

**REVISIONS TO DISTRIBUTION OF SALES
AND USE TAX REVENUE**

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott L Wyatt

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Local Sales and Use Tax Act to provide counties and municipalities options relating to the distribution of revenue from this local sales and use tax.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ establishes a procedure for a county, and a majority of the municipalities within a county, to agree to an alternate distribution formula for certain local option sales and use tax revenues within the incorporated and unincorporated areas of the county;
- ▶ provides that an agreement described in the preceding paragraph must be approved by a majority vote of the voters in the incorporated and unincorporated area of the county;
- ▶ provides requirements relating to an election for a vote required by this bill;
- ▶ provides that if the incorporated and unincorporated areas of a county adopt an alternate distribution formula described in this bill, the revenue normally paid to each municipality and county:
 - will be paid to the county; and



- will be distributed by the county in accordance with the adopted alternate distribution formula;
- establishes requirements for an alternate distribution formula and a written agreement relating to the formula;
- establishes requirements relating to the distribution of the local option sales and use tax revenue under this bill;
- provides that, notwithstanding an alternate distribution formula adopted under this bill, a county or municipality to which the alternate distribution formula applies may not receive less revenue than it received during the same month of the year before the alternate distribution formula was adopted;
- provides an exception to the preceding paragraph by requiring that if the total distribution to the county and municipalities to which the alternate distribution formula applies is less than the total distribution received during the same month of the year before the alternate distribution formula was adopted, the distribution to the county and each municipality within the county will be proportionally reduced;
- establishes a procedure for a county, and a majority of the municipalities within a county, to reinstate the local option sales and use tax revenue distribution formula that applies to counties and municipalities that have not adopted an alternate distribution formula under this bill; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2006.

Utah Code Sections Affected:

AMENDS:

59-12-205 (Effective 07/01/06), as last amended by Chapter 158, Laws of Utah 2005

ENACTS:

59-12-205.5, Utah Code Annotated 1953

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

Section 1. Section **59-12-205 (Effective 07/01/06)** is amended to read:

59-12-205 (Effective 07/01/06). Ordinances to conform with statutory amendments -- Distribution of tax revenues -- Rulemaking authority -- Determination of population.

(1) Each county, city, and town, in order to maintain in effect sales and use tax ordinances adopted pursuant to Section 59-12-204, shall, within 30 days of any amendment of any applicable provisions of Part 1, Tax Collection, adopt amendments of their respective sales and use tax ordinances to conform with the amendments to Part 1, Tax Collection, insofar as they relate to sales and use taxes.

(2) Except as provided in Subsection (7) and Section 59-12-205.5:

(a) 50% of each dollar collected from the sales and use tax authorized by this part shall be paid to each county, city, and town on the basis of the percentage that the population of the county, city, or town bears to the total population of all counties, cities, and towns in the state; and

(b) notwithstanding Sections 59-12-207.1 through 59-12-207.3, 50% of each dollar collected from the sales and use tax authorized by this part shall be paid to each county, city, and town on the basis of the location where the transaction is consummated as determined under this section.

(3) For purposes of Subsection (2)(b), the location where a transaction is consummated is determined in accordance with Subsections (4) through (6).

(4) (a) For a transaction that is reported to the commission on a return other than a simplified electronic return, the location where the transaction is consummated is determined in accordance with Subsections (4)(b) through (h).

(b) (i) Except as provided in Subsections (4)(c) through (h), for a transaction described in Subsection (4)(b)(ii), the location where the transaction is consummated is the place of business of the seller.

(ii) Subsection (4)(b)(i) applies to a transaction other than a transaction described in:

(A) Subsection (4)(c)(ii);

(B) Subsection (4)(d)(ii);

(C) Subsection (4)(e)(ii);

(D) Subsection (4)(f)(ii);

(E) Subsection (4)(g)(ii); or

(F) Subsection (4)(h).

(c) (i) Notwithstanding Subsection (4)(b), for a transaction described in Subsection (4)(c)(ii), the location where the transaction is consummated is determined by allocating the total revenues remitted to the commission each month that are generated by the tax imposed under this section on the transactions described in Subsection (4)(c)(ii):

(A) to each local taxing jurisdiction; and

(B) on the basis of the population of each local taxing jurisdiction as compared to the population of the state.

(ii) Subsection (4)(c)(i) applies to a transaction:

(A) made by a seller described in Subsection 59-12-107(1)(b); and

(B) involving tangible personal property that is shipped from outside the state.

(d) (i) Notwithstanding Subsection (4)(b), for a transaction described in Subsection (4)(d)(ii), the location where the transaction is consummated is determined by allocating the total revenues reported to the commission each month that are generated by the tax imposed under this section on the transactions described in Subsection (4)(d)(ii):

(A) to local taxing jurisdictions within a county; and

(B) on the basis of the proportion of total revenues generated by the transactions described in Subsection (4)(b)(ii) that are reported to the commission for that month within a local taxing jurisdiction within that county as compared to the total revenues generated by the transactions described in Subsection (4)(b)(ii) that are reported to the commission for that month within all local taxing jurisdictions within that county.

(ii) Subsection (4)(d)(i) applies to a transaction:

(A) made from a location in the state other than a fixed place of business in the state;

or

(B) (I) made by a seller described in Subsection 59-12-107(1)(a); and

(II) involving tangible personal property that is shipped from outside the state.

(e) (i) Notwithstanding Subsection (4)(b), for a transaction described in Subsection (4)(e)(ii), the location where the transaction is consummated is determined by allocating the total revenues reported to the commission each month that are generated by the tax imposed under this section on the transactions described in Subsection (4)(e)(ii):

121 (A) to local taxing jurisdictions; and

122 (B) on the basis of the proportion of the total revenues generated by the transactions
123 described in Subsection (4)(b)(ii) that are reported to the commission for that month within
124 each local taxing jurisdiction as compared to the total revenues generated by the transactions
125 described in Subsection (4)(b)(ii) that are reported to the commission for that month within the
126 state.

127 (ii) Subsection (4)(e)(i) applies to a transaction involving tangible personal property
128 purchased with a direct payment permit in accordance with Section 59-12-107.1.

129 (f) (i) Notwithstanding Subsection (4)(b), for a transaction described in Subsection
130 (4)(f)(ii), the location where the transaction is consummated is each location where the good or
131 service described in Subsection 59-12-107.2(1)(b) is used.

132 (ii) Subsection (4)(f)(i) applies to a transaction involving a good or service:

133 (A) described in Subsection 59-12-107.2(1)(b);

134 (B) that is concurrently available for use in more than one location; and

135 (C) is purchased using the form described in Section 59-12-107.2.

136 (g) (i) Notwithstanding Subsection (4)(b), for a transaction described in Subsection
137 (4)(g)(ii), the location where the transaction is consummated is determined by allocating the
138 total revenues reported to the commission each month that are generated by the tax imposed
139 under this section on the transactions described in Subsection (4)(g)(ii):

140 (A) to local taxing jurisdictions; and

141 (B) on the basis of the proportion of the total revenues generated by the transactions
142 described in Subsection (4)(b)(ii) that are reported to the commission for that month within
143 each local taxing jurisdiction as compared to the total revenues generated by the transactions
144 described in Subsection (4)(b)(ii) that are reported to the commission for that month within the
145 state.

146 (ii) Subsection (4)(g)(i) applies to a transaction involving a purchase of direct mail if
147 the purchaser of the direct mail provides to the seller the form described in Subsection
148 59-12-107.3(1)(a) at the time of the purchase of the direct mail.

149 (h) Notwithstanding Subsection (4)(b), for a transaction involving the sale of a service
150 described in Section 59-12-207.4, the location where the transaction is consummated is the
151 same as the location of the transaction determined under Section 59-12-207.4.

(5) (a) For a transaction that is reported to the commission on a simplified electronic return, the location where the transaction is consummated is determined in accordance with Subsections (5)(b) through (e).

(b) (i) Except as provided in Subsections (5)(c) through (e), the location where a transaction is consummated is determined by allocating the total revenues reported to the commission each month on the simplified electronic return:

(A) to local taxing jurisdictions; and

(B) on the basis of the proportion of the total revenues generated by the transactions described in Subsection (4)(b)(ii) that are reported to the commission in accordance with Subsection (5)(b)(ii) for that month within each local taxing jurisdiction as compared to the total revenues generated by the transactions described in Subsection (4)(b)(ii) that are reported to the commission in accordance with Subsection (5)(b)(ii) for that month within the state.

(ii) In making the allocations required by Subsection (5)(b)(i), the commission shall use the total revenues generated by the transactions described in Subsection (4)(b)(ii) reported to the commission:

(A) in the report required by Subsection 59-12-105(2); and

(B) if a local taxing jurisdiction reports revenues to the commission in accordance with Subsection (5)(b)(iii), in the report made in accordance with Subsection (5)(b)(iii).

(iii) (A) For purposes of this Subsection (5)(b), a local taxing jurisdiction may report to the commission the revenues generated by a tax imposed by this chapter within the local taxing jurisdiction if a seller:

(I) opens an additional place of business within the local taxing jurisdiction after the seller makes an initial application for a license under Section 59-12-106; and

(II) estimates that the additional place of business will increase by 5% or more the revenues generated by a tax imposed by this chapter within the local taxing jurisdiction.

(B) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules providing procedures and requirements for making the report described in this Subsection (5)(b).

(c) (i) Notwithstanding Subsection (5)(b), for a transaction described in Subsection (5)(c)(ii), the location where the transaction is consummated is determined by allocating the total revenues reported to the commission each month that are generated by the tax imposed

under this section on the transactions described in Subsection (5)(c)(ii):

(A) to local taxing jurisdictions within a county; and

(B) on the basis of the proportion of the total revenues generated by the transactions described in Subsection (4)(b)(ii) that are reported to the commission for that month within a local taxing jurisdiction within that county as compared to the total revenues generated by the transactions described in Subsection (4)(b)(ii) that are reported to the commission for that month within all local taxing jurisdictions within that county.

(ii) Subsection (5)(c)(i) applies to a transaction:

(A) made from a location in the state other than a fixed place of business in the state;

or

(B) (I) made by a seller described in Subsection 59-12-107(1)(a); and

(II) involving tangible personal property that is shipped from outside the state.

(d) Notwithstanding Subsection (5)(b), for a transaction made by a seller described in Subsection 59-12-107(1)(b), the location where the transaction is consummated is determined by allocating the total revenues remitted to the commission each month that are generated by the tax imposed under this section on the transactions made by a seller described in Subsection 59-12-107(1)(b):

(i) to each local taxing jurisdiction; and

(ii) on the basis of the population of each local taxing jurisdiction as compared to the population of the state.

(e) (i) Notwithstanding Subsection (5)(b), for a transaction described in Subsection (5)(e)(ii), the location where the transaction is consummated is determined by allocating the total revenues reported to the commission each month that are generated by the tax imposed under this section on the transactions described in Subsection (5)(e)(ii):

(A) to local taxing jurisdictions; and

(B) on the basis of the proportion of the total revenues generated by the transactions described in Subsection (4)(b)(ii) that are reported to the commission for that month within each local taxing jurisdiction as compared to the total revenues generated by the transactions described in Subsection (4)(b)(ii) that are reported to the commission for that month within the state.

(ii) Subsection (5)(e)(i) applies to a transaction involving tangible personal property

214 purchased with a direct payment permit in accordance with Section 59-12-107.1.

215 (6) For purposes of Subsections (4) and (5) and in accordance with Title 63, Chapter
216 46a, Utah Administrative Rulemaking Act, the commission may make rules defining what
217 constitutes a fixed place of business in the state.

218 (7) (a) Notwithstanding Subsection (2), a county, city, or town may not receive a tax
219 revenue distribution less than .75% of the taxable sales within the boundaries of the county,
220 city, or town.

221 (b) The commission shall proportionally reduce quarterly distributions to any county,
222 city, or town that, but for the reduction, would receive a distribution in excess of 1% of the
223 sales and use tax revenue collected within the boundaries of the county, city, or town.

224 (8) (a) Population figures for purposes of this section shall be based on the most recent
225 official census or census estimate of the United States Census Bureau.

226 (b) If a needed population estimate is not available from the United States Census
227 Bureau, population figures shall be derived from the estimate from the Utah Population
228 Estimates Committee created by executive order of the governor.

229 (9) The population of a county for purposes of this section shall be determined solely
230 from the unincorporated area of the county.

231 Section 2. Section **59-12-205.5** is enacted to read:

232 **59-12-205.5. Alternate distribution formula for revenue from local option sales**
233 **and use tax -- Agreement on formula -- Elections -- Return to original distribution**
234 **formula.**

235 (1) As used in this section:

236 (a) "Alternate disbursal area" means the incorporated and unincorporated area of a
237 county that is designated as an alternate disbursal area by the commission under Subsection (3).

238 (b) "Alternate distribution formula" means a formula for the division and distribution,
239 among a county and municipalities within a county, of the countywide distribution, if that
240 formula:

241 (i) is different than the formula required by Section 59-12-205;

242 (ii) subject to Subsection (1)(b)(iii), divides and distributes the countywide distribution
243 by distributing to each county and municipality within the county;

244 (A) a percentage of the revenues on the basis of the percentage that the population of

the unincorporated area of the county and the portion of each municipality that lies within the county bears to the total population of the county; and

(B) notwithstanding Sections 59-12-207.1 through 59-12-207.3, a percentage of the revenues on the basis of the location where the transaction is consummated as determined under Section 59-12-205;

(iii) is drafted so that the sum of the percentage described in Subsection (1)(b)(ii)(A) and the percentage described in Subsection (1)(b)(ii)(B) is equal to 100%; and

(iv) is drafted so that the percentage described in Subsection (1)(b)(ii)(B) does not exceed 50%.

(c) "Countywide distribution" means the revenue generated by a tax under this part, that is required under Section 59-12-205 to be paid to a county, and to each municipality within a county for the portion of the municipality that is within the county.

(d) "Managing county" means the legislative body of a county that has been designated as an alternate disbursal area under Subsection (3).

(e) "Municipality" is as defined in Section 10-1-104.

(f) "Predesignation year" means the one-year period immediately preceding the day on which a particular alternate distribution formula is first in effect for a county.

(2) Notwithstanding Subsection 59-12-205(2), if the commission designates a county as an alternate disbursal area:

(a) the commission may not make the distributions required by Section 59-12-205 directly to a municipality; and

(b) shall pay the countywide distribution to the managing county.

(3) A county shall be designated as an alternate disbursal area by the commission on the first day of the first calendar month after a 90-day period beginning on the day on which the commission receives written notice from the county that an alternate distribution formula is approved under Subsection (3)(b), if:

(a) subject to Subsections (4) and (5), the county legislative body and a majority of the municipalities that are, in whole or in part, within that county agree, in writing, to an alternate distribution formula; and

(b) in accordance with Subsection (8), after the agreement described in Subsection (3)(a) is reached, the alternate distribution formula is approved by a majority vote of the legal

voters residing in the incorporated and unincorporated areas of the county.

(4) The legislative body of a municipality shall determine whether a municipality agrees to an alternate distribution formula.

(5) The agreement described in Subsection (3)(a) shall require that the entire countywide distribution be distributed by the managing county to the county and the municipalities within the county:

(a) except as provided in Subsection (7), in accordance with the alternate distribution formula described in Subsection (3)(a); and

(b) within a time period, specified in the agreement, that may not exceed 30 days after the day on which the countywide distribution is paid to the managing county by the commission.

(6) The managing county of an alternate disbursal area:

(a) shall receive the countywide distribution from the commission;

(b) except as provided in Subsection (7), shall distribute the countywide distribution to the county and each municipality within the county in accordance with the agreement described in Subsection (3)(a);

(c) may not withhold any amount of the countywide distribution that is due to the county or a municipality under the agreement described in Subsection (3)(a) for any reason; and

(d) may not pay any portion of the countywide distribution to any person other than the county or a municipality within the county.

(7) (a) Except as provided in Subsection (7)(c), if, for any month of the current year, the portion of the countywide distribution required to be distributed to a county or municipality within the county under the alternate distribution formula is less than the amount received under this part by the county, or by the municipality for the portion of the municipality that is within the county, for the same month of the predesignation year, the managing county shall increase the distribution to the county or municipality by the difference between:

(i) the amount required to be paid to the county or municipality under the alternate distribution formula; and

(ii) the amount received under this part by the county, or by the municipality for the portion of the municipality that is within the county, for the same month of the predesignation

year.

(b) If the distribution to a county or a municipality within the county is increased under Subsection (7)(a), the distribution to a county that is not increased under Subsection (7)(a), and each municipality within the county that is not increased under Subsection (7)(a), shall be proportionally reduced to offset the sum of the increases made under Subsection (7)(a) for each county and municipality within the county.

(c) If the countywide distribution for any month of the current year is less than the countywide distribution for the same month of the predesignation year, the managing county shall distribute to the county, and each municipality within the county, the amount received by the county, or by the municipality for the portion of the municipality within the county, for the same month of the predesignation year, proportionally reduced to offset the difference between:

(i) the countywide distribution for the month of the current year; and

(ii) the countywide distribution for the same month of the predesignation year.

(8) The election required by Subsection (3)(b):

(a) may be held:

(i) on the day of a regular general election, described in Section 20A-1-201; or

(ii) on the day of a municipal general election, described in Section 20A-1-202;

(b) shall be conducted in accordance with Title 20A, Election Code; and

(c) shall be conducted with a ballot that includes:

(i) a printed number and ballot title;

(ii) a description of:

(A) the formula that is used within the county, at the time of the election, for the division and distribution of revenue from the sales and use tax authorized by this part among the county and municipalities, or portions of municipalities, that are within the county; and

(B) the alternate distribution formula that is proposed on the ballot;

(iii) a question asking voters to indicate whether the proposed alternate distribution formula should be approved; and

(iv) the words "YES" and "NO", each followed by a square which the voter may select or mark to indicate the voter's vote.

(9) Subject to Subsection (10), the commission shall remove a county's designation as an alternate disbursal area if:

(a) subject to Subsection (11), the county legislative body and a majority of the municipalities that are, in whole or in part, within that county, agree, in writing, to remove the designation as an alternate disbursal area; and

(b) in accordance with Subsection (12), after the agreement described in Subsection (9)(a) is reached, adoption of the distribution formula described in Section 59-12-205 is approved by a majority vote of the legal voters residing in the incorporated and unincorporated areas of the county.

(10) (a) The commission shall remove a county's designation as an alternate disbursal area on the first day of the first calendar month after a 90-day period beginning on the day on which the commission receives written notice from the county that the distribution formula has been approved under Subsection (9)(b).

(b) Beginning on the day that the commission removes a county's designation as an alternate disbursal area under Subsection (10)(a), the commission shall distribute revenue generated by the sales and use tax authorized by this part to the county and each municipality within the county as required by Section 59-12-205.

(11) The legislative body of a municipality shall determine whether a municipality agrees to removal of the designation as an alternate disbursal area under Subsection (9)(a).

(12) The election, described in Subsection (9)(b):

(a) may be held:

(i) on the day of a regular general election, described in Section 20A-1-201; or

(ii) on the day of a municipal general election, described in Section 20A-1-202;

(b) shall be conducted in accordance with Title 20A, Election Code; and

(c) shall be conducted with a ballot that includes:

(i) a printed number and ballot title;

(ii) a description of:

(A) the formula that is used within the county, at the time of the election, for the division and distribution of revenue from the sales and use tax authorized by this part among the county and municipalities, or portions of municipalities, that are within the county; and

(B) the distribution formula described in Section 59-12-205;

(iii) a question asking voters to indicate whether the distribution formula described in Section 59-12-205 should be approved; and

369 (iv) the words "YES" and "NO", each followed by a square which the voter may select
370 or mark to indicate the voter's vote.

371 (13) An alternate disbursal area may change from one alternate distribution formula to
372 another alternate distribution formula by complying with the procedures in Subsection (3).

373 Section 3. **Effective date.**

374 This bill takes effect on July 1, 2006.

Legislative Review Note
as of 1-23-06 4:37 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

Fiscal Note**Revisions to Distribution of Sales and Use Tax Revenue***27-Jan-06***Bill Number HB0147***3:01 PM*

State Impact

No net fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst