

1 **TAX, FEE, OR CHARGE ELECTRONIC FILING AND**
2 **REMITTANCE**

3 2011 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Julie Fisher**

6 Senate Sponsor: _____

8 **LONG TITLE**

9 **General Description:**

10 This bill makes changes related to electronic filing and remittance related to certain
11 taxes, fees, or charges administered by the State Tax Commission.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ requires electronic filing and remittance related to certain taxes, fees, or charges
- 15 administered by the State Tax Commission;
- 16 ▶ establishes penalties for failing to file certain returns electronically; and
- 17 ▶ makes technical and conforming changes.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 This bill takes effect on January 1, 2012.

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **59-1-401**, as last amended by Laws of Utah 2010, Chapter 233

25 **59-12-107**, as last amended by Laws of Utah 2009, Chapter 212

26 **59-12-108**, as last amended by Laws of Utah 2008, Chapters 286, 382, and 384



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

29 Section 1. Section **59-1-401** is amended to read:

30 **59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute**
31 **of limitations -- Commission authority to waive, reduce, or compromise penalty or**
32 **interest.**

33 (1) As used in this section:

34 (a) "Activated tax, fee, or charge" means a tax, fee, or charge with respect to which the
35 commission:

36 (i) has implemented the commission's GenTax system; and

37 (ii) at least 30 days before implementing the commission's GenTax system as described
38 in Subsection (1)(a)(i), has provided notice in a conspicuous place on the commission's website
39 stating:

40 (A) the date the commission will implement the GenTax system with respect to the tax,
41 fee, or charge; and

42 (B) that, at the time the commission implements the GenTax system with respect to the
43 tax, fee, or charge:

44 (I) a person that files a return after the due date as described in Subsection (2)(a) is
45 subject to the penalty described in Subsection (2)(c)(ii); and

46 (II) a person that fails to pay the tax, fee, or charge as described in Subsection (3)(a) is
47 subject to the penalty described in Subsection (3)(b)(ii).

48 (b) "Activation date for a tax, fee, or charge" means with respect to a tax, fee, or
49 charge, the later of:

50 (i) the date on which the commission implements the commission's GenTax system
51 with respect to the tax, fee, or charge; or

52 (ii) 30 days after the date the commission provides the notice described in Subsection
53 (1)(a)(ii) with respect to the tax, fee, or charge.

54 (c) (i) Except as provided in Subsection (1)(c)(ii), "tax, fee, or charge" means:

55 (A) a tax, fee, or charge the commission administers under:

56 (I) this title;

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

58 (III) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

- 59 (IV) Section 19-6-410.5;
- 60 (V) Section 19-6-714;
- 61 (VI) Section 19-6-805;
- 62 (VII) Section 34A-2-202;
- 63 (VIII) Section 40-6-14;
- 64 (IX) Section 69-2-5;
- 65 (X) Section 69-2-5.5; or
- 66 (XI) Section 69-2-5.6; or
- 67 (B) another amount that by statute is subject to a penalty imposed under this section.
- 68 (ii) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:
 - 69 (A) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;
 - 70 (B) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
 - 71 (C) Chapter 2, Property Tax Act, except for Section 59-2-1309;
 - 72 (D) Chapter 3, Tax Equivalent Property Act; or
 - 73 (E) Chapter 4, Privilege Tax.
- 74 (d) "Unactivated tax, fee, or charge" means a tax, fee, or charge except for an activated
- 75 tax, fee, or charge.
- 76 (2) (a) The due date for filing a return is:
 - 77 (i) if the person filing the return is not allowed by law an extension of time for filing
 - 78 the return, the day on which the return is due as provided by law; or
 - 79 (ii) if the person filing the return is allowed by law an extension of time for filing the
 - 80 return, the earlier of:
 - 81 (A) the date the person files the return; or
 - 82 (B) the last day of that extension of time as allowed by law.
 - 83 (b) A penalty in the amount described in Subsection (2)(c) is imposed if a person files a
 - 84 return after the due date described in Subsection (2)(a).
 - 85 (c) For purposes of Subsection (2)(b), the penalty is an amount equal to the greater of:
 - 86 (i) if the return described in Subsection (2)(b) is filed with respect to an unactivated
 - 87 tax, fee, or charge:
 - 88 (A) \$20; or
 - 89 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or

90 (ii) if the return described in Subsection (2)(b) is filed with respect to an activated tax,
91 fee, or charge, beginning on the activation date for the tax, fee, or charge:

92 (A) \$20; or

93 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the return is
94 filed no later than five days after the due date described in Subsection (2)(a);

95 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the return is filed
96 more than five days after the due date but no later than 15 days after the due date described in
97 Subsection (2)(a); or

98 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the return is
99 filed more than 15 days after the due date described in Subsection (2)(a).

100 (d) This Subsection (2) does not apply to:

101 (i) an amended return; or

102 (ii) a return with no tax due.

103 (3) (a) A person is subject to a penalty for failure to pay a tax, fee, or charge if:

104 (i) the person files a return on or before the due date for filing a return described in
105 Subsection (2)(a), but fails to pay the tax, fee, or charge due on the return on or before that due
106 date;

107 (ii) the person:

108 (A) is subject to a penalty under Subsection (2)(b); and

109 (B) fails to pay the tax, fee, or charge due on a return within a 90-day period after the
110 due date for filing a return described in Subsection (2)(a);

111 (iii) (A) the person is subject to a penalty under Subsection (2)(b); and

112 (B) the commission estimates an amount of tax due for that person in accordance with
113 Subsection 59-1-1406(2);

114 (iv) the person:

115 (A) is mailed a notice of deficiency; and

116 (B) within a 30-day period after the day on which the notice of deficiency described in
117 Subsection (3)(a)(iv)(A) is mailed:

118 (I) does not file a petition for redetermination or a request for agency action; and

119 (II) fails to pay the tax, fee, or charge due on a return;

120 (v) (A) the commission:

121 (I) issues an order constituting final agency action resulting from a timely filed petition
122 for redetermination or a timely filed request for agency action; or

123 (II) is considered to have denied a request for reconsideration under Subsection
124 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed
125 request for agency action; and

126 (B) the person fails to pay the tax, fee, or charge due on a return within a 30-day period
127 after the date the commission:

128 (I) issues the order constituting final agency action described in Subsection
129 (3)(a)(v)(A)(I); or

130 (II) is considered to have denied the request for reconsideration described in
131 Subsection (3)(a)(v)(A)(II); or

132 (vi) the person fails to pay the tax, fee, or charge within a 30-day period after the date
133 of a final judicial decision resulting from a timely filed petition for judicial review.

134 (b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:

135 (i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with
136 respect to an unactivated tax, fee, or charge:

137 (A) \$20; or

138 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or

139 (ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with
140 respect to an activated tax, fee, or charge, beginning on the activation date:

141 (A) \$20; or

142 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the activated
143 tax, fee, or charge due on the return is paid no later than five days after the due date for filing a
144 return described in Subsection (2)(a);

145 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the activated tax,
146 fee, or charge due on the return is paid more than five days after the due date for filing a return
147 described in Subsection (2)(a) but no later than 15 days after that due date; or

148 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the activated
149 tax, fee, or charge due on the return is paid more than 15 days after the due date for filing a
150 return described in Subsection (2)(a).

151 (4) (a) Beginning January 1, 1995, in the case of any underpayment of estimated tax or

152 quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104, there
153 shall be added a penalty in an amount determined by applying the interest rate provided under
154 Section 59-1-402 plus four percentage points to the amount of the underpayment for the period
155 of the underpayment.

156 (b) (i) For purposes of Subsection (4)(a), the amount of the underpayment shall be the
157 excess of the required installment over the amount, if any, of the installment paid on or before
158 the due date for the installment.

159 (ii) The period of the underpayment shall run from the due date for the installment to
160 whichever of the following dates is the earlier:

161 (A) the original due date of the tax return, without extensions, for the taxable year; or

162 (B) with respect to any portion of the underpayment, the date on which that portion is
163 paid.

164 (iii) For purposes of this Subsection (4), a payment of estimated tax shall be credited
165 against unpaid required installments in the order in which the installments are required to be
166 paid.

167 (5) (a) Notwithstanding Subsection (2) and except as provided in Subsection (6), a
168 person allowed by law an extension of time for filing a corporate franchise or income tax return
169 under Chapter 7, Corporate Franchise and Income Taxes, or an individual income tax return
170 under Chapter 10, Individual Income Tax Act, is subject to a penalty in the amount described in
171 Subsection (5)(b) if, on or before the day on which the return is due as provided by law, not
172 including the extension of time, the person fails to pay:

173 (i) for a person filing a corporate franchise or income tax return under Chapter 7,
174 Corporate Franchise and Income Taxes, the payment required by Subsection 59-7-507(1)(b); or

175 (ii) for a person filing an individual income tax return under Chapter 10, Individual
176 Income Tax Act, the payment required by Subsection 59-10-516(2).

177 (b) For purposes of Subsection (5)(a), the penalty per month during the period of the
178 extension of time for filing the return is an amount equal to 2% of the tax due on the return,
179 unpaid as of the day on which the return is due as provided by law.

180 (6) If a person does not file a return within an extension of time allowed by Section
181 59-7-505 or 59-10-516, the person:

182 (a) is not subject to a penalty in the amount described in Subsection (5)(b); and

183 (b) is subject to a penalty in an amount equal to the sum of:

184 (i) a late file penalty in an amount equal to the greater of:

185 (A) \$20; or

186 (B) 10% of the tax due on the return, unpaid as of the day on which the return is due as

187 provided by law, not including the extension of time; and

188 (ii) a late pay penalty in an amount equal to the greater of:

189 (A) \$20; or

190 (B) 10% of the unpaid tax due on the return, unpaid as of the day on which the return is

191 due as provided by law, not including the extension of time.

192 (7) (a) Additional penalties for an underpayment of a tax, fee, or charge are as provided

193 in this Subsection (7)(a).

194 (i) Except as provided in Subsection (7)(c), if any portion of an underpayment of a tax,

195 fee, or charge is due to negligence, the penalty is 10% of the portion of the underpayment that

196 is due to negligence.

197 (ii) Except as provided in Subsection (7)(d), if any portion of an underpayment of a

198 tax, fee, or charge is due to intentional disregard of law or rule, the penalty is 15% of the entire

199 underpayment.

200 (iii) If any portion of an underpayment is due to an intent to evade a tax, fee, or charge,

201 the penalty is the greater of \$500 per period or 50% of the entire underpayment.

202 (iv) If any portion of an underpayment is due to fraud with intent to evade a tax, fee, or

203 charge, the penalty is the greater of \$500 per period or 100% of the entire underpayment.

204 (b) If the commission determines that a person is liable for a penalty imposed under

205 Subsection (7)(a)(ii), (iii), or (iv), the commission shall notify the person of the proposed

206 penalty.

207 (i) The notice of proposed penalty shall:

208 (A) set forth the basis of the assessment; and

209 (B) be mailed by certified mail, postage prepaid, to the person's last-known address.

210 (ii) Upon receipt of the notice of proposed penalty, the person against whom the

211 penalty is proposed may:

212 (A) pay the amount of the proposed penalty at the place and time stated in the notice;

213 or

214 (B) proceed in accordance with the review procedures of Subsection (7)(b)(iii).

215 (iii) A person against whom a penalty is proposed in accordance with this Subsection
216 (7) may contest the proposed penalty by filing a petition for an adjudicative proceeding with
217 the commission.

218 (iv) (A) If the commission determines that a person is liable for a penalty under this
219 Subsection (7), the commission shall assess the penalty and give notice and demand for
220 payment.

221 (B) The commission shall mail the notice and demand for payment described in
222 Subsection (7)(b)(iv)(A):

223 (I) to the person's last-known address; and

224 (II) in accordance with Section 59-1-1404.

225 (c) A seller that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not
226 subject to the penalty under Subsection (7)(a)(i) if on or after July 1, 2001:

227 (i) a court of competent jurisdiction issues a final unappealable judgment or order
228 determining that:

229 (A) the seller meets one or more of the criteria described in Subsection
230 59-12-107(1)(a); and

231 (B) the commission or a county, city, or town may require the seller to collect a tax
232 under Subsections 59-12-103(2)(a) through (d); or

233 (ii) the commission issues a final unappealable administrative order determining that:

234 (A) the seller meets one or more of the criteria described in Subsection
235 59-12-107(1)(a); and

236 (B) the commission or a county, city, or town may require the seller to collect a tax
237 under Subsections 59-12-103(2)(a) through (d).

238 (d) A seller that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not
239 subject to the penalty under Subsection (7)(a)(ii) if:

240 (i) (A) a court of competent jurisdiction issues a final unappealable judgment or order
241 determining that:

242 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a);
243 and

244 (II) the commission or a county, city, or town may require the seller to collect a tax

245 under Subsections 59-12-103(2)(a) through (d); or

246 (B) the commission issues a final unappealable administrative order determining that:

247 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a);

248 and

249 (II) the commission or a county, city, or town may require the seller to collect a tax

250 under Subsections 59-12-103(2)(a) through (d); and

251 (ii) the seller's intentional disregard of law or rule is warranted by existing law or by a

252 nonfrivolous argument for the extension, modification, or reversal of existing law or the

253 establishment of new law.

254 (8) The penalty for failure to file an information return, information report, or a

255 complete supporting schedule is \$50 for each information return, information report, or

256 supporting schedule up to a maximum of \$1,000.

257 (9) If a person, in furtherance of a frivolous position, has a prima facie intent to delay

258 or impede administration of a law relating to a tax, fee, or charge and files a purported return

259 that fails to contain information from which the correctness of reported tax, fee, or charge

260 liability can be determined or that clearly indicates that the tax, fee, or charge liability shown is

261 substantially incorrect, the penalty is \$500.

262 (10) (a) A seller that fails to remit a tax, fee, or charge monthly as required by

263 Subsection 59-12-108(1)(a):

264 (i) is subject to a penalty described in Subsection (2); and

265 (ii) may not retain the percentage of sales and use taxes that would otherwise be

266 allowable under Subsection 59-12-108(2).

267 (b) A seller that fails to [~~remit a tax, fee, or charge by electronic funds transfer~~] file a

268 return by electronic means as required by [~~Subsection 59-12-108(1)(a)(ii)(B); (i)~~] Section

269 59-12-107 is subject to a penalty [~~described in Subsection (2); and~~] in an amount equal to the

270 greater of:

271 [~~(ii) may not retain the percentage of sales and use taxes that would otherwise be~~

272 ~~allowable under Subsection 59-12-108(2).]~~

273 (i) \$20; or

274 (ii) 10% of the tax, fee, or charge due on the return.

275 (11) (a) A person is subject to the penalty provided in Subsection (11)(c) if that person:

276 (i) commits an act described in Subsection (11)(b) with respect to one or more of the
277 following documents:
278 (A) a return;
279 (B) an affidavit;
280 (C) a claim; or
281 (D) a document similar to Subsections (11)(a)(i)(A) through (C);
282 (ii) knows or has reason to believe that the document described in Subsection (11)(a)(i)
283 will be used in connection with any material matter administered by the commission; and
284 (iii) knows that the document described in Subsection (11)(a)(i), if used in connection
285 with any material matter administered by the commission, would result in an understatement of
286 another person's liability for a tax, fee, or charge.
287 (b) The following acts apply to Subsection (11)(a)(i):
288 (i) preparing any portion of a document described in Subsection (11)(a)(i);
289 (ii) presenting any portion of a document described in Subsection (11)(a)(i);
290 (iii) procuring any portion of a document described in Subsection (11)(a)(i);
291 (iv) advising in the preparation or presentation of any portion of a document described
292 in Subsection (11)(a)(i);
293 (v) aiding in the preparation or presentation of any portion of a document described in
294 Subsection (11)(a)(i);
295 (vi) assisting in the preparation or presentation of any portion of a document described
296 in Subsection (11)(a)(i); or
297 (vii) counseling in the preparation or presentation of any portion of a document
298 described in Subsection (11)(a)(i).
299 (c) For purposes of Subsection (11)(a), the penalty:
300 (i) shall be imposed by the commission;
301 (ii) is \$500 for each document described in Subsection (11)(a)(i) with respect to which
302 the person described in Subsection (11)(a) meets the requirements of Subsection (11)(a); and
303 (iii) is in addition to any other penalty provided by law.
304 (d) The commission may seek a court order to enjoin a person from engaging in
305 conduct that is subject to a penalty under this Subsection (11).
306 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

307 commission may make rules prescribing the documents that are similar to Subsections
308 (11)(a)(i)(A) through (C).

309 (12) (a) As provided in Section 76-8-1101, criminal offenses and penalties are as
310 provided in Subsections (12)(b) through (e).

311 (b) (i) A person who is required by this title or any laws the commission administers or
312 regulates to register with or obtain a license or permit from the commission, who operates
313 without having registered or secured a license or permit, or who operates when the registration,
314 license, or permit is expired or not current, is guilty of a class B misdemeanor.

315 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(b)(i), the
316 penalty may not:

317 (A) be less than \$500; or

318 (B) exceed \$1,000.

319 (c) (i) A person who, with intent to evade a tax, fee, or charge or requirement of this
320 title or any lawful requirement of the commission, fails to make, render, sign, or verify a return
321 or to supply information within the time required by law, or who makes, renders, signs, or
322 verifies a false or fraudulent return or statement, or who supplies false or fraudulent
323 information, is guilty of a third degree felony.

324 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(c)(i), the
325 penalty may not:

326 (A) be less than \$1,000; or

327 (B) exceed \$5,000.

328 (d) (i) A person who intentionally or willfully attempts to evade or defeat a tax, fee, or
329 charge or the payment of a tax, fee, or charge is, in addition to other penalties provided by law,
330 guilty of a second degree felony.

331 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(d)(i), the
332 penalty may not:

333 (A) be less than \$1,500; or

334 (B) exceed \$25,000.

335 (e) (i) A person is guilty of a second degree felony if that person commits an act:

336 (A) described in Subsection (12)(e)(ii) with respect to one or more of the following
337 documents:

- 338 (I) a return;
- 339 (II) an affidavit;
- 340 (III) a claim; or
- 341 (IV) a document similar to Subsections (12)(e)(i)(A)(I) through (III); and
- 342 (B) subject to Subsection (12)(e)(iii), with knowledge that the document described in
- 343 Subsection (12)(e)(i)(A):
- 344 (I) is false or fraudulent as to any material matter; and
- 345 (II) could be used in connection with any material matter administered by the
- 346 commission.
- 347 (ii) The following acts apply to Subsection (12)(e)(i):
- 348 (A) preparing any portion of a document described in Subsection (12)(e)(i)(A);
- 349 (B) presenting any portion of a document described in Subsection (12)(e)(i)(A);
- 350 (C) procuring any portion of a document described in Subsection (12)(e)(i)(A);
- 351 (D) advising in the preparation or presentation of any portion of a document described
- 352 in Subsection (12)(e)(i)(A);
- 353 (E) aiding in the preparation or presentation of any portion of a document described in
- 354 Subsection (12)(e)(i)(A);
- 355 (F) assisting in the preparation or presentation of any portion of a document described
- 356 in Subsection (12)(e)(i)(A); or
- 357 (G) counseling in the preparation or presentation of any portion of a document
- 358 described in Subsection (12)(e)(i)(A).
- 359 (iii) This Subsection (12)(e) applies:
- 360 (A) regardless of whether the person for which the document described in Subsection
- 361 (12)(e)(i)(A) is prepared or presented:
- 362 (I) knew of the falsity of the document described in Subsection (12)(e)(i)(A); or
- 363 (II) consented to the falsity of the document described in Subsection (12)(e)(i)(A); and
- 364 (B) in addition to any other penalty provided by law.
- 365 (iv) Notwithstanding Section 76-3-301, for purposes of this Subsection (12)(e), the
- 366 penalty may not:
- 367 (A) be less than \$1,500; or
- 368 (B) exceed \$25,000.

369 (v) The commission may seek a court order to enjoin a person from engaging in
370 conduct that is subject to a penalty under this Subsection (12)(e).

371 (vi) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
372 the commission may make rules prescribing the documents that are similar to Subsections
373 (12)(e)(i)(A)(I) through (III).

374 (f) The statute of limitations for prosecution for a violation of this Subsection (12) is
375 the later of six years:

- 376 (i) from the date the tax should have been remitted; or
- 377 (ii) after the day on which the person commits the criminal offense.

378 (13) Upon making a record of its actions, and upon reasonable cause shown, the
379 commission may waive, reduce, or compromise any of the penalties or interest imposed under
380 this part.

381 Section 2. Section **59-12-107** is amended to read:

382 **59-12-107. Collection, remittance, and payment of tax by sellers or other persons**
383 **-- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other liability for**
384 **collection -- Rulemaking authority -- Credits -- Treatment of bad debt -- Penalties.**

385 (1) (a) Except as provided in Subsection (1)(d) or Section 59-12-107.1 or 59-12-123
386 and subject to Subsection (1)(e), each seller shall pay or collect and remit the sales and use
387 taxes imposed by this chapter if within this state the seller:

- 388 (i) has or utilizes:
 - 389 (A) an office;
 - 390 (B) a distribution house;
 - 391 (C) a sales house;
 - 392 (D) a warehouse;
 - 393 (E) a service enterprise; or
 - 394 (F) a place of business similar to Subsections (1)(a)(i)(A) through (E);
- 395 (ii) maintains a stock of goods;
- 396 (iii) regularly solicits orders, regardless of whether or not the orders are accepted in the
397 state, unless the seller's only activity in the state is:
 - 398 (A) advertising; or
 - 399 (B) solicitation by:

- 400 (I) direct mail;
- 401 (II) electronic mail;
- 402 (III) the Internet;
- 403 (IV) telecommunications service; or
- 404 (V) a means similar to Subsection (1)(a)(iii)(A) or (B);
- 405 (iv) regularly engages in the delivery of property in the state other than by:
- 406 (A) common carrier; or
- 407 (B) United States mail; or
- 408 (v) regularly engages in an activity directly related to the leasing or servicing of
- 409 property located within the state.
- 410 (b) A seller that does not meet one or more of the criteria provided for in Subsection
- 411 (1)(a):
- 412 (i) except as provided in Subsection (1)(b)(ii), may voluntarily:
- 413 (A) collect a tax on a transaction described in Subsection 59-12-103(1); and
- 414 (B) remit the tax to the commission as provided in this part; or
- 415 (ii) notwithstanding Subsection (1)(b)(i), shall collect a tax on a transaction described
- 416 in Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to collect the tax.
- 417 (c) The collection and remittance of a tax under this chapter by a seller that is
- 418 registered under the agreement may not be used as a factor in determining whether that seller is
- 419 required by Subsection (1)(a) to:
- 420 (i) pay a tax, fee, or charge under:
- 421 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 422 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 423 (C) Section 19-6-714;
- 424 (D) Section 19-6-805;
- 425 (E) Section 69-2-5;
- 426 (F) Section 69-2-5.5;
- 427 (G) Section 69-2-5.6; or
- 428 (H) this title; or
- 429 (ii) collect and remit a tax, fee, or charge under:
- 430 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

- 431 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 432 (C) Section 19-6-714;
- 433 (D) Section 19-6-805;
- 434 (E) Section 69-2-5;
- 435 (F) Section 69-2-5.5;
- 436 (G) Section 69-2-5.6; or
- 437 (H) this title.

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

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

441 (ii) the person:

442 (A) stores the tangible personal property or product transferred electronically in the
443 state;

444 (B) uses the tangible personal property or product transferred electronically in the state;

445 or

446 (C) consumes the tangible personal property or product transferred electronically in the
447 state.

448 (e) The ownership of property that is located at the premises of a printer's facility with
449 which the retailer has contracted for printing and that consists of the final printed product,
450 property that becomes a part of the final printed product, or copy from which the printed
451 product is produced, shall not result in the retailer being considered to have or maintain an
452 office, distribution house, sales house, warehouse, service enterprise, or other place of
453 business, or to maintain a stock of goods, within this state.

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

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

458 (B) "Common ownership" is as defined in Section 59-7-101.

459 (C) "Related seller" means a seller that:

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

462 (II) is:
463 (Aa) related to a seller that is required to pay or collect and remit sales and use taxes
464 under Subsection (1)(a) as part of an affiliated group or because of common ownership; or
465 (Bb) a limited liability company owned by the parent corporation of an affiliated group
466 if that parent corporation of the affiliated group is required to pay or collect and remit sales and
467 use taxes under Subsection (1)(a); and
468 (III) does not voluntarily collect and remit a tax under Subsection (1)(b)(i).
469 (ii) A seller is not required to pay or collect and remit sales and use taxes under
470 Subsection (1)(a):
471 (A) if the seller is a related seller;
472 (B) if the seller to which the related seller is related does not engage in any of the
473 following activities on behalf of the related seller:
474 (I) advertising;
475 (II) marketing;
476 (III) sales; or
477 (IV) other services; and
478 (C) if the seller to which the related seller is related accepts the return of an item sold
479 by the related seller, the seller to which the related seller is related accepts the return of that
480 item:
481 (I) sold by a seller that is not a related seller; and
482 (II) on the same terms as the return of an item sold by that seller to which the related
483 seller is related.
484 (2) (a) Except as provided in Section 59-12-107.1, a tax under this chapter shall be
485 collected from a purchaser.
486 (b) A seller may not collect as tax an amount, without regard to fractional parts of one
487 cent, in excess of the tax computed at the rates prescribed by this chapter.
488 (c) (i) Each seller shall:
489 (A) give the purchaser a receipt for the tax collected; or
490 (B) bill the tax as a separate item and declare the name of this state and the seller's
491 sales and use tax license number on the invoice for the sale.
492 (ii) The receipt or invoice is prima facie evidence that the seller has collected the tax

493 and relieves the purchaser of the liability for reporting the tax to the commission as a
494 consumer.

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

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

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

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

509 (3) (a) Except as provided in Subsections [~~(4)~~] (5) through [~~(6)~~] (7) and Section
510 59-12-108, the sales or use tax imposed by this chapter is due and payable to the commission
511 quarterly on or before the last day of the month next succeeding each calendar quarterly period.

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

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

516 (c) Except as provided in Subsection [~~(4)~~] (5)(c), a return shall contain information and
517 be in a form the commission prescribes by rule.

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

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

523 (f) (i) Subject to Subsection (3)(f)(ii) and in accordance with Title 63G, Chapter 3,

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

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

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

530 (h) (i) The commission may require a seller that files a simplified electronic return with
531 the commission to file an additional electronic report with the commission.

532 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
533 commission may make rules providing:

534 (A) the information required to be included in the additional electronic report described
535 in Subsection (3)(h)(i); and

536 (B) one or more due dates for filing the additional electronic report described in
537 Subsection (3)(h)(i).

538 (4) A seller shall file a return and remit a tax, fee, or charge by electronic means if:

539 (a) the seller is required to file the return and remit the tax, fee, or charge under:

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

541 (ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

542 (iii) Chapter 26, Multi-Channel Video or Audio Service Tax Act;

543 (iv) Chapter 27, Sexually Explicit Business and Escort Service Tax;

544 (v) Section 19-6-714;

545 (vi) Section 19-6-805;

546 (vii) Section 69-2-5;

547 (viii) Section 69-2-5.5;

548 (ix) Section 69-2-5.6; or

549 (x) this chapter; and

550 (b) the seller reports \$1,000 or more in tax under this chapter for the preceding
551 calendar year.

552 [~~4~~] (5) (a) As used in this Subsection [~~4~~] (5) and Subsection [~~5~~] (6)(b), "remote
553 seller" means a seller that is:

554 (i) registered under the agreement;

- 555 (ii) described in Subsection (1)(b); and
- 556 (iii) not a:
- 557 (A) model 1 seller;
- 558 (B) model 2 seller; or
- 559 (C) model 3 seller.
- 560 (b) (i) Except as provided in Subsection [~~(4)~~] (5)(b)(ii), a tax a remote seller collects in
- 561 accordance with Subsection (1)(b) is due and payable:
- 562 (A) to the commission;
- 563 (B) annually; and
- 564 (C) on or before the last day of the month immediately following the last day of each
- 565 calendar year.
- 566 (ii) The commission may require that a tax a remote seller collects in accordance with
- 567 Subsection (1)(b) be due and payable:
- 568 (A) to the commission; and
- 569 (B) on the last day of the month immediately following any month in which the seller
- 570 accumulates a total of at least \$1,000 in agreement sales and use tax.
- 571 (c) (i) If a remote seller remits a tax to the commission in accordance with Subsection
- 572 [~~(4)~~] (5)(b), the remote seller shall file a return:
- 573 (A) with the commission;
- 574 (B) with respect to the tax;
- 575 (C) containing information prescribed by the commission; and
- 576 (D) on a form prescribed by the commission.
- 577 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 578 commission shall make rules prescribing:
- 579 (A) the information required to be contained in a return described in Subsection [~~(4)~~
- 580 ~~(a)~~] (5)(c)(i); and
- 581 (B) the form described in Subsection [~~(4)~~] (5)(c)(i)(D).
- 582 (d) A tax a remote seller collects in accordance with this Subsection [~~(4)~~] (5) shall be
- 583 calculated on the basis of the total amount of taxable transactions under Subsection
- 584 59-12-103(1) the remote seller completes, including:
- 585 (i) a cash transaction; and

586 (ii) a charge transaction.

587 [~~5~~] (6) (a) Except as provided in Subsection [~~5~~] (6)(b), a tax a seller that files a
588 simplified electronic return collects in accordance with this chapter is due and payable:

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

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

592 (b) A tax a remote seller that files a simplified electronic return collects in accordance
593 with this chapter is due and payable as provided in Subsection [~~4~~] (5).

594 [~~6~~] (7) (a) On each vehicle sale made by other than a regular licensed vehicle dealer,
595 the purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject
596 to titling or registration under the laws of this state.

597 (b) The commission shall collect the tax described in Subsection [~~6~~] (7)(a) when the
598 vehicle is titled or registered.

599 [~~7~~] (8) If any sale of tangible personal property or any other taxable transaction under
600 Subsection 59-12-103(1), is made by a wholesaler to a retailer, the wholesaler is not
601 responsible for the collection or payment of the tax imposed on the sale and the retailer is
602 responsible for the collection or payment of the tax imposed on the sale if:

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

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

606 [~~8~~] (9) If any sale of property or service subject to the tax is made to a person
607 prepaying sales or use tax in accordance with Title 63M, Chapter 5, Resource Development
608 Act, or to a contractor or subcontractor of that person, the person to whom such payment or
609 consideration is payable is not responsible for the collection or payment of the sales or use tax
610 and the person prepaying the sales or use tax is responsible for the collection or payment of the
611 sales or use tax if the person prepaying the sales or use tax represents that the amount prepaid
612 as sales or use tax has not been fully credited against sales or use tax due and payable under the
613 rules promulgated by the commission.

614 [~~9~~] (10) (a) For purposes of this Subsection [~~9~~] (10):

615 (i) Except as provided in Subsection [~~9~~] (10)(a)(ii), "bad debt" is as defined in
616 Section 166, Internal Revenue Code.

- 617 (ii) Notwithstanding Subsection [~~(9)~~] (10)(a)(i), "bad debt" does not include:
- 618 (A) an amount included in the purchase price of tangible personal property, a product
- 619 transferred electronically, or a service that is:
- 620 (I) not a transaction described in Subsection 59-12-103(1); or
- 621 (II) exempt under Section 59-12-104;
- 622 (B) a financing charge;
- 623 (C) interest;
- 624 (D) a tax imposed under this chapter on the purchase price of tangible personal
- 625 property, a product transferred electronically, or a service;
- 626 (E) an uncollectible amount on tangible personal property or a product transferred
- 627 electronically that:
- 628 (I) is subject to a tax under this chapter; and
- 629 (II) remains in the possession of a seller until the full purchase price is paid;
- 630 (F) an expense incurred in attempting to collect any debt; or
- 631 (G) an amount that a seller does not collect on repossessed property.
- 632 (b) A seller may deduct bad debt from the total amount from which a tax under this
- 633 chapter is calculated on a return.
- 634 (c) A seller may file a refund claim with the commission if:
- 635 (i) the amount of bad debt for the time period described in Subsection [~~(9)~~] (10)(e)
- 636 exceeds the amount of the seller's sales that are subject to a tax under this chapter for that same
- 637 time period; and
- 638 (ii) as provided in Section 59-1-1410.
- 639 (d) A bad debt deduction under this section may not include interest.
- 640 (e) A bad debt may be deducted under this Subsection [~~(9)~~] (10) on a return for the
- 641 time period during which the bad debt:
- 642 (i) is written off as uncollectible in the seller's books and records; and
- 643 (ii) would be eligible for a bad debt deduction:
- 644 (A) for federal income tax purposes; and
- 645 (B) if the seller were required to file a federal income tax return.
- 646 (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or
- 647 claims a refund under this Subsection [~~(9)~~] (10), the seller shall report and remit a tax under

648 this chapter:

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

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

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

654 (i) in a proportional amount:

655 (A) to the purchase price of the tangible personal property, product transferred
656 electronically, or service; and

657 (B) to the tax due under this chapter on the tangible personal property, product
658 transferred electronically, or service; and

659 (ii) to:

660 (A) interest charges;

661 (B) service charges; and

662 (C) other charges.

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

665 (i) in accordance with this Subsection [~~(9)~~ (10)]; and

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

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

670 [~~(10)~~ (11)] (a) A seller may not, with intent to evade any tax, fail to timely remit the
671 full amount of tax required by this chapter.

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

673 (c) Each person who fails to pay any tax to the state or any amount of tax required to be
674 paid to the state, except amounts determined to be due by the commission under Chapter 1,
675 Part 14, Assessment, Collections, and Refunds Act, or Section 59-12-111, within the time
676 required by this chapter, or who fails to file any return as required by this chapter, shall pay, in
677 addition to the tax, penalties and interest as provided in Section 59-1-401.

678 (d) For purposes of prosecution under this section, each quarterly tax period in which a

679 seller, with intent to evade any tax, collects a tax and fails to timely remit the full amount of the
680 tax required to be remitted, constitutes a separate offense.

681 Section 3. Section **59-12-108** is amended to read:

682 **59-12-108. Monthly payment -- Amount of tax a seller may retain -- Penalty --**
683 **Certain amounts allocated to local taxing jurisdictions.**

684 (1) (a) Notwithstanding Section 59-12-107, a seller that has a tax liability under this
685 chapter of \$50,000 or more for the previous calendar year shall~~[(i)]~~ file a return with the
686 commission:

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

689 ~~[(B)]~~ (ii) for the month for which the seller collects a tax under this chapter~~[-and]~~.

690 ~~[(ii) except as provided in Subsection (1)(b), remit with the return required by~~
691 ~~Subsection (1)(a)(i) the amount the person is required to remit to the commission for each tax,~~
692 ~~fee, or charge described in Subsection (1)(c):]~~

693 ~~[(A) if that seller's tax liability under this chapter for the previous calendar year is less~~
694 ~~than \$96,000, by any method permitted by the commission; or]~~

695 ~~[(B) if that seller's tax liability under this chapter for the previous calendar year is~~
696 ~~\$96,000 or more, by electronic funds transfer.]~~

697 ~~[(b) A seller shall remit electronically with the return required by Subsection (1)(a)(i)~~
698 ~~the amount the seller is required to remit to the commission for each tax, fee, or charge~~
699 ~~described in Subsection (1)(c) if that seller:]~~

700 ~~[(i) is required by Section 59-12-107 to file the return electronically; or]~~

701 ~~[(ii) (A) is required to collect and remit a tax under Subsection 59-12-107(1)(a); and]~~

702 ~~[(B) files a simplified electronic return.]~~

703 ~~[(c) Subsections (1)(a) and (b) apply]~~

704 (b) Subsection (1)(a) applies to the following taxes, fees, or charges:

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

706 (ii) a fee under Section 19-6-716;

707 (iii) a fee under Section 19-6-805;

708 (iv) a charge under Section 69-2-5;

709 (v) a charge under Section 69-2-5.5;

710 (vi) a charge under Section 69-2-5.6; or

711 (vii) a tax under this chapter.

712 [~~(d) Notwithstanding Subsection (1)(a)(ii) and in accordance with Title 63G, Chapter~~
713 ~~3, Utah Administrative Rulemaking Act, the commission shall make rules providing for a~~
714 ~~method for making same-day payments other than by electronic funds transfer if making~~
715 ~~payments by electronic funds transfer fails.]]~~

716 [(e)] (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
717 Act, the commission shall establish by rule procedures and requirements for determining the
718 amount a seller is required to remit to the commission under this Subsection (1).

719 (2) (a) Except as provided in Subsection (3), a seller subject to Subsection (1) or a
720 seller described in Subsection (4) may retain each month the amount allowed by this
721 Subsection (2).

722 (b) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain
723 each month 1.31% of any amounts the seller is required to remit to the commission:

724 (i) for a transaction described in Subsection 59-12-103(1) that is subject to a state tax
725 and a local tax imposed in accordance with the following, for the month for which the seller is
726 filing a return in accordance with Subsection (1):

727 (A) Subsection 59-12-103(2)(a);

728 (B) Subsection 59-12-103(2)(b); and

729 (C) Subsection 59-12-103(2)(d); and

730 (ii) for an agreement sales and use tax.

731 (c) (i) A seller subject to Subsection (1) or a seller described in Subsection (4) may
732 retain each month the amount calculated under Subsection (2)(c)(ii) for a transaction described
733 in Subsection 59-12-103(1) that is subject to the state tax and the local tax imposed in
734 accordance with Subsection 59-12-103(2)(c).

735 (ii) For purposes of Subsection (2)(c)(i), the amount a seller may retain is an amount
736 equal to the sum of:

737 (A) 1.31% of any amounts the seller is required to remit to the commission for:

738 (I) the state tax and the local tax imposed in accordance with Subsection
739 59-12-103(2)(c);

740 (II) the month for which the seller is filing a return in accordance with Subsection (1);

741 and

742 (III) an agreement sales and use tax; and

743 (B) 1.31% of the difference between:

744 (I) the amounts the seller would have been required to remit to the commission:

745 (Aa) in accordance with Subsection 59-12-103(2)(a) if the transaction had been subject

746 to the state tax and the local tax imposed in accordance with Subsection 59-12-103(2)(a);

747 (Bb) for the month for which the seller is filing a return in accordance with Subsection

748 (1); and

749 (Cc) for an agreement sales and use tax; and

750 (II) the amounts the seller is required to remit to the commission for:

751 (Aa) the state tax and the local tax imposed in accordance with Subsection

752 59-12-103(2)(c);

753 (Bb) the month for which the seller is filing a return in accordance with Subsection (1);

754 and

755 (Cc) an agreement sales and use tax.

756 (d) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain

757 each month 1% of any amounts the seller is required to remit to the commission:

758 (i) for the month for which the seller is filing a return in accordance with Subsection

759 (1); and

760 (ii) under:

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

762 (B) Subsection 59-12-603(1)(a)(i)(A); or

763 (C) Subsection 59-12-603(1)(a)(i)(B).

764 (3) A state government entity that is required to remit taxes monthly in accordance

765 with Subsection (1) may not retain any amount under Subsection (2).

766 (4) A seller that has a tax liability under this chapter for the previous calendar year of

767 less than \$50,000 may:

768 (a) voluntarily meet the requirements of Subsection (1); and

769 (b) if the seller voluntarily meets the requirements of Subsection (1), retain the

770 amounts allowed by Subsection (2).

771 (5) Penalties for late payment shall be as provided in Section 59-1-401.

772 (6) (a) Except as provided in Subsection (6)(c), for any amounts required to be remitted
773 to the commission under this part, the commission shall each month calculate an amount equal
774 to the difference between:

775 (i) the total amount retained for that month by all sellers had the percentages listed
776 under Subsections (2)(b) and (2)(c)(ii) been 1.5%; and

777 (ii) the total amount retained for that month by all sellers at the percentages listed
778 under Subsections (2)(b) and (2)(c)(ii).

779 (b) The commission shall each month allocate the amount calculated under Subsection
780 (6)(a) to each county, city, and town on the basis of the proportion of agreement sales and use
781 tax that the commission distributes to each county, city, and town for that month compared to
782 the total agreement sales and use tax that the commission distributes for that month to all
783 counties, cities, and towns.

784 (c) The amount the commission calculates under Subsection (6)(a) may not include an
785 amount collected from a tax that:

786 (i) the state imposes within a county, city, or town, including the unincorporated area
787 of a county; and

788 (ii) is not imposed within the entire state.

789 **Section 4. Effective date.**

790 This bill takes effect on January 1, 2012.

Legislative Review Note
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Office of Legislative Research and General Counsel