

REMOTE TRANSACTIONS PARITY ACT

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike K. McKell

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to sales and use taxes.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses the state sales and use tax rates;
- ▶ addresses the circumstances under which a person may be required to collect and remit sales and use taxes to the State Tax Commission;
- ▶ provides for certain collections being deposited into a restricted account;
- ▶ makes technical and conforming changes; and
- ▶ contains a severability clause.

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 2015, Chapter 369
- 59-12-103**, as last amended by Laws of Utah 2015, Chapter 283
- 59-12-103.1**, as last amended by Laws of Utah 2013, Chapter 150



- 28 [59-12-103.2](#), as last amended by Laws of Utah 2013, Chapter 150
- 29 [59-12-107](#), as last amended by Laws of Utah 2012, Chapters 178, 312, and 399
- 30 [59-12-108](#), as last amended by Laws of Utah 2013, Chapter 50
- 31 [59-12-211](#), as last amended by Laws of Utah 2012, Chapter 312
- 32 [59-12-211.1](#), as last amended by Laws of Utah 2012, Chapter 312
- 33 [76-8-1101](#), as last amended by Laws of Utah 2014, Chapter 52

34

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

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

37 **59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute**
38 **of limitations -- Commission authority to waive, reduce, or compromise penalty or**
39 **interest.**

40 (1) As used in this section:

41 [~~(a) "Activated tax, fee, or charge" means a tax, fee, or charge with respect to which the~~
42 ~~commission:~~]

43 [~~(i) has implemented the commission's GenTax system; and]~~

44 [~~(ii) at least 30 days before implementing the commission's GenTax system as~~
45 ~~described in Subsection (1)(a)(i), has provided notice in a conspicuous place on the~~
46 ~~commission's website stating:~~]

47 [~~(A) the date the commission will implement the GenTax system with respect to the~~
48 ~~tax, fee, or charge; and]~~

49 [~~(B) that, at the time the commission implements the GenTax system with respect to~~
50 ~~the tax, fee, or charge:~~]

51 [~~(f) a person that files a return after the due date as described in Subsection (2)(a) is~~
52 ~~subject to the penalty described in Subsection (2)(c)(ii); and]~~

53 [~~(H) a person that fails to pay the tax, fee, or charge as described in Subsection (3)(a) is~~
54 ~~subject to the penalty described in Subsection (3)(b)(ii).]~~

55 [~~(b) "Activation date for a tax, fee, or charge" means with respect to a tax, fee, or~~
56 ~~charge, the later of:]~~

57 [~~(i) the date on which the commission implements the commission's GenTax system~~
58 ~~with respect to the tax, fee, or charge; or]~~

59 ~~[(ii) 30 days after the date the commission provides the notice described in Subsection~~
60 ~~(1)(a)(ii) with respect to the tax, fee, or charge.]~~

61 ~~[(c)(i)]~~ (a) Except as provided in Subsection (1)~~[(c)(ii)]~~(b), "tax, fee, or charge"
62 means:

- 63 ~~[(A)]~~ (i) a tax, fee, or charge the commission administers under:
- 64 ~~[(F)]~~ (A) this title;
- 65 ~~[(H)]~~ (B) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 66 ~~[(HH)]~~ (C) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 67 ~~[(IV)]~~ (D) Section 19-6-410.5;
- 68 ~~[(V)]~~ (E) Section 19-6-714;
- 69 ~~[(VI)]~~ (F) Section 19-6-805;
- 70 ~~[(VII)]~~ (G) Section 32B-2-304;
- 71 ~~[(VIII)]~~ (H) Section 34A-2-202;
- 72 ~~[(IX)]~~ (I) Section 40-6-14;
- 73 ~~[(X)]~~ (J) Section 69-2-5;
- 74 ~~[(XI)]~~ (K) Section 69-2-5.5; or
- 75 ~~[(XII)]~~ (L) Section 69-2-5.6; or
- 76 ~~[(B)]~~ (ii) another amount that by statute is subject to a penalty imposed under this
77 section.

78 ~~[(ii)]~~ (b) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:

- 79 ~~[(A)]~~ (i) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;
- 80 ~~[(B)]~~ (ii) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
- 81 ~~[(C)]~~ (iii) Chapter 2, Property Tax Act, except for Section 59-2-1309;
- 82 ~~[(D)]~~ (iv) Chapter 3, Tax Equivalent Property Act; or
- 83 ~~[(E)]~~ (v) Chapter 4, Privilege Tax.

84 ~~[(d)] "Unactivated tax, fee, or charge" means a tax, fee, or charge except for an~~
85 ~~activated tax, fee, or charge.]~~

86 (2) (a) The due date for filing a return is:

- 87 (i) if the person filing the return is not allowed by law an extension of time for filing
88 the return, the day on which the return is due as provided by law; or
- 89 (ii) if the person filing the return is allowed by law an extension of time for filing the

90 return, the earlier of:

91 (A) the date the person files the return; or

92 (B) the last day of that extension of time as allowed by law.

93 (b) A penalty in the amount described in Subsection (2)(c) is imposed if a person files a
94 return after the due date described in Subsection (2)(a).

95 (c) For purposes of Subsection (2)(b), the penalty is an amount equal to the greater of:

96 ~~[(i) if the return described in Subsection (2)(b) is filed with respect to an unactivated~~
97 ~~tax, fee, or charge:]~~

98 ~~[(A) \$20; or]~~

99 ~~[(B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or]~~

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

102 ~~[(A)] (i) \$20; or~~

103 ~~[(B)-(F)] (ii) (A) 2% of the unpaid [activated] tax, fee, or charge due on the return if the~~
104 ~~return is filed no later than five days after the due date described in Subsection (2)(a);~~

105 ~~[(H)] (B) 5% of the unpaid [activated] tax, fee, or charge due on the return if the return~~
106 ~~is filed more than five days after the due date but no later than 15 days after the due date~~
107 ~~described in Subsection (2)(a); or~~

108 ~~[(HH)] (C) 10% of the unpaid [activated] tax, fee, or charge due on the return if the~~
109 ~~return is filed more than 15 days after the due date described in Subsection (2)(a).~~

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

111 (i) an amended return; or

112 (ii) a return with no tax due.

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

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

117 (ii) the person:

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

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

- 121 (iii) (A) the person is subject to a penalty under Subsection (2)(b); and
 122 (B) the commission estimates an amount of tax due for that person in accordance with
 123 Subsection 59-1-1406(2);
- 124 (iv) the person:
 125 (A) is mailed a notice of deficiency; and
 126 (B) within a 30-day period after the day on which the notice of deficiency described in
 127 Subsection (3)(a)(iv)(A) is mailed:
 128 (I) does not file a petition for redetermination or a request for agency action; and
 129 (II) fails to pay the tax, fee, or charge due on a return;
- 130 (v) (A) the commission:
 131 (I) issues an order constituting final agency action resulting from a timely filed petition
 132 for redetermination or a timely filed request for agency action; or
 133 (II) is considered to have denied a request for reconsideration under Subsection
 134 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed
 135 request for agency action; and
 136 (B) the person fails to pay the tax, fee, or charge due on a return within a 30-day period
 137 after the date the commission:
 138 (I) issues the order constituting final agency action described in Subsection
 139 (3)(a)(v)(A)(I); or
 140 (II) is considered to have denied the request for reconsideration described in
 141 Subsection (3)(a)(v)(A)(II); or
 142 (vi) the person fails to pay the tax, fee, or charge within a 30-day period after the date
 143 of a final judicial decision resulting from a timely filed petition for judicial review.
- 144 (b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:
 145 [~~i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with~~
 146 ~~respect to an unactivated tax, fee, or charge:]~~
 147 [~~(A) \$20; or~~]
 148 [~~(B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or~~]
 149 [~~ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with~~
 150 ~~respect to an activated tax, fee, or charge, beginning on the activation date:]~~
 151 [~~(A)~~] (i) \$20; or

152 ~~[(B)-(F)]~~ (ii) (A) 2% of the unpaid ~~[activated]~~ tax, fee, or charge due on the return if the
153 activated tax, fee, or charge due on the return is paid no later than five days after the due date
154 for filing a return described in Subsection (2)(a);

155 ~~[(H)]~~ (B) 5% of the unpaid ~~[activated]~~ tax, fee, or charge due on the return if the
156 activated tax, fee, or charge due on the return is paid more than five days after the due date for
157 filing a return described in Subsection (2)(a) but no later than 15 days after that due date; or

158 ~~[(HH)]~~ (C) 10% of the unpaid ~~[activated]~~ tax, fee, or charge due on the return if the
159 activated tax, fee, or charge due on the return is paid more than 15 days after the due date for
160 filing a return described in Subsection (2)(a).

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

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

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

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

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

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

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

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

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

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

190 (6) If a person does not file a return within an extension of time allowed by Section
191 59-7-505 or 59-10-516, the person:

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

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

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

195 (A) \$20; or

196 (B) 10% of the tax due on the return, unpaid as of the day on which the return is due as
197 provided by law, not including the extension of time; and

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

199 (A) \$20; or

200 (B) 10% of the unpaid tax due on the return, unpaid as of the day on which the return is
201 due as provided by law, not including the extension of time.

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

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

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

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

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

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

217 (i) The notice of proposed penalty shall:

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

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

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

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

223 or

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

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

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

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

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

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

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

237 (i) a court of competent jurisdiction issues a final, unappealable judgment or order
238 determining that:

239 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
240 or is a seller required to pay or collect and remit sales and use taxes under Subsection
241 59-12-107(2)(b) or (d); and

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

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

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

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

250 (d) A seller that voluntarily collects a tax under Subsection 59-12-107(2)~~(d)~~(e)(i) is
251 not subject to the penalty under Subsection (7)(a)(ii) if:

252 (i) (A) a court of competent jurisdiction issues a final, unappealable judgment or order
253 determining that:

254 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
255 or is a seller required to pay or collect and remit sales and use taxes under Subsection
256 59-12-107(2)(b) or (d); and

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

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

260 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
261 or is a seller required to pay or collect and remit sales and use taxes under Subsection
262 59-12-107(2)(b) or (d); and

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

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

268 (8) (a) Subject to Subsections (8)(b) and (c), the penalty for failure to file an
269 information return, information report, or a complete supporting schedule is \$50 for each
270 information return, information report, or supporting schedule up to a maximum of \$1,000.

271 (b) If an employer is subject to a penalty under Subsection (13), the employer may not
272 be subject to a penalty under Subsection (8)(a).

273 (c) If an employer is subject to a penalty under this Subsection (8) for failure to file a
274 return in accordance with Subsection 59-10-406(3) on or before the due date described in
275 Subsection 59-10-406(3)(b)(ii), the commission may not impose a penalty under this

276 Subsection (8) unless the return is filed more than 14 days after the due date described in
277 Subsection 59-10-406(3)(b)(ii).

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

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

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

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

288 (b) A seller that fails to remit a tax, fee, or charge by electronic funds transfer as
289 required by Subsection 59-12-108(1)(a)(ii)(B):

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

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

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

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

296 (A) a return;

297 (B) an affidavit;

298 (C) a claim; or

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

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

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

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

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

- 307 (ii) presenting any portion of a document described in Subsection (11)(a)(i);
- 308 (iii) procuring any portion of a document described in Subsection (11)(a)(i);
- 309 (iv) advising in the preparation or presentation of any portion of a document described
- 310 in Subsection (11)(a)(i);
- 311 (v) aiding in the preparation or presentation of any portion of a document described in
- 312 Subsection (11)(a)(i);
- 313 (vi) assisting in the preparation or presentation of any portion of a document described
- 314 in Subsection (11)(a)(i); or
- 315 (vii) counseling in the preparation or presentation of any portion of a document
- 316 described in Subsection (11)(a)(i).
- 317 (c) For purposes of Subsection (11)(a), the penalty:
- 318 (i) shall be imposed by the commission;
- 319 (ii) is \$500 for each document described in Subsection (11)(a)(i) with respect to which
- 320 the person described in Subsection (11)(a) meets the requirements of Subsection (11)(a); and
- 321 (iii) is in addition to any other penalty provided by law.
- 322 (d) The commission may seek a court order to enjoin a person from engaging in
- 323 conduct that is subject to a penalty under this Subsection (11).
- 324 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 325 commission may make rules prescribing the documents that are similar to Subsections
- 326 (11)(a)(i)(A) through (C).
- 327 (12) (a) As provided in Section 76-8-1101, criminal offenses and penalties are as
- 328 provided in Subsections (12)(b) through (e).
- 329 (b) (i) A person ~~[who]~~ is guilty of a class B misdemeanor if the person:
- 330 (A) is required by this title or any laws the commission administers or regulates to
- 331 register with or obtain a license or permit from the commission~~[-who]~~; and
- 332 (B) operates without having registered or secured a license or permit~~[-]~~; or ~~[who]~~
- 333 operates when the registration, license, or permit is expired or not current~~[-is guilty of a class~~
- 334 ~~B-misdemeanor]~~.
- 335 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(b)(i), the
- 336 penalty may not:
- 337 (A) be less than \$500; or

338 (B) exceed \$1,000.

339 (c) (i) With respect to a tax, fee, or charge, a person [~~who~~] is guilty of a third degree
340 felony if the person:

341 (A) knowingly and intentionally, and without a reasonable good faith basis, fails to
342 make, render, sign, or verify a return within the time required by law or to supply information
343 within the time required by law[~~;~~ ~~or who~~];

344 (B) makes, renders, signs, or verifies a false or fraudulent return or statement[~~;~~]; or
345 [~~who~~]

346 (C) supplies false or fraudulent information[~~;~~ ~~is guilty of a third degree felony~~].

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

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

350 (B) exceed \$5,000.

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

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

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

357 (B) exceed \$25,000.

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

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

361 (I) a return;

362 (II) an affidavit;

363 (III) a claim; or

364 (IV) a document similar to Subsections (12)(e)(i)(A)(I) through (III); and

365 (B) subject to Subsection (12)(e)(iii), with knowledge that the document described in
366 Subsection (12)(e)(i)(A):

367 (I) is false or fraudulent as to any material matter; and

368 (II) could be used in connection with any material matter administered by the

369 commission.

370 (ii) The following acts apply to Subsection (12)(e)(i):

371 (A) preparing any portion of a document described in Subsection (12)(e)(i)(A);

372 (B) presenting any portion of a document described in Subsection (12)(e)(i)(A);

373 (C) procuring any portion of a document described in Subsection (12)(e)(i)(A);

374 (D) advising in the preparation or presentation of any portion of a document described
375 in Subsection (12)(e)(i)(A);

376 (E) aiding in the preparation or presentation of any portion of a document described in
377 Subsection (12)(e)(i)(A);

378 (F) assisting in the preparation or presentation of any portion of a document described
379 in Subsection (12)(e)(i)(A); or

380 (G) counseling in the preparation or presentation of any portion of a document
381 described in Subsection (12)(e)(i)(A).

382 (iii) This Subsection (12)(e) applies:

383 (A) regardless of whether the person for which the document described in Subsection
384 (12)(e)(i)(A) is prepared or presented:

385 (I) knew of the falsity of the document described in Subsection (12)(e)(i)(A); or

386 (II) consented to the falsity of the document described in Subsection (12)(e)(i)(A); and

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

388 (iv) Notwithstanding Section [76-3-301](#), for purposes of this Subsection (12)(e), the
389 penalty may not:

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

391 (B) exceed \$25,000.

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

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

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

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

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

401 (13) (a) Subject to Subsection (13)(b), an employer that is required to file a form with
402 the commission in accordance with Subsection 59-10-406(8) is subject to a penalty described
403 in Subsection (13)(b) if the employer:

404 (i) fails to file the form with the commission in an electronic format approved by the
405 commission as required by Subsection 59-10-406(8);

406 (ii) fails to file the form on or before the due date provided in Subsection 59-10-406(8);

407 (iii) fails to provide accurate information on the form; or

408 (iv) fails to provide all of the information required by the Internal Revenue Service to
409 be contained on the form.

410 (b) For purposes of Subsection (13)(a), the penalty is:

411 (i) \$30 per form, not to exceed \$75,000 in a calendar year, if the employer files the
412 form in accordance with Subsection 59-10-406(8), more than 14 days after the due date
413 provided in Subsection 59-10-406(8) but no later than 30 days after the due date provided in
414 Subsection 59-10-406(8);

415 (ii) \$60 per form, not to exceed \$200,000 in a calendar year, if the employer files the
416 form in accordance with Subsection 59-10-406(8), more than 30 days after the due date
417 provided in Subsection 59-10-406(8) but on or before June 1; or

418 (iii) \$100 per form, not to exceed \$500,000 in a calendar year, if the employer:

419 (A) files the form in accordance with Subsection 59-10-406(8) after June 1; or

420 (B) fails to file the form.

421 (14) Upon making a record of its actions, and upon reasonable cause shown, the
422 commission may waive, reduce, or compromise any of the penalties or interest imposed under
423 this part.

424 Section 2. Section 59-12-103 is amended to read:

425 **59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use**
426 **tax revenues.**

427 (1) A tax is imposed on the purchaser as provided in this part for amounts paid or
428 charged for the following transactions:

429 (a) retail sales of tangible personal property made within the state;

430 (b) amounts paid for:

- 431 (i) telecommunications service, other than mobile telecommunications service, that
- 432 originates and terminates within the boundaries of this state;
- 433 (ii) mobile telecommunications service that originates and terminates within the
- 434 boundaries of one state only to the extent permitted by the Mobile Telecommunications
- 435 Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or
- 436 (iii) an ancillary service associated with a:
 - 437 (A) telecommunications service described in Subsection (1)(b)(i); or
 - 438 (B) mobile telecommunications service described in Subsection (1)(b)(ii);
- 439 (c) sales of the following for commercial use:
 - 440 (i) gas;
 - 441 (ii) electricity;
 - 442 (iii) heat;
 - 443 (iv) coal;
 - 444 (v) fuel oil; or
 - 445 (vi) other fuels;
- 446 (d) sales of the following for residential use:
 - 447 (i) gas;
 - 448 (ii) electricity;
 - 449 (iii) heat;
 - 450 (iv) coal;
 - 451 (v) fuel oil; or
 - 452 (vi) other fuels;
- 453 (e) sales of prepared food;
- 454 (f) except as provided in Section [59-12-104](#), amounts paid or charged as admission or
- 455 user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,
- 456 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,
- 457 fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit
- 458 television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf
- 459 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,
- 460 tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises,
- 461 horseback rides, sports activities, or any other amusement, entertainment, recreation,

462 exhibition, cultural, or athletic activity;

463 (g) amounts paid or charged for services for repairs or renovations of tangible personal
464 property, unless Section 59-12-104 provides for an exemption from sales and use tax for:

465 (i) the tangible personal property; and

466 (ii) parts used in the repairs or renovations of the tangible personal property described
467 in Subsection (1)(g)(i), regardless of whether:

468 (A) any parts are actually used in the repairs or renovations of that tangible personal
469 property; or

470 (B) the particular parts used in the repairs or renovations of that tangible personal
471 property are exempt from a tax under this chapter;

472 (h) except as provided in Subsection 59-12-104(7), amounts paid or charged for
473 assisted cleaning or washing of tangible personal property;

474 (i) amounts paid or charged for tourist home, hotel, motel, or trailer court
475 accommodations and services that are regularly rented for less than 30 consecutive days;

476 (j) amounts paid or charged for laundry or dry cleaning services;

477 (k) amounts paid or charged for leases or rentals of tangible personal property if within
478 this state the tangible personal property is:

479 (i) stored;

480 (ii) used; or

481 (iii) otherwise consumed;

482 (l) amounts paid or charged for tangible personal property if within this state the
483 tangible personal property is:

484 (i) stored;

485 (ii) used; or

486 (iii) consumed; and

487 (m) amounts paid or charged for a sale:

488 (i) (A) of a product transferred electronically; or

489 (B) of a repair or renovation of a product transferred electronically; and

490 (ii) regardless of whether the sale provides:

491 (A) a right of permanent use of the product; or

492 (B) a right to use the product that is less than a permanent use, including a right:

- 493 (I) for a definite or specified length of time; and
- 494 (II) that terminates upon the occurrence of a condition.
- 495 (2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax
- 496 is imposed on a transaction described in Subsection (1) equal to the sum of:
- 497 (i) a state tax imposed on the transaction at a tax rate equal to the sum of:
- 498 (A) (I) 4.70%; [and]
- 499 (II) 4.60% beginning the January 1 immediately following the day on which the state
- 500 collects at least \$50,000,000 in a calendar year but less than \$100,000,000 of qualified state
- 501 revenue collected from remote sellers, as defined in Section [59-12-103.2](#);
- 502 (III) 4.50% beginning the January 1 immediately following the day on which the state
- 503 collects at least \$100,000,000 in a calendar year but less than \$150,000,000 of qualified state
- 504 revenue collected from remote sellers, as defined in Section [59-12-103.2](#);
- 505 (IV) 4.39% beginning the January 1 immediately following the day on which the state
- 506 collects at least \$150,000,000 in a calendar year but less than \$200,000,000 of qualified state
- 507 revenue collected from remote sellers, as defined in Section [59-12-103.2](#); or
- 508 (V) 4.29% beginning the January 1 immediately following the day on which the state
- 509 collects at least \$200,000,000 in a calendar year of qualified state revenue collected from
- 510 remote sellers, as defined in Section [59-12-103.2](#); and
- 511 (B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales
- 512 and Use Tax Act, if the location of the transaction as determined under Sections [59-12-211](#)
- 513 through [59-12-215](#) is in a county in which the state imposes the tax under Part 18, Additional
- 514 State Sales and Use Tax Act; and
- 515 (II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales
- 516 and Use Tax Act, if the location of the transaction as determined under Sections [59-12-211](#)
- 517 through [59-12-215](#) is in a city, town, or the unincorporated area of a county in which the state
- 518 imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and
- 519 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
- 520 transaction under this chapter other than this part.
- 521 (b) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed
- 522 on a transaction described in Subsection (1)(d) equal to the sum of:
- 523 (i) a state tax imposed on the transaction at a tax rate of 2%; and

524 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
525 transaction under this chapter other than this part.

526 (c) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed
527 on amounts paid or charged for food and food ingredients equal to the sum of:

528 (i) a state tax imposed on the amounts paid or charged for food and food ingredients at
529 a tax rate of 1.75%; and

530 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
531 amounts paid or charged for food and food ingredients under this chapter other than this part.

532 (d) (i) For a bundled transaction that is attributable to food and food ingredients and
533 tangible personal property other than food and food ingredients, a state tax and a local tax is
534 imposed on the entire bundled transaction equal to the sum of:

535 (A) a state tax imposed on the entire bundled transaction equal to the sum of:

536 (I) the tax rate described in Subsection (2)(a)(i)(A); and

537 (II) (Aa) the tax rate the state imposes in accordance with Part 18, Additional State
538 Sales and Use Tax Act, if the location of the transaction as determined under Sections
539 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18,
540 Additional State Sales and Use Tax Act; and

541 (Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State
542 Sales and Use Tax Act, if the location of the transaction as determined under Sections
543 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which
544 the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

545 (B) a local tax imposed on the entire bundled transaction at the sum of the tax rates
546 described in Subsection (2)(a)(ii).

547 (ii) If an optional computer software maintenance contract is a bundled transaction that
548 consists of taxable and nontaxable products that are not separately itemized on an invoice or
549 similar billing document, the purchase of the optional computer software maintenance contract
550 is 40% taxable under this chapter and 60% nontaxable under this chapter.

551 (iii) Subject to Subsection (2)(d)(iv), for a bundled transaction other than a bundled
552 transaction described in Subsection (2)(d)(i) or (ii):

553 (A) if the sales price of the bundled transaction is attributable to tangible personal
554 property, a product, or a service that is subject to taxation under this chapter and tangible

555 personal property, a product, or service that is not subject to taxation under this chapter, the
556 entire bundled transaction is subject to taxation under this chapter unless:

557 (I) the seller is able to identify by reasonable and verifiable standards the tangible
558 personal property, product, or service that is not subject to taxation under this chapter from the
559 books and records the seller keeps in the seller's regular course of business; or

560 (II) state or federal law provides otherwise; or

561 (B) if the sales price of a bundled transaction is attributable to two or more items of
562 tangible personal property, products, or services that are subject to taxation under this chapter
563 at different rates, the entire bundled transaction is subject to taxation under this chapter at the
564 higher tax rate unless:

565 (I) the seller is able to identify by reasonable and verifiable standards the tangible
566 personal property, product, or service that is subject to taxation under this chapter at the lower
567 tax rate from the books and records the seller keeps in the seller's regular course of business; or

568 (II) state or federal law provides otherwise.

569 (iv) For purposes of Subsection (2)(d)(iii), books and records that a seller keeps in the
570 seller's regular course of business includes books and records the seller keeps in the regular
571 course of business for nontax purposes.

572 (e) (i) Except as otherwise provided in this chapter and subject to Subsections (2)(e)(ii)
573 and (iii), if a transaction consists of the sale, lease, or rental of tangible personal property, a
574 product, or a service that is subject to taxation under this chapter, and the sale, lease, or rental
575 of tangible personal property, other property, a product, or a service that is not subject to
576 taxation under this chapter, the entire transaction is subject to taxation under this chapter unless
577 the seller, at the time of the transaction:

578 (A) separately states the portion of the transaction that is not subject to taxation under
579 this chapter on an invoice, bill of sale, or similar document provided to the purchaser; or

580 (B) is able to identify by reasonable and verifiable standards, from the books and
581 records the seller keeps in the seller's regular course of business, the portion of the transaction
582 that is not subject to taxation under this chapter.

583 (ii) A purchaser and a seller may correct the taxability of a transaction if:

584 (A) after the transaction occurs, the purchaser and the seller discover that the portion of
585 the transaction that is not subject to taxation under this chapter was not separately stated on an

586 invoice, bill of sale, or similar document provided to the purchaser because of an error or
587 ignorance of the law; and

588 (B) the seller is able to identify by reasonable and verifiable standards, from the books
589 and records the seller keeps in the seller's regular course of business, the portion of the
590 transaction that is not subject to taxation under this chapter.

591 (iii) For purposes of Subsections (2)(e)(i) and (ii), books and records that a seller keeps
592 in the seller's regular course of business includes books and records the seller keeps in the
593 regular course of business for nontax purposes.

594 (f) (i) If the sales price of a transaction is attributable to two or more items of tangible
595 personal property, products, or services that are subject to taxation under this chapter at
596 different rates, the entire purchase is subject to taxation under this chapter at the higher tax rate
597 unless the seller, at the time of the transaction:

598 (A) separately states the items subject to taxation under this chapter at each of the
599 different rates on an invoice, bill of sale, or similar document provided to the purchaser; or

600 (B) is able to identify by reasonable and verifiable standards the tangible personal
601 property, product, or service that is subject to taxation under this chapter at the lower tax rate
602 from the books and records the seller keeps in the seller's regular course of business.

603 (ii) For purposes of Subsection (2)(f)(i), books and records that a seller keeps in the
604 seller's regular course of business includes books and records the seller keeps in the regular
605 course of business for nontax purposes.

606 (g) Subject to Subsections (2)(h) and (i), a tax rate repeal or tax rate change for a tax
607 rate imposed under the following shall take effect on the first day of a calendar quarter:

- 608 (i) Subsection (2)(a)(i)(A);
- 609 (ii) Subsection (2)(b)(i);
- 610 (iii) Subsection (2)(c)(i); or
- 611 (iv) Subsection (2)(d)(i)(A)(I).

612 (h) (i) A tax rate increase takes effect on the first day of the first billing period that
613 begins on or after the effective date of the tax rate increase if the billing period for the
614 transaction begins before the effective date of a tax rate increase imposed under:

- 615 (A) Subsection (2)(a)(i)(A);
- 616 (B) Subsection (2)(b)(i);

- 617 (C) Subsection (2)(c)(i); or
- 618 (D) Subsection (2)(d)(i)(A)(I).
- 619 (ii) The repeal of a tax or a tax rate decrease applies to a billing
- 620 statement for the billing period is rendered on or after the effective date of the repeal of the tax
- 621 or the tax rate decrease imposed under:
 - 622 (A) Subsection (2)(a)(i)(A);
 - 623 (B) Subsection (2)(b)(i);
 - 624 (C) Subsection (2)(c)(i); or
 - 625 (D) Subsection (2)(d)(i)(A)(I).
- 626 (i) (i) For a tax rate described in Subsection (2)(i)(ii), if a tax due on a catalogue sale is
- 627 computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal or
- 628 change in a tax rate takes effect:
 - 629 (A) on the first day of a calendar quarter; and
 - 630 (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.
- 631 (ii) Subsection (2)(i)(i) applies to the tax rates described in the following:
 - 632 (A) Subsection (2)(a)(i)(A);
 - 633 (B) Subsection (2)(b)(i);
 - 634 (C) Subsection (2)(c)(i); or
 - 635 (D) Subsection (2)(d)(i)(A)(I).
- 636 (iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
- 637 the commission may by rule define the term "catalogue sale."
- 638 (3) (a) The following state taxes shall be deposited into the General Fund:
 - 639 (i) the tax imposed by Subsection (2)(a)(i)(A);
 - 640 (ii) the tax imposed by Subsection (2)(b)(i);
 - 641 (iii) the tax imposed by Subsection (2)(c)(i); or
 - 642 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).
- 643 (b) The following local taxes shall be distributed to a county, city, or town as provided
- 644 in this chapter:
 - 645 (i) the tax imposed by Subsection (2)(a)(ii);
 - 646 (ii) the tax imposed by Subsection (2)(b)(ii);
 - 647 (iii) the tax imposed by Subsection (2)(c)(ii); and

648 (iv) the tax imposed by Subsection (2)(d)(i)(B).
649 (4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
650 2003, the lesser of the following amounts shall be expended as provided in Subsections (4)(b)
651 through (g):
652 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:
653 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and
654 (B) for the fiscal year; or
655 (ii) \$17,500,000.
656 (b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount
657 described in Subsection (4)(a) shall be transferred each year as dedicated credits to the
658 Department of Natural Resources to:
659 (A) implement the measures described in Subsections 79-2-303(3)(a) through (d) to
660 protect sensitive plant and animal species; or
661 (B) award grants, up to the amount authorized by the Legislature in an appropriations
662 act, to political subdivisions of the state to implement the measures described in Subsections
663 79-2-303(3)(a) through (d) to protect sensitive plant and animal species.
664 (ii) Money transferred to the Department of Natural Resources under Subsection
665 (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other
666 person to list or attempt to have listed a species as threatened or endangered under the
667 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.
668 (iii) At the end of each fiscal year:
669 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
670 Conservation and Development Fund created in Section 73-10-24;
671 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
672 Program Subaccount created in Section 73-10c-5; and
673 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
674 Program Subaccount created in Section 73-10c-5.
675 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in
676 Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund
677 created in Section 4-18-106.
678 (d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described

679 in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water
680 Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of
681 water rights.

682 (ii) At the end of each fiscal year:

683 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
684 Conservation and Development Fund created in Section 73-10-24;

685 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
686 Program Subaccount created in Section 73-10c-5; and

687 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
688 Program Subaccount created in Section 73-10c-5.

689 (e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described
690 in Subsection (4)(a) shall be deposited in the Water Resources Conservation and Development
691 Fund created in Section 73-10-24 for use by the Division of Water Resources.

692 (ii) In addition to the uses allowed of the Water Resources Conservation and
693 Development Fund under Section 73-10-24, the Water Resources Conservation and
694 Development Fund may also be used to:

695 (A) conduct hydrologic and geotechnical investigations by the Division of Water
696 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of
697 quantifying surface and ground water resources and describing the hydrologic systems of an
698 area in sufficient detail so as to enable local and state resource managers to plan for and
699 accommodate growth in water use without jeopardizing the resource;

700 (B) fund state required dam safety improvements; and

701 (C) protect the state's interest in interstate water compact allocations, including the
702 hiring of technical and legal staff.

703 (f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
704 in Subsection (4)(a) shall be deposited in the Utah Wastewater Loan Program Subaccount
705 created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

706 (g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
707 in Subsection (4)(a) shall be deposited in the Drinking Water Loan Program Subaccount
708 created in Section 73-10c-5 for use by the Division of Drinking Water to:

709 (i) provide for the installation and repair of collection, treatment, storage, and

710 distribution facilities for any public water system, as defined in Section 19-4-102;

711 (ii) develop underground sources of water, including springs and wells; and

712 (iii) develop surface water sources.

713 (5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,

714 2006, the difference between the following amounts shall be expended as provided in this

715 Subsection (5), if that difference is greater than \$1:

716 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the

717 fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

718 (ii) \$17,500,000.

719 (b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:

720 (A) transferred each fiscal year to the Department of Natural Resources as dedicated

721 credits; and

722 (B) expended by the Department of Natural Resources for watershed rehabilitation or

723 restoration.

724 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described

725 in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund

726 created in Section 73-10-24.

727 (c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the

728 remaining difference described in Subsection (5)(a) shall be:

729 (A) transferred each fiscal year to the Division of Water Resources as dedicated

730 credits; and

731 (B) expended by the Division of Water Resources for cloud-seeding projects

732 authorized by Title 73, Chapter 15, Modification of Weather.

733 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described

734 in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund

735 created in Section 73-10-24.

736 (d) After making the transfers required by Subsections (5)(b) and (c), 94% of the

737 remaining difference described in Subsection (5)(a) shall be deposited into the Water

738 Resources Conservation and Development Fund created in Section 73-10-24 for use by the

739 Division of Water Resources for:

740 (i) preconstruction costs:

741 (A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter
742 26, Bear River Development Act; and

743 (B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project
744 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

745 (ii) the cost of employing a civil engineer to oversee any project authorized by Title 73,
746 Chapter 26, Bear River Development Act;

747 (iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project
748 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

749 (iv) other uses authorized under Sections 73-10-24, 73-10-25.1, 73-10-30, and
750 Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

751 (e) After making the transfers required by Subsections (5)(b) and (c) and subject to
752 Subsection (5)(f), 6% of the remaining difference described in Subsection (5)(a) shall be
753 transferred each year as dedicated credits to the Division of Water Rights to cover the costs
754 incurred for employing additional technical staff for the administration of water rights.

755 (f) At the end of each fiscal year, any unexpended dedicated credits described in
756 Subsection (5)(e) over \$150,000 lapse to the Water Resources Conservation and Development
757 Fund created in Section 73-10-24.

758 (6) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
759 2003, and for taxes listed under Subsection (3)(a), the amount of revenue generated by a 1/16%
760 tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited in
761 the Transportation Fund created by Section 72-2-102.

762 (7) Notwithstanding Subsection (3)(a), beginning on July 1, 2012, the Division of
763 Finance shall deposit into the Transportation Investment Fund of 2005 created in Section
764 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated
765 by a 1/64% tax rate on the taxable transactions under Subsection (1).

766 (8) (a) Notwithstanding Subsection (3)(a), in addition to the amounts deposited in
767 Subsection (7), and subject to Subsection (8)(b), for a fiscal year beginning on or after July 1,
768 2012, the Division of Finance shall deposit into the Transportation Investment Fund of 2005
769 created by Section 72-2-124:

770 (i) a portion of the taxes listed under Subsection (3)(a) in an amount equal to 8.3% of
771 the revenues collected from the following taxes, which represents a portion of the

772 approximately 17% of sales and use tax revenues generated annually by the sales and use tax
773 on vehicles and vehicle-related products:

- 774 (A) the tax imposed by Subsection (2)(a)(i)(A);
 - 775 (B) the tax imposed by Subsection (2)(b)(i);
 - 776 (C) the tax imposed by Subsection (2)(c)(i); and
 - 777 (D) the tax imposed by Subsection (2)(d)(i)(A)(I); plus
- 778 (ii) an amount equal to 30% of the growth in the amount of revenues collected in the
779 current fiscal year from the sales and use taxes described in Subsections (8)(a)(i)(A) through
780 (D) that exceeds the amount collected from the sales and use taxes described in Subsections
781 (8)(a)(i)(A) through (D) in the 2010-11 fiscal year.

782 (b) (i) Subject to Subsections (8)(b)(ii) and (iii), in any fiscal year that the portion of
783 the sales and use taxes deposited under Subsection (8)(a) represents an amount that is a total
784 lower percentage of the sales and use taxes described in Subsections (8)(a)(i)(A) through (D)
785 generated in the current fiscal year than the total percentage of sales and use taxes deposited in
786 the previous fiscal year, the Division of Finance shall deposit an amount under Subsection
787 (8)(a) equal to the product of:

- 788 (A) the total percentage of sales and use taxes deposited under Subsection (8)(a) in the
789 previous fiscal year; and
- 790 (B) the total sales and use tax revenue generated by the taxes described in Subsections
791 (8)(a)(i)(A) through (D) in the current fiscal year.

792 (ii) In any fiscal year in which the portion of the sales and use taxes deposited under
793 Subsection (8)(a) would exceed 17% of the revenues collected from the sales and use taxes
794 described in Subsections (8)(a)(i)(A) through (D) in the current fiscal year, the Division of
795 Finance shall deposit 17% of the revenues collected from the sales and use taxes described in
796 Subsections (8)(a)(i)(A) through (D) for the current fiscal year under Subsection (8)(a).

797 (iii) In all subsequent fiscal years after a year in which 17% of the revenues collected
798 from the sales and use taxes described in Subsections (8)(a)(i)(A) through (D) was deposited
799 under Subsection (8)(a), the Division of Finance shall annually deposit 17% of the revenues
800 collected from the sales and use taxes described in Subsections (8)(a)(i)(A) through (D) in the
801 current fiscal year under Subsection (8)(a).

802 (9) Notwithstanding Subsection (3)(a), and in addition to the amounts deposited under

803 Subsections (7) and (8), for a fiscal year beginning on or after July 1, 2012, the Division of
804 Finance shall annually deposit \$90,000,000 of the revenues generated by the taxes listed under
805 Subsection (3)(a) into the Transportation Investment Fund of 2005 created by Section
806 [72-2-124](#).

807 (10) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year
808 2009-10, \$533,750 shall be deposited into the Qualified Emergency Food Agencies Fund
809 created by Section [35A-8-1009](#) and expended as provided in Section [35A-8-1009](#).

810 (11) (a) Notwithstanding Subsection (3)(a), except as provided in Subsection (11)(b),
811 and in addition to any amounts deposited under Subsections (7), (8), and (9), beginning on July
812 1, 2012, the Division of Finance shall deposit into the Transportation Investment Fund of 2005
813 created by Section [72-2-124](#) the amount of tax revenue generated by a .025% tax rate on the
814 transactions described in Subsection (1).

815 (b) For purposes of Subsection (11)(a), the Division of Finance may not deposit into
816 the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or
817 charged for food and food ingredients, except for tax revenue generated by a bundled
818 transaction attributable to food and food ingredients and tangible personal property other than
819 food and food ingredients described in Subsection (2)(d).

820 (12) (a) Notwithstanding Subsection (3)(a), and except as provided in Subsection
821 (12)(b), beginning on January 1, 2009, the Division of Finance shall deposit into the
822 Transportation Fund created by Section [72-2-102](#) the amount of tax revenue generated by a
823 .025% tax rate on the transactions described in Subsection (1) to be expended to address
824 chokepoints in construction management.

825 (b) For purposes of Subsection (12)(a), the Division of Finance may not deposit into
826 the Transportation Fund any tax revenue generated by amounts paid or charged for food and
827 food ingredients, except for tax revenue generated by a bundled transaction attributable to food
828 and food ingredients and tangible personal property other than food and food ingredients
829 described in Subsection (2)(d).

830 (13) Notwithstanding Subsection (3)(a), beginning the second fiscal year after the
831 fiscal year during which the Division of Finance receives notice under Subsection
832 [63N-2-510](#)~~(3)~~(2) that construction on a qualified hotel, as defined in Section [63N-2-502](#), has
833 begun, the Division of Finance shall, for two consecutive fiscal years, annually deposit

834 \$1,900,000 of the revenue generated by the taxes listed under Subsection (3)(a) into the Hotel
835 Impact Mitigation Fund, created in Section 63N-2-512.

836 (14) Notwithstanding Subsections (4) through (13), an amount required to be expended
837 or deposited in accordance with Subsections (4) through (13) may not include an amount the
838 Division of Finance deposits in accordance with Section 59-12-103.2.

839 Section 3. Section 59-12-103.1 is amended to read:

840 **59-12-103.1. Action by Supreme Court of the United States authorizing or action**
841 **by Congress permitting a state to require certain sellers to collect a sales or use tax --**
842 **Collection of tax by commission -- Commission report to Revenue and Taxation Interim**
843 **Committee -- Revenue and Taxation Interim Committee study -- Division of Finance**
844 **requirement to make certain deposits.**

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

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

849 (i) a seller that does not meet one or more of the criteria described in Subsection
850 59-12-107(2)(a); or

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

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

855 (i) a seller that does not meet one or more of the criteria described in Subsection
856 59-12-107(2)(a); or

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

859 (2) The commission shall:

860 [~~(a) collect the tax described in Subsection (1) from the seller;~~]

861 [~~(i) to the extent;~~]

862 [~~(A) authorized by the Supreme Court of the United States; or~~]

863 [~~(B) permitted by Congress; and~~]

864 [~~(ii) beginning on the first day of a calendar quarter as prescribed by the Revenue and~~]

865 ~~Taxation Interim Committee; and]~~

866 ~~[(b)]~~ (a) make a report to the Revenue and Taxation Interim Committee:

867 (i) regarding the actions taken by:

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

869 (B) Congress;

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

871 and

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

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

877 (B) any other meeting of the Revenue and Taxation Interim Committee as requested by
878 the chairs of the committee[-]; and

879 (b) collect the tax described in Subsection (1) from the seller:

880 (i) to the extent:

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

882 (B) permitted by Congress; and

883 (ii) beginning on the first day of a calendar quarter as prescribed by the Revenue and

884 Taxation Interim Committee.

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

887 (a) review the actions taken by:

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

889 (ii) Congress;

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

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

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

895 (ii) within a one-year period after the day on which the commission makes a report

896 under Subsection (2)(b).

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

899 Section 4. Section 59-12-103.2 is amended to read:

900 **59-12-103.2. Definitions -- Remote Sales Restricted Account -- Creation --**
901 **Funding for account -- Interest -- Division of Finance accounting.**

902 (1) As used in this section:

903 (a) "Qualified local revenue collected from remote sellers" means the local revenue the
904 commission collects under Section 59-12-103.1 for a fiscal year from sellers who obtain a
905 license under Section 59-12-106 for the first time on or after the earlier of:

906 (i) the date a decision described in Subsection 59-12-103.1(1)(a) becomes a final,
907 unappealable decision; [or]

908 (ii) the effective date of the action by Congress described in Subsection
909 59-12-103.1(1)(b)[-]; or

910 (iii) the day on which the seller is required to pay or collect and remit sales and use
911 taxes under Subsection 59-12-107(2)(b) or (d).

912 (b) "Qualified state revenue collected from remote sellers" means the state revenue the
913 commission collects under Section 59-12-103.1 for a fiscal year from sellers who obtain a
914 license under Section 59-12-106 for the first time on or after the earlier of:

915 (i) the date a decision described in Subsection 59-12-103.1(1)(a) becomes a final,
916 unappealable decision; [or]

917 (ii) the effective date of the action by Congress described in Subsection
918 59-12-103.1(1)(b)[-]; or

919 (iii) the date on which the seller is required to pay or collect and remit sales and use
920 taxes under Subsection 59-12-207(2)(b) or (d).

921 (2) There is created within the General Fund a restricted account known as the
922 "Remote Sales Restricted Account."

923 (3) The account shall be funded by:

924 (a) the qualified local revenue collected from remote sellers; and

925 (b) the qualified state revenue collected from remote sellers.

926 (4) (a) The account shall earn interest.

927 (b) The interest described in Subsection (4)(a) shall be deposited into the account.

928 (5) The Division of Finance shall deposit the revenue described in Subsection (3) into
929 the account.

930 (6) The Division of Finance shall separately account for:

931 (a) (i) the qualified local revenue collected from remote sellers; and

932 (ii) interest earned on the amount described in Subsection (6)(a)(i); and

933 (b) (i) the qualified state revenue collected from remote sellers; and

934 (ii) interest earned on the amount described in Subsection (6)(b)(i).

935 (7) (a) The revenue and interest described in Subsection (6)(a) may be used to lower
936 local sales and use tax rates as the Legislature may provide by statute.

937 (b) The revenue and interest described in Subsection (6)(b) may be used to lower state
938 sales and use tax rates as the Legislature may provide by statute.

939 Section 5. Section **59-12-107** is amended to read:

940 **59-12-107. Definitions -- Collection, remittance, and payment of tax by sellers or**
941 **other persons -- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other**
942 **liability for collection -- Rulemaking authority -- Credits -- Treatment of bad debt --**
943 **Penalties and interest.**

944 (1) As used in this section:

945 [~~(a) "Ownership" means direct ownership or indirect ownership through a parent,~~
946 ~~subsidiary, or affiliate.]~~

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

948 [~~(i) meets one or more of the criteria described in Subsection (2)(a)(i); and]~~

949 [~~(ii) delivers tangible personal property, a service, or a product transferred~~
950 ~~electronically that is sold:]~~

951 [~~(A) by a seller that does not meet one or more of the criteria described in Subsection~~
952 ~~(2)(a)(i); and]~~

953 [~~(B) to a purchaser in the state.]~~

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

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

- 958 (A) announcing by graphic, pictorial, verbal, written, or other similar means the
959 availability of a product for sale; or
- 960 (B) employing purchased space or time in print or electronic media if that purchased
961 space or time is given to communicate an announcement of a product for sale.
- 962 (ii) "Advertising" includes online advertising.
- 963 (b) "Affiliate" means:
- 964 (i) a person that is a member of the same controlled group of corporations as the seller;
965 or
- 966 (ii) another entity that, regardless of how that entity is organized, has the same
967 ownership relationship to a seller as another corporation or group of corporations.
- 968 (c) (i) "Arrangement" means an agreement between a noncollecting seller and a
969 referring seller, under which the referring seller, for a commission or other consideration,
970 directly or indirectly makes a referral to the noncollecting seller of a potential purchaser of
971 tangible personal property, a product transferred electronically, or a service.
- 972 (ii) "Arrangement" does not include any agreement under which a noncollecting seller
973 purchases advertising from a person in the state, unless the person in the state also directs a
974 solicitation toward one or more potential purchasers in the state.
- 975 (d) "Controlled group of corporations" means the same as that term is defined in
976 Section 1563(a), Internal Revenue Code.
- 977 (e) "Noncollecting seller" means a remote seller that:
- 978 (i) does not voluntarily collect and remit sales and use tax under this chapter; and
979 (ii) during the 12-month period immediately preceding the current month, sells
980 \$10,000 or more in tangible personal property, products transferred electronically, or services:
- 981 (A) for storage, use, or consumption in the state; and
982 (B) as a result of an arrangement with one or more referring sellers.
- 983 (f) (i) "Online advertising" means advertising delivered through the Internet.
- 984 (ii) "Online advertising" includes:
- 985 (A) an email communication generated as a result of generic algorithmic functions if
986 the email communication does not target a specific person;
987 (B) an advertisement tied to an Internet search engine;
988 (C) a banner announcement;

989 (D) a cost-per-action advertisement; or

990 (E) an online advertising service similar to the online advertising described in
 991 Subsections (1)(f)(ii)(A) through (D), as the commission may define by rule made in
 992 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

993 (iii) "Online advertising" does not include an Internet-based link to a seller's website.

994 (g) (i) "Referral" means the act of sending a potential purchaser to a noncollecting
 995 seller by:

996 (A) an Internet-based link;

997 (B) an Internet website;

998 (C) telemarketing;

999 (D) in-person marketing; or

1000 (E) other means similar to the means described in Subsections (1)(g)(i)(A) through (D),
 1001 as the commission may define by rule made in accordance with Title 63G, Chapter 3, Utah
 1002 Administrative Rulemaking Act.

1003 (ii) "Referral" does not include online advertising.

1004 (h) "Referring seller" means a person:

1005 (i) that makes a sale of tangible personal property, a product transferred electronically,
 1006 or a service;

1007 (ii) that meets one or more of the criteria described in Subsection (2)(a); and

1008 (iii) with which a noncollecting seller enters an arrangement.

1009 (i) "Remote seller" means a seller that is not required to pay or collect and remit sales
 1010 and use taxes under Subsection (2)(a) or (b).

1011 (j) "Solicitation" means a communication directly or indirectly to a specific person
 1012 within the state in a manner that is intended to and calculated to incite the person to purchase
 1013 tangible personal property, a service, or a product transferred electronically from a specific
 1014 seller.

1015 (2) (a) Except as provided in Subsection (2)(~~(e)~~)(h), Section 59-12-107.1, or Section
 1016 59-12-123, and subject to Subsection (2)(~~(f)~~)(g), each seller shall pay or collect and remit the
 1017 sales and use taxes imposed by this chapter if within this state the seller:

1018 (i) [~~has or~~] utilizes:

1019 (A) an office;

- 1020 (B) a distribution house;
- 1021 (C) a sales house;
- 1022 (D) a warehouse[;] or other storage place; or
- 1023 [~~(E)~~] ~~a service enterprise; or~~
- 1024 [~~(F)~~] (E) a place of business similar to Subsections (2)(a)(i)(A) through [~~(E)~~] (D);
- 1025 (ii) maintains a stock of goods;
- 1026 (iii) regularly solicits orders, regardless of whether or not the orders are accepted in the
- 1027 state, unless the seller's only activity in the state is:
- 1028 (A) advertising; or
- 1029 (B) solicitation by:
- 1030 (I) direct mail;
- 1031 (II) electronic mail;
- 1032 (III) except as provided in Subsection (2)(d), the Internet;
- 1033 (IV) telecommunications service; or
- 1034 (V) a means similar to Subsection (2)(a)(iii)(A) or (B);
- 1035 (iv) regularly engages in the delivery of property in the state other than by:
- 1036 (A) common carrier; or
- 1037 (B) United States mail; or
- 1038 (v) regularly engages in an activity directly related to the leasing or servicing of
- 1039 property located within the state.
- 1040 (b) [A] There is a rebuttable presumption that a remote seller is [considered to be]
- 1041 engaged, in the state, in the business of selling tangible personal property, [a service, or] a
- 1042 product transferred electronically, or a service for storage, use [in the state], or consumption,
- 1043 and shall pay or collect and remit the sales and use taxes imposed by this chapter if:
- 1044 [(i) the seller holds a substantial ownership interest in, or is owned in whole or in
- 1045 substantial part by, a related seller; and]
- 1046 (i) a person who meets one or more of the criteria described in Subsection (2)(a) is an
- 1047 affiliate of the remote seller; or
- 1048 (ii) any person, other than a person acting in the capacity of a common carrier, that
- 1049 meets one or more of the criteria described in Subsection (2)(a):
- 1050 [~~(i)~~] (A) [~~the seller~~] sells the same or a substantially similar line of products as the

1051 ~~[related]~~ seller and does so under the same or a substantially similar business name as the
1052 remote seller; [or]

1053 (B) ~~[the]~~ maintains a place of business described in Subsection (2)(a)(i) [of the related
1054 seller] or provides an [in-state] in-state employee [of the related seller is used] to advertise,
1055 promote, deliver, or facilitate sales by the remote seller to a purchaser[-];

1056 (C) uses trademarks, service marks, or trade names in the state that are the same or
1057 substantially similar to those used by the remote seller;

1058 (D) delivers, installs, assembles, or performs maintenance service for the remote
1059 seller's purchaser within the state;

1060 (E) facilitates the remote seller's delivery of tangible personal property to a purchaser
1061 in the state by allowing the purchaser to pick up tangible personal property sold by the remote
1062 seller at an in-state office, distribution house, sales house, warehouse or other storage place, or
1063 similar place of business that is maintained by the person that meets one or more of the criteria
1064 described in Subsection (2)(a); or

1065 (F) conducts any other activity in the state that is significantly associated with the
1066 remote seller's ability to establish and maintain a market in the state for the seller's sales of
1067 tangible personal property, a product transferred electronically, or a service.

1068 (c) A remote seller may rebut the presumption described in Subsection (2)(b) by
1069 proving that the in-state activities of the person that meets one or more of the criteria described
1070 in Subsection (2)(a) are not significantly associated with the remote seller's ability to establish
1071 and maintain a market in the state for the seller's sales of tangible personal property, a service,
1072 or a product transferred electronically.

1073 (d) (i) (A) Subject to the other provisions of this Subsection (2)(d), there is a rebuttable
1074 presumption that a noncollecting seller is engaged, in the state, in the business of selling
1075 tangible personal property, a product transferred electronically, or a service, for storage, use, or
1076 consumption.

1077 (B) Once the presumption arises, the noncollecting seller shall pay or collect and remit
1078 sales and use tax.

1079 (ii) (A) The presumption described in Subsection (2)(d)(i) arises if the noncollecting
1080 seller makes sales in the state using a referring seller after the effective date of this section,
1081 regardless of the date when the noncollecting seller and the referring seller enter the

1082 arrangement and regardless of whether the 12-month period immediately preceding the current
 1083 month includes any period of time that occurred before the effective date of this section.

1084 (B) If the presumption described in Subsection (2)(d)(i) arises, a noncollecting seller's
 1085 obligation to collect and remit sales and use taxes begins on September 1, 2016.

1086 (iii) A noncollecting seller may rebut the presumption described in Subsection (2)(d)(i)
 1087 by proving that a referring seller has not engaged in an activity within the state that is
 1088 significantly associated with the noncollecting seller's ability, during the preceding 12 months,
 1089 to establish and maintain a market within the state for the sale of tangible personal property, a
 1090 product transferred electronically, or a service.

1091 (iv) (A) Proof to rebut the presumption described in Subsection (2)(d)(i) includes a
 1092 written sworn statement from each referring seller that the referring seller did not engage in any
 1093 solicitation of a potential purchaser in the state on behalf of the noncollecting seller for the sale
 1094 of tangible personal property, a product transferred electronically, or a service.

1095 (B) A referring seller must make the written sworn statement described in Subsection
 1096 (2)(d)(iv)(A) in good faith.

1097 ~~[(c) A]~~ (e) (i) Except as provided in Subsection (2)(e)(ii), a remote seller [that does not
 1098 meet one or more of the criteria provided for in Subsection (2)(a) or is not a seller required to
 1099 pay or collect and remit sales and use taxes under Subsection (2)(b): (i) except as provided in
 1100 Subsection (2)(c)(ii);] that is not subject to the presumption described in Subsection (2)(d) may
 1101 voluntarily:

1102 (A) collect a tax on a transaction described in Subsection 59-12-103(1); and

1103 (B) remit the tax to the commission as provided in this part~~[-or]~~.

1104 (ii) ~~[notwithstanding Subsection (2)(c)(i);]~~ A remote seller shall collect a tax on a
 1105 transaction described in Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to
 1106 collect the tax.

1107 ~~[(d)]~~ (f) The collection and remittance of a tax under this chapter by a seller that is
 1108 registered under the agreement may not be used as a factor in determining whether that seller is
 1109 required by Subsection (2) to:

1110 (i) pay a tax, fee, or charge under:

1111 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

1112 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

- 1113 (C) Section 19-6-714;
- 1114 (D) Section 19-6-805;
- 1115 (E) Section 69-2-5;
- 1116 (F) Section 69-2-5.5;
- 1117 (G) Section 69-2-5.6; or
- 1118 (H) this title; or
- 1119 (ii) collect and remit a tax, fee, or charge under:
 - 1120 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
 - 1121 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
 - 1122 (C) Section 19-6-714;
 - 1123 (D) Section 19-6-805;
 - 1124 (E) Section 69-2-5;
 - 1125 (F) Section 69-2-5.5;
 - 1126 (G) Section 69-2-5.6; or
 - 1127 (H) this title.
- 1128 ~~[(e) A person shall pay a use tax imposed by this chapter on a transaction described in~~
- 1129 ~~Subsection 59-12-103(1) if:]~~
- 1130 ~~[(i) the seller did not collect a tax imposed by this chapter on the transaction; and]~~
- 1131 ~~[(ii) the person:]~~
- 1132 ~~[(A) stores the tangible personal property or product transferred electronically in the~~
- 1133 ~~state;]~~
- 1134 ~~[(B) uses the tangible personal property or product transferred electronically in the~~
- 1135 ~~state; or]~~
- 1136 ~~[(C) consumes the tangible personal property or product transferred electronically in~~
- 1137 ~~the state.]~~
- 1138 ~~[(f)]~~ (g) The ownership of property that is located at the premises of a printer's facility
- 1139 with which the retailer has contracted for printing and that consists of the final printed product,
- 1140 property that becomes a part of the final printed product, or copy from which the printed
- 1141 product is produced, shall not result in the retailer being considered to have or maintain an
- 1142 office, distribution house, sales house, warehouse, service enterprise, or other place of
- 1143 business, or to maintain a stock of goods, within this state.

1144 (h) A person shall pay a use tax imposed by this chapter on a transaction described in
1145 Subsection 59-12-103(1) if:

1146 (i) the seller did not collect a tax imposed under this chapter on the transaction; and

1147 (ii) the person:

1148 (A) stores the tangible personal property or product transferred electronically in the
1149 state;

1150 (B) uses the tangible personal property or product transferred electronically in the state;

1151 or

1152 (C) consumes the tangible personal property or product transferred electronically in the
1153 state.

1154 (3) (a) Except as provided in Section 59-12-107.1, a seller shall collect a tax due under
1155 this chapter [~~shall be collected~~] from a purchaser.

1156 (b) A seller may not collect as a tax an amount, without regard to fractional parts of
1157 one cent, in excess of the tax computed at the rates prescribed by this chapter.

1158 (c) (i) Each seller shall:

1159 (A) give the purchaser a receipt for the tax collected; or

1160 (B) bill the tax as a separate item and declare the name of this state and the seller's
1161 sales and use tax license number on the invoice for the sale.

1162 (ii) The receipt or invoice is prima facie evidence that the seller has collected the tax
1163 and relieves the purchaser of the liability for reporting the tax to the commission as a
1164 consumer.

1165 (d) A seller is not required to maintain a separate account for the tax collected[;] but is
1166 considered to be a person charged with receipt, safekeeping, and transfer of public money.

1167 (e) Taxes collected by a seller pursuant to this chapter shall be held in trust for the
1168 benefit of the state and for payment to the commission in the manner and at the time provided
1169 for in this chapter.

1170 (f) If any seller, during any reporting period, collects as a tax an amount in excess of
1171 the lawful state and local percentage of total taxable sales allowed under this chapter, the seller
1172 shall remit to the commission the full amount of the tax imposed under this chapter, plus any
1173 excess.

1174 (g) If the accounting methods regularly employed by the seller in the transaction of the

1175 seller's business are such that reports of sales made during a calendar month or quarterly period
1176 will impose unnecessary hardships, the commission may accept reports at intervals that, in the
1177 commission's opinion, will~~[, in the commission's opinion,]~~ better suit the convenience of the
1178 taxpayer or seller and will not jeopardize collection of the tax.

1179 (h) (i) For a purchase paid with specie legal tender as defined in Section 59-1-1501.1,
1180 and until such time as the commission accepts specie legal tender for the payment of a tax
1181 under this chapter, if the commission requires a seller to remit a tax under this chapter in legal
1182 tender other than specie legal tender, the seller shall state on the seller's books and records and
1183 on an invoice, bill of sale, or similar document provided to the purchaser:

1184 (A) the purchase price in specie legal tender and in the legal tender the seller is
1185 required to remit to the commission;

1186 (B) subject to Subsection (3)(h)(ii), the amount of tax due under this chapter in specie
1187 legal tender and in the legal tender the seller is required to remit to the commission;

1188 (C) the tax rate under this chapter applicable to the purchase; and

1189 (D) the date of the purchase.

1190 (ii) (A) Subject to Subsection (3)(h)(ii)(B), for purposes of determining the amount of
1191 tax due under Subsection (3)(h)(i), a seller shall use the most recent London fixing price for the
1192 specie legal tender the purchaser paid.

1193 (B) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1194 commission may make rules for determining the amount of tax due under Subsection (3)(h)(i)
1195 if the London fixing price is not available for a particular day.

1196 (4) (a) Except as provided in Subsections (5) through (7) and Section 59-12-108, the
1197 ~~[sales or use]~~ tax imposed by this chapter is due and payable to the commission quarterly on or
1198 before the last day of the month next succeeding each quarterly calendar ~~[quarterly]~~ period.

1199 (b) (i) Each seller shall, on or before the last day of the month next succeeding each
1200 quarterly calendar ~~[quarterly]~~ period, file with the commission a return for the preceding
1201 quarterly period.

1202 (ii) The seller shall remit with the return under Subsection (4)(b)(i) the amount of the
1203 tax required under this chapter to be collected or paid for the period covered by the return.

1204 (c) Except as provided in Subsection (5)(c), a return shall contain information and be in
1205 a form the commission prescribes by rule.

1206 (d) (i) Subject to Subsection (4)(d)(ii), the sales tax as computed in the return shall be
1207 based on the total nonexempt sales made during the period for which the return is filed,
1208 including both cash and charge sales.

1209 (ii) For a sale that includes the delivery or installation of tangible personal property at a
1210 location other than a seller's place of business described in Subsection (2)(a)(i), if the delivery
1211 or installation is separately stated on an invoice or receipt, a seller may compute the tax due [~~on~~
1212 ~~the sale~~] for purposes of Subsection (4)(d)(i) based on the amount the seller receives for that
1213 sale during each period for which the seller receives payment for the sale.

1214 (e) (i) The use tax as computed in the return shall be based on the total amount of
1215 purchases for storage, use, or other consumption in this state made during the period for which
1216 the return is filed, including both cash and charge purchases.

1217 (ii) (A) As used in this Subsection (4)(e)(ii), "qualifying purchaser" means a purchaser
1218 who is required to remit taxes under this chapter[;] but is not required to remit taxes monthly in
1219 accordance with Section 59-12-108, and who converts tangible personal property into real
1220 property.

1221 (B) Subject to Subsections (4)(e)(ii)(C) and (D), a qualifying purchaser may remit the
1222 taxes due under this chapter on tangible personal property for which the qualifying purchaser
1223 claims an exemption as allowed under Subsection 59-12-104(23) or (25) based on the period in
1224 which the qualifying purchaser receives payment, in accordance with Subsection (4)(e)(ii)(C),
1225 for the conversion of the tangible personal property into real property.

1226 (C) A qualifying purchaser remitting taxes due under this chapter in accordance with
1227 Subsection (4)(e)(ii)(B) shall remit an amount equal to the total amount of tax due on the
1228 qualifying purchaser's purchase of the tangible personal property that was converted into real
1229 property multiplied by a fraction, the numerator of which is the payment received in the period
1230 for the qualifying purchaser's sale of the tangible personal property that was converted into real
1231 property and the denominator of which is the entire sales price for the qualifying purchaser's
1232 sale of the tangible personal property that was converted into real property.

1233 (D) A qualifying purchaser may remit taxes due under this chapter in accordance with
1234 this Subsection (4)(e)(ii) only if the books and records that the qualifying purchaser keeps in
1235 the qualifying purchaser's regular course of business identify by reasonable and verifiable
1236 standards that the tangible personal property was converted into real property.

1237 (f) (i) Subject to Subsection (4)(f)(ii) and in accordance with Title 63G, Chapter 3,
1238 Utah Administrative Rulemaking Act, the commission may by rule extend the time for making
1239 returns and paying the taxes.

1240 (ii) An extension under Subsection (4)(f)(i) may not be for more than 90 days.

1241 (g) The commission may require returns and payment of the tax to be made for other
1242 than quarterly periods if the commission considers it necessary in order to ensure the payment
1243 of the tax imposed by this chapter.

1244 (h) (i) The commission may require a seller that files a simplified electronic return with
1245 the commission to file an additional electronic report with the commission.

1246 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1247 commission may make rules providing:

1248 (A) the information required to be included in the additional electronic report described
1249 in Subsection (4)(h)(i); and

1250 (B) one or more due dates for filing the additional electronic report described in
1251 Subsection (4)(h)(i).

1252 (5) (a) As used in this Subsection (5) and Subsection (6)(b), [~~remote seller~~]

1253 "registered remitter" means a seller that is:

1254 (i) registered under the agreement;

1255 (ii) described in Subsection (2)(c); and

1256 (iii) not a:

1257 (A) model 1 seller;

1258 (B) model 2 seller; or

1259 (C) model 3 seller.

1260 (b) (i) Except as provided in Subsection (5)(b)(ii), a tax a [~~remote seller~~] registered
1261 remitter collects in accordance with Subsection (2)(c) is due and payable:

1262 (A) to the commission;

1263 (B) annually; and

1264 (C) on or before the last day of the month immediately following the last day of each
1265 calendar year.

1266 (ii) The commission may require that a tax a [~~remote seller~~] registered remitter collects
1267 in accordance with Subsection (2)(c) be due and payable:

- 1268 (A) to the commission; and
- 1269 (B) on the last day of the month immediately following any month in which the [seller]
- 1270 registered remitter accumulates a total of at least \$1,000 in agreement sales and use tax.
- 1271 (c) (i) If a remote seller remits a tax to the commission in accordance with Subsection
- 1272 (5)(b), the [~~remote seller~~] registered remitter shall file a return:
- 1273 (A) with the commission;
- 1274 (B) with respect to the tax;
- 1275 (C) containing information prescribed by the commission; and
- 1276 (D) on a form prescribed by the commission.
- 1277 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1278 commission shall make rules prescribing:
- 1279 (A) the information required to be contained in a return described in Subsection
- 1280 (5)(c)(i); and
- 1281 (B) the form described in Subsection (5)(c)(i)(D).
- 1282 (d) A tax a [~~remote seller~~] registered remitter collects in accordance with this
- 1283 Subsection (5) shall be calculated on the basis of the total amount of taxable transactions under
- 1284 Subsection 59-12-103(1) the [~~remote seller~~] registered remitter completes, including[?] cash
- 1285 transactions and charge transactions.
- 1286 [~~(i) a cash transaction; and~~]
- 1287 [~~(ii) a charge transaction.~~]
- 1288 (6) (a) Except as provided in Subsection (6)(b), a tax a seller that files a simplified
- 1289 electronic return collects in accordance with this chapter is due and payable:
- 1290 (i) monthly on or before the last day of the month immediately following the month for
- 1291 which the seller collects a tax under this chapter; and
- 1292 (ii) for the month for which the seller collects a tax under this chapter.
- 1293 (b) A tax a remote seller that files a simplified electronic return collects in accordance
- 1294 with this chapter is due and payable as provided in Subsection (5).
- 1295 (7) (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the
- 1296 purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to
- 1297 titling or registration under the laws of this state.
- 1298 (b) The commission shall collect the tax described in Subsection (7)(a) when the

1299 vehicle is titled or registered.

1300 (8) If any sale of tangible personal property or any other taxable transaction under
1301 Subsection 59-12-103(1), is made by a wholesaler to a retailer[;]:

1302 (a) the wholesaler is not responsible for the collection or payment of the tax imposed
1303 on the sale; and

1304 (b) the retailer is responsible for the collection or payment of the tax imposed on the
1305 sale if:

1306 ~~[(a)]~~ (i) the retailer represents that the tangible personal property, product transferred
1307 electronically, or service is purchased by the retailer for resale; and

1308 ~~[(b)]~~ (ii) the tangible personal property, product transferred electronically, or service is
1309 not subsequently resold.

1310 (9) If any sale of property or service subject to the tax is made to a person prepaying
1311 sales or use tax in accordance with Title 63M, Chapter 5, Resource Development Act, or to a
1312 contractor or subcontractor of that person[;]:

1313 (a) the person to whom such payment or consideration is payable is not responsible for
1314 the collection or payment of the sales or use tax; and

1315 (b) the person prepaying the sales or use tax is responsible for the collection or
1316 payment of the sales or use tax if the person prepaying the sales or use tax represents that the
1317 amount prepaid as sales or use tax has not been fully credited against sales or use tax due and
1318 payable under the rules promulgated by the commission.

1319 (10) (a) For purposes of this Subsection (10):

1320 (i) Except as provided in Subsection (10)(a)(ii), "bad debt" ~~[is as]~~ means the same as
1321 that term is defined in Section 166, Internal Revenue Code.

1322 (ii) ~~[Notwithstanding Subsection (10)(a)(i), "bad]~~ Bad debt does not include:

1323 (A) an amount included in the purchase price of tangible personal property, a product
1324 transferred electronically, or a service that is:

1325 (I) not a transaction described in Subsection 59-12-103(1); or

1326 (II) exempt under Section 59-12-104;

1327 (B) a financing charge;

1328 (C) interest;

1329 (D) a tax imposed under this chapter on the purchase price of tangible personal

1330 property, a product transferred electronically, or a service;

1331 (E) an uncollectible amount on tangible personal property or a product transferred
1332 electronically that:

1333 (I) is subject to a tax under this chapter; and

1334 (II) remains in the possession of a seller until the full purchase price is paid;

1335 (F) an expense incurred in attempting to collect any debt; or

1336 (G) an amount that a seller does not collect on repossessed property.

1337 (b) (i) To the extent an amount remitted in accordance with Subsection (4)(d) later
1338 becomes bad debt, a seller may deduct the bad debt from the total amount from which a tax
1339 under this chapter is calculated on a return.

1340 (ii) A qualifying purchaser, as defined in Subsection (4)(e)(ii)(A), may deduct from the
1341 total amount of taxes due under this chapter the amount of tax the qualifying purchaser paid on
1342 the qualifying purchaser's purchase of tangible personal property converted into real property to
1343 the extent that:

1344 (A) tax was remitted in accordance with Subsection (4)(e) on that tangible personal
1345 property converted into real property;

1346 (B) the qualifying purchaser's sale of that tangible personal property converted into real
1347 property later becomes bad debt; and

1348 (C) the books and records that the qualifying purchaser keeps in the qualifying
1349 purchaser's regular course of business identify by reasonable and verifiable standards that the
1350 tangible personal property was converted into real property.

1351 (c) A seller may file a refund claim with the commission if:

1352 (i) the amount of bad debt for the time period described in Subsection (10)(e) exceeds
1353 the amount of the seller's sales that are subject to a tax under this chapter for that same time
1354 period; and

1355 (ii) as provided in Section [59-1-1410](#).

1356 (d) A bad debt deduction under this section may not include interest.

1357 (e) A bad debt may be deducted under this Subsection (10) on a return for the time
1358 period during which the bad debt:

1359 (i) is written off as uncollectible in the seller's books and records; and

1360 (ii) would be eligible for a bad debt deduction:

- 1361 (A) for federal income tax purposes; and
1362 (B) if the seller were required to file a federal income tax return.
1363 (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or
1364 claims a refund under this Subsection (10), the seller shall report and remit a tax under this
1365 chapter:
- 1366 (i) on the portion of the bad debt the seller recovers; and
 - 1367 (ii) on a return filed for the time period for which the portion of the bad debt is
1368 recovered.
 - 1369 (g) For purposes of reporting a recovery of a portion of bad debt under Subsection
1370 (10)(f), a seller shall apply amounts received on the bad debt in the following order:
 - 1371 (i) in a proportional amount:
 - 1372 (A) to the purchase price of the tangible personal property, product transferred
1373 electronically, or service; and
 - 1374 (B) to the tax due under this chapter on the tangible personal property, product
1375 transferred electronically, or service; and
 - 1376 (ii) to:
 - 1377 (A) interest charges;
 - 1378 (B) service charges; and
 - 1379 (C) other charges.
 - 1380 (h) A seller's certified service provider may make a deduction or claim a refund for bad
1381 debt on behalf of the seller:
 - 1382 (i) in accordance with this Subsection (10); and
 - 1383 (ii) if the certified service provider credits or refunds the entire amount of the bad debt
1384 deduction or refund to the seller.
 - 1385 (i) A seller may allocate bad debt among the states that are members of the agreement
1386 if the seller's books and records support that allocation.
 - 1387 (11) (a) A seller may not, with intent to evade any tax, fail to timely remit the full
1388 amount of tax required by this chapter.
 - 1389 (b) A violation of this section is punishable as provided in Section [59-1-401](#).
 - 1390 (c) Each person who fails to pay any tax to the state or any amount of tax required to be
1391 paid to the state, except amounts determined to be due by the commission under Chapter 1,

1392 Part 14, Assessment, Collections, and Refunds Act, or Section 59-12-111, within the time
1393 required by this chapter, or who fails to file any return as required by this chapter, shall pay, in
1394 addition to the tax, penalties and interest as provided in Sections 59-1-401 and 59-1-402.

1395 (d) For purposes of prosecution under this section, each quarterly tax period in which a
1396 seller, with intent to evade any tax, collects a tax and fails to timely remit the full amount of the
1397 tax required to be remitted, constitutes a separate offense.

1398 (12) The provisions of this section are severable. If any provision of this section or the
1399 application of any provision of this section to any person or circumstance is held invalid by a
1400 final decision of a court of competent jurisdiction, the remainder of this section shall be given
1401 effect without the invalid provision or application.

1402 Section 6. Section 59-12-108 is amended to read:

1403 **59-12-108. Monthly payment -- Amount of tax a seller may retain -- Penalty --**
1404 **Certain amounts allocated to local taxing jurisdictions.**

1405 (1) (a) Notwithstanding Section 59-12-107, a seller that has a tax liability under this
1406 chapter of \$50,000 or more for the previous calendar year shall:

1407 (i) file a return with the commission:

1408 (A) monthly on or before the last day of the month immediately following the month
1409 for which the seller collects a tax under this chapter; and

1410 (B) for the month for which the seller collects a tax under this chapter; and

1411 (ii) except as provided in Subsection (1)(b), remit₂ with the return required by
1412 Subsection (1)(a)(i)₂ the amount [~~the person is required to remit to the commission for each tax,~~
1413 ~~fee, or charge~~] described in Subsection (1)(c) as follows:

1414 (A) if that seller's tax liability under this chapter for the previous calendar year is less
1415 than \$96,000, by any method permitted by the commission; or

1416 (B) if that seller's tax liability under this chapter for the previous calendar year is
1417 \$96,000 or more, by electronic funds transfer.

1418 (b) A seller shall remit electronically with the return required by Subsection (1)(a)(i)
1419 the amount the seller is required to remit to the commission for each tax, fee, or charge
1420 described in Subsection (1)(c) if that seller:

1421 (i) is required by Section 59-12-107 to file the return electronically; or

1422 (ii) (A) is required to collect and remit a tax under Section 59-12-107; and

- 1423 (B) files a simplified electronic return.
- 1424 (c) Subsections (1)(a) and (b) apply to the following taxes, fees, or charges:
- 1425 (i) a tax under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 1426 (ii) a fee under Section 19-6-714;
- 1427 (iii) a fee under Section 19-6-805;
- 1428 (iv) a charge under Section 69-2-5;
- 1429 (v) a charge under Section 69-2-5.5;
- 1430 (vi) a charge under Section 69-2-5.6; [or] and
- 1431 (vii) a tax under this chapter.
- 1432 (d) Notwithstanding [~~Subsection~~] Subsections (1)(a)(ii) and (b) and in accordance with
- 1433 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules
- 1434 providing for a method for making same-day payments other than by electronic funds transfer
- 1435 if making payments by electronic funds transfer fails.
- 1436 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1437 commission shall establish by rule procedures and requirements for determining the amount a
- 1438 seller is required to remit to the commission under this Subsection (1).
- 1439 (2) (a) Except as provided in Subsection (3), a seller subject to Subsection (1) or a
- 1440 seller described in Subsection (4) may retain each month the amount allowed by this
- 1441 Subsection (2).
- 1442 (b) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain
- 1443 each month 1.31% of any amounts the seller is required to remit to the commission:
- 1444 (i) for a transaction described in Subsection 59-12-103(1) that is subject to a state tax
- 1445 and a local tax imposed in accordance with the following, for the month for which the seller is
- 1446 filing a return in accordance with Subsection (1):
- 1447 (A) Subsection 59-12-103(2)(a);
- 1448 (B) Subsection 59-12-103(2)(b); and
- 1449 (C) Subsection 59-12-103(2)(d); and
- 1450 (ii) for an agreement sales and use tax.
- 1451 (c) (i) A seller subject to Subsection (1) or a seller described in Subsection (4) may
- 1452 retain each month the amount calculated under Subsection (2)(c)(ii) for a transaction described
- 1453 in Subsection 59-12-103(1) that is subject to the state tax and the local tax imposed in

1454 accordance with Subsection 59-12-103(2)(c).
1455 (ii) For purposes of Subsection (2)(c)(i), the amount a seller may retain is an amount
1456 equal to the sum of:
1457 (A) 1.31% of any amounts the seller is required to remit to the commission for:
1458 (I) the state tax and the local tax imposed in accordance with Subsection
1459 59-12-103(2)(c);
1460 (II) the month for which the seller is filing a return in accordance with Subsection (1);
1461 and
1462 (III) an agreement sales and use tax; and
1463 (B) 1.31% of the difference between:
1464 (I) the amounts the seller would have been required to remit to the commission:
1465 (Aa) in accordance with Subsection 59-12-103(2)(a) if the transaction had been subject
1466 to the state tax and the local tax imposed in accordance with Subsection 59-12-103(2)(a);
1467 (Bb) for the month for which the seller is filing a return in accordance with Subsection
1468 (1); and
1469 (Cc) for an agreement sales and use tax; and
1470 (II) the amounts the seller is required to remit to the commission for:
1471 (Aa) the state tax and the local tax imposed in accordance with Subsection
1472 59-12-103(2)(c);
1473 (Bb) the month for which the seller is filing a return in accordance with Subsection (1);
1474 and
1475 (Cc) an agreement sales and use tax.
1476 (d) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain
1477 each month 1% of any amounts the seller is required to remit to the commission:
1478 (i) for the month for which the seller is filing a return in accordance with Subsection
1479 (1); and
1480 (ii) under:
1481 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
1482 (B) Subsection 59-12-603(1)(a)(i)(A); or
1483 (C) Subsection 59-12-603(1)(a)(i)(B).
1484 (3) A state government entity that is required to remit taxes monthly in accordance

1485 with Subsection (1) may not retain any amount under Subsection (2).

1486 (4) A seller that has a tax liability under this chapter for the previous calendar year of
1487 less than \$50,000 may:

1488 (a) voluntarily meet the requirements of Subsection (1); and

1489 (b) if the seller voluntarily meets the requirements of Subsection (1), retain the
1490 amounts allowed by Subsection (2).

1491 (5) (a) Subject to Subsections (5)(b) through (d), a seller that voluntarily collects and
1492 remits a tax in accordance with Subsection 59-12-107(2)~~(f)~~(e)(i) may retain an amount equal
1493 to 18% of any amounts the seller would otherwise remit to the commission:

1494 (i) if the seller obtains a license under Section 59-12-106 for the first time on or after
1495 January 1, 2014; and

1496 (ii) for:

1497 (A) an agreement sales and use tax; and

1498 (B) the time period for which the seller files a return in accordance with this section.

1499 (b) If a seller retains an amount under this Subsection (5), the seller may not retain any
1500 other amount under this section.

1501 (c) If a seller retains an amount under this Subsection (5), the commission may require
1502 the seller to file a return by:

1503 (i) electronic means; or

1504 (ii) a means other than electronic means.

1505 (d) A seller may not retain an amount under this Subsection (5) if the seller is required
1506 to collect or remit a tax under this section in accordance with Section 59-12-103.1.

1507 (6) Penalties for late payment shall be as provided in Section 59-1-401.

1508 (7) (a) Except as provided in Subsection (7)(c), for any amounts required to be remitted
1509 to the commission under this part, the commission shall each month calculate an amount equal
1510 to the difference between:

1511 (i) the total amount retained for that month by all sellers had the percentages listed
1512 under Subsections (2)(b) and (2)(c)(ii) been 1.5%; and

1513 (ii) the total amount retained for that month by all sellers at the percentages listed
1514 under Subsections (2)(b) and (2)(c)(ii).

1515 (b) The commission shall each month allocate the amount calculated under Subsection

1516 (7)(a) to each county, city, and town on the basis of the proportion of agreement sales and use
1517 tax that the commission distributes to each county, city, and town for that month compared to
1518 the total agreement sales and use tax that the commission distributes for that month to all
1519 counties, cities, and towns.

1520 (c) The amount the commission calculates under Subsection (7)(a) may not include an
1521 amount collected from a tax that:

1522 (i) the state imposes within a county, city, or town, including the unincorporated area
1523 of a county; and

1524 (ii) is not imposed within the entire state.

1525 Section 7. Section **59-12-211** is amended to read:

1526 **59-12-211. Definitions -- Location of certain transactions -- Reports to**
1527 **commission -- Direct payment provision for a seller making certain purchases --**
1528 **Exceptions.**

1529 (1) As used in this section:

1530 (a) (i) "Receipt" and "receive" mean:

1531 (A) taking possession of tangible personal property;

1532 (B) making first use of a service; or

1533 (C) for a product transferred electronically, the earlier of:

1534 (I) taking possession of the product transferred electronically; or

1535 (II) making first use of the product transferred electronically.

1536 (ii) "Receipt" and "receive" do not include possession by a shipping company on behalf
1537 of a purchaser.

1538 (b) "Transportation equipment" means:

1539 (i) a locomotive or rail car that is used to carry a person or property in interstate
1540 commerce;

1541 (ii) a truck or truck-tractor:

1542 (A) with a gross vehicle weight rating of 10,001 pounds or [more] greater;

1543 (B) registered under Section [41-1a-301](#); and

1544 (C) operated under the authority of a carrier authorized and certificated:

1545 (I) by the United States Department of Transportation or another federal authority; and

1546 (II) to engage in carrying a person or property in interstate commerce;

- 1547 (iii) a trailer, semitrailer, or passenger bus that is:
1548 (A) registered under Section 41-1a-301; and
1549 (B) operated under the authority of a carrier authorized and certificated:
1550 (I) by the United States Department of Transportation or another federal authority; and
1551 (II) to engage in carrying a person or property in interstate commerce;
1552 (iv) an aircraft that is operated by an air carrier authorized and certificated:
1553 (A) by the United States Department of Transportation or another federal or foreign
1554 authority; and
1555 (B) to engage in carrying a person or property in interstate commerce; or
1556 (v) a container designed for use on, or a component part attached or secured on, an
1557 item of equipment listed in Subsections (1)(b)(i) through (iv).
1558 (2) Except as provided in Subsections (8) and (14), if tangible personal property, a
1559 product transferred electronically, or a service that is subject to taxation under this chapter is
1560 received by a purchaser at a business location of a seller, the location of the transaction is the
1561 business location of the seller.
1562 (3) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
1563 and (14), if tangible personal property, a product transferred electronically, or a service that is
1564 subject to taxation under this chapter is not received by a purchaser at a business location of a
1565 seller, the location of the transaction is the location where the purchaser takes receipt of the
1566 tangible personal property or service.
1567 (4) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
1568 and (14), if Subsection (2) or (3) does not apply, the location of the transaction is the location
1569 indicated by an address for or other information on the purchaser if:
1570 (a) the address or other information is available from the seller's business records; and
1571 (b) use of the address or other information from the seller's records does not constitute
1572 bad faith.
1573 (5) (a) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9),
1574 (11), and (14), if Subsection (2), (3), or (4) does not apply, the location of the transaction is the
1575 location indicated by an address for the purchaser if:
1576 (i) the address is obtained during the consummation of the transaction; and
1577 (ii) use of the address described in Subsection (5)(a)(i) does not constitute bad faith.

1578 (b) An address used under Subsection (5)(a) includes the address of a purchaser's
1579 payment instrument if no other address is available.

1580 (6) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
1581 and (14), if Subsection (2), (3), (4), or (5) does not apply or if a seller does not have sufficient
1582 information to apply Subsection (2), (3), (4), or (5), the location of the transaction is the
1583 location:

1584 (a) indicated by the address from which:

1585 (i) except as provided in Subsection (6)(a)(ii), for tangible personal property that is
1586 subject to taxation under this chapter, the tangible personal property is shipped;

1587 (ii) for computer software delivered electronically or for a product transferred
1588 electronically that is subject to taxation under this chapter, the computer software or product
1589 transferred electronically is first available for transmission by the seller; or

1590 (iii) for a service that is subject to taxation under this chapter, the service is provided;
1591 or

1592 (b) as determined by the seller with respect to a prepaid wireless calling service:

1593 (i) provided in Subsection (6)(a)(iii); or

1594 (ii) associated with the mobile telephone number.

1595 (7) (a) For purposes of this Subsection (7), "shared ZIP Code" means a nine-digit ZIP
1596 Code that is located within two or more local taxing jurisdictions.

1597 (b) If the location of a transaction determined under Subsections (3) through (6) is in a
1598 shared ZIP Code, the location of the transaction is:

1599 (i) if there is only one local taxing jurisdiction that imposes the lowest agreement
1600 combined tax rate for the shared ZIP Code, the local taxing jurisdiction that imposes the lowest
1601 agreement combined tax rate; or

1602 (ii) if two or more local taxing jurisdictions impose the lowest agreement combined tax
1603 rate for the shared ZIP Code, the local taxing jurisdiction that:

1604 (A) imposes the lowest agreement combined tax rate for the shared ZIP Code; and

1605 (B) has located within the local taxing jurisdiction the largest number of street
1606 addresses within the shared ZIP Code.

1607 (c) Notwithstanding any provision under this chapter authorizing or requiring the
1608 imposition of a sales and use tax, for purposes of Subsection (7)(b), a seller shall collect a sales

1609 and use tax imposed under this chapter at the lowest agreement combined tax rate imposed
1610 within the local taxing jurisdiction in which the transaction is located under Subsection (7)(b).

1611 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1612 commission may make rules:

1613 (i) providing for the circumstances under which a seller has exercised due diligence in
1614 determining the nine-digit ZIP Code for an address; or

1615 (ii) notwithstanding Subsection (7)(b), for determining the local taxing jurisdiction
1616 within which a transaction is located if a seller is unable to determine the local taxing
1617 jurisdiction within which the transaction is located under Subsection (7)(b).

1618 (8) The location of a transaction made with a direct payment permit described in
1619 Section [59-12-107.1](#) is the location where receipt of the tangible personal property, product
1620 transferred electronically, or service by the purchaser occurs.

1621 (9) The location of a purchase of direct mail is the location determined in accordance
1622 with Section [59-12-123](#).

1623 (10) (a) Except as provided in Subsection (10)(b), the location of a transaction
1624 determined under Subsections (3) through (6), (8), or (9), is the local taxing jurisdiction within
1625 which:

1626 (i) the nine-digit ZIP Code assigned to the location determined under Subsections (3)
1627 through (6), (8), or (9) is located; or

1628 (ii) the five-digit ZIP Code assigned to the location determined under Subsections (3)
1629 through (6), (8), or (9) is located if:

1630 (A) a nine-digit ZIP Code is not available for the location determined under
1631 Subsections (3) through (6), (8), or (9); or

1632 (B) after exercising due diligence, a seller or certified service provider is unable to
1633 determine a nine-digit ZIP Code for the location determined under Subsections (3) through (6),
1634 (8), or (9).

1635 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1636 commission may make rules for determining the local taxing jurisdiction within which a
1637 transaction is located if a seller or certified service provider is unable to determine the local
1638 taxing jurisdiction within which the transaction is located under Subsection (10)(a).

1639 (11) (a) As used in this Subsection (11), "florist delivery transaction" means a

1640 transaction commenced by a florist that transmits an order:

1641 (i) by:

1642 (A) telegraph;

1643 (B) telephone; or

1644 (C) a means of communication similar to Subsection (11)(a)(i)(A) or (B); and

1645 (ii) for delivery to another place:

1646 (A) in this state; or

1647 (B) outside this state.

1648 ~~[(b) Notwithstanding Subsections (3) through (6), beginning on January 1, 2009, and~~
1649 ~~ending on December 31, 2009, the location of a florist delivery transaction is the business~~
1650 ~~location of the florist that commences the florist delivery transaction.]~~

1651 ~~[(c)]~~ (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
1652 Act, the commission may by rule:

1653 (i) define:

1654 (A) "business location"; and

1655 (B) "florist";

1656 (ii) define what constitutes a means of communication similar to Subsection
1657 (11)(a)(i)(A) or (B); and

1658 (iii) provide procedures for determining when a transaction is commenced.

1659 (12) (a) Notwithstanding any other provision of this section and except as provided in
1660 Subsection (12)(b), if a purchaser uses computer software and there is not a transfer of a copy
1661 of that software to the purchaser, the location of the transaction is determined in accordance
1662 with Subsections (4) and (5).

1663 (b) If a purchaser uses computer software described in Subsection (12)(a) at more than
1664 one location, the location of the transaction shall be determined in accordance with rules made
1665 by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
1666 Act.

1667 (13) (a) A tax collected under this chapter shall be reported to the commission on a
1668 form that identifies the location of each transaction that occurs during the return filing period.

1669 (b) The form described in Subsection (13)(a) shall be filed with the commission as
1670 required under this chapter.

- 1671 (14) This section does not apply to:
- 1672 (a) amounts charged by a seller for:
- 1673 (i) telecommunications service except for a prepaid calling service or a prepaid
- 1674 wireless calling service as provided in Subsection (6)(b) or Section 59-12-215; or
- 1675 (ii) the retail sale or transfer of:
- 1676 (A) a motor vehicle other than a motor vehicle that is transportation equipment;
- 1677 (B) an aircraft other than an aircraft that is transportation equipment;
- 1678 (C) a watercraft;
- 1679 (D) a modular home;
- 1680 (E) a manufactured home; or
- 1681 (F) a mobile home; or
- 1682 (iii) except as provided in Section 59-12-214, the lease or rental of tangible personal
- 1683 property other than tangible personal property that is transportation equipment;
- 1684 (b) a tax a person pays in accordance with Subsection 59-12-107(2)[~~(e)~~](h); or
- 1685 (c) a retail sale of tangible personal property or a product transferred electronically if:
- 1686 (i) the seller receives the order for the tangible personal property or product transferred
- 1687 electronically in this state;
- 1688 (ii) receipt of the tangible personal property or product transferred electronically by the
- 1689 purchaser or the purchaser's donee occurs in this state;
- 1690 (iii) the location where receipt of the tangible personal property or product transferred
- 1691 electronically by the purchaser occurs is determined in accordance with Subsections (3)
- 1692 through (5); and
- 1693 (iv) at the time the seller receives the order, the record keeping system that the seller
- 1694 uses to calculate the proper amount of tax imposed under this chapter captures the location
- 1695 where the order is received.
- 1696 Section 8. Section 59-12-211.1 is amended to read:
- 1697 **59-12-211.1. Location of a transaction that is subject to a use tax.**
- 1698 (1) Subject to Subsection (2), a person that is required by Subsection
- 1699 59-12-107(2)[~~(e)~~](h) to pay a use tax on a transaction shall report the location of that
- 1700 transaction at the person's location.
- 1701 (2) For purposes of Subsection (1), if a person has more than one location in this state,

1702 the person shall report the location of the transaction at the location at which tangible personal
1703 property, a product transferred electronically, or a service is received.

1704 Section 9. Section **76-8-1101** is amended to read:

1705 **76-8-1101. Criminal offenses and penalties relating to revenue and taxation --**
1706 **Rulemaking authority -- Statute of limitations.**

1707 (1) (a) As provided in Section **59-1-401**, criminal offenses and penalties are as
1708 provided in Subsections (1)(b) through (e).

1709 (b) (i) ~~[Any]~~ A person [who] is guilty of a class B misdemeanor if the person:

1710 (A) is required by Title 59, Revenue and Taxation, or any laws the State Tax
1711 Commission administers or regulates, to register with or obtain a license or permit from the
1712 State Tax Commission[~~, who~~]; and

1713 (B) operates without having registered or secured a license or permit[;] or [who]
1714 operates when the registration, license, or permit is expired or not current[~~, is guilty of a class~~
1715 ~~B misdemeanor~~].

1716 (ii) Notwithstanding Section **76-3-301**, for purposes of Subsection (1)(b)(i), the
1717 penalty may not:

1718 (A) be less than \$500; or

1719 (B) exceed \$1,000.

1720 (c) (i) With respect to a tax, fee, or charge as defined in Section **59-1-401**, ~~[any]~~ a
1721 person [who] is guilty of a third degree felony if the person:

1722 (A) knowingly and intentionally, and without a reasonable good faith basis, fails to
1723 make, render, sign, or verify any return within the time required by law or to supply any
1724 information within the time required by law[~~, or who~~];

1725 (B) makes, renders, signs, or verifies any false or fraudulent return or statement[;] or
1726 [who]

1727 (C) supplies any false or fraudulent information[~~, is guilty of a third degree felony~~].

1728 (ii) Notwithstanding Section **76-3-301**, for purposes of Subsection (1)(c)(i), the penalty
1729 may not:

1730 (A) be less than \$1,000; or

1731 (B) exceed \$5,000.

1732 (d) (i) Any person who intentionally or willfully attempts to evade or defeat any tax,

1733 fee, or charge as defined in Section 59-1-401 or the payment of a tax, fee, or charge as defined
1734 in Section 59-1-401 is, in addition to other penalties provided by law, guilty of a second degree
1735 felony.

1736 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(d)(i), the penalty
1737 may not:

1738 (A) be less than \$1,500; or

1739 (B) exceed \$25,000.

1740 (e) (i) A person is guilty of a second degree felony if that person commits an act:

1741 (A) described in Subsection (1)(e)(ii) with respect to one or more of the following
1742 documents:

1743 (I) a return;

1744 (II) an affidavit;

1745 (III) a claim; or

1746 (IV) a document similar to Subsections (1)(e)(i)(A)(I) through (III); and

1747 (B) subject to Subsection (1)(e)(iii), with knowledge that the document described in
1748 Subsection (1)(e)(i)(A):

1749 (I) is false or fraudulent as to any material matter; and

1750 (II) could be used in connection with any material matter administered by the State Tax
1751 Commission.

1752 (ii) The following acts apply to Subsection (1)(e)(i):

1753 (A) preparing any portion of a document described in Subsection (1)(e)(i)(A);

1754 (B) presenting any portion of a document described in Subsection (1)(e)(i)(A);

1755 (C) procuring any portion of a document described in Subsection (1)(e)(i)(A);

1756 (D) advising in the preparation or presentation of any portion of a document described
1757 in Subsection (1)(e)(i)(A);

1758 (E) aiding in the preparation or presentation of any portion of a document described in
1759 Subsection (1)(e)(i)(A);

1760 (F) assisting in the preparation or presentation of any portion of a document described
1761 in Subsection (1)(e)(i)(A); or

1762 (G) counseling in the preparation or presentation of any portion of a document
1763 described in Subsection (1)(e)(i)(A).

1764 (iii) This Subsection (1)(e) applies:
1765 (A) regardless of whether the person for which the document described in Subsection
1766 (1)(e)(i)(A) is prepared or presented:
1767 (I) knew of the falsity of the document described in Subsection (1)(e)(i)(A); or
1768 (II) consented to the falsity of the document described in Subsection (1)(e)(i)(A); and
1769 (B) in addition to any other penalty provided by law.
1770 (iv) Notwithstanding Section [76-3-301](#), for purposes of this Subsection (1)(e), the
1771 penalty may not:
1772 (A) be less than \$1,500; or
1773 (B) exceed \$25,000.
1774 (v) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1775 State Tax Commission may make rules prescribing the documents that are similar to
1776 Subsections (1)(e)(i)(A)(I) through (III).
1777 (2) The statute of limitations for prosecution for a violation of this section is the later
1778 of six years:
1779 (a) from the date the tax should have been remitted; or
1780 (b) after the day on which the person commits the criminal offense.
1781 **Section 10. Effective date.**
1782 This bill takes effect on July 1, 2016.

Legislative Review Note
Office of Legislative Research and General Counsel