

**DISTRIBUTION OF REVENUES COLLECTED UNDER THE
LOCAL SALES AND USE TAX ACT**

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David P. Hinkins

House Sponsor: Christine F. Watkins

LONG TITLE

General Description:

This bill amends the Local Sales and Use Tax Act to address the distribution of revenues.

Highlighted Provisions:

This bill:

- ▶ modifies the distribution of revenues under the Local Sales and Use Tax Act; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

AMENDS:

59-12-204, as last amended by Laws of Utah 2009, Chapters 203 and 385

59-12-205, as last amended by Laws of Utah 2009, Chapters 92 and 203

59-12-2103, as enacted by Laws of Utah 2008, Chapter 323

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

Section 1. Section **59-12-204** is amended to read:

59-12-204. Sales and use tax ordinance provisions -- Tax rate -- Distribution of tax revenues -- Commission requirement to retain an amount to be deposited into the

30 **Qualified Emergency Food Agencies Fund.**

31 (1) The tax ordinance adopted pursuant to this part shall impose a tax upon those
32 transactions listed in Subsection 59-12-103(1).

33 (2) (a) The tax ordinance under Subsection (1) shall include a provision imposing a tax
34 upon every transaction listed in Subsection 59-12-103(1) made within a county, including areas
35 contained within the cities and towns located in the county:

36 (i) at the rate of 1% of the purchase price paid or charged; and

37 (ii) if the location of the transaction is [~~consummated~~] within the county [~~in accordance~~
38 ~~with Section 59-12-205~~] as determined under Sections 59-12-211 through 59-12-215.

39 (b) Notwithstanding Subsection (2)(a), a tax ordinance under this Subsection (2) shall
40 include a provision prohibiting a county, city, or town from imposing a tax under this section
41 on the sales and uses described in Section 59-12-104 to the extent the sales and uses are
42 exempt from taxation under Section 59-12-104.

43 (3) Such tax ordinance shall include provisions substantially the same as those
44 contained in Part 1, Tax Collection, insofar as they relate to sales or use tax, except that the
45 name of the county as the taxing agency shall be substituted for that of the state where
46 necessary for the purpose of this part and that an additional license is not required if one has
47 been or is issued under Section 59-12-106.

48 (4) Such tax ordinance shall include a provision that the county shall contract, prior to
49 the effective date of the ordinance, with the commission to perform all functions incident to the
50 administration or operation of the ordinance.

51 (5) Such tax ordinance shall include a provision that the sale, storage, use, or other
52 consumption of tangible personal property, the purchase price or the cost of which has been
53 subject to sales or use tax under a sales and use tax ordinance enacted in accordance with this
54 part by any county, city, or town in any other county in this state, shall be exempt from the tax
55 due under this ordinance.

56 (6) Such tax ordinance shall include a provision that any person subject to the
57 provisions of a city or town sales and use tax shall be exempt from the county sales and use tax

58 if the city or town sales and use tax is levied under an ordinance including provisions in
59 substance as follows:

60 (a) a provision imposing a tax upon every transaction listed in Subsection 59-12-103(1)
61 made within the city or town at the rate imposed by the county in which it is situated pursuant
62 to Subsection (2);

63 (b) notwithstanding Subsection (2)(a), a provision prohibiting the city or town from
64 imposing a tax under this section on the sales and uses described in Section 59-12-104 to the
65 extent the sales and uses are exempt from taxation under Section 59-12-104;

66 (c) provisions substantially the same as those contained in Part 1, Tax Collection,
67 insofar as they relate to sales and use taxes, except that the name of the city or town as the
68 taxing agency shall be substituted for that of the state where necessary for the purposes of this
69 part;

70 (d) a provision that the city or town shall contract prior to the effective date of the city
71 or town sales and use tax ordinance with the commission to perform all functions incident to
72 the administration or operation of the sales and use tax ordinance of the city or town;

73 (e) a provision that the sale, storage, use, or other consumption of tangible personal
74 property, the gross receipts from the sale of or the cost of which has been subject to sales or use
75 tax under a sales and use tax ordinance enacted in accordance with this part by any county
76 other than the county in which the city or town is located, or city or town in this state, shall be
77 exempt from the tax; and

78 (f) a provision that the amount of any tax paid under Part 1, Tax Collection, shall not
79 be included as a part of the purchase price paid or charged for a taxable item.

80 (7) Notwithstanding any other provision of this section, beginning July 1, 2000, the
81 commission shall:

82 (a) determine and retain the portion of sales and use tax imposed under this section:

83 (i) by each county and by each city and town within that county whose legislative body
84 consents by resolution to the commission's retaining and depositing sales and use tax revenues
85 as provided in this Subsection (7); and

86 (ii) that is equal to the revenues generated by a 1/64% tax rate;

87 (b) deposit the revenues described in Subsection (7)(a) into a special fund of the
88 county, or a city, town, or other political subdivision of the state located within that county, that
89 has issued bonds to finance sports or recreational facilities or that is leasing sports or
90 recreational facilities, in order to repay those bonds or to pay the lease payments; and

91 (c) continue to deposit those revenues into the special fund only as long as the bonds or
92 leases are outstanding.

93 (8) (a) Notwithstanding any other provision of this section, beginning on July 1, 2009,
94 the commission shall calculate and retain a portion of the sales and use tax collected under this
95 part as provided in this Subsection (8).

96 (b) For a city, town, or unincorporated area of a county that imposes a tax under this
97 part, the commission shall calculate a percentage each month by dividing the sales and use tax
98 collected under this part for that month within the boundaries of that city, town, or
99 unincorporated area of a county by the total sales and use tax collected under this part for that
100 month within the boundaries of all of the cities, towns, and unincorporated areas of the
101 counties that impose a tax under this part.

102 (c) For a city, town, or unincorporated area of a county that imposes a tax under this
103 part, the commission shall retain each month an amount equal to the product of:

104 (i) the percentage the commission determines for the month under Subsection (8)(b)
105 for the city, town, or unincorporated area of a county; and

106 (ii) \$25,417.

107 (d) The commission shall deposit an amount the commission retains in accordance
108 with this Subsection (8) into the Qualified Emergency Food Agencies Fund created by Section
109 9-4-1409.

110 (e) An amount the commission deposits into the Qualified Emergency Food Agencies
111 Fund shall be expended as provided in Section 9-4-1409.

112 Section 2. Section **59-12-205** is amended to read:

113 **59-12-205. Ordinances to conform with statutory amendments -- Distribution of**

114 **tax revenues -- Determination of population.**

115 (1) ~~[Each]~~ A county, city, ~~[and]~~ or town, in order to maintain in effect sales and use tax
116 ordinances adopted pursuant to Section 59-12-204, shall, within 30 days of ~~[any]~~ an
117 amendment ~~[of any]~~ to an applicable ~~[provisions]~~ provision of Part 1, Tax Collection, adopt
118 amendments ~~[of their respective]~~ to the county's, city's, or town's sales and use tax ordinances
119 as required to conform ~~[with]~~ to the amendments to Part 1, Tax Collection~~[, insofar as they~~
120 ~~relate to sales and use taxes].~~

121 (2) Except as provided in Subsections (3) through (5) and subject to Subsection (6):

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

126 (b) (i) except as provided in Subsection (2)(b)(ii), 50% of each dollar collected from
127 the sales and use tax authorized by this part shall be ~~[paid]~~ distributed to each county, city, and
128 town on the basis of the location ~~[where]~~ of the transaction ~~[is consummated]~~ as determined
129 under Sections 59-12-211 through 59-12-215; and

130 (ii) 50% of each dollar collected from the sales and use tax authorized by this part
131 within a project area described in a project area plan adopted by the military installation
132 development authority under Title 63H, Chapter 1, Military Installation Development
133 Authority Act, shall be ~~[paid]~~ distributed to the military installation development authority
134 created in Section 63H-1-201.

135 (3) (a) Beginning on July 1, 2011, and ending on June 30, 2016, the commission shall
136 each year distribute to a county, city, or town the distribution required by this Subsection (3) if:

137 (i) the county, city, or town is a:

138 (A) county of the third, fourth, fifth, or sixth class;

139 (B) city of the fifth class; or

140 (C) town;

141 (ii) the county, city, or town received a distribution under this section for the calendar

142 year beginning on January 1, 2008, that was less than the distribution under this section that the
143 county, city, or town received for the calendar year beginning on January 1, 2007;

144 (iii) (A) for a county described in Subsection (3)(a)(i)(A), the county had located
145 within the unincorporated area of the county for one or more days during the calendar year
146 beginning on January 1, 2008, an establishment described in NAICS Industry Group 2121,
147 Coal Mining, or NAICS Code 213113, Support Activities for Coal Mining, of the 2002 North
148 American Industry Classification System of the federal Executive Office of the President,
149 Office of Management and Budget; or

150 (B) for a city described in Subsection (3)(a)(i)(B) or a town described in Subsection
151 (3)(a)(i)(C), the city or town had located within the city or town for one or more days during
152 the calendar year beginning on January 1, 2008, an establishment described in NAICS Industry
153 Group 2121, Coal Mining, or NAICS Code 213113, Support Activities for Coal Mining, of the
154 2002 North American Industry Classification System of the federal Executive Office of the
155 President, Office of Management and Budget; and

156 (iv) (A) for a county described in Subsection (3)(a)(i)(A), at least one establishment
157 described in Subsection (3)(a)(iii)(A) located within the unincorporated area of the county for
158 one more days during the calendar year beginning on January 1, 2008, was not the holder of a
159 direct payment permit under Section 59-12-107.1; or

160 (B) for a city described in Subsection (3)(a)(i)(B) or a town described in Subsection
161 (3)(a)(i)(C), at least one establishment described in Subsection (3)(a)(iii)(B) located within a
162 city or town for one or more days during the calendar year beginning on January 1, 2008, was
163 not the holder of a direct payment permit under Section 59-12-107.1.

164 (b) The commission shall make the distribution required by this Subsection (3) to a
165 county, city, or town described in Subsection (3)(a):

166 (i) from the distribution required by Subsection (2)(a); and

167 (ii) before making any other distribution required by this section.

168 (c) (i) For purposes of this Subsection (3), the distribution is the amount calculated by
169 multiplying the fraction calculated under Subsection (3)(c)(ii) by \$333,583.

170 (ii) For purposes of Subsection (3)(c)(i):
 171 (A) the numerator of the fraction is the difference calculated by subtracting the
 172 distribution a county, city, or town described in Subsection (3)(a) received under this section
 173 for the calendar year beginning on January 1, 2008, from the distribution under this section that
 174 the county, city, or town received for the calendar year beginning on January 1, 2007; and
 175 (B) the denominator of the fraction is \$333,583.
 176 (d) A distribution required by this Subsection (3) is in addition to any other distribution
 177 required by this section.

178 ~~[(3)]~~ (4) (a) For fiscal years beginning with fiscal year 1983-84 and ending with fiscal
 179 year 2005-06, a county, city, or town may not receive a tax revenue distribution less than .75%
 180 of the taxable sales within the boundaries of the county, city, or town.

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

184 ~~[(4)]~~ (5) (a) As used in this Subsection ~~[(4)]~~ (5):

185 (i) "Eligible county, city, or town" means a county, city, or town that receives \$2,000 or
 186 more in tax revenue distributions in accordance with Subsection ~~[(3)]~~ (4) for each of the
 187 following fiscal years:

- 188 (A) fiscal year 2002-03;
- 189 (B) fiscal year 2003-04; and
- 190 (C) fiscal year 2004-05.

191 (ii) "Minimum tax revenue distribution" means the greater of:

- 192 (A) the total amount of tax revenue distributions an eligible county, city, or town
 193 receives from a tax imposed in accordance with this part for fiscal year 2000-01; or
- 194 (B) the total amount of tax revenue distributions an eligible county, city, or town
 195 receives from a tax imposed in accordance with this part for fiscal year 2004-05.

196 (b) (i) ~~[Notwithstanding Subsection (2) and except]~~ Except as provided in Subsection
 197 ~~[(4)]~~ (5)(b)(ii), beginning with fiscal year 2006-07 and ending with fiscal year 2012-13, an

198 eligible county, city, or town shall receive a tax revenue distribution for a tax imposed in
199 accordance with this part equal to the greater of:

200 (A) the payment required by Subsection (2); or

201 (B) the minimum tax revenue distribution.

202 (ii) If the tax revenue distribution required by Subsection [~~(4)~~] (5)(b)(i) for an eligible
203 county, city, or town is equal to the amount described in Subsection [~~(4)~~] (5)(b)(i)(A) for three
204 consecutive fiscal years, for fiscal years beginning with the fiscal year immediately following
205 that three consecutive fiscal year period, the eligible county, city, or town shall receive the tax
206 revenue distribution equal to the payment required by Subsection (2).

207 (c) For a fiscal year beginning with fiscal year 2013-14 and ending with fiscal year
208 2015-16, an eligible county, city, or town shall receive the minimum tax revenue distribution
209 for that fiscal year if for fiscal year 2012-13 the payment required by Subsection (2) to that
210 eligible county, city, or town is less than or equal to the product of:

211 (i) the minimum tax revenue distribution; and

212 (ii) .90.

213 [~~(5)~~] (6) (a) Population figures for purposes of this section shall be based on the most
214 recent official census or census estimate of the United States Census Bureau.

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

218 [~~(6)~~] (c) The population of a county for purposes of this section shall be determined
219 [~~solely~~] only from the unincorporated area of the county.

220 Section 3. Section **59-12-2103** is amended to read:

221 **59-12-2103. Imposition of tax -- Base -- Rate -- Expenditure of revenues collected**
222 **from the tax -- Administration, collection, and enforcement of tax by commission --**
223 **Administrative fee -- Enactment or repeal of tax -- Annexation -- Notice.**

224 (1) (a) Subject to the other provisions of this section and except as provided in
225 Subsection (2), beginning on January 1, 2009 and ending on June 30, 2016, if a city or town

226 receives a distribution for the 12 consecutive months of fiscal year 2005-06 because the city or
227 town would have received a tax revenue distribution of less than .75% of the taxable sales
228 within the boundaries of the city or town but for Subsection 59-12-205[(3)](4)(a), the city or
229 town legislative body may impose a sales and use tax of up to .20% on the transactions:

230 (i) described in Subsection 59-12-103(1); and

231 (ii) within the city or town.

232 (b) A city or town legislative body that imposes a tax under Subsection (1)(a) shall
233 expend the revenues collected from the tax for the same purposes for which the city or town
234 may expend the city's or town's general fund revenues.

235 (c) For purposes of this Subsection (1), the location of a transaction shall be
236 determined in accordance with Sections 59-12-211 through 59-12-215.

237 (2) (a) A city or town legislative body may not impose a tax under this section on:

238 (i) the sales and uses described in Section 59-12-104 to the extent the sales and uses
239 are exempt from taxation under Section 59-12-104; and

240 (ii) except as provided in Subsection (2)(b), amounts paid or charged for food and food
241 ingredients.

242 (b) A city or town legislative body imposing a tax under this section shall impose the
243 tax on amounts paid or charged for food and food ingredients if the food and food ingredients
244 are sold as part of a bundled transaction attributable to food and food ingredients and tangible
245 personal property other than food and food ingredients.

246 (3) To impose a tax under this part, a city or town legislative body shall obtain
247 approval from a majority of the members of the city or town legislative body.

248 (4) The commission shall transmit revenues collected within a city or town from a tax
249 under this part:

250 (a) to the city or town legislative body;

251 (b) monthly; and

252 (c) by electronic funds transfer.

253 (5) (a) Except as provided in Subsection (5)(b), the commission shall administer,

254 collect, and enforce a tax under this part in accordance with:

255 (i) the same procedures used to administer, collect, and enforce the tax under:

256 (A) Part 1, Tax Collection; or

257 (B) Part 2, Local Sales and Use Tax Act; and

258 (ii) Chapter 1, General Taxation Policies.

259 (b) A tax under this part is not subject to Subsections 59-12-205(2) through (6).

260 (6) (a) The commission may retain an amount of tax collected under this part of not to

261 exceed the lesser of:

262 (i) 1.5%; or

263 (ii) an amount equal to the cost to the commission of administering this part.

264 (b) Any amount the commission retains under Subsection (6)(a) shall be:

265 (i) deposited into the Sales and Use Tax Administrative Fees Account; and

266 (ii) used as provided in Subsection 59-12-206(2).

267 (7) (a) (i) Except as provided in Subsection (7)(b) or (c), if, on or after January 1, 2009,

268 a city or town enacts or repeals a tax or changes the rate of a tax under this part, the enactment,

269 repeal, or change shall take effect:

270 (A) on the first day of a calendar quarter; and

271 (B) after a 90-day period beginning on the date the commission receives notice meeting

272 the requirements of Subsection (7)(a)(i) from the city or town.

273 (ii) The notice described in Subsection (7)(a)(i)(B) shall state:

274 (A) that the city or town will enact or repeal a tax or change the rate of the tax under

275 this part;

276 (B) the statutory authority for the tax described in Subsection (7)(a)(ii)(A);

277 (C) the effective date of the tax described in Subsection (7)(a)(ii)(A); and

278 (D) if the city or town enacts the tax or changes the rate of the tax described in

279 Subsection (7)(a)(ii)(A), the rate of the tax.

280 (b) (i) If the billing period for a transaction begins before the enactment of the tax or

281 the tax rate increase under Subsection (1), the enactment of a tax or a tax rate increase shall

282 take effect on the first day of the first billing period that begins after the effective date of the
283 enactment of the tax or the tax rate increase.

284 (ii) If the billing period for a transaction begins before the effective date of the repeal
285 of the tax or the tax rate decrease imposed under Subsection (1), the repeal of a tax or a tax rate
286 decrease shall take effect on the first day of the last billing period that began before the
287 effective date of the repeal of the tax or the tax rate decrease.

288 (c) (i) If a tax due under this part on a catalogue sale is computed on the basis of sales
289 and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of a tax
290 described in Subsection (7)(a)(i) takes effect:

291 (A) on the first day of a calendar quarter; and

292 (B) beginning 60 days after the effective date of the enactment, repeal, or change in the
293 rate of the tax under Subsection (7)(a)(i).

294 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
295 commission may by rule define the term "catalogue sale."

296 (d) (i) Except as provided in Subsection (7)(e) or (f), if, for an annexation that occurs
297 on or after January 1, 2009, the annexation will result in the enactment, repeal, or change in the
298 rate of a tax under this part for an annexing area, the enactment, repeal, or change shall take
299 effect:

300 (A) on the first day of a calendar quarter; and

301 (B) after a 90-day period beginning on the date the commission receives notice meeting
302 the requirements of Subsection (7)(d)(ii) from the city or town that annexes the annexing area.

303 (ii) The notice described in Subsection (7)(d)(i)(B) shall state:

304 (A) that the annexation described in Subsection (7)(d)(i)(B) will result in the
305 enactment, repeal, or change in the rate of a tax under this part for the annexing area;

306 (B) the statutory authority for the tax described in Subsection (7)(d)(ii)(A);

307 (C) the effective date of the tax described in Subsection (7)(d)(ii)(A); and

308 (D) if the city or town enacts the tax or changes the rate of the tax described in
309 Subsection (7)(d)(ii)(A), the rate of the tax.

310 (e) (i) If the billing period for a transaction begins before the effective date of the
311 enactment of the tax or a tax rate increase under Subsection (1), the enactment of a tax or a tax
312 rate increase shall take effect on the first day of the first billing period that begins after the
313 effective date of the enactment of the tax or the tax rate increase.

314 (ii) If the billing period for a transaction begins before the effective date of the repeal
315 of the tax or the tax rate decrease imposed under Subsection (1), the repeal of a tax or a tax rate
316 decrease shall take effect on the first day of the last billing period that began before the
317 effective date of the repeal of the tax or the tax rate decrease.

318 (f) (i) If a tax due under this part on a catalogue sale is computed on the basis of sales
319 and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of a tax
320 described in Subsection (7)(d)(i) takes effect:

321 (A) on the first day of a calendar quarter; and

322 (B) beginning 60 days after the effective date of the enactment, repeal, or change under
323 Subsection (7)(d)(i).

324 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
325 commission may by rule define the term "catalogue sale".

326 Section 4. **Effective date.**

327 This bill takes effect on July 1, 2011.