

Representative David G. Butterfield proposes the following substitute bill:

SALES AND USE TAX COLLECTION AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David G. Butterfield

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill makes changes to the collection and remittance of sales and use taxes.

Highlighted Provisions:

This bill:

- ▶ changes the timing of sales and use tax collection and remittance for certain sales involving delivery, installation, or the conversion of tangible personal property into real property;
- ▶ addresses a deduction for bad debt; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2012.

Utah Code Sections Affected:

AMENDS:

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

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



26 Section 1. Section 59-12-107 is amended to read:

27 **59-12-107. Collection, remittance, and payment of tax by sellers or other persons**
28 **-- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other liability for**
29 **collection -- Rulemaking authority -- Credits -- Treatment of bad debt -- Penalties.**

30 (1) (a) Except as provided in Subsection (1)(d) [or], Section 59-12-107.1, or Section
31 59-12-123, and subject to Subsection (1)(e), each seller shall pay or collect and remit the sales
32 and use taxes imposed by this chapter if within this state the seller:

33 (i) has or utilizes:

34 (A) an office;

35 (B) a distribution house;

36 (C) a sales house;

37 (D) a warehouse;

38 (E) a service enterprise; or

39 (F) a place of business similar to Subsections (1)(a)(i)(A) through (E);

40 (ii) maintains a stock of goods;

41 (iii) regularly solicits orders, regardless of whether or not the orders are accepted in the
42 state, unless the seller's only activity in the state is:

43 (A) advertising; or

44 (B) solicitation by:

45 (I) direct mail;

46 (II) electronic mail;

47 (III) the Internet;

48 (IV) telecommunications service; or

49 (V) a means similar to Subsection (1)(a)(iii)(A) or (B);

50 (iv) regularly engages in the delivery of property in the state other than by:

51 (A) common carrier; or

52 (B) United States mail; or

53 (v) regularly engages in an activity directly related to the leasing or servicing of
54 property located within the state.

55 (b) A seller that does not meet one or more of the criteria provided for in Subsection

56 (1)(a):

- 57 (i) except as provided in Subsection (1)(b)(ii), may voluntarily:
- 58 (A) collect a tax on a transaction described in Subsection 59-12-103(1); and
- 59 (B) remit the tax to the commission as provided in this part; or
- 60 (ii) notwithstanding Subsection (1)(b)(i), shall collect a tax on a transaction described
- 61 in Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to collect the tax.
- 62 (c) The collection and remittance of a tax under this chapter by a seller that is
- 63 registered under the agreement may not be used as a factor in determining whether that seller is
- 64 required by Subsection (1)(a) to:
- 65 (i) pay a tax, fee, or charge under:
- 66 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 67 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 68 (C) Section 19-6-714;
- 69 (D) Section 19-6-805;
- 70 (E) Section 69-2-5;
- 71 (F) Section 69-2-5.5;
- 72 (G) Section 69-2-5.6; or
- 73 (H) this title; or
- 74 (ii) collect and remit a tax, fee, or charge under:
- 75 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 76 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 77 (C) Section 19-6-714;
- 78 (D) Section 19-6-805;
- 79 (E) Section 69-2-5;
- 80 (F) Section 69-2-5.5;
- 81 (G) Section 69-2-5.6; or
- 82 (H) this title.
- 83 (d) A person shall pay a use tax imposed by this chapter on a transaction described in
- 84 Subsection 59-12-103(1) if:
- 85 (i) the seller did not collect a tax imposed by this chapter on the transaction; and
- 86 (ii) the person:
- 87 (A) stores the tangible personal property or product transferred electronically in the

88 state;

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

90 or

91 (C) consumes the tangible personal property or product transferred electronically in the
92 state.

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

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

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

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

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

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

107 (II) is:

108 (Aa) related to a seller that is required to pay or collect and remit sales and use taxes
109 under Subsection (1)(a) as part of an affiliated group or because of common ownership; or

110 (Bb) a limited liability company owned by the parent corporation of an affiliated group
111 if that parent corporation of the affiliated group is required to pay or collect and remit sales and
112 use taxes under Subsection (1)(a); and

113 (III) does not voluntarily collect and remit a tax under Subsection (1)(b)(i).

114 (ii) A seller is not required to pay or collect and remit sales and use taxes under
115 Subsection (1)(a):

116 (A) if the seller is a related seller;

117 (B) if the seller to which the related seller is related does not engage in any of the
118 following activities on behalf of the related seller:

- 119 (I) advertising;
- 120 (II) marketing;
- 121 (III) sales; or
- 122 (IV) other services; and

123 (C) if the seller to which the related seller is related accepts the return of an item sold
124 by the related seller, the seller to which the related seller is related accepts the return of that
125 item:

- 126 (I) sold by a seller that is not a related seller; and
- 127 (II) on the same terms as the return of an item sold by that seller to which the related
128 seller is related.

129 (2) (a) Except as provided in Section 59-12-107.1, a tax under this chapter shall be
130 collected from a purchaser.

131 (b) A seller may not collect as tax an amount, without regard to fractional parts of one
132 cent, in excess of the tax computed at the rates prescribed by this chapter.

133 (c) (i) Each seller shall:

134 (A) give the purchaser a receipt for the tax collected; or

135 (B) bill the tax as a separate item and declare the name of this state and the seller's
136 sales and use tax license number on the invoice for the sale.

137 (ii) The receipt or invoice is prima facie evidence that the seller has collected the tax
138 and relieves the purchaser of the liability for reporting the tax to the commission as a
139 consumer.

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

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

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

149 (g) If the accounting methods regularly employed by the seller in the transaction of the

150 seller's business are such that reports of sales made during a calendar month or quarterly period
151 will impose unnecessary hardships, the commission may accept reports at intervals that will, in
152 the commission's opinion, better suit the convenience of the taxpayer or seller and will not
153 jeopardize collection of the tax.

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

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

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

161 (c) Except as provided in Subsection (4)(c), a return shall contain information and be in
162 a form the commission prescribes by rule.

163 (d) ~~[The]~~ (i) Subject to Subsection (3)(d)(ii), the sales tax as computed in the return
164 shall be based ~~[upon]~~ on the total nonexempt sales made during the period~~[-including both~~
165 cash and charge sales] for which the return is filed, including both cash and charge sales.

166 (ii) For a sale that includes the delivery or installation of tangible personal property at a
167 location other than a seller's place of business described in Subsection (1)(a)(i), if the delivery
168 or installation is separately stated on an invoice or receipt, a seller may compute the tax due on
169 the sale for purposes of Subsection (3)(d)(i) based on the amount the seller receives for that
170 sale during each period for which the seller receives payment for the sale.

171 (e) (i) The use tax as computed in the return shall be based ~~[upon]~~ on the total amount
172 of purchases for storage, use, or other consumption in this state made during the period~~[-~~
173 including both by cash and by charge] for which the return is filed, including both cash and
174 charge purchases.

175 (ii) (A) As used in this Subsection (3)(e)(ii), "qualifying purchaser" means a purchaser
176 who is required to remit taxes under this chapter, but is not required to remit taxes monthly in
177 accordance with Section 59-12-108, and who converts tangible personal property into real
178 property.

179 (B) Subject to Subsections (3)(e)(ii)(C) and (D), a qualifying purchaser may remit the
180 taxes due under this chapter on tangible personal property for which the qualifying purchaser

181 claims an exemption as allowed under Subsection 59-12-104(23) or (25) based on the period in
182 which the qualifying purchaser receives payment, in accordance with Subsection (3)(e)(ii)(C),
183 for the conversion of the tangible personal property into real property.

184 (C) A qualifying purchaser remitting taxes due under this chapter in accordance with
185 Subsection (3)(e)(ii)(B) shall remit an amount equal to the total amount of tax due on the
186 qualifying purchaser's purchase of the tangible personal property that was converted into real
187 property multiplied by a fraction, the numerator of which is the payment received in the period
188 for the qualifying purchaser's sale of the tangible personal property that was converted into real
189 property and the denominator of which is the entire sales price for the qualifying purchaser's
190 sale of the tangible personal property that was converted into real property.

191 (D) A qualifying purchaser may remit taxes due under this chapter in accordance with
192 this Subsection (3)(e)(ii) only if the books and records that the qualifying purchaser keeps in
193 the qualifying purchaser's regular course of business identify by reasonable and verifiable
194 standards that the tangible personal property was converted into real property.

195 (f) (i) Subject to Subsection (3)(f)(ii) and in accordance with Title 63G, Chapter 3,
196 Utah Administrative Rulemaking Act, the commission may by rule extend the time for making
197 returns and paying the taxes.

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

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

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

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

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

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

210 (4) (a) As used in this Subsection (4) and Subsection (5)(b), "remote seller" means a
211 seller that is:

212 (i) registered under the agreement;
213 (ii) described in Subsection (1)(b); and
214 (iii) not a:
215 (A) model 1 seller;
216 (B) model 2 seller; or
217 (C) model 3 seller.
218 (b) (i) Except as provided in Subsection (4)(b)(ii), a tax a remote seller collects in
219 accordance with Subsection (1)(b) is due and payable:
220 (A) to the commission;
221 (B) annually; and
222 (C) on or before the last day of the month immediately following the last day of each
223 calendar year.
224 (ii) The commission may require that a tax a remote seller collects in accordance with
225 Subsection (1)(b) be due and payable:
226 (A) to the commission; and
227 (B) on the last day of the month immediately following any month in which the seller
228 accumulates a total of at least \$1,000 in agreement sales and use tax.
229 (c) (i) If a remote seller remits a tax to the commission in accordance with Subsection
230 (4)(b), the remote seller shall file a return:
231 (A) with the commission;
232 (B) with respect to the tax;
233 (C) containing information prescribed by the commission; and
234 (D) on a form prescribed by the commission.
235 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
236 commission shall make rules prescribing:
237 (A) the information required to be contained in a return described in Subsection
238 (4)~~(a)~~(c)(i); and
239 (B) the form described in Subsection (4)(c)(i)(D).
240 (d) A tax a remote seller collects in accordance with this Subsection (4) shall be
241 calculated on the basis of the total amount of taxable transactions under Subsection
242 59-12-103(1) the remote seller completes, including:

243 (i) a cash transaction; and

244 (ii) a charge transaction.

245 (5) (a) Except as provided in Subsection (5)(b), a tax a seller that files a simplified
246 electronic return collects in accordance with this chapter is due and payable:

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

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

250 (b) A tax a remote seller that files a simplified electronic return collects in accordance
251 with this chapter is due and payable as provided in Subsection (4).

252 (6) (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the
253 purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to
254 titling or registration under the laws of this state.

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

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

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

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

264 (8) If any sale of property or service subject to the tax is made to a person prepaying
265 sales or use tax in accordance with Title 63M, Chapter 5, Resource Development Act, or to a
266 contractor or subcontractor of that person, the person to whom such payment or consideration
267 is payable is not responsible for the collection or payment of the sales or use tax and the person
268 prepaying the sales or use tax is responsible for the collection or payment of the sales or use tax
269 if the person prepaying the sales or use tax represents that the amount prepaid as sales or use
270 tax has not been fully credited against sales or use tax due and payable under the rules
271 promulgated by the commission.

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

273 (i) Except as provided in Subsection (9)(a)(ii), "bad debt" is as defined in Section 166,

274 Internal Revenue Code.

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

276 (A) an amount included in the purchase price of tangible personal property, a product
277 transferred electronically, or a service that is:

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

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

280 (B) a financing charge;

281 (C) interest;

282 (D) a tax imposed under this chapter on the purchase price of tangible personal
283 property, a product transferred electronically, or a service;

284 (E) an uncollectible amount on tangible personal property or a product transferred
285 electronically that:

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

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

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

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

290 (b) (i) ~~[A]~~ To the extent an amount remitted in accordance with Subsection (3)(d)

290a ~~§~~ → ~~[or (e)]~~ ← ~~§~~

291 later becomes bad debt, a seller may deduct the bad debt from the total amount from which a
292 tax under this chapter is calculated on a return.

293 (ii) A qualifying purchaser, as defined in Subsection (3)(e)(ii)(A), may deduct from the
294 total amount of taxes due under this chapter the amount of tax the qualifying purchaser paid on
295 the qualifying purchaser's purchase of tangible personal property converted into real property to
296 the extent that:

297 (A) tax was remitted in accordance with Subsection (3)(e) on that tangible personal
298 property converted into real property;

299 (B) the qualifying purchaser's sale of that tangible personal property converted into real
300 property later becomes bad debt; and

301 (C) the books and records that the qualifying purchaser keeps in the qualifying
302 purchaser's regular course of business identify by reasonable and verifiable standards that the
303 tangible personal property was converted into real property.

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

305 (i) the amount of bad debt for the time period described in Subsection (9)(e) exceeds
306 the amount of the seller's sales that are subject to a tax under this chapter for that same time
307 period; and

308 (ii) as provided in Section 59-1-1410.

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

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

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

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

314 (A) for federal income tax purposes; and

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

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

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

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

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

324 (i) in a proportional amount:

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

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

329 (ii) to:

330 (A) interest charges;

331 (B) service charges; and

332 (C) other charges.

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

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

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

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

340 (10) (a) A seller may not, with intent to evade any tax, fail to timely remit the full
341 amount of tax required by this chapter.

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

343 (c) Each person who fails to pay any tax to the state or any amount of tax required to be
344 paid to the state, except amounts determined to be due by the commission under Chapter 1,
345 Part 14, Assessment, Collections, and Refunds Act, or Section 59-12-111, within the time
346 required by this chapter, or who fails to file any return as required by this chapter, shall pay, in
347 addition to the tax, penalties and interest as provided in [~~Section~~] Sections 59-1-401 and
348 59-1-402.

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

352 Section 2. **Effective date.**

353 This bill takes effect on July 1, 2012.