

Senator James A. Dunnigan proposes the following substitute bill:

SALES AND USE TAX REVISIONS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: James A. Dunnigan

LONG TITLE

General Description:

This bill amends provisions related to sales and use taxes.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses the circumstances under which a person may be required to collect and remit sales and use taxes to the State Tax Commission; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

59-1-401, as last amended by Laws of Utah 2014, Chapter 52

59-12-103.1, as last amended by Laws of Utah 2013, Chapter 150

59-12-107, as last amended by Laws of Utah 2012, Chapters 178, 312, and 399

59-12-108, as last amended by Laws of Utah 2013, Chapter 50



26 59-12-211, as last amended by Laws of Utah 2012, Chapter 312

27 59-12-211.1, as last amended by Laws of Utah 2012, Chapter 312



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

30 Section 1. Section 59-1-401 is amended to read:

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

34 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

- 57 (I) this title;
- 58 (II) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 59 (III) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 60 (IV) Section 19-6-410.5;
- 61 (V) Section 19-6-714;
- 62 (VI) Section 19-6-805;
- 63 (VII) Section 32B-2-304;
- 64 (VIII) Section 34A-2-202;
- 65 (IX) Section 40-6-14;
- 66 (X) Section 69-2-5;
- 67 (XI) Section 69-2-5.5; or
- 68 (XII) Section 69-2-5.6; or
- 69 (B) another amount that by statute is subject to a penalty imposed under this section.
- 70 (ii) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:
 - 71 (A) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;
 - 72 (B) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
 - 73 (C) Chapter 2, Property Tax Act, except for Section 59-2-1309;
 - 74 (D) Chapter 3, Tax Equivalent Property Act; or
 - 75 (E) Chapter 4, Privilege Tax.
- 76 (d) "Unactivated tax, fee, or charge" means a tax, fee, or charge except for an activated
- 77 tax, fee, or charge.
- 78 (2) (a) The due date for filing a return is:
 - 79 (i) if the person filing the return is not allowed by law an extension of time for filing
 - 80 the return, the day on which the return is due as provided by law; or
 - 81 (ii) if the person filing the return is allowed by law an extension of time for filing the
 - 82 return, the earlier of:
 - 83 (A) the date the person files the return; or
 - 84 (B) the last day of that extension of time as allowed by law.
 - 85 (b) A penalty in the amount described in Subsection (2)(c) is imposed if a person files a
 - 86 return after the due date described in Subsection (2)(a).
 - 87 (c) For purposes of Subsection (2)(b), the penalty is an amount equal to the greater of:

88 (i) if the return described in Subsection (2)(b) is filed with respect to an unactivated
89 tax, fee, or charge:
90 (A) \$20; or
91 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or
92 (ii) if the return described in Subsection (2)(b) is filed with respect to an activated tax,
93 fee, or charge, beginning on the activation date for the tax, fee, or charge:
94 (A) \$20; or
95 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the return is
96 filed no later than five days after the due date described in Subsection (2)(a);
97 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the return is filed
98 more than five days after the due date but no later than 15 days after the due date described in
99 Subsection (2)(a); or
100 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the return is
101 filed more than 15 days after the due date described in Subsection (2)(a).
102 (d) This Subsection (2) does not apply to:
103 (i) an amended return; or
104 (ii) a return with no tax due.
105 (3) (a) A person is subject to a penalty for failure to pay a tax, fee, or charge if:
106 (i) the person files a return on or before the due date for filing a return described in
107 Subsection (2)(a), but fails to pay the tax, fee, or charge due on the return on or before that due
108 date;
109 (ii) the person:
110 (A) is subject to a penalty under Subsection (2)(b); and
111 (B) fails to pay the tax, fee, or charge due on a return within a 90-day period after the
112 due date for filing a return described in Subsection (2)(a);
113 (iii) (A) the person is subject to a penalty under Subsection (2)(b); and
114 (B) the commission estimates an amount of tax due for that person in accordance with
115 Subsection 59-1-1406(2);
116 (iv) the person:
117 (A) is mailed a notice of deficiency; and
118 (B) within a 30-day period after the day on which the notice of deficiency described in

119 Subsection (3)(a)(iv)(A) is mailed:

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

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

122 (v) (A) the commission:

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

125 (II) is considered to have denied a request for reconsideration under Subsection
126 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed

127 request for agency action; and

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

130 (I) issues the order constituting final agency action described in Subsection

131 (3)(a)(v)(A)(I); or

132 (II) is considered to have denied the request for reconsideration described in

133 Subsection (3)(a)(v)(A)(II); or

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

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

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

139 (A) \$20; or

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

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

143 (A) \$20; or

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

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

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

153 (4) (a) Beginning January 1, 1995, in the case of any underpayment of estimated tax or
154 quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104, there
155 shall be added a penalty in an amount determined by applying the interest rate provided under
156 Section 59-1-402 plus four percentage points to the amount of the underpayment for the period
157 of the underpayment.

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

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

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

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

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

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

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

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

179 (b) For purposes of Subsection (5)(a), the penalty per month during the period of the
180 extension of time for filing the return is an amount equal to 2% of the tax due on the return,

181 unpaid as of the day on which the return is due as provided by law.

182 (6) If a person does not file a return within an extension of time allowed by Section
183 59-7-505 or 59-10-516, the person:

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

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

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

187 (A) \$20; or

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

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

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

191 (A) \$20; or

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

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

194 (7) (a) Additional penalties for an underpayment of a tax, fee, or charge are as provided
195 in this Subsection (7)(a).

196 (i) Except as provided in Subsection (7)(c), if any portion of an underpayment of a tax,
197 fee, or charge is due to negligence, the penalty is 10% of the portion of the underpayment that
198 is due to negligence.

199 (ii) Except as provided in Subsection (7)(d), if any portion of an underpayment of a
200 tax, fee, or charge is due to intentional disregard of law or rule, the penalty is 15% of the entire
201 underpayment.

202 (iii) If any portion of an underpayment is due to an intent to evade a tax, fee, or charge,
203 the penalty is the greater of \$500 per period or 50% of the entire underpayment.

204 (iv) If any portion of an underpayment is due to fraud with intent to evade a tax, fee, or
205 charge, the penalty is the greater of \$500 per period or 100% of the entire underpayment.

206 (b) If the commission determines that a person is liable for a penalty imposed under
207 Subsection (7)(a)(ii), (iii), or (iv), the commission shall notify the person of the proposed
208 penalty.

209 (i) The notice of proposed penalty shall:

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

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

212 (ii) Upon receipt of the notice of proposed penalty, the person against whom the
213 penalty is proposed may:

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

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

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

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

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

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

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

227 (c) A seller that voluntarily collects a tax under Subsection 59-12-107(2)(d) is not
228 subject to the penalty under Subsection (7)(a)(i) if on or after July 1, 2001:

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

231 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
232 or is a seller required to pay or collect and remit sales and use taxes under Subsection
233 59-12-107(2)(b) or (c); and

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

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

237 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
238 or is a seller required to pay or collect and remit sales and use taxes under Subsection
239 59-12-107(2)(b) or (c); and

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

242 (d) A seller that voluntarily collects a tax under Subsection 59-12-107(2)(d) is not

243 subject to the penalty under Subsection (7)(a)(ii) if:

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

246 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
247 or is a seller required to pay or collect and remit sales and use taxes under Subsection
248 59-12-107(2)(b) or (c); 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); or

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

252 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
253 or is a seller required to pay or collect and remit sales and use taxes under Subsection
254 59-12-107(2)(b) or (c); and

255 (II) the commission or a county, city, or town may require the seller to collect a tax
256 under Subsections 59-12-103(2)(a) through (d); and

257 (ii) the seller's intentional disregard of law or rule is warranted by existing law or by a
258 nonfrivolous argument for the extension, modification, or reversal of existing law or the
259 establishment of new law.

260 (8) The penalty for failure to file an information return, information report, or a
261 complete supporting schedule is \$50 for each information return, information report, or
262 supporting schedule up to a maximum of \$1,000.

263 (9) If a person, in furtherance of a frivolous position, has a prima facie intent to delay
264 or impede administration of a law relating to a tax, fee, or charge and files a purported return
265 that fails to contain information from which the correctness of reported tax, fee, or charge
266 liability can be determined or that clearly indicates that the tax, fee, or charge liability shown is
267 substantially incorrect, the penalty is \$500.

268 (10) (a) A seller that fails to remit a tax, fee, or charge monthly as required by
269 Subsection 59-12-108(1)(a):

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

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 (b) A seller that fails to remit a tax, fee, or charge by electronic funds transfer as

274 required by Subsection 59-12-108(1)(a)(ii)(B):

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

276 (ii) may not retain the percentage of sales and use taxes that would otherwise be
277 allowable under Subsection 59-12-108(2).

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

279 (i) commits an act described in Subsection (11)(b) with respect to one or more of the
280 following documents:

281 (A) a return;

282 (B) an affidavit;

283 (C) a claim; or

284 (D) a document similar to Subsections (11)(a)(i)(A) through (C);

285 (ii) knows or has reason to believe that the document described in Subsection (11)(a)(i)
286 will be used in connection with any material matter administered by the commission; and

287 (iii) knows that the document described in Subsection (11)(a)(i), if used in connection
288 with any material matter administered by the commission, would result in an understatement of
289 another person's liability for a tax, fee, or charge.

290 (b) The following acts apply to Subsection (11)(a)(i):

291 (i) preparing any portion of a document described in Subsection (11)(a)(i);

292 (ii) presenting any portion of a document described in Subsection (11)(a)(i);

293 (iii) procuring any portion of a document described in Subsection (11)(a)(i);

294 (iv) advising in the preparation or presentation of any portion of a document described
295 in Subsection (11)(a)(i);

296 (v) aiding in the preparation or presentation of any portion of a document described in
297 Subsection (11)(a)(i);

298 (vi) assisting in the preparation or presentation of any portion of a document described
299 in Subsection (11)(a)(i); or

300 (vii) counseling in the preparation or presentation of any portion of a document
301 described in Subsection (11)(a)(i).

302 (c) For purposes of Subsection (11)(a), the penalty:

303 (i) shall be imposed by the commission;

304 (ii) is \$500 for each document described in Subsection (11)(a)(i) with respect to which

305 the person described in Subsection (11)(a) meets the requirements of Subsection (11)(a); and
306 (iii) is in addition to any other penalty provided by law.

307 (d) The commission may seek a court order to enjoin a person from engaging in
308 conduct that is subject to a penalty under this Subsection (11).

309 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
310 commission may make rules prescribing the documents that are similar to Subsections
311 (11)(a)(i)(A) through (C).

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

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

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

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

321 (B) exceed \$1,000.

322 (c) (i) With respect to a tax, fee, or charge, a person who knowingly and intentionally,
323 and without a reasonable good faith basis, fails to make, render, sign, or verify a return within
324 the time required by law or to supply information within the time required by law, or who
325 makes, renders, signs, or verifies a false or fraudulent return or statement, or who supplies false
326 or fraudulent information, is guilty of a third degree felony.

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

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

330 (B) exceed \$5,000.

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

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

- 336 (A) be less than \$1,500; or
- 337 (B) exceed \$25,000.
- 338 (e) (i) A person is guilty of a second degree felony if that person commits an act:
- 339 (A) described in Subsection (12)(e)(ii) with respect to one or more of the following
- 340 documents:
- 341 (I) a return;
- 342 (II) an affidavit;
- 343 (III) a claim; or
- 344 (IV) a document similar to Subsections (12)(e)(i)(A)(I) through (III); and
- 345 (B) subject to Subsection (12)(e)(iii), with knowledge that the document described in
- 346 Subsection (12)(e)(i)(A):
- 347 (I) is false or fraudulent as to any material matter; and
- 348 (II) could be used in connection with any material matter administered by the
- 349 commission.
- 350 (ii) The following acts apply to Subsection (12)(e)(i):
- 351 (A) preparing any portion of a document described in Subsection (12)(e)(i)(A);
- 352 (B) presenting any portion of a document described in Subsection (12)(e)(i)(A);
- 353 (C) procuring any portion of a document described in Subsection (12)(e)(i)(A);
- 354 (D) advising in the preparation or presentation of any portion of a document described
- 355 in Subsection (12)(e)(i)(A);
- 356 (E) aiding in the preparation or presentation of any portion of a document described in
- 357 Subsection (12)(e)(i)(A);
- 358 (F) assisting in the preparation or presentation of any portion of a document described
- 359 in Subsection (12)(e)(i)(A); or
- 360 (G) counseling in the preparation or presentation of any portion of a document
- 361 described in Subsection (12)(e)(i)(A).
- 362 (iii) This Subsection (12)(e) applies:
- 363 (A) regardless of whether the person for which the document described in Subsection
- 364 (12)(e)(i)(A) is prepared or presented:
- 365 (I) knew of the falsity of the document described in Subsection (12)(e)(i)(A); or
- 366 (II) consented to the falsity of the document described in Subsection (12)(e)(i)(A); and

367 (B) in addition to any other penalty provided by law.

368 (iv) Notwithstanding Section 76-3-301, for purposes of this Subsection (12)(e), the
369 penalty may not:

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

371 (B) exceed \$25,000.

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

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

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

379 (i) from the date the tax should have been remitted; or

380 (ii) after the day on which the person commits the criminal offense.

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

384 Section 2. Section 59-12-103.1 is amended to read:

385 **59-12-103.1. Action by Supreme Court of the United States authorizing or action**
386 **by Congress permitting a state to require certain sellers to collect a sales or use tax --**
387 **Collection of tax by commission -- Commission report to Revenue and Taxation Interim**
388 **Committee -- Revenue and Taxation Interim Committee study -- Division of Finance**
389 **requirement to make certain deposits.**

390 (1) Except as provided in Section 59-12-107.1, a seller shall remit a tax to the
391 commission as provided in Section 59-12-107 if:

392 (a) the Supreme Court of the United States issues a decision authorizing a state to
393 require the following sellers to collect a sales or use tax:

394 (i) a seller that does not meet one or more of the criteria described in Subsection
395 59-12-107(2)(a); or

396 (ii) a seller that is not a seller required to pay or collect and remit sales and use taxes
397 under Subsection 59-12-107(2)(b) or (c); or

398 (b) Congress permits the state to require the following sellers to collect a sales or use
399 tax:

400 (i) a seller that does not meet one or more of the criteria described in Subsection
401 59-12-107(2)(a); or

402 (ii) a seller that is not a seller required to pay or collect and remit sales and use taxes
403 under Subsection 59-12-107(2)(b) or (c).

404 (2) The commission shall:

405 (a) collect the tax described in Subsection (1) from the seller:

406 (i) to the extent:

407 (A) authorized by the Supreme Court of the United States; or

408 (B) permitted by Congress; and

409 (ii) beginning on the first day of a calendar quarter as prescribed by the Revenue and
410 Taxation Interim Committee; and

411 (b) make a report to the Revenue and Taxation Interim Committee:

412 (i) regarding the actions taken by:

413 (A) the Supreme Court of the United States; or

414 (B) Congress;

415 (ii) (A) stating the amount of state revenue collected at the time of the report, if any;

416 and

417 (B) estimating the state sales and use tax rate reduction that would offset the amount of
418 state revenue estimated to be collected for the current fiscal year and the next fiscal year; and

419 (iii) (A) at the Revenue and Taxation Interim Committee meeting immediately
420 following the day on which the actions of the Supreme Court of the United States or Congress
421 become effective; and

422 (B) any other meeting of the Revenue and Taxation Interim Committee as requested by
423 the chairs of the committee.

424 (3) The Revenue and Taxation Interim Committee shall after hearing the commission's
425 report under Subsection (2)(b):

426 (a) review the actions taken by:

427 (i) the Supreme Court of the United States; or

428 (ii) Congress;

429 (b) direct the commission regarding the day on which the commission is required to
430 collect the tax described in Subsection (1); and

431 (c) make recommendations to the Legislative Management Committee:

432 (i) regarding whether as a result of the actions of the Supreme Court of the United
433 States or Congress any provisions of this chapter should be amended or repealed; and

434 (ii) within a one-year period after the day on which the commission makes a report
435 under Subsection (2)(b).

436 (4) The Division of Finance shall deposit a portion of the revenue collected under this
437 section into the Remote Sales Restricted Account as required by Section [59-12-103.2](#).

438 Section 3. Section [59-12-107](#) is amended to read:

439 **59-12-107. Definitions -- Collection, remittance, and payment of tax by sellers or**
440 **other persons -- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other**
441 **liability for collection -- Rulemaking authority -- Credits -- Treatment of bad debt --**
442 **Penalties and interest.**

443 (1) As used in this section:

444 (a) (i) "Advertising" means:

445 (A) announcing tangible personal property, a service, or a product transferred
446 electronically for sale by graphic, pictorial, verbal, written, or other similar means; or

447 (B) employing purchased space or time in print or electronic media if that purchased
448 space or time is given to communicate an announcement of tangible personal property, a
449 service, or a product transferred electronically for sale.

450 (ii) "Advertising" includes online advertising.

451 (b) (i) "Online advertising" means advertising that is anonymous and passive in nature.

452 (ii) "Online advertising" includes:

453 (A) an email communication generated as a result of generic algorithmic functions if
454 the email communication does not target a specific person;

455 (B) a banner advertisement;

456 (C) a cost-per-action advertisement;

457 (D) a link to a seller's website; or

458 (E) an online advertising service similar to Subsections (1)(b)(ii)(A) through (D) as the
459 commission may define by rule made in accordance with Title 63G, Chapter 3, Utah

460 Administrative Rulemaking Act.

461 ~~[(a)]~~ (c) "Ownership" means direct ownership or indirect ownership through a parent,
462 subsidiary, or affiliate.

463 ~~[(b)]~~ (d) "Related seller" means a seller that:

464 (i) meets one or more of the criteria described in Subsection (2)(a)(i); and

465 (ii) delivers tangible personal property, a service, or a product transferred electronically
466 that is sold:

467 (A) by a seller that does not meet one or more of the criteria described in Subsection
468 (2)(a)(i); and

469 (B) to a purchaser in the state.

470 (e) (i) "Solicit" means to communicate directly or indirectly to a specific person within
471 the state in a manner that is intended to and calculated to incite the person to purchase tangible
472 personal property, a service, or a product transferred electronically from a specific seller.

473 (ii) "Solicit" includes online advertising.

474 ~~[(e)]~~ (f) "Substantial ownership interest" means an ownership interest in a business
475 entity if that ownership interest is greater than the degree of ownership of equity interest
476 specified in 15 U.S.C. Sec. 78p, with respect to a person other than a director or an officer.

477 (2) (a) Except as provided in Subsection (2)(e), Section 59-12-107.1, or Section
478 59-12-123, and subject to Subsection (2)~~[(f)]~~(g), each seller shall pay or collect and remit the
479 sales and use taxes imposed by this chapter if within this state the seller:

480 (i) has or utilizes:

481 (A) an office;

482 (B) a distribution house;

483 (C) a sales house;

484 (D) a warehouse;

485 (E) a service enterprise; or

486 (F) a place of business similar to Subsections (2)(a)(i)(A) through (E);

487 (ii) maintains a stock of goods;

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

490 (A) advertising; or

491 (B) solicitation by:
492 (I) direct mail;
493 (II) electronic mail;
494 (III) the Internet;
495 (IV) telecommunications service; or
496 (V) a means similar to Subsection (2)(a)(iii)(A) or (B);
497 (iv) regularly engages in the delivery of property in the state other than by:
498 (A) common carrier; or
499 (B) United States mail; or
500 (v) regularly engages in an activity directly related to the leasing or servicing of
501 property located within the state.

502 (b) A seller is considered to be engaged in the business of selling tangible personal
503 property, a service, or a product transferred electronically for use in the state, and shall pay or
504 collect and remit the sales and use taxes imposed by this chapter if:

505 (i) the seller holds a substantial ownership interest in, or is owned in whole or in
506 substantial part by, a related seller; and

507 (ii) (A) the seller sells the same or a substantially similar line of products as the related
508 seller and does so under the same or a substantially similar business name; or

509 (B) the place of business described in Subsection (2)(a)(i) of the related seller or an in
510 state employee of the related seller is used to advertise, promote, or facilitate sales by the seller
511 to a purchaser.

512 (c) (i) If, during the 12-month period immediately preceding the current month, a seller
513 that does not meet one or more of the criteria provided for in Subsection (2)(a) or is not a seller
514 required to pay or collect and remit sales and use taxes under Subsection (2)(b) sold a total of
515 \$10,000 or more in tangible personal property, services, or products transferred electronically
516 for use in the state, there is a rebuttable presumption that the seller:

517 (A) is considered to be engaged in the business of selling tangible personal property, a
518 service, or a product transferred electronically for use in the state; and

519 (B) shall pay or collect and remit the sales and use taxes imposed by this chapter.

520 (ii) For purposes of Subsection (2)(c)(i), a presumption may be rebutted by the seller
521 demonstrating that the seller has never solicited the sale of tangible personal property, a

522 service, or a product transferred electronically to a resident of this state.

523 ~~[(e)]~~ (d) A seller that does not meet one or more of the criteria provided for in
524 Subsection (2)(a) or is not a seller required to pay or collect and remit sales and use taxes under
525 Subsection (2)(b) or (c):

526 (i) except as provided in Subsection (2)~~[(e)]~~(d)(ii), may voluntarily:

527 (A) collect a tax on a transaction described in Subsection 59-12-103(1); and

528 (B) remit the tax to the commission as provided in this part; or

529 (ii) ~~[notwithstanding Subsection (2)(e)(i),]~~ shall collect a tax on a transaction described
530 in Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to collect the tax.

531 ~~[(d)]~~ (e) The collection and remittance of a tax under this chapter by a seller that is
532 registered under the agreement may not be used as a factor in determining whether that seller is
533 required by Subsection (2) to:

534 (i) pay a tax, fee, or charge under:

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

536 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

537 (C) Section 19-6-714;

538 (D) Section 19-6-805;

539 (E) Section 69-2-5;

540 (F) Section 69-2-5.5;

541 (G) Section 69-2-5.6; or

542 (H) this title; or

543 (ii) collect and remit a tax, fee, or charge under:

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

545 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

546 (C) Section 19-6-714;

547 (D) Section 19-6-805;

548 (E) Section 69-2-5;

549 (F) Section 69-2-5.5;

550 (G) Section 69-2-5.6; or

551 (H) this title.

552 ~~[(e)]~~ (f) A person shall pay a use tax imposed by this chapter on a transaction described

553 in Subsection 59-12-103(1) if:

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

555 (ii) the person:

556 (A) stores the tangible personal property or product transferred electronically in the
557 state;

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

559 or

560 (C) consumes the tangible personal property or product transferred electronically in the
561 state.

562 ~~(f)~~ (g) The ownership of property that is located at the premises of a printer's facility
563 with which the retailer has contracted for printing and that consists of the final printed product,
564 property that becomes a part of the final printed product, or copy from which the printed
565 product is produced, shall not result in the retailer being considered to have or maintain an
566 office, distribution house, sales house, warehouse, service enterprise, or other place of
567 business, or to maintain a stock of goods, within this state.

568 (3) (a) Except as provided in Section 59-12-107.1, a tax under this chapter shall be
569 collected from a purchaser.

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

572 (c) (i) Each seller shall:

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

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

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

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

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

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

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

593 (h) (i) For a purchase paid with specie legal tender as defined in Section 59-1-1501.1,
594 and until such time as the commission accepts specie legal tender for the payment of a tax
595 under this chapter, if the commission requires a seller to remit a tax under this chapter in legal
596 tender other than specie legal tender, the seller shall state on the seller's books and records and
597 on an invoice, bill of sale, or similar document provided to the purchaser:

598 (A) the purchase price in specie legal tender and in the legal tender the seller is
599 required to remit to the commission;

600 (B) subject to Subsection (3)(h)(ii), the amount of tax due under this chapter in specie
601 legal tender and in the legal tender the seller is required to remit to the commission;

602 (C) the tax rate under this chapter applicable to the purchase; and

603 (D) the date of the purchase.

604 (ii) (A) Subject to Subsection (3)(h)(ii)(B), for purposes of determining the amount of
605 tax due under Subsection (3)(h)(i), a seller shall use the most recent London fixing price for the
606 specie legal tender the purchaser paid.

607 (B) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
608 commission may make rules for determining the amount of tax due under Subsection (3)(h)(i)
609 if the London fixing price is not available for a particular day.

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

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

615 (ii) The seller shall remit with the return under Subsection (4)(b)(i) the amount of the
616 tax required under this chapter to be collected or paid for the period covered by the return.

617 (c) Except as provided in Subsection (5)(c), a return shall contain information and be in
618 a form the commission prescribes by rule.

619 (d) (i) Subject to Subsection (4)(d)(ii), the sales tax as computed in the return shall be
620 based on the total nonexempt sales made during the period for which the return is filed,
621 including both cash and charge sales.

622 (ii) For a sale that includes the delivery or installation of tangible personal property at a
623 location other than a seller's place of business described in Subsection (2)(a)(i), if the delivery
624 or installation is separately stated on an invoice or receipt, a seller may compute the tax due on
625 the sale for purposes of Subsection (4)(d)(i) based on the amount the seller receives for that
626 sale during each period for which the seller receives payment for the sale.

627 (e) (i) The use tax as computed in the return shall be based on the total amount of
628 purchases for storage, use, or other consumption in this state made during the period for which
629 the return is filed, including both cash and charge purchases.

630 (ii) (A) As used in this Subsection (4)(e)(ii), "qualifying purchaser" means a purchaser
631 who is required to remit taxes under this chapter, but is not required to remit taxes monthly in
632 accordance with Section [59-12-108](#), and who converts tangible personal property into real
633 property.

634 (B) Subject to Subsections (4)(e)(ii)(C) and (D), a qualifying purchaser may remit the
635 taxes due under this chapter on tangible personal property for which the qualifying purchaser
636 claims an exemption as allowed under Subsection [59-12-104](#)(23) or (25) based on the period in
637 which the qualifying purchaser receives payment, in accordance with Subsection (4)(e)(ii)(C),
638 for the conversion of the tangible personal property into real property.

639 (C) A qualifying purchaser remitting taxes due under this chapter in accordance with
640 Subsection (4)(e)(ii)(B) shall remit an amount equal to the total amount of tax due on the
641 qualifying purchaser's purchase of the tangible personal property that was converted into real
642 property multiplied by a fraction, the numerator of which is the payment received in the period
643 for the qualifying purchaser's sale of the tangible personal property that was converted into real
644 property and the denominator of which is the entire sales price for the qualifying purchaser's
645 sale of the tangible personal property that was converted into real property.

646 (D) A qualifying purchaser may remit taxes due under this chapter in accordance with
647 this Subsection (4)(e)(ii) only if the books and records that the qualifying purchaser keeps in
648 the qualifying purchaser's regular course of business identify by reasonable and verifiable
649 standards that the tangible personal property was converted into real property.

650 (f) (i) Subject to Subsection (4)(f)(ii) and in accordance with Title 63G, Chapter 3,
651 Utah Administrative Rulemaking Act, the commission may by rule extend the time for making
652 returns and paying the taxes.

653 (ii) An extension under Subsection (4)(f)(i) may not be for more than 90 days.

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

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

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

661 (A) the information required to be included in the additional electronic report described
662 in Subsection (4)(h)(i); and

663 (B) one or more due dates for filing the additional electronic report described in
664 Subsection (4)(h)(i).

665 (5) (a) As used in this Subsection (5) and Subsection (6)(b), "remote seller" means a
666 seller that is:

667 (i) registered under the agreement;

668 (ii) described in Subsection (2)~~(c)~~(d); and

669 (iii) not a:

670 (A) model 1 seller;

671 (B) model 2 seller; or

672 (C) model 3 seller.

673 (b) (i) Except as provided in Subsection (5)(b)(ii), a tax a remote seller collects in
674 accordance with Subsection (2)~~(c)~~(d) is due and payable:

675 (A) to the commission;

676 (B) annually; and

677 (C) on or before the last day of the month immediately following the last day of each
678 calendar year.

679 (ii) The commission may require that a tax a remote seller collects in accordance with
680 Subsection (2)~~(c)~~(d) be due and payable:

681 (A) to the commission; and

682 (B) on the last day of the month immediately following any month in which the seller
683 accumulates a total of at least \$1,000 in agreement sales and use tax.

684 (c) (i) If a remote seller remits a tax to the commission in accordance with Subsection
685 (5)(b), the remote seller shall file a return:

686 (A) with the commission;

687 (B) with respect to the tax;

688 (C) containing information prescribed by the commission; and

689 (D) on a form prescribed by the commission.

690 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
691 commission shall make rules prescribing:

692 (A) the information required to be contained in a return described in Subsection

693 (5)(c)(i); and

694 (B) the form described in Subsection (5)(c)(i)(D).

695 (d) A tax a remote seller collects in accordance with this Subsection (5) shall be
696 calculated on the basis of the total amount of taxable transactions under Subsection

697 59-12-103(1) the remote seller completes, including:

698 (i) a cash transaction; and

699 (ii) a charge transaction.

700 (6) (a) Except as provided in Subsection (6)(b), a tax a seller that files a simplified
701 electronic return collects in accordance with this chapter is due and payable:

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

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

705 (b) A tax a remote seller that files a simplified electronic return collects in accordance
706 with this chapter is due and payable as provided in Subsection (5).

707 (7) (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the

708 purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to
709 titling or registration under the laws of this state.

710 (b) The commission shall collect the tax described in Subsection (7)(a) when the
711 vehicle is titled or registered.

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

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

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

719 (9) If any sale of property or service subject to the tax is made to a person prepaying
720 sales or use tax in accordance with Title 63M, Chapter 5, Resource Development Act, or to a
721 contractor or subcontractor of that person, the person to whom such payment or consideration
722 is payable is not responsible for the collection or payment of the sales or use tax and the person
723 prepaying the sales or use tax is responsible for the collection or payment of the sales or use tax
724 if the person prepaying the sales or use tax represents that the amount prepaid as sales or use
725 tax has not been fully credited against sales or use tax due and payable under the rules
726 promulgated by the commission.

727 (10) (a) For purposes of this Subsection (10):

728 (i) Except as provided in Subsection (10)(a)(ii), "bad debt" is as defined in Section
729 166, Internal Revenue Code.

730 (ii) Notwithstanding Subsection (10)(a)(i), "bad debt" does not include:

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

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

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

735 (B) a financing charge;

736 (C) interest;

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

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

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

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

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

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

745 (b) (i) To the extent an amount remitted in accordance with Subsection (4)(d) later
746 becomes bad debt, a seller may deduct the bad debt from the total amount from which a tax
747 under this chapter is calculated on a return.

748 (ii) A qualifying purchaser, as defined in Subsection (4)(e)(ii)(A), may deduct from the
749 total amount of taxes due under this chapter the amount of tax the qualifying purchaser paid on
750 the qualifying purchaser's purchase of tangible personal property converted into real property to
751 the extent that:

752 (A) tax was remitted in accordance with Subsection (4)(e) on that tangible personal
753 property converted into real property;

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

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

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

760 (i) the amount of bad debt for the time period described in Subsection (10)(e) exceeds
761 the amount of the seller's sales that are subject to a tax under this chapter for that same time
762 period; and

763 (ii) as provided in Section [59-1-1410](#).

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

765 (e) A bad debt may be deducted under this Subsection (10) on a return for the time
766 period during which the bad debt:

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

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

769 (A) for federal income tax purposes; and

770 (B) if the seller were required to file a federal income tax return.
771 (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or
772 claims a refund under this Subsection (10), the seller shall report and remit a tax under this
773 chapter:
774 (i) on the portion of the bad debt the seller recovers; and
775 (ii) on a return filed for the time period for which the portion of the bad debt is
776 recovered.
777 (g) For purposes of reporting a recovery of a portion of bad debt under Subsection
778 (10)(f), a seller shall apply amounts received on the bad debt in the following order:
779 (i) in a proportional amount:
780 (A) to the purchase price of the tangible personal property, product transferred
781 electronically, or service; and
782 (B) to the tax due under this chapter on the tangible personal property, product
783 transferred electronically, or service; and
784 (ii) to:
785 (A) interest charges;
786 (B) service charges; and
787 (C) other charges.
788 (h) A seller's certified service provider may make a deduction or claim a refund for bad
789 debt on behalf of the seller:
790 (i) in accordance with this Subsection (10); and
791 (ii) if the certified service provider credits or refunds the entire amount of the bad debt
792 deduction or refund to the seller.
793 (i) A seller may allocate bad debt among the states that are members of the agreement
794 if the seller's books and records support that allocation.
795 (11) (a) A seller may not, with intent to evade any tax, fail to timely remit the full
796 amount of tax required by this chapter.
797 (b) A violation of this section is punishable as provided in Section 59-1-401.
798 (c) Each person who fails to pay any tax to the state or any amount of tax required to be
799 paid to the state, except amounts determined to be due by the commission under Chapter 1,
800 Part 14, Assessment, Collections, and Refunds Act, or Section 59-12-111, within the time

801 required by this chapter, or who fails to file any return as required by this chapter, shall pay, in
802 addition to the tax, penalties and interest as provided in Sections 59-1-401 and 59-1-402.

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

806 Section 4. Section 59-12-108 is amended to read:

807 **59-12-108. Monthly payment -- Amount of tax a seller may retain -- Penalty --**
808 **Certain amounts allocated to local taxing jurisdictions.**

809 (1) (a) Notwithstanding Section 59-12-107, a seller that has a tax liability under this
810 chapter of \$50,000 or more for the previous calendar year shall:

811 (i) file a return with the commission:

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

814 (B) for the month for which the seller collects a tax under this chapter; and

815 (ii) except as provided in Subsection (1)(b), remit with the return required by
816 Subsection (1)(a)(i) the amount the person is required to remit to the commission for each tax,
817 fee, or charge described in Subsection (1)(c):

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

820 (B) if that seller's tax liability under this chapter for the previous calendar year is
821 \$96,000 or more, by electronic funds transfer.

822 (b) A seller shall remit electronically with the return required by Subsection (1)(a)(i)
823 the amount the seller is required to remit to the commission for each tax, fee, or charge
824 described in Subsection (1)(c) if that seller:

825 (i) is required by Section 59-12-107 to file the return electronically; or

826 (ii) (A) is required to collect and remit a tax under Section 59-12-107; and

827 (B) files a simplified electronic return.

828 (c) Subsections (1)(a) and (b) apply to the following taxes, fees, or charges:

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

830 (ii) a fee under Section 19-6-714;

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

- 832 (iv) a charge under Section 69-2-5;
- 833 (v) a charge under Section 69-2-5.5;
- 834 (vi) a charge under Section 69-2-5.6; or
- 835 (vii) a tax under this chapter.

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

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

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

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

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

- 851 (A) Subsection 59-12-103(2)(a);
- 852 (B) Subsection 59-12-103(2)(b); and
- 853 (C) Subsection 59-12-103(2)(d); and
- 854 (ii) for an agreement sales and use tax.

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

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

- 861 (A) 1.31% of any amounts the seller is required to remit to the commission for:
- 862 (I) the state tax and the local tax imposed in accordance with Subsection

863 59-12-103(2)(c);
864 (II) the month for which the seller is filing a return in accordance with Subsection (1);
865 and
866 (III) an agreement sales and use tax; and
867 (B) 1.31% of the difference between:
868 (I) the amounts the seller would have been required to remit to the commission:
869 (Aa) in accordance with Subsection 59-12-103(2)(a) if the transaction had been subject
870 to the state tax and the local tax imposed in accordance with Subsection 59-12-103(2)(a);
871 (Bb) for the month for which the seller is filing a return in accordance with Subsection
872 (1); and
873 (Cc) for an agreement sales and use tax; and
874 (II) the amounts the seller is required to remit to the commission for:
875 (Aa) the state tax and the local tax imposed in accordance with Subsection
876 59-12-103(2)(c);
877 (Bb) the month for which the seller is filing a return in accordance with Subsection (1);
878 and
879 (Cc) an agreement sales and use tax.
880 (d) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain
881 each month 1% of any amounts the seller is required to remit to the commission:
882 (i) for the month for which the seller is filing a return in accordance with Subsection
883 (1); and
884 (ii) under:
885 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
886 (B) Subsection 59-12-603(1)(a)(i)(A); or
887 (C) Subsection 59-12-603(1)(a)(i)(B).
888 (3) A state government entity that is required to remit taxes monthly in accordance
889 with Subsection (1) may not retain any amount under Subsection (2).
890 (4) A seller that has a tax liability under this chapter for the previous calendar year of
891 less than \$50,000 may:
892 (a) voluntarily meet the requirements of Subsection (1); and
893 (b) if the seller voluntarily meets the requirements of Subsection (1), retain the

894 amounts allowed by Subsection (2).

895 (5) (a) Subject to Subsections (5)(b) through (d), a seller that voluntarily collects and
896 remits a tax in accordance with Subsection 59-12-107(2)~~(c)~~(d)(i) may retain an amount equal
897 to 18% of any amounts the seller would otherwise remit to the commission:

898 (i) if the seller obtains a license under Section 59-12-106 for the first time on or after
899 January 1, 2014; and

900 (ii) for:

901 (A) an agreement sales and use tax; and

902 (B) the time period for which the seller files a return in accordance with this section.

903 (b) If a seller retains an amount under this Subsection (5), the seller may not retain any
904 other amount under this section.

905 (c) If a seller retains an amount under this Subsection (5), the commission may require
906 the seller to file a return by:

907 (i) electronic means; or

908 (ii) a means other than electronic means.

909 (d) A seller may not retain an amount under this Subsection (5) if the seller is required
910 to collect or remit a tax under this section in accordance with Section 59-12-103.1.

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

912 (7) (a) Except as provided in Subsection (7)(c), for any amounts required to be remitted
913 to the commission under this part, the commission shall each month calculate an amount equal
914 to the difference between:

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

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

919 (b) The commission shall each month allocate the amount calculated under Subsection
920 (7)(a) to each county, city, and town on the basis of the proportion of agreement sales and use
921 tax that the commission distributes to each county, city, and town for that month compared to
922 the total agreement sales and use tax that the commission distributes for that month to all
923 counties, cities, and towns.

924 (c) The amount the commission calculates under Subsection (7)(a) may not include an

925 amount collected from a tax that:

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

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

929 Section 5. Section **59-12-211** is amended to read:

930 **59-12-211. Definitions -- Location of certain transactions -- Reports to**
931 **commission -- Direct payment provision for a seller making certain purchases --**
932 **Exceptions.**

933 (1) As used in this section:

934 (a) (i) "Receipt" and "receive" mean:

935 (A) taking possession of tangible personal property;

936 (B) making first use of a service; or

937 (C) for a product transferred electronically, the earlier of:

938 (I) taking possession of the product transferred electronically; or

939 (II) making first use of the product transferred electronically.

940 (ii) "Receipt" and "receive" do not include possession by a shipping company on behalf
941 of a purchaser.

942 (b) "Transportation equipment" means:

943 (i) a locomotive or rail car that is used to carry a person or property in interstate
944 commerce;

945 (ii) a truck or truck-tractor:

946 (A) with a gross vehicle weight rating of 10,001 pounds or more;

947 (B) registered under Section [41-1a-301](#); and

948 (C) operated under the authority of a carrier authorized and certificated:

949 (I) by the United States Department of Transportation or another federal authority; and

950 (II) to engage in carrying a person or property in interstate commerce;

951 (iii) a trailer, semitrailer, or passenger bus that is:

952 (A) registered under Section [41-1a-301](#); and

953 (B) operated under the authority of a carrier authorized and certificated:

954 (I) by the United States Department of Transportation or another federal authority; and

955 (II) to engage in carrying a person or property in interstate commerce;

956 (iv) an aircraft that is operated by an air carrier authorized and certificated:
957 (A) by the United States Department of Transportation or another federal or foreign
958 authority; and
959 (B) to engage in carrying a person or property in interstate commerce; or
960 (v) a container designed for use on, or a component part attached or secured on, an
961 item of equipment listed in Subsections (1)(b)(i) through (iv).
962 (2) Except as provided in Subsections (8) and (14), if tangible personal property, a
963 product transferred electronically, or a service that is subject to taxation under this chapter is
964 received by a purchaser at a business location of a seller, the location of the transaction is the
965 business location of the seller.
966 (3) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
967 and (14), if tangible personal property, a product transferred electronically, or a service that is
968 subject to taxation under this chapter is not received by a purchaser at a business location of a
969 seller, the location of the transaction is the location where the purchaser takes receipt of the
970 tangible personal property or service.
971 (4) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
972 and (14), if Subsection (2) or (3) does not apply, the location of the transaction is the location
973 indicated by an address for or other information on the purchaser if:
974 (a) the address or other information is available from the seller's business records; and
975 (b) use of the address or other information from the seller's records does not constitute
976 bad faith.
977 (5) (a) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9),
978 (11), and (14), if Subsection (2), (3), or (4) does not apply, the location of the transaction is the
979 location indicated by an address for the purchaser if:
980 (i) the address is obtained during the consummation of the transaction; and
981 (ii) use of the address described in Subsection (5)(a)(i) does not constitute bad faith.
982 (b) An address used under Subsection (5)(a) includes the address of a purchaser's
983 payment instrument if no other address is available.
984 (6) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
985 and (14), if Subsection (2), (3), (4), or (5) does not apply or if a seller does not have sufficient
986 information to apply Subsection (2), (3), (4), or (5), the location of the transaction is the

987 location:

988 (a) indicated by the address from which:

989 (i) except as provided in Subsection (6)(a)(ii), for tangible personal property that is
990 subject to taxation under this chapter, the tangible personal property is shipped;

991 (ii) for computer software delivered electronically or for a product transferred
992 electronically that is subject to taxation under this chapter, the computer software or product
993 transferred electronically is first available for transmission by the seller; or

994 (iii) for a service that is subject to taxation under this chapter, the service is provided;

995 or

996 (b) as determined by the seller with respect to a prepaid wireless calling service:

997 (i) provided in Subsection (6)(a)(iii); or

998 (ii) associated with the mobile telephone number.

999 (7) (a) For purposes of this Subsection (7), "shared ZIP Code" means a nine-digit ZIP
1000 Code that is located within two or more local taxing jurisdictions.

1001 (b) If the location of a transaction determined under Subsections (3) through (6) is in a
1002 shared ZIP Code, the location of the transaction is:

1003 (i) if there is only one local taxing jurisdiction that imposes the lowest agreement
1004 combined tax rate for the shared ZIP Code, the local taxing jurisdiction that imposes the lowest
1005 agreement combined tax rate; or

1006 (ii) if two or more local taxing jurisdictions impose the lowest agreement combined tax
1007 rate for the shared ZIP Code, the local taxing jurisdiction that:

1008 (A) imposes the lowest agreement combined tax rate for the shared ZIP Code; and

1009 (B) has located within the local taxing jurisdiction the largest number of street
1010 addresses within the shared ZIP Code.

1011 (c) Notwithstanding any provision under this chapter authorizing or requiring the
1012 imposition of a sales and use tax, for purposes of Subsection (7)(b), a seller shall collect a sales
1013 and use tax imposed under this chapter at the lowest agreement combined tax rate imposed
1014 within the local taxing jurisdiction in which the transaction is located under Subsection (7)(b).

1015 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1016 commission may make rules:

1017 (i) providing for the circumstances under which a seller has exercised due diligence in

1018 determining the nine-digit ZIP Code for an address; or

1019 (ii) notwithstanding Subsection (7)(b), for determining the local taxing jurisdiction
1020 within which a transaction is located if a seller is unable to determine the local taxing
1021 jurisdiction within which the transaction is located under Subsection (7)(b).

1022 (8) The location of a transaction made with a direct payment permit described in
1023 Section 59-12-107.1 is the location where receipt of the tangible personal property, product, or
1024 service by the purchaser occurs.

1025 (9) The location of a purchase of direct mail is the location determined in accordance
1026 with Section 59-12-123.

1027 (10) (a) Except as provided in Subsection (10)(b), the location of a transaction
1028 determined under Subsections (3) through (6), (8), or (9), is the local taxing jurisdiction within
1029 which:

1030 (i) the nine-digit ZIP Code assigned to the location determined under Subsections (3)
1031 through (6), (8), or (9) is located; or

1032 (ii) the five-digit ZIP Code assigned to the location determined under Subsections (3)
1033 through (6), (8), or (9) is located if:

1034 (A) a nine-digit ZIP Code is not available for the location determined under
1035 Subsections (3) through (6), (8), or (9); or

1036 (B) after exercising due diligence, a seller or certified service provider is unable to
1037 determine a nine-digit ZIP Code for the location determined under Subsections (3) through (6),
1038 (8), or (9).

1039 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1040 commission may make rules for determining the local taxing jurisdiction within which a
1041 transaction is located if a seller or certified service provider is unable to determine the local
1042 taxing jurisdiction within which the transaction is located under Subsection (10)(a).

1043 (11) (a) As used in this Subsection (11), "florist delivery transaction" means a
1044 transaction commenced by a florist that transmits an order:

1045 (i) by:

1046 (A) telegraph;

1047 (B) telephone; or

1048 (C) a means of communication similar to Subsection (11)(a)(i)(A) or (B); and

1049 (ii) for delivery to another place:

1050 (A) in this state; or

1051 (B) outside this state.

1052 (b) Notwithstanding Subsections (3) through (6), beginning on January 1, 2009, and
1053 ending on December 31, 2009, the location of a florist delivery transaction is the business
1054 location of the florist that commences the florist delivery transaction.

1055 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1056 commission may by rule:

1057 (i) define:

1058 (A) "business location"; and

1059 (B) "florist";

1060 (ii) define what constitutes a means of communication similar to Subsection
1061 (11)(a)(i)(A) or (B); and

1062 (iii) provide procedures for determining when a transaction is commenced.

1063 (12) (a) Notwithstanding any other provision of this section and except as provided in
1064 Subsection (12)(b), if a purchaser uses computer software and there is not a transfer of a copy
1065 of that software to the purchaser, the location of the transaction is determined in accordance
1066 with Subsections (4) and (5).

1067 (b) If a purchaser uses computer software described in Subsection (12)(a) at more than
1068 one location, the location of the transaction shall be determined in accordance with rules made
1069 by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
1070 Act.

1071 (13) (a) A tax collected under this chapter shall be reported to the commission on a
1072 form that identifies the location of each transaction that occurs during the return filing period.

1073 (b) The form described in Subsection (13)(a) shall be filed with the commission as
1074 required under this chapter.

1075 (14) This section does not apply to:

1076 (a) amounts charged by a seller for:

1077 (i) telecommunications service except for a prepaid calling service or a prepaid
1078 wireless calling service as provided in Subsection (6)(b) or Section [59-12-215](#); or

1079 (ii) the retail sale or transfer of:

- 1080 (A) a motor vehicle other than a motor vehicle that is transportation equipment;
- 1081 (B) an aircraft other than an aircraft that is transportation equipment;
- 1082 (C) a watercraft;
- 1083 (D) a modular home;
- 1084 (E) a manufactured home; or
- 1085 (F) a mobile home; or
- 1086 (iii) except as provided in Section 59-12-214, the lease or rental of tangible personal
- 1087 property other than tangible personal property that is transportation equipment;
- 1088 (b) a tax a person pays in accordance with Subsection 59-12-107(2)(~~e~~)(f); or
- 1089 (c) a retail sale of tangible personal property or a product transferred electronically if:
- 1090 (i) the seller receives the order for the tangible personal property or product transferred
- 1091 electronically in this state;
- 1092 (ii) receipt of the tangible personal property or product transferred electronically by the
- 1093 purchaser or the purchaser's donee occurs in this state;
- 1094 (iii) the location where receipt of the tangible personal property or product transferred
- 1095 electronically by the purchaser occurs is determined in accordance with Subsections (3)
- 1096 through (5); and
- 1097 (iv) at the time the seller receives the order, the record keeping system that the seller
- 1098 uses to calculate the proper amount of tax imposed under this chapter captures the location
- 1099 where the order is received.

1100 Section 6. Section 59-12-211.1 is amended to read:

1101 **59-12-211.1. Location of a transaction that is subject to a use tax.**

1102 (1) Subject to Subsection (2), a person that is required by Subsection

1103 59-12-107(2)(~~e~~)(f) to pay a use tax on a transaction shall report the location of that

1104 transaction at the person's location.

1105 (2) For purposes of Subsection (1), if a person has more than one location in this state,

1106 the person shall report the location of the transaction at the location at which tangible personal

1107 property, a product transferred electronically, or a service is received.

1108 Section 7. **Effective date.**

1109 This bill takes effect on July 1, 2015.