

SALES AND USE TAX REVISIONS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to sales and use taxes.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses the circumstances under which a person may be required to collect and remit sales and use taxes to the State Tax Commission;
- ▶ provides for expedited judicial review;
- ▶ makes technical and conforming changes; and
- ▶ contains a severability clause.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a severability clause.

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

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

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



28 **59-12-108**, as last amended by Laws of Utah 2013, Chapter 50
 29 **59-12-211**, as last amended by Laws of Utah 2012, Chapter 312
 30 **59-12-211.1**, as last amended by Laws of Utah 2012, Chapter 312
 31 **76-8-1101**, as last amended by Laws of Utah 2014, Chapter 52

32 ENACTS:

33 **59-12-107.6**, Utah Code Annotated 1953



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 ~~[(H)]~~ (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 59-12-103.1 is amended to read:

425 **59-12-103.1. Action by Supreme Court of the United States authorizing or action**
426 **by Congress permitting a state to require certain sellers to collect a sales or use tax --**
427 **Collection of tax by commission -- Commission report to Revenue and Taxation Interim**
428 **Committee -- Revenue and Taxation Interim Committee study -- Division of Finance**
429 **requirement to make certain deposits.**

430 (1) Except as provided in Section 59-12-107.1, a seller shall remit a tax to the

431 commission as provided in Section 59-12-107 if:

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

434 (i) a seller that does not meet one or more of the criteria described in Subsection
435 59-12-107(2)(a); or

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

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

440 (i) a seller that does not meet one or more of the criteria described in Subsection
441 59-12-107(2)(a); or

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

444 (2) The commission shall:

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

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

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

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

449 [~~(ii) beginning on the first day of a calendar quarter as prescribed by the Revenue and
450 Taxation Interim Committee; and~~]

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

452 (i) regarding the actions taken by:

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

454 (B) Congress;

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

456 and

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

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

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

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

465 (i) to the extent:

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

467 (B) permitted by Congress; and

468 (ii) beginning on the first day of a calendar quarter as prescribed by the Revenue and
469 Taxation Interim Committee.

470 (3) The Revenue and Taxation Interim Committee shall after hearing the commission's
471 report under Subsection (2)~~(b)~~(a):

472 (a) review the actions taken by:

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

474 (ii) Congress;

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

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

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

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

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

484 Section 3. Section **59-12-107** is amended to read:

485 **59-12-107. Definitions -- Collection, remittance, and payment of tax by sellers or**
486 **other persons -- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other**
487 **liability for collection -- Rulemaking authority -- Credits -- Treatment of bad debt --**
488 **Penalties and interest.**

489 (1) As used in this section:

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

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

493 (A) announcing by graphic, pictorial, verbal, written, or other similar means the
494 availability of a product for sale; or

495 (B) employing purchased space or time in print or electronic media if that purchased
496 space or time is used to communicate an announcement of a product for sale.

497 (ii) "Advertising" includes online advertising.

498 (b) (i) "Arrangement" means an agreement between a noncollecting seller and a
499 referring party, under which the referring party:

500 (A) directly or indirectly makes a referral to the noncollecting seller of a potential
501 purchaser of tangible personal property, a product transferred electronically, or a service;

502 (B) uses trademarks, service marks, or trade names in the state that are the same or
503 substantially similar to those used by the noncollecting seller;

504 (C) delivers, on behalf of the noncollecting seller, tangible personal property to a
505 purchaser in the state; or

506 (D) facilitates the noncollecting seller's delivery of tangible personal property to a
507 purchaser in the state by allowing the purchaser to pick up tangible personal property sold by
508 the noncollecting seller at an in-state office, distribution house, warehouse or other storage
509 place, or similar place of business that is maintained by the referring party.

510 (ii) "Arrangement" does not include any agreement under which a noncollecting seller
511 purchases advertising from a person in the state, unless the person also directs a solicitation
512 toward one or more potential purchasers in the state.

513 (c) "Noncollecting seller" means a remote seller that:

514 (i) does not voluntarily collect and remit sales and use tax under this chapter; and

515 (ii) during the 12-month period immediately preceding the current month, makes sales
516 totaling \$100,000 or more in tangible personal property, products transferred electronically, or
517 services:

518 (A) for storage, use, or consumption in the state; and

519 (B) as a result of an arrangement with one or more referring parties.

520 (d) (i) "Online advertising" means advertising delivered through the Internet.

521 (ii) "Online advertising" includes:

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

524 (B) an advertisement tied to an Internet search engine;
525 (C) a banner announcement;
526 (D) a cost-per-action advertisement; or
527 (E) an online advertising service similar to the online advertising described in
528 Subsections (1)(d)(ii)(A) through (D), as the commission may define by rule made in
529 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
530 (iii) "Online advertising" does not include an Internet-based link to a seller's website.
531 (e) (i) "Referral" means the act of sending a potential purchaser in the state to a
532 noncollecting seller by:
533 (A) an Internet-based link;
534 (B) an Internet website;
535 (C) telemarketing;
536 (D) catalog;
537 (E) in-person marketing; or
538 (F) other means similar to the means described in Subsections (1)(e)(i)(A) through (E),
539 as the commission may define by rule made in accordance with Title 63G, Chapter 3, Utah
540 Administrative Rulemaking Act.
541 (ii) "Referral" does not include online advertising.
542 (f) "Referring party" means a person other than a common carrier:
543 (i) that meets one or more of the criteria described in Subsection (2)(a); and
544 (ii) with which a noncollecting seller enters an arrangement.
545 ~~[(b)]~~ (g) "Related [seller] party" means a [seller that] person:
546 (i) that meets one or more of the criteria described in Subsection (2)(a)[(i)]; and
547 ~~[(ii) delivers tangible personal property, a service, or a product transferred~~
548 ~~electronically that is sold:]~~
549 ~~[(A) by a seller that does not meet one or more of the criteria described in Subsection~~
550 ~~(2)(a)(i); and]~~
551 ~~[(B) to a purchaser in the state:]~~
552 ~~[(c) "Substantial ownership interest" means an ownership interest in a business entity if~~
553 ~~that ownership interest is greater than the degree of ownership of equity interest specified in 15~~
554 ~~U.S.C. Sec. 78p, with respect to a person other than a director or an officer.]~~

555 (ii) with whom a remote seller has one of the relationships described in 26 U.S.C. Sec.
556 267(b) or (c) or 26 U.S.C. Sec. 707(b)(1).

557 (h) "Remote seller" means a seller that is not required to pay or collect and remit sales
558 and use taxes under Subsection (2)(a).

559 (i) "Solicitation" means a communication directly or indirectly to a specific person
560 within the state in a manner that is intended and calculated to incite the person to purchase
561 tangible personal property, a service, or a product transferred electronically from a specific
562 seller.

563 (2) (a) Except as provided in Subsection (2)~~(f)~~(h), Section 59-12-107.1, or Section
564 59-12-123, and subject to Subsection (2)~~(f)~~(g), each seller shall pay or collect and remit the
565 sales and use taxes imposed by this chapter if within this state the seller:

566 (i) has or utilizes:

567 (A) an office, including a home office of a resident employee;

568 (B) a distribution house;

569 (C) a sales house;

570 (D) a warehouse or other storage place;

571 (E) a service enterprise; or

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

573 (ii) maintains a stock of goods;

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

576 (A) advertising; or

577 (B) solicitation by:

578 (I) direct mail;

579 (II) electronic mail;

580 (III) except as provided in Subsection (2)(d), the Internet;

581 (IV) telecommunications service; or

582 (V) a means similar to Subsection (2)(a)(iii)(A) or (B);

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

584 (A) common carrier; or

585 (B) United States mail; or

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

588 (b) ~~[A]~~ There is a rebuttable presumption that a remote seller is [considered to be]
589 engaged, in the state, in the business of selling tangible personal property, [a service, or] a
590 product transferred electronically, or a service, for storage, use [in the state], or consumption,
591 and shall pay or collect and remit the sales and use taxes imposed by this chapter if a related
592 party:

593 ~~[(i) the seller holds a substantial ownership interest in, or is owned in whole or in~~
594 ~~substantial part by, a related seller; and (ii) (A) the seller]~~

595 (i) sells the same or a substantially similar line of products or services as the [related]
596 seller and [does so] sells under the same or a substantially similar business name as the remote
597 seller; [or]

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

601 (iii) uses, with the remote seller's knowledge or consent, trademarks, service marks, or
602 trade names in the state that are the same or substantially similar to those used by the remote
603 seller;

604 (iv) delivers, installs, or assembles tangible personal property or performs maintenance
605 or repair services on tangible personal property or a product delivered electronically that the
606 remote seller has sold or will sell to a purchaser within the state;

607 (v) facilitates the remote seller's delivery of tangible personal property to a purchaser in
608 the state by allowing the purchaser to pick up tangible personal property sold by the remote
609 seller at an in-state office, distribution house, sales house, warehouse or other storage place, or
610 similar place of business that is maintained by a related party; or

611 (vi) shares management, business systems, or employees with the seller, or engages in
612 intercompany transactions with a remote seller, for the purpose of the remote seller being able
613 to establish or maintain a market in the state.

614 (c) A remote seller may rebut the presumption described in Subsection (2)(b) by
615 proving that the in-state activities of the related party are not significantly associated with the
616 seller's ability to establish and maintain a market in the state for the seller's sales of tangible

617 personal property, a service, or a product transferred electronically.

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

622 (ii) When the presumption arises, the noncollecting seller has an obligation to pay or
 623 collect and remit sales and use tax on any sale the noncollecting seller makes, through an
 624 arrangement, to a purchaser in the state.

625 (iii) A noncollecting seller may rebut the presumption described in Subsection (2)(d)(i)
 626 by proving, in accordance with Subsection (2)(d)(iv) that a referring party has not engaged in a
 627 referral activity within the state on behalf of the noncollecting seller during the preceding 12
 628 months.

629 (iv) To rebut the presumption described in Subsection (2)(d)(i), a noncollecting seller
 630 shall provide:

631 (A) proof that any arrangement with the referring party prohibits the referring party
 632 from engaging in solicitation of a potential purchaser on behalf of the seller in the state; and

633 (B) an annual, written, sworn statement from each referring party that the referring
 634 party did not engage in any prohibited solicitation of a potential purchaser in the state on behalf
 635 of the noncollecting seller.

636 ~~[(c) A seller that does not meet one or more of the criteria provided for in Subsection~~
 637 ~~(2)(a) or is not a seller required to pay or collect and remit sales and use taxes under Subsection~~
 638 ~~(2)(b): (i) except as provided in Subsection (2)(c)(ii);]~~

639 (e) (i) Except as provided in Subsection (2)(e)(ii), a remote seller that is not subject to,
 640 or rebuts, a presumption described in Subsection (2)(b) or (d) may voluntarily:

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

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

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

646 ~~[(d)]~~ (f) The collection and remittance of a tax under this chapter by a seller that is
 647 registered under the agreement may not be used as a factor in determining whether that seller is

648 required by Subsection (2) to:

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

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

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

652 (C) Section 19-6-714;

653 (D) Section 19-6-805;

654 (E) Section 69-2-5;

655 (F) Section 69-2-5.5;

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

657 (H) this title; or

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

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

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

661 (C) Section 19-6-714;

662 (D) Section 19-6-805;

663 (E) Section 69-2-5;

664 (F) Section 69-2-5.5;

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

666 (H) this title.

667 ~~[(e) A person shall pay a use tax imposed by this chapter on a transaction described in~~

668 ~~Subsection 59-12-103(1) if:]~~

669 ~~[(i) the seller did not collect a tax imposed by this chapter on the transaction; and]~~

670 ~~[(ii) the person:]~~

671 ~~[(A) stores the tangible personal property or product transferred electronically in the~~
672 ~~state;]~~

673 ~~[(B) uses the tangible personal property or product transferred electronically in the~~
674 ~~state; or]~~

675 ~~[(C) consumes the tangible personal property or product transferred electronically in~~
676 ~~the state.]~~

677 ~~[(f)]~~ (g) The ownership of property that is located at the premises of a printer's facility
678 with which the retailer has contracted for printing and that consists of the final printed product,

679 property that becomes a part of the final printed product, or copy from which the printed
680 product is produced, shall not result in the retailer being considered to have or maintain an
681 office, distribution house, sales house, warehouse, service enterprise, or other place of
682 business, or to maintain a stock of goods, within this state.

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

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

686 (ii) the person:

687 (A) stores the tangible personal property or product transferred electronically in the
688 state;

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

690 or

691 (C) consumes the tangible personal property or product transferred electronically in the
692 state.

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

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

697 (c) (i) Each seller shall:

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

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

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

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

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

709 (f) If any seller, during any reporting period, collects as a tax an amount in excess of

710 the lawful state and local percentage of total taxable sales allowed under this chapter, the seller
711 shall remit to the commission the full amount of the tax imposed under this chapter, plus any
712 excess.

713 (g) If the accounting methods regularly employed by the seller in the transaction of the
714 seller's business are such that reports of sales made during a calendar month or quarterly period
715 will impose unnecessary hardships, the commission may accept reports at intervals that, in the
716 commission's opinion, will~~[, in the commission's opinion,]~~ better suit the convenience of the
717 taxpayer or seller and will not jeopardize collection of the tax.

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

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

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

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

728 (D) the date of the purchase.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

792 "registered remitter" means a seller that is:

793 (i) registered under the agreement;

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

795 (iii) not a:

796 (A) model 1 seller;

797 (B) model 2 seller; or

798 (C) model 3 seller.

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

801 (A) to the commission;

802 (B) annually; and

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

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

807 (A) to the commission; and

808 (B) on the last day of the month immediately following any month in which the [~~seller~~]
809 registered remitter accumulates a total of at least \$1,000 in agreement sales and use tax.

810 (c) (i) If a remote seller remits a tax to the commission in accordance with Subsection

811 (5)(b), the [~~remote seller~~] registered remitter shall file a return:

812 (A) with the commission;

813 (B) with respect to the tax;

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

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

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

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

819 (5)(c)(i); and

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

821 (d) A tax a [~~remote seller~~] registered remitter collects in accordance with this
822 Subsection (5) shall be calculated on the basis of the total amount of taxable transactions under
823 Subsection 59-12-103(1) the [~~remote seller~~] registered remitter completes, including[~~:(i) a cash~~
824 ~~transaction; and (ii) a charge transaction.~~] cash transactions and charge transactions.

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

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

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

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

832 (7) (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the
833 purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to

834 titling or registration under the laws of this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

864 (B) a financing charge;

- 865 (C) interest;
- 866 (D) a tax imposed under this chapter on the purchase price of tangible personal
867 property, a product transferred electronically, or a service;
- 868 (E) an uncollectible amount on tangible personal property or a product transferred
869 electronically that:
- 870 (I) is subject to a tax under this chapter; and
- 871 (II) remains in the possession of a seller until the full purchase price is paid;
- 872 (F) an expense incurred in attempting to collect any debt; or
- 873 (G) an amount that a seller does not collect on repossessed property.
- 874 (b) (i) To the extent an amount remitted in accordance with Subsection (4)(d) later
875 becomes bad debt, a seller may deduct the bad debt from the total amount from which a tax
876 under this chapter is calculated on a return.
- 877 (ii) A qualifying purchaser, as defined in Subsection (4)(e)(ii)(A), may deduct from the
878 total amount of taxes due under this chapter the amount of tax the qualifying purchaser paid on
879 the qualifying purchaser's purchase of tangible personal property converted into real property to
880 the extent that:
- 881 (A) tax was remitted in accordance with Subsection (4)(e) on that tangible personal
882 property converted into real property;
- 883 (B) the qualifying purchaser's sale of that tangible personal property converted into real
884 property later becomes bad debt; and
- 885 (C) the books and records that the qualifying purchaser keeps in the qualifying
886 purchaser's regular course of business identify by reasonable and verifiable standards that the
887 tangible personal property was converted into real property.
- 888 (c) A seller may file a refund claim with the commission if:
- 889 (i) the amount of bad debt for the time period described in Subsection (10)(e) exceeds
890 the amount of the seller's sales that are subject to a tax under this chapter for that same time
891 period; and
- 892 (ii) as provided in Section [59-1-1410](#).
- 893 (d) A bad debt deduction under this section may not include interest.
- 894 (e) A bad debt may be deducted under this Subsection (10) on a return for the time
895 period during which the bad debt:

- 896 (i) is written off as uncollectible in the seller's books and records; and
- 897 (ii) would be eligible for a bad debt deduction:
- 898 (A) for federal income tax purposes; and
- 899 (B) if the seller were required to file a federal income tax return.
- 900 (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or
- 901 claims a refund under this Subsection (10), the seller shall report and remit a tax under this
- 902 chapter:
- 903 (i) on the portion of the bad debt the seller recovers; and
- 904 (ii) on a return filed for the time period for which the portion of the bad debt is
- 905 recovered.
- 906 (g) For purposes of reporting a recovery of a portion of bad debt under Subsection
- 907 (10)(f), a seller shall apply amounts received on the bad debt in the following order:
- 908 (i) in a proportional amount:
- 909 (A) to the purchase price of the tangible personal property, product transferred
- 910 electronically, or service; and
- 911 (B) to the tax due under this chapter on the tangible personal property, product
- 912 transferred electronically, or service; and
- 913 (ii) to:
- 914 (A) interest charges;
- 915 (B) service charges; and
- 916 (C) other charges.
- 917 (h) A seller's certified service provider may make a deduction or claim a refund for bad
- 918 debt on behalf of the seller:
- 919 (i) in accordance with this Subsection (10); and
- 920 (ii) if the certified service provider credits or refunds the entire amount of the bad debt
- 921 deduction or refund to the seller.
- 922 (i) A seller may allocate bad debt among the states that are members of the agreement
- 923 if the seller's books and records support that allocation.
- 924 (11) (a) A seller may not, with intent to evade any tax, fail to timely remit the full
- 925 amount of tax required by this chapter.
- 926 (b) A violation of this section is punishable as provided in Section [59-1-401](#).

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

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

935 Section 4. Section [59-12-107.6](#) is enacted to read:

936 **[59-12-107.6](#). Expedited judicial review.**

937 (1) Subject to the limitations described in Subsection (2) and notwithstanding the
938 judicial review procedures described in Chapter 1, Part 6, Judicial Review, any aggrieved party
939 may directly petition the Utah Supreme Court for judicial review of the commission's final
940 determination on:

941 (a) a remote seller's obligation to pay or collect and remit sales and use tax under
942 Section [59-12-107](#); or

943 (b) an owner or operator of a selling platform's obligation under Section [59-12-107.6](#).

944 (2) Direct judicial review is available if the petitioner:

945 (a) makes only a facial challenge to the constitutionality of Section [59-12-107](#),
946 [59-12-107.6](#), or both; and

947 (b) files the petition for judicial review within 60 days after the day on which the
948 commission issues the commission's final determination.

949 Section 5. Section [59-12-108](#) is amended to read:

950 **[59-12-108](#). Monthly payment -- Amount of tax a seller may retain -- Penalty --**
951 **Certain amounts allocated to local taxing jurisdictions.**

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

954 (i) file a return with the commission:

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

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

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

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

963 (B) if that seller's tax liability under this chapter for the previous calendar year is
964 \$96,000 or more, by electronic funds transfer.

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

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

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

970 (B) files a simplified electronic return.

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

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

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

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

975 (iv) a charge under Section 69-2-5;

976 (v) a charge under Section 69-2-5.5;

977 (vi) a charge under Section 69-2-5.6; [~~or~~] and

978 (vii) a tax under this chapter.

979 (d) Notwithstanding [~~Subsection~~] Subsections (1)(a)(ii) and (b) and in accordance with
980 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules
981 providing for a method for making same-day payments other than by electronic funds transfer
982 if making payments by electronic funds transfer fails.

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

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

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

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

994 (A) Subsection 59-12-103(2)(a);

995 (B) Subsection 59-12-103(2)(b); and

996 (C) Subsection 59-12-103(2)(d); and

997 (ii) for an agreement sales and use tax.

998 (c) (i) A seller subject to Subsection (1) or a seller described in Subsection (4) may
999 retain each month the amount calculated under Subsection (2)(c)(ii) for a transaction described
1000 in Subsection 59-12-103(1) that is subject to the state tax and the local tax imposed in
1001 accordance with Subsection 59-12-103(2)(c).

1002 (ii) For purposes of Subsection (2)(c)(i), the amount a seller may retain is an amount
1003 equal to the sum of:

1004 (A) 1.31% of any amounts the seller is required to remit to the commission for:

1005 (I) the state tax and the local tax imposed in accordance with Subsection
1006 59-12-103(2)(c);

1007 (II) the month for which the seller is filing a return in accordance with Subsection (1);
1008 and

1009 (III) an agreement sales and use tax; and

1010 (B) 1.31% of the difference between:

1011 (I) the amounts the seller would have been required to remit to the commission:

1012 (Aa) in accordance with Subsection 59-12-103(2)(a) if the transaction had been subject
1013 to the state tax and the local tax imposed in accordance with Subsection 59-12-103(2)(a);

1014 (Bb) for the month for which the seller is filing a return in accordance with Subsection
1015 (1); and

1016 (Cc) for an agreement sales and use tax; and

1017 (II) the amounts the seller is required to remit to the commission for:

1018 (Aa) the state tax and the local tax imposed in accordance with Subsection
1019 59-12-103(2)(c);

1020 (Bb) the month for which the seller is filing a return in accordance with Subsection (1);
1021 and
1022 (Cc) an agreement sales and use tax.
1023 (d) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain
1024 each month 1% of any amounts the seller is required to remit to the commission:
1025 (i) for the month for which the seller is filing a return in accordance with Subsection
1026 (1); and
1027 (ii) under:
1028 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
1029 (B) Subsection 59-12-603(1)(a)(i)(A); or
1030 (C) Subsection 59-12-603(1)(a)(i)(B).
1031 (3) A state government entity that is required to remit taxes monthly in accordance
1032 with Subsection (1) may not retain any amount under Subsection (2).
1033 (4) A seller that has a tax liability under this chapter for the previous calendar year of
1034 less than \$50,000 may:
1035 (a) voluntarily meet the requirements of Subsection (1); and
1036 (b) if the seller voluntarily meets the requirements of Subsection (1), retain the
1037 amounts allowed by Subsection (2).
1038 (5) (a) Subject to Subsections (5)(b) through (d), a seller that voluntarily collects and
1039 remits a tax in accordance with Subsection 59-12-107(2)~~(c)~~(e)(i) may retain an amount equal
1040 to 18% of any amounts the seller would otherwise remit to the commission:
1041 (i) if the seller obtains a license under Section 59-12-106 for the first time on or after
1042 January 1, 2014; and
1043 (ii) for:
1044 (A) an agreement sales and use tax; and
1045 (B) the time period for which the seller files a return in accordance with this section.
1046 (b) If a seller retains an amount under this Subsection (5), the seller may not retain any
1047 other amount under this section.
1048 (c) If a seller retains an amount under this Subsection (5), the commission may require
1049 the seller to file a return by:
1050 (i) electronic means; or

1051 (ii) a means other than electronic means.

1052 (d) A seller may not retain an amount under this Subsection (5) if the seller is required
1053 to collect or remit a tax under this section in accordance with Section 59-12-103.1.

1054 (6) Penalties for late payment shall be as provided in Section 59-1-401.

1055 (7) (a) Except as provided in Subsection (7)(c), for any amounts required to be remitted
1056 to the commission under this part, the commission shall each month calculate an amount equal
1057 to the difference between:

1058 (i) the total amount retained for that month by all sellers had the percentages listed
1059 under Subsections (2)(b) and (2)(c)(ii) been 1.5%; and

1060 (ii) the total amount retained for that month by all sellers at the percentages listed
1061 under Subsections (2)(b) and (2)(c)(ii).

1062 (b) The commission shall each month allocate the amount calculated under Subsection
1063 (7)(a) to each county, city, and town on the basis of the proportion of agreement sales and use
1064 tax that the commission distributes to each county, city, and town for that month compared to
1065 the total agreement sales and use tax that the commission distributes for that month to all
1066 counties, cities, and towns.

1067 (c) The amount the commission calculates under Subsection (7)(a) may not include an
1068 amount collected from a tax that:

1069 (i) the state imposes within a county, city, or town, including the unincorporated area
1070 of a county; and

1071 (ii) is not imposed within the entire state.

1072 Section 6. Section 59-12-211 is amended to read:

1073 **59-12-211. Definitions -- Location of certain transactions -- Reports to**
1074 **commission -- Direct payment provision for a seller making certain purchases --**

1075 **Exceptions.**

1076 (1) As used in this section:

1077 (a) (i) "Receipt" and "receive" mean:

1078 (A) taking possession of tangible personal property;

1079 (B) making first use of a service; or

1080 (C) for a product transferred electronically, the earlier of:

1081 (I) taking possession of the product transferred electronically; or

- 1082 (II) making first use of the product transferred electronically.
- 1083 (ii) "Receipt" and "receive" do not include possession by a shipping company on behalf
1084 of a purchaser.
- 1085 (b) "Transportation equipment" means:
- 1086 (i) a locomotive or rail car that is used to carry a person or property in interstate
1087 commerce;
- 1088 (ii) a truck or truck-tractor:
- 1089 (A) with a gross vehicle weight rating of 10,001 pounds or ~~more~~ greater;
- 1090 (B) registered under Section 41-1a-301; and
- 1091 (C) operated under the authority of a carrier authorized and certificated:
- 1092 (I) by the United States Department of Transportation or another federal authority; and
- 1093 (II) to engage in carrying a person or property in interstate commerce;
- 1094 (iii) a trailer, semitrailer, or passenger bus that is:
- 1095 (A) registered under Section 41-1a-301; and
- 1096 (B) operated under the authority of a carrier authorized and certificated:
- 1097 (I) by the United States Department of Transportation or another federal authority; and
- 1098 (II) to engage in carrying a person or property in interstate commerce;
- 1099 (iv) an aircraft that is operated by an air carrier authorized and certificated:
- 1100 (A) by the United States Department of Transportation or another federal or foreign
1101 authority; and
- 1102 (B) to engage in carrying a person or property in interstate commerce; or
- 1103 (v) a container designed for use on, or a component part attached or secured on, an
1104 item of equipment listed in Subsections (1)(b)(i) through (iv).
- 1105 (2) Except as provided in Subsections (8) and (14), if tangible personal property, a
1106 product transferred electronically, or a service that is subject to taxation under this chapter is
1107 received by a purchaser at a business location of a seller, the location of the transaction is the
1108 business location of the seller.
- 1109 (3) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
1110 and (14), if tangible personal property, a product transferred electronically, or a service that is
1111 subject to taxation under this chapter is not received by a purchaser at a business location of a
1112 seller, the location of the transaction is the location where the purchaser takes receipt of the

1113 tangible personal property or service.

1114 (4) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
1115 and (14), if Subsection (2) or (3) does not apply, the location of the transaction is the location
1116 indicated by an address for or other information on the purchaser if:

1117 (a) the address or other information is available from the seller's business records; and
1118 (b) use of the address or other information from the seller's records does not constitute
1119 bad faith.

1120 (5) (a) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9),
1121 (11), and (14), if Subsection (2), (3), or (4) does not apply, the location of the transaction is the
1122 location indicated by an address for the purchaser if:

1123 (i) the address is obtained during the consummation of the transaction; and
1124 (ii) use of the address described in Subsection (5)(a)(i) does not constitute bad faith.

1125 (b) An address used under Subsection (5)(a) includes the address of a purchaser's
1126 payment instrument if no other address is available.

1127 (6) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
1128 and (14), if Subsection (2), (3), (4), or (5) does not apply or if a seller does not have sufficient
1129 information to apply Subsection (2), (3), (4), or (5), the location of the transaction is the
1130 location:

1131 (a) indicated by the address from which:

1132 (i) except as provided in Subsection (6)(a)(ii), for tangible personal property that is
1133 subject to taxation under this chapter, the tangible personal property is shipped;

1134 (ii) for computer software delivered electronically or for a product transferred
1135 electronically that is subject to taxation under this chapter, the computer software or product
1136 transferred electronically is first available for transmission by the seller; or

1137 (iii) for a service that is subject to taxation under this chapter, the service is provided;
1138 or

1139 (b) as determined by the seller with respect to a prepaid wireless calling service:

1140 (i) provided in Subsection (6)(a)(iii); or

1141 (ii) associated with the mobile telephone number.

1142 (7) (a) For purposes of this Subsection (7), "shared ZIP Code" means a nine-digit ZIP
1143 Code that is located within two or more local taxing jurisdictions.

1144 (b) If the location of a transaction determined under Subsections (3) through (6) is in a
1145 shared ZIP Code, the location of the transaction is:

1146 (i) if there is only one local taxing jurisdiction that imposes the lowest agreement
1147 combined tax rate for the shared ZIP Code, the local taxing jurisdiction that imposes the lowest
1148 agreement combined tax rate; or

1149 (ii) if two or more local taxing jurisdictions impose the lowest agreement combined tax
1150 rate for the shared ZIP Code, the local taxing jurisdiction that:

1151 (A) imposes the lowest agreement combined tax rate for the shared ZIP Code; and

1152 (B) has located within the local taxing jurisdiction the largest number of street
1153 addresses within the shared ZIP Code.

1154 (c) Notwithstanding any provision under this chapter authorizing or requiring the
1155 imposition of a sales and use tax, for purposes of Subsection (7)(b), a seller shall collect a sales
1156 and use tax imposed under this chapter at the lowest agreement combined tax rate imposed
1157 within the local taxing jurisdiction in which the transaction is located under Subsection (7)(b).

1158 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1159 commission may make rules:

1160 (i) providing for the circumstances under which a seller has exercised due diligence in
1161 determining the nine-digit ZIP Code for an address; or

1162 (ii) notwithstanding Subsection (7)(b), for determining the local taxing jurisdiction
1163 within which a transaction is located if a seller is unable to determine the local taxing
1164 jurisdiction within which the transaction is located under Subsection (7)(b).

1165 (8) The location of a transaction made with a direct payment permit described in
1166 Section [59-12-107.1](#) is the location where receipt of the tangible personal property, product
1167 transferred electronically, or service by the purchaser occurs.

1168 (9) The location of a purchase of direct mail is the location determined in accordance
1169 with Section [59-12-123](#).

1170 (10) (a) Except as provided in Subsection (10)(b), the location of a transaction
1171 determined under Subsections (3) through (6), (8), or (9), is the local taxing jurisdiction within
1172 which:

1173 (i) the nine-digit ZIP Code assigned to the location determined under Subsections (3)
1174 through (6), (8), or (9) is located; or

1175 (ii) the five-digit ZIP Code assigned to the location determined under Subsections (3)
1176 through (6), (8), or (9) is located if:

1177 (A) a nine-digit ZIP Code is not available for the location determined under
1178 Subsections (3) through (6), (8), or (9); or

1179 (B) after exercising due diligence, a seller or certified service provider is unable to
1180 determine a nine-digit ZIP Code for the location determined under Subsections (3) through (6),
1181 (8), or (9).

1182 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1183 commission may make rules for determining the local taxing jurisdiction within which a
1184 transaction is located if a seller or certified service provider is unable to determine the local
1185 taxing jurisdiction within which the transaction is located under Subsection (10)(a).

1186 (11) (a) As used in this Subsection (11), "florist delivery transaction" means a
1187 transaction commenced by a florist that transmits an order:

1188 (i) by:

1189 (A) telegraph;

1190 (B) telephone; or

1191 (C) a means of communication similar to Subsection (11)(a)(i)(A) or (B); and

1192 (ii) for delivery to another place:

1193 (A) in this state; or

1194 (B) outside this state.

1195 ~~[(b) Notwithstanding Subsections (3) through (6), beginning on January 1, 2009, and~~
1196 ~~ending on December 31, 2009, the location of a florist delivery transaction is the business~~
1197 ~~location of the florist that commences the florist delivery transaction.]~~

1198 ~~[(c)]~~ (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
1199 Act, the commission may by rule:

1200 (i) define:

1201 (A) "business location"; and

1202 (B) "florist";

1203 (ii) define what constitutes a means of communication similar to Subsection
1204 (11)(a)(i)(A) or (B); and

1205 (iii) provide procedures for determining when a transaction is commenced.

1206 (12) (a) Notwithstanding any other provision of this section and except as provided in
1207 Subsection (12)(b), if a purchaser uses computer software and there is not a transfer of a copy
1208 of that software to the purchaser, the location of the transaction is determined in accordance
1209 with Subsections (4) and (5).

1210 (b) If a purchaser uses computer software described in Subsection (12)(a) at more than
1211 one location, the location of the transaction shall be determined in accordance with rules made
1212 by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
1213 Act.

1214 (13) (a) A tax collected under this chapter shall be reported to the commission on a
1215 form that identifies the location of each transaction that occurs during the return filing period.

1216 (b) The form described in Subsection (13)(a) shall be filed with the commission as
1217 required under this chapter.

1218 (14) This section does not apply to:

1219 (a) amounts charged by a seller for:

1220 (i) telecommunications service except for a prepaid calling service or a prepaid
1221 wireless calling service as provided in Subsection (6)(b) or Section [59-12-215](#); or

1222 (ii) the retail sale or transfer of:

1223 (A) a motor vehicle other than a motor vehicle that is transportation equipment;

1224 (B) an aircraft other than an aircraft that is transportation equipment;

1225 (C) a watercraft;

1226 (D) a modular home;

1227 (E) a manufactured home; or

1228 (F) a mobile home; or

1229 (iii) except as provided in Section [59-12-214](#), the lease or rental of tangible personal
1230 property other than tangible personal property that is transportation equipment;

1231 (b) a tax a person pays in accordance with Subsection [59-12-107\(2\)](#)~~(e)~~(h); or

1232 (c) a retail sale of tangible personal property or a product transferred electronically if:

1233 (i) the seller receives the order for the tangible personal property or product transferred
1234 electronically in this state;

1235 (ii) receipt of the tangible personal property or product transferred electronically by the
1236 purchaser or the purchaser's donee occurs in this state;

1237 (iii) the location where receipt of the tangible personal property or product transferred
 1238 electronically by the purchaser occurs is determined in accordance with Subsections (3)
 1239 through (5); and

1240 (iv) at the time the seller receives the order, the record keeping system that the seller
 1241 uses to calculate the proper amount of tax imposed under this chapter captures the location
 1242 where the order is received.

1243 Section 7. Section **59-12-211.1** is amended to read:

1244 **59-12-211.1. Location of a transaction that is subject to a use tax.**

1245 (1) Subject to Subsection (2), a person that is required by Subsection
 1246 **59-12-107(2)(e)(h)** to pay a use tax on a transaction shall report the location of that
 1247 transaction at the person's location.

1248 (2) For purposes of Subsection (1), if a person has more than one location in this state,
 1249 the person shall report the location of the transaction at the location at which tangible personal
 1250 property, a product transferred electronically, or a service is received.

1251 Section 8. Section **76-8-1101** is amended to read:

1252 **76-8-1101. Criminal offenses and penalties relating to revenue and taxation --**
 1253 **Rulemaking authority -- Statute of limitations.**

1254 (1) (a) As provided in Section **59-1-401**, criminal offenses and penalties are as
 1255 provided in Subsections (1)(b) through (e).

1256 (b) (i) ~~Any~~ A person [who] is guilty of a class B misdemeanor if the person:

1257 (A) is required by Title 59, Revenue and Taxation, or any laws the State Tax
 1258 Commission administers or regulates, to register with or obtain a license or permit from the
 1259 State Tax Commission[~~, who~~]; and

1260 (B) operates without having registered or secured a license or permit[~~;~~] or [who]
 1261 operates when the registration, license, or permit is expired or not current[~~, is guilty of a class~~
 1262 B misdemeanor].

1263 (ii) Notwithstanding Section **76-3-301**, for purposes of Subsection (1)(b)(i), the
 1264 penalty may not:

1265 (A) be less than \$500; or

1266 (B) exceed \$1,000.

1267 (c) (i) With respect to a tax, fee, or charge as defined in Section **59-1-401**, ~~any~~ a

1268 person ~~[who]~~ is guilty of a third degree felony if the person:

1269 (A) knowingly and intentionally, and without a reasonable good faith basis, fails to
1270 make, render, sign, or verify any return within the time required by law or to supply any
1271 information within the time required by law~~[-or who]~~;

1272 (B) makes, renders, signs, or verifies any false or fraudulent return or statement~~[-]~~; or
1273 ~~[who]~~

1274 (C) supplies any false or fraudulent information~~[- is guilty of a third degree felony]~~.

1275 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(c)(i), the penalty
1276 may not:

1277 (A) be less than \$1,000; or

1278 (B) exceed \$5,000.

1279 (d) (i) Any person who intentionally or willfully attempts to evade or defeat any tax,
1280 fee, or charge as defined in Section 59-1-401 or the payment of a tax, fee, or charge as defined
1281 in Section 59-1-401 is, in addition to other penalties provided by law, guilty of a second degree
1282 felony.

1283 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(d)(i), the penalty
1284 may not:

1285 (A) be less than \$1,500; or

1286 (B) exceed \$25,000.

1287 (e) (i) A person is guilty of a second degree felony if that person commits an act:

1288 (A) described in Subsection (1)(e)(ii) with respect to one or more of the following
1289 documents:

1290 (I) a return;

1291 (II) an affidavit;

1292 (III) a claim; or

1293 (IV) a document similar to Subsections (1)(e)(i)(A)(I) through (III); and

1294 (B) subject to Subsection (1)(e)(iii), with knowledge that the document described in
1295 Subsection (1)(e)(i)(A):

1296 (I) is false or fraudulent as to any material matter; and

1297 (II) could be used in connection with any material matter administered by the State Tax
1298 Commission.

- 1299 (ii) The following acts apply to Subsection (1)(e)(i):
- 1300 (A) preparing any portion of a document described in Subsection (1)(e)(i)(A);
- 1301 (B) presenting any portion of a document described in Subsection (1)(e)(i)(A);
- 1302 (C) procuring any portion of a document described in Subsection (1)(e)(i)(A);
- 1303 (D) advising in the preparation or presentation of any portion of a document described
- 1304 in Subsection (1)(e)(i)(A);
- 1305 (E) aiding in the preparation or presentation of any portion of a document described in
- 1306 Subsection (1)(e)(i)(A);
- 1307 (F) assisting in the preparation or presentation of any portion of a document described
- 1308 in Subsection (1)(e)(i)(A); or
- 1309 (G) counseling in the preparation or presentation of any portion of a document
- 1310 described in Subsection (1)(e)(i)(A).
- 1311 (iii) This Subsection (1)(e) applies:
- 1312 (A) regardless of whether the person for which the document described in Subsection
- 1313 (1)(e)(i)(A) is prepared or presented:
- 1314 (I) knew of the falsity of the document described in Subsection (1)(e)(i)(A); or
- 1315 (II) consented to the falsity of the document described in Subsection (1)(e)(i)(A); and
- 1316 (B) in addition to any other penalty provided by law.
- 1317 (iv) Notwithstanding Section [76-3-301](#), for purposes of this Subsection (1)(e), the
- 1318 penalty may not:
- 1319 (A) be less than \$1,500; or
- 1320 (B) exceed \$25,000.
- 1321 (v) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1322 State Tax Commission may make rules prescribing the documents that are similar to
- 1323 Subsections (1)(e)(i)(A)(I) through (III).
- 1324 (2) The statute of limitations for prosecution for a violation of this section is the later
- 1325 of six years:
- 1326 (a) from the date the tax should have been remitted; or
- 1327 (b) after the day on which the person commits the criminal offense.
- 1328 **Section 9. Severability clause.**
- 1329 The provisions of this bill are severable. If any provision of this bill, or the application

1330 of any provision to any person or circumstance, is held invalid by a final decision of a court of
1331 competent jurisdiction, the remainder of this bill shall be given effect without the invalid
1332 provision or application.

1333 Section 10. **Effective date.**

1334 This bill takes effect on July 1, 2016.

Legislative Review Note
Office of Legislative Research and General Counsel