

1 **AMENDMENTS TO REVENUE AND TAXATION**

2 2013 GENERAL SESSION

3 STATE OF UTAH

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

5 House Sponsor: Francis D. Gibson

7 **LONG TITLE**

8 **General Description:**

9 This bill addresses the Multistate Tax Compact and related provisions.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ repeals the Multistate Tax Compact;
- 13 ▶ enacts the Multistate Tax Compact, excluding certain provisions from the repealed
- 14 version of the Multistate Tax Compact;
- 15 ▶ amends provisions within the Multistate Tax Compact part addressing the State Tax
- 16 Commission's authority related to the Multistate Tax Commission and
- 17 governmental entities;
- 18 ▶ provides a repeal date for the Multistate Tax Compact enacted by this bill;
- 19 ▶ repeals obsolete language; and
- 20 ▶ makes technical and conforming changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 This bill provides effective dates.

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **59-1-809**, as renumbered and amended by Laws of Utah 1987, Chapter 3

28 **63I-1-259**, as last amended by Laws of Utah 2012, Chapter 9

29 ENACTS:

30 59-1-801.5, Utah Code Annotated 1953

31 REPEALS:

32 59-1-801, as last amended by Laws of Utah 2010, Chapter 155

33

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

35 Section 1. Section 59-1-801.5 is enacted to read:

36 **59-1-801.5. Purpose of compact -- Definitions -- Elements of sales and use tax**
37 **laws -- The Multistate Tax Commission -- Uniform regulations and forms -- Interstate**
38 **audits -- Entry into force and withdrawal -- Effect on other laws and jurisdiction --**
39 **Construction and severability.**

40 The "Multistate Tax Compact" is hereby enacted into law and entered into with all
41 jurisdictions legally joining therein, in the form substantially as follows:

42 ARTICLE I. PURPOSES

43 The purposes of this compact are to:

- 44 1. Facilitate proper determination of state and local tax liability of multistate taxpayers.
- 45 2. Promote uniformity or compatibility in significant components of tax systems.
- 46 3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in
47 other phases of tax administration.
- 48 4. Avoid duplicative taxation.

49 ARTICLE II. DEFINITIONS

50 As used in this compact:

- 51 1. "State" means a state of the United States, the District of Columbia, the
52 Commonwealth of Puerto Rico, or any territory or possession of the United States.
- 53 2. "Subdivision" means any governmental unit or special district of a state.
- 54 3. "Taxpayer" means any corporation, partnership, firm, association, governmental unit
55 or agency, or person acting as a business entity in more than one state.
- 56 4. "Income tax" means a tax imposed on or measured by net income including any tax
57 imposed on or measured by an amount arrived at by deducting expenses from gross income.

58 one or more forms of which expenses are not specifically and directly related to particular
59 transactions.

60 5. "Capital stock tax" means a tax measured in any way by the capital of a corporation
61 considered in its entirety.

62 6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or
63 measured by the gross volume of business, in terms of gross receipts or in other terms, and in
64 the determination of which no deduction is allowed which would constitute the tax an income
65 tax.

66 7. "Sales tax" means a tax imposed with respect to the transfer for a consideration of
67 ownership, possession, or custody of tangible personal property or the rendering of services
68 measured by the price of the tangible personal property transferred or services rendered and
69 which is required by state or local law to be separately stated from the sales price by the seller,
70 or which is customarily separately stated from the sales price, but does not include a tax
71 imposed exclusively on the sale of a specifically identified commodity or article or class of
72 commodities or articles.

73 8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on
74 or with respect to the exercise or enjoyment of any right or power over tangible personal
75 property incident to the ownership, possession, or custody of that property or the leasing of that
76 property from another including any consumption, keeping, retention, or other use of tangible
77 personal property, and (b) is complementary to a sales tax.

78 9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax,
79 and any other tax which has a multistate impact, except that the provisions of Article V of this
80 compact shall apply only to the taxes specifically designated therein.

81 ARTICLE III. ELEMENTS OF INCOME TAX LAWS (intentionally omitted)

82 ARTICLE IV. DIVISION OF INCOME (intentionally omitted)

83 ARTICLE V. ELEMENTS OF SALES AND USE TAX LAWS

84 Tax Credit

85 1. Each purchaser liable for a use tax on tangible personal property shall be entitled to

86 full credit for the combined amount or amounts of legally imposed sales or use taxes paid by
87 him with respect to the same property to another state and any subdivision thereof. The credit
88 shall be applied first against the amount of any use tax due the state, and any unused portion of
89 the credit shall then be applied against the amount of any use tax due a subdivision.

90 Exemption Certificates, Vendors May Rely

91 2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or
92 other exemption certificate or other written evidence of exemption authorized by the
93 appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a
94 sales or use tax with respect to the transaction.

95 ARTICLE VI. THE COMMISSION

96 Organization and Management

97 1. (a) The Multistate Tax Commission is hereby established. It shall be composed of
98 one "member" from each party state who shall be the head of the state agency charged with the
99 administration of the types of taxes to which this compact applies. If there is more than one
100 such agency the state shall provide by law for the selection of the commission member from
101 the heads of the relevant agencies. State law may provide that a member of the commission be
102 represented by an alternate but only if there is on file with the commission written notification
103 of the designation and identity of the alternate. The attorney general of each party state or his
104 designee, or other counsel if the laws of the party state specifically provide, shall be entitled to
105 attend the meetings of the commission, but shall not vote. Such attorneys general, designees,
106 or other counsel shall receive all notices of meetings required under paragraph 1(e) of this
107 article.

108 (b) Each party state shall provide by law for the selection of representatives from its
109 subdivisions affected by this compact to consult with the commission member from that state.

110 (c) Each member shall be entitled to one vote. The commission shall not act unless a
111 majority of the members are present, and no action shall be binding unless approved by a
112 majority of the total number of members.

113 (d) The commission shall adopt an official seal to be used as it may provide.

114 (e) The commission shall hold an annual meeting and such other regular meetings as
115 its bylaws may provide and such special meetings as its executive committee may determine.
116 The commission bylaws shall specify the dates of the annual and any other regular meetings,
117 and shall provide for the giving of notice of annual, regular, and special meetings. Notices of
118 special meetings shall include the reasons therefor and an agenda of the items to be considered.

119 (f) The commission shall elect annually, from among its members, a chairman, a
120 vice-chairman, and a treasurer. The commission shall appoint an executive director who shall
121 serve at its pleasure, and it shall fix his duties and compensation. The executive director shall
122 be secretary of the commission. The commission shall make provision for the bonding of such
123 of its officers and employees as it may deem appropriate.

124 (g) Irrespective of the civil service, personnel, or other merit system laws of any party
125 state, the executive director shall appoint or discharge such personnel as may be necessary for
126 the performance of the functions of the commission and shall fix their duties and
127 compensation. The commission bylaws shall provide for personnel policies and programs.

128 (h) The commission may borrow, accept, or contract for the services of personnel from
129 any state, the United States, or any other governmental entity.

130 (i) The commission may accept for any of its purposes and functions any and all
131 donations and grants of money, equipment, supplies, materials, and services, conditional or
132 otherwise, from any governmental entity, and may utilize and dispose of the same.

133 (j) The commission may establish one or more offices for the transacting of its
134 business.

135 (k) The commission shall adopt bylaws for the conduct of its business. The
136 commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and
137 any amendments thereto with the appropriate agency or officer in each of the party states.

138 (l) The commission annually shall make to the governor and legislature of each party
139 state a report covering its activities for the preceding year. Any donation or grant accepted by
140 the commission or services borrowed shall be reported in the annual report of the commission,
141 and shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or

142 services borrowed and the identity of the donor or lender. The commission may make
143 additional reports as it may deem desirable.

144 Committees

145 2. (a) To assist in the conduct of its business when the full commission is not meeting,
146 the commission shall have an executive committee of seven members, including the chairman,
147 vice-chairman, treasurer, and four other members elected annually by the commission. The
148 executive committee, subject to the provisions of this compact and consistent with the policies
149 of the commission, shall function as provided in the bylaws of the commission.

150 (b) The commission may establish advisory and technical committees, membership on
151 which may include private persons and public officials, in furthering any of its activities. Such
152 committees may consider any matter of concern to the commission, including problems of
153 special interest to any party state and problems dealing with particular types of taxes.

154 (c) The commission may establish such additional committees as its bylaws may
155 provide.

156 Powers

157 3. In addition to powers conferred elsewhere in this compact, the commission shall
158 have power to:

159 (a) study state and local tax systems and particular types of state and local taxes;

160 (b) develop and recommend proposals for an increase in uniformity or compatibility of
161 state and local tax laws with a view toward encouraging the simplification and improvement of
162 state and local tax law and administration;

163 (c) compile and publish information as in its judgment would assist the party states in
164 implementation of the compact and taxpayers in complying with state and local tax laws; and

165 (d) do all things necessary and incidental to the administration of its functions pursuant
166 to this compact.

167 Finance

168 4. (a) The commission shall submit to the governor or designated officer or officers of
169 each party state a budget of its estimated expenditures for such period as may be required by

170 the laws of that state for presentation to the legislature thereof.

171 (b) Each of the commission's budgets of estimated expenditures shall contain specific
172 recommendations of the amounts to be appropriated by each of the party states. The total
173 amount of appropriations requested under any such budget shall be apportioned among the
174 party states as follows: one-tenth in equal shares; and the remainder in proportion to the
175 amount of revenue collected by each party state and its subdivisions from income taxes, capital
176 stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the
177 commission shall employ such available public sources of information as, in its judgment,
178 present the most equitable and accurate comparisons among the party states. Each of the
179 commission's budgets of estimated expenditures and requests for appropriations shall indicate
180 the sources used in obtaining information employed in applying the formula contained in this
181 paragraph.

182 (c) The commission shall not pledge the credit of any party state. The commission may
183 meet any of its obligations in whole or in part with funds available to it under paragraph 1(i) of
184 this article; provided that the commission takes specific action setting aside such funds prior to
185 incurring any obligation to be met in whole or in part in such manner. Except where the
186 commission makes use of funds available to it under paragraph 1(i), the commission shall not
187 incur any obligation prior to the allotment of funds by the party states adequate to meet the
188 same.

189 (d) The commission shall keep accurate accounts of all receipts and disbursements.
190 The receipts and disbursements of the commission shall be subject to the audit and accounting
191 procedures established under its bylaws. All receipts and disbursements of funds handled by
192 the commission shall be audited yearly by a certified or licensed public accountant and the
193 report of the audit shall be included in and become part of the annual report of the commission.

194 (e) The accounts of the commission shall be open at any reasonable time for inspection
195 by duly constituted officers of the party states and by any persons authorized by the
196 commission.

197 (f) Nothing contained in this article shall be construed to prevent commission

198 compliance with laws relating to audit or inspection of accounts by or on behalf of any
199 government contributing to the support of the commission.

200 ARTICLE VII. UNIFORM REGULATIONS AND FORMS

201 1. Whenever any two or more party states, or subdivisions of party states, have uniform
202 or similar provisions of law relating to an income tax, the commission may adopt uniform
203 regulations for any phase of the administration of such law, including assertion of jurisdiction
204 to tax, or prescribing uniform tax forms.

205 2. Prior to the adoption of any regulations, the commission shall:

206 (a) as provided in its bylaws, hold at least one public hearing on due notice to all
207 affected party states and subdivisions thereof and to all taxpayers and other persons who have
208 made timely request of the commission for advance notice of its regulation-making
209 proceedings; and

210 (b) afford all affected party states and subdivisions and interested persons an
211 opportunity to submit relevant written data and views, which shall be considered fully by the
212 commission.

213 3. The commission shall submit any regulations adopted by it to the appropriate
214 officials of all party states and subdivisions to which they might apply. Each such state and
215 subdivision shall consider any such regulation for adoption in accordance with its own laws
216 and procedures.

217 ARTICLE VIII. INTERSTATE AUDITS

218 1. This article shall be in force only in those party states that specifically provide
219 therefor by statute.

220 2. Any party state or subdivision thereof desiring to make or participate in an audit of
221 any accounts, books, papers, records, or other documents may request the commission to
222 perform the audit on its behalf. In responding to the request, the commission shall have access
223 to and may examine, at any reasonable time, such accounts, books, papers, records, and other
224 documents and any relevant property or stock of merchandise. The commission may enter into
225 agreements with party states or their subdivisions for assistance in performance of the audit.

226 The commission shall make charges, to be paid by the state or local government or
227 governments for which it performs the service, for any audits performed by it in order to
228 reimburse itself for the actual costs incurred in making the audit.

229 3. The commission may require the attendance of any person within the state where it
230 is conducting an audit or part thereof at a time and place fixed by it within such state for the
231 purpose of giving testimony with respect to any account, book, paper, document, other record,
232 property, or stock of merchandise being examined in connection with the audit. If the person is
233 not within the jurisdiction, he may be required to attend for such purpose at any time and place
234 fixed by the commission within the state of which he is a resident; provided that such state has
235 adopted this article.

236 4. The commission may apply to any court having power to issue compulsory process
237 for orders in aid of its powers and responsibilities pursuant to this article and any and all such
238 courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order
239 shall be punishable as contempt of the issuing court. If the party or subject matter on account
240 of which the commission seeks an order is within the jurisdiction of the court to which
241 application is made, such application may be to a court in the state or subdivision on behalf of
242 which the audit is being made or a court in the state in which the object of the order being
243 sought is situated. The provisions of this paragraph apply only to courts in a state that has
244 adopted this article.

245 5. The commission may decline to perform any audit requested if it finds that its
246 available personnel or other resources are insufficient for the purpose or that, in the terms
247 requested, the audit is impracticable of satisfactory performance. If the commission, on the
248 basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a
249 particular time or on a particular schedule, would be of interest to a number of party states or
250 their subdivisions, it may offer to make the audit or audits, the offer to be contingent on
251 sufficient participation therein as determined by the commission.

252 6. Information obtained by any audit pursuant to this article shall be confidential and
253 available only for tax purposes to party states, their subdivisions or the United States.

254 Availability of information shall be in accordance with the laws of the states or subdivisions on
255 whose account the commission performs the audit, and only through the appropriate agencies
256 or officers of such states or subdivisions. Nothing in this article shall be construed to require
257 any taxpayer to keep records for any period not otherwise required by law.

258 7. Other arrangements made or authorized pursuant to law for cooperative audit by or
259 on behalf of the party states or any of their subdivisions are not superseded or invalidated by
260 this article.

261 8. In no event shall the commission make any charge against a taxpayer for an audit.

262 9. As used in this article, "tax," in addition to the meaning ascribed to it in Article II,
263 means any tax or license fee imposed in whole or in part for revenue purposes.

264 ARTICLE IX. ARBITRATION (intentionally omitted)

265 ARTICLE X. ENTRY INTO FORCE AND WITHDRAWAL

266 1. This compact shall enter into force when enacted into law by any seven states.
267 Thereafter, this compact shall become effective as to any other state upon its enactment thereof.
268 The commission shall arrange for notification of all party states whenever there is a new
269 enactment of the compact.

270 2. Any party state may withdraw from this compact by enacting a statute repealing the
271 same. No withdrawal shall affect any liability already incurred by or chargeable to a party state
272 prior to the time of such withdrawal.

273 3. No proceeding commenced before an arbitration board prior to the withdrawal of a
274 state and to which the withdrawing state or any subdivision thereof is a party shall be
275 discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over
276 any of the parties to the proceeding necessary to make a binding determination therein.

277 ARTICLE XI. EFFECT ON OTHER LAWS AND JURISDICTION

278 Nothing in this compact shall be construed to:

279 (a) affect the power of any state or subdivision thereof to fix rates of taxation;

280 (b) apply to any tax or fixed fee imposed for the registration of a motor vehicle or any
281 tax on motor fuel, other than a sales tax; provided that the definition of "tax" in Article VIII 9

282 may apply for the purposes of that article and the commission's powers of study and
283 recommendation pursuant to Article VI 3 may apply;

284 (c) withdraw or limit the jurisdiction of any state or local court or administrative officer
285 or body with respect to any person, corporation or other entity or subject matter, except to the
286 extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another
287 agency or body; or

288 (d) supersede or limit the jurisdiction of any court of the United States.

289 ARTICLE XII. CONSTRUCTION AND SEVERABILITY

290 This compact shall be liberally construed so as to effectuate the purposes thereof. The
291 provisions of this compact shall be severable and if any phrase, clause, sentence, or provision
292 of this compact is declared to be contrary to the constitution of any state or of the United States
293 or the applicability thereof to any government, agency, person, or circumstance is held invalid,
294 the validity of the remainder of this compact and the applicability thereof to any government,
295 agency, person, or circumstance shall not be affected thereby. If this compact shall be held
296 contrary to the constitution of any state participating therein, the compact shall remain in full
297 force and effect as to the remaining party states and in full force and effect as to the state
298 affected as to all severable matters.

299 Section 2. Section **59-1-809** is amended to read:

300 **59-1-809. Commission authority related to the Multistate Tax Commission and**
301 **governmental entities.**

302 (1) The commission may participate in an audit, tax enforcement, or tax administration
303 with the Multistate Tax Commission, a taxing official of another state, the District of
304 Columbia, or the United States or its territories.

305 (2) The [~~Utah State Tax Commission~~] commission may [~~at its discretion~~] furnish to the
306 Multistate Tax Commission, [~~the~~] a taxing [~~officials~~] official of [~~any other~~] another state, the
307 District of Columbia, [~~and~~] or the United States [~~and~~] or its territories, any information
308 contained in;

309 (a) a tax [~~returns and reports,~~] return or report, a related [~~schedules, and documents~~]

310 schedule, or a document filed pursuant to the tax laws of this state~~[, or in];~~ or

311 (b) the report of an audit or investigation made with respect [thereto] to a tax return or
 312 report, a related schedule, or a document described in Subsection (2)(a).

313 Section 3. Section **63I-1-259** is amended to read:

314 **63I-1-259. Repeal dates, Title 59.**

315 (1) Sections 59-1-801.5 and 59-1-808 are repealed on June 30, 2014.

316 ~~[(1)]~~ (2) Subsection 59-2-924(3)(g) is repealed on December 31, 2016.

317 ~~[(2)]~~ (3) Section 59-2-924.3 is repealed on December 31, 2016.

318 ~~[(3)]~~ (4) Section 59-9-102.5 is repealed December 31, 2020.

319 ~~[(4) The language in Subsection 59-12-205(3)(a) that reads "Except as provided in~~
 320 ~~Subsection (3)(c)," is repealed January 1, 2013.]~~

321 ~~[(5) Subsection 59-12-205(3)(c), requiring a distribution to a qualifying city to be~~
 322 ~~reduced, is repealed January 1, 2013.]~~

323 Section 4. **Repealer.**

324 This bill repeals:

325 Section **59-1-801, Purpose of compact -- Definitions -- Elements of income tax laws**
 326 **-- Allocation and apportionment of income -- Elements of sales and use tax laws -- The**
 327 **commission -- Uniform regulations and forms -- Interstate audits -- Arbitration -- Entry**
 328 **into force and withdrawal -- Effect on other laws and jurisdiction -- Construction and**
 329 **severability.**

330 Section 5. **Effective date.**

331 (1) Except as provided in Subsections (2) and (3), this bill takes effect on July 1, 2013.

332 (2) Section 59-1-801 is repealed June 30, 2013.

333 (3) The actions affecting Section 59-1-809 take effect on July 1, 2014.