

1 **SALES AND USE TAX - DETERMINING THE**
2 **LOCATION OF CERTAIN TRANSACTIONS**

3 2009 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Wayne A. Harper**

6 Senate Sponsor: Curtis S. Bramble

8 **LONG TITLE**

9 **General Description:**

10 This bill amends the Sales and Use Tax Act relating to determining the location of
11 certain transactions.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ addresses the sale, lease, or rental of a service under provisions for determining the
15 location of certain transactions if the receipt of an order and the receipt of tangible
16 personal property or a product transferred electronically take place within the state;
17 and

18 ▶ makes technical changes.

19 **Monies Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 This bill takes effect on July 1, 2009.

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **59-12-212**, as enacted by Laws of Utah 2008, Chapter 384

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

28 Section 1. Section **59-12-212** is amended to read:

29 **59-12-212. Location of certain transactions if receipt of order and receipt of**

30 **tangible personal property or product take place in this state -- Location of sale, lease, or**
31 **rental of a service -- Exception from tax, penalty, or interest.**

32 (1) The location of the sale of tangible personal property or a product transferred
33 electronically is the location where the seller receives the order if:

34 (a) the seller receives the order for the tangible personal property or product
35 transferred electronically in this state;

36 (b) receipt of the tangible personal property or product transferred electronically by the
37 purchaser or the purchaser's donee occurs in this state;

38 (c) the location where receipt of the tangible personal property or product transferred
39 electronically by the purchaser occurs is determined in accordance with Subsections (3)
40 through [~~(5)~~] (6); and

41 (d) at the time the seller receives the order, the record keeping system that the seller
42 uses to calculate the proper amount of tax imposed under this chapter captures the location
43 where the order is received.

44 (2) (a) Subject to Subsections (2)(b) through (d), for purposes of this section, the
45 location where a seller receives an order is:

46 (i) a physical location of the seller or a third party; and

47 (ii) where an order is initially received by or on behalf of the seller.

48 (b) A physical location of a seller or third party includes the following if operated by
49 or on behalf of the seller:

50 (i) an automated order receipt system;

51 (ii) an office; or

52 (iii) an outlet.

53 (c) The location where a seller receives an order does not include the location:

54 (i) where an order is accepted, completed, or fulfilled; or

55 (ii) from which tangible personal property or a product transferred electronically is
56 shipped.

57 (d) For purposes of this Subsection (2), an order is considered to be received when all

58 of the information necessary to the determination of whether the order can be accepted has
59 been received by or on behalf of the seller.

60 (3) (a) A purchaser is not liable for a tax, penalty, or interest on a sale for which the
61 purchaser remits a tax under this chapter to the seller in the amount the seller invoices if the
62 amount is calculated at the total tax rate applicable to the location where:

63 (i) receipt by the purchaser occurs; or

64 (ii) the seller receives the order.

65 (b) A purchaser may rely on a written representation by the seller as to the location
66 where the seller receives the order for the sale.

67 (c) If a purchaser does not have a written representation by the seller as to the location
68 where the seller receives the order for the sale, the purchaser may determine the total tax rate
69 applicable to the location where the order is received by using a location indicated by a
70 business address for the seller that is available from the business records:

71 (i) of the purchaser; and

72 (ii) that are maintained in the ordinary course of the purchaser's business.

73 (4) If an item of tangible personal property or an item that is a product transferred
74 electronically is sold with an item that is subject to Section 59-12-211, all of the items are
75 subject to this section if the items are:

76 (a) sold under a single contract;

77 (b) sold in the same transaction; and

78 (c) billed on the same billing statement.

79 (5) Notwithstanding Section 59-12-211, a seller may elect to determine the location of
80 a sale, lease, or rental of a service under this section if the seller makes any sale, lease, or
81 rental that is subject to this section.

82 [~~5~~ This] (6) Except as provided in Subsection (5), this section does not apply to the
83 lease or rental of:

84 (a) tangible personal property; or

85 (b) a product transferred electronically.

86 Section 2. **Effective date.**

87 This bill takes effect on July 1, 2009.