upon the property of any  
976 supplier liable for an amount of tax that is required to be collected, if the supplier sells the  
977 business, stock of goods, or quits business, and if the supplier fails to make a final return and  
978 payment within 15 days after the date of selling or quitting business.

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

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

987 **59-13-303. Special fuel user permits -- Application -- Revocation of permits under**  
988 **certain circumstances.**



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

990 ~~[(2)]~~ (1) (a) Except as provided in Subsection ~~[(2)]~~ (1)(b), each user shall, prior to the  
991 use of the fuel in a qualified motor vehicle, apply to the commission on forms prescribed by the  
992 commission for a special fuel user permit. When the application is approved by the  
993 commission, a single special fuel user permit shall be issued to the user.

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

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

998 ~~[(3)]~~ (2) A special fuel user permit number shall be assigned to each licensed user and  
999 is nontransferable and valid until surrendered by the user for nonuse or until revoked by the  
1000 commission.

1001 ~~[(4)]~~ (3) The special fuel user permit expires December 31 of each year. Special fuel  
1002 user permits for the calendar year shall be honored until February 28 of the following year. An  
1003 application shall be filed with the commission each year for a new special fuel user permit for  
1004 vehicles operated by a licensed user.

1005 ~~[(5)]~~ (4) (a) The special fuel user permit shall be kept in the passenger compartment of  
1006 each vehicle, or as otherwise authorized by the commission.

1007 (b) A user that does not comply with the requirements of this section may be required  
1008 to purchase a special fuel user trip permit.

1009 ~~[(6)]~~ (5) The commission may revoke the special fuel user permit issued under this  
1010 section from any person refusing or neglecting to comply with this part.

1011 ~~[(7)]~~ (6) Any user reporting Utah special fuel tax liability under Part 5, Interstate  
1012 Agreements, is exempted from the permit requirements of this section.

1013 Section 10. Section **59-13-305** is amended to read:

1014 **59-13-305. User report required -- Contents of report -- Signature -- Penalties --**  
1015 **Exemptions from requirements -- Change of exemption status -- Duty to notify**  
1016 **commission.**

1017 (1) Unless exempted by Subsection (5), each user shall file with the commission, on or  
1018 before the last day of the month following the end of a reporting period, a report on forms  
1019 prescribed by the commission showing:

1020 (a) the amount of fuel purchased and the amount of fuel used during the preceding  
1021 reporting period by that user in the state; and

1022 (b) any other information the commission may require to carry out the purposes of this  
1023 part.

1024 (2) The report shall be signed by the user or a responsible representative. This  
1025 signature need not be notarized, but when signed is considered to have been made under oath.

1026 (3) A penalty is imposed under Section 59-1-401 for failure to file reports as provided  
1027 in this section for each report not filed, regardless of the imposition of other penalties under  
1028 this part.

1029 (4) (a) Each user that has a registered special fuel-powered motor vehicle other than a  
1030 qualified motor vehicle and has facilities for bulk storage of special fuels shall declare special  
1031 fuel tax liability for any nonqualified motor vehicle on the user report required by Subsection  
1032 (1).

1033 (b) Credit shall be given on the report for any special fuel taxes paid on purchases for  
1034 any nonqualified vehicle. Purchase records must be maintained to substantiate the amount of  
1035 any credit claimed.

1036 (5) (a) The following users are exempt from the filing requirements of Subsections (1)  
1037 and (2) for the motor vehicles specified:

1038 (i) a user who purchases a special fuel user trip permit for all of its operations for  
1039 qualified vehicles for the reporting period, except a user having a special fuel user permit under  
1040 Subsection 59-13-303[~~(2)~~] (1)(a);

1041 (ii) a user that has a registered special fuel-powered motor vehicle other than a  
1042 qualified motor vehicle and does not have facilities for bulk storage of special fuels;

1043 (iii) a user of special fuel, for which the tax imposed by this chapter has already been  
1044 paid; or

1045 (iv) a user that has a motor vehicle powered by special fuel for which the tax is paid  
1046 under an interstate fuel tax agreement under Section 59-13-502.

1047 (b) (i) The exemption under Subsection (5)(a)(iii) applies only when the user retains  
1048 records verifying that all special fuel purchases for the exempt vehicle were taxed as required  
1049 under this part.

1050 (ii) The commission may at the time of application or renewal of a special fuel user

1051 permit under Section 59-13-303 require that the user certify:

1052 (A) that the user qualifies for an exemption under Subsection (5)(a)(iii); and

1053 (B) whether the user has facilities for bulk storage of special fuel.

1054 [~~(c) A user of a motor vehicle that qualifies for an exemption under Subsections~~  
1055 ~~(5)(a)(ii) and (iii) is also exempt from the requirements of Subsection 59-13-303(1) for that~~  
1056 ~~motor vehicle.]~~

1057 Section 11. Section **59-13-308** is amended to read:

1058 **59-13-308. Delinquency -- Penalties -- Interest.**

1059 If any user [~~or supplier~~] becomes delinquent in tax payments under this part, all licenses  
1060 or permits issued under this part are automatically revoked. In addition, the commission shall  
1061 impose a penalty determined under Section 59-1-401. The amount of the delinquent tax and  
1062 the penalty shall bear interest at the rate and in the manner prescribed in Section 59-1-402.

1063 Section 12. **Repealer.**

1064 This bill repeals:

1065 Section **59-13-203, Distributor licensing requirements -- Fees -- Application --**  
1066 **Bond requirement or substitute -- Additional bonds.**

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**Legislative Review Note**  
**as of 2-11-05 3:07 PM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number SB0170**

State Tax Commission Collection and Licensing Practices

17-Feb-05

9:36 AM

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**State Impact**

Passage of this bill could make collections more efficient over time.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**