

## SB0182S01 compared with SB0182

~~text~~ shows text that was in SB0182 but was deleted in SB0182S01.

text shows text that was not in SB0182 but was inserted into SB0182S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Wayne A. Harper proposes the following substitute bill:

### 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

## SB0182S01 compared with SB0182

### 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

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

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

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

**76-8-1101**, as last amended by Laws of Utah 2014, Chapter 52

#### ENACTS:

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

---

---

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

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

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

(1) As used in this section:

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

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

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

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

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

## SB0182S01 compared with SB0182

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

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

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

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

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

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

~~[(A)] (i) a tax, fee, or charge the commission administers under:~~

~~[(F)] (A) this title;~~

~~[(H)] (B) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;~~

~~[(HH)] (C) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;~~

~~[(IV)] (D) Section 19-6-410.5;~~

~~[(V)] (E) Section 19-6-714;~~

~~[(VF)] (F) Section 19-6-805;~~

~~[(VH)] (G) Section 32B-2-304;~~

~~[(VHH)] (H) Section 34A-2-202;~~

~~[(IX)] (I) Section 40-6-14;~~

~~[(X)] (J) Section 69-2-5;~~

~~[(XF)] (K) Section 69-2-5.5; or~~

~~[(XH)] (L) Section 69-2-5.6; or~~

~~[(B)] (ii) another amount that by statute is subject to a penalty imposed under this section.~~

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

~~[(A)] (i) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;~~

~~[(B)] (ii) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;~~

~~[(C)] (iii) Chapter 2, Property Tax Act, except for Section 59-2-1309;~~

## SB0182S01 compared with SB0182

~~[(D)]~~ (iv) Chapter 3, Tax Equivalent Property Act; or

~~[(E)]~~ (v) Chapter 4, Privilege Tax.

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

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

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

(ii) if the person filing the return is allowed by law an extension of time for filing the return, the earlier of:

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) an amended return; or

(ii) a return with no tax due.

## SB0182S01 compared with SB0182

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

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

(ii) the person:

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

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

(iii) (A) the person is subject to a penalty under Subsection (2)(b); and

(B) the commission estimates an amount of tax due for that person in accordance with Subsection 59-1-1406(2);

(iv) the person:

(A) is mailed a notice of deficiency; and

(B) within a 30-day period after the day on which the notice of deficiency described in Subsection (3)(a)(iv)(A) is mailed:

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

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

(v) (A) the commission:

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

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

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

(I) issues the order constituting final agency action described in Subsection (3)(a)(v)(A)(I); or

(II) is considered to have denied the request for reconsideration described in Subsection (3)(a)(v)(A)(II); or

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

## SB0182S01 compared with SB0182

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) For purposes of this Subsection (4), a payment of estimated tax shall be credited

## **SB0182S01 compared with SB0182**

against unpaid required installments in the order in which the installments are required to be paid.

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

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

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

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

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

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

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

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

(A) \$20; or

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

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

(A) \$20; or

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

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

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

## SB0182S01 compared with SB0182

is due to negligence.

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

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

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

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

(i) The notice of proposed penalty shall:

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

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

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

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

or

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

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

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

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

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

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

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



## SB0182S01 compared with SB0182

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **SB0182S01 compared with SB0182**

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

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

(c) If an employer is subject to a penalty under this Subsection (8) for failure to file a return in accordance with Subsection 59-10-406(3) on or before the due date described in Subsection 59-10-406(3)(b)(ii), the commission may not impose a penalty under this Subsection (8) unless the return is filed more than 14 days after the due date described in Subsection 59-10-406(3)(b)(ii).

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

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

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

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

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

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

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

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

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

(A) a return;

(B) an affidavit;

(C) a claim; or

## SB0182S01 compared with SB0182

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

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

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

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

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

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

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

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

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

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

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

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

(i) shall be imposed by the commission;

(ii) is \$500 for each document described in Subsection (11)(a)(i) with respect to which the person described in Subsection (11)(a) meets the requirements of Subsection (11)(a); and

(iii) is in addition to any other penalty provided by law.

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

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

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

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

## SB0182S01 compared with SB0182

(A) is required by this title or any laws the commission administers or regulates to register with or obtain a license or permit from the commission~~[- who]; and~~

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

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

(A) be less than \$500; or

(B) exceed \$1,000.

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

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

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

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

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

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

(B) exceed \$5,000.

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

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

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

(B) exceed \$25,000.

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

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

## SB0182S01 compared with SB0182

- (I) a return;
- (II) an affidavit;
- (III) a claim; or
- (IV) a document similar to Subsections (12)(e)(i)(A)(I) through (III); and
- (B) subject to Subsection (12)(e)(iii), with knowledge that the document described in

Subsection (12)(e)(i)(A):

- (I) is false or fraudulent as to any material matter; and
- (II) could be used in connection with any material matter administered by the

commission.

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

- (A) preparing any portion of a document described in Subsection (12)(e)(i)(A);
- (B) presenting any portion of a document described in Subsection (12)(e)(i)(A);
- (C) procuring any portion of a document described in Subsection (12)(e)(i)(A);
- (D) advising in the preparation or presentation of any portion of a document described

in Subsection (12)(e)(i)(A);

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

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

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

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

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

- (I) knew of the falsity of the document described in Subsection (12)(e)(i)(A); or
- (II) consented to the falsity of the document described in Subsection (12)(e)(i)(A); and
- (B) in addition to any other penalty provided by law.

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

- (A) be less than \$1,500; or
- (B) exceed \$25,000.

## **SB0182S01 compared with SB0182**

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

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

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

- (i) from the date the tax should have been remitted; or
- (ii) after the day on which the person commits the criminal offense.

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

- (i) fails to file the form with the commission in an electronic format approved by the commission as required by Subsection 59-10-406(8);
- (ii) fails to file the form on or before the due date provided in Subsection 59-10-406(8);
- (iii) fails to provide accurate information on the form; or
- (iv) fails to provide all of the information required by the Internal Revenue Service to be contained on the form.

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

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

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

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

- (A) files the form in accordance with Subsection 59-10-406(8) after June 1; or
- (B) fails to file the form.

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

## SB0182S01 compared with SB0182

this part.

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

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

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

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

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

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

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

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

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

(2) The commission shall:

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

~~[(i) to the extent:]~~

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

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

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

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

(i) regarding the actions taken by:

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

## SB0182S01 compared with SB0182

(B) Congress;

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

and

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

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

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

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

(i) to the extent:

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

(B) permitted by Congress; and

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

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

(a) review the actions taken by:

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

(ii) Congress;

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

(c) make recommendations to the Legislative Management Committee:

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

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

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

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



## SB0182S01 compared with SB0182

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

(1) As used in this section:

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

(a) (i) "Advertising" means:

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

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

(ii) "Advertising" includes online advertising.

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

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

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

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

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

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

(c) "Noncollecting seller" means a ~~remote seller that~~

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

~~(ii) qualified seller that, during the 12-month period immediately preceding the current~~

## SB0182S01 compared with SB0182

month, makes sales totaling \$100,000 or more in tangible personal property, products transferred electronically, or services:

(~~f~~A) i) for storage, use, or consumption in the state; and

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

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

(ii) "Online advertising" includes:

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

(B) an advertisement tied to an Internet search engine;

(C) a banner announcement;

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

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

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

(e) "Qualified seller" means a seller that is not required to pay or collect and remit sales and use taxes under Subsection (2)(a).

(~~f~~e) f) (i) "Referral" means the act of sending a potential purchaser in the state to a noncollecting seller by:

(A) an Internet-based link;

(B) an Internet website;

(C) telemarketing;

(D) catalog;

(E) in-person marketing; or

(F) other means similar to the means described in Subsections (1)(~~f~~e) f) (i)(A) through (E), as the commission may define by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

(~~f~~f) g) "Referring party" means a person other than a common carrier:

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

(ii) with which a noncollecting seller enters an arrangement.

## SB0182S01 compared with SB0182

~~(b)~~ ~~(f)(g)(h)~~ "Related [seller] party" means a ~~[seller that]~~ person:

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

~~(ii) delivers tangible personal property, a service, or a product transferred electronically that is sold;~~

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

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

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

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

~~(f)(i)~~ "Remote seller" means a seller that:

(i) is not required to pay or collect and remit sales and use taxes under Subsection (2)(a); and

(ii) is not subject to, or rebuts, a presumption described in Subsection (2)(b) or (d).

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

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

(i) has or utilizes:

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

(B) a distribution house;

(C) a sales house;

(D) a warehouse or other storage place;

(E) a service enterprise; or

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

(ii) maintains a stock of goods;

## SB0182S01 compared with SB0182

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

- (A) advertising; or
- (B) solicitation by:
  - (I) direct mail;
  - (II) electronic mail;
  - (III) except as provided in Subsection (2)(d), the Internet;
  - (IV) telecommunications service; or
  - (V) a means similar to Subsection (2)(a)(iii)(A) or (B);

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

- (A) common carrier; or
- (B) United States mail; or

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

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

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

~~(i)~~ sells the same or a substantially similar line of products or services as the ~~[related]~~ qualified seller and ~~[does so]~~ sells under the same or a substantially similar business name as the {remote}qualified seller; ~~[or]~~

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

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

~~(iv)~~ delivers, installs, or assembles tangible personal property or performs maintenance

## SB0182S01 compared with SB0182

or repair services on tangible personal property or a product delivered electronically that the ~~remote~~ qualified seller has sold or will sell to a purchaser within the state;

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

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

(c) A ~~remote~~ qualified seller may rebut the presumption described in Subsection (2)(b) by proving that the in-state activities of the related party are not significantly associated with the qualified seller's ability to establish and maintain a market in the state for the qualified seller's sales of tangible personal property, a service, or a product transferred electronically.

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

~~When the presumption arises, the~~ noncollecting seller ~~has an obligation to~~ shall pay or collect and remit sales and use tax on any sale the noncollecting seller makes, through an arrangement, to a purchaser in the state.

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

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

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

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

## SB0182S01 compared with SB0182

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

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

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

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

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

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

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

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

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

(C) Section 19-6-714;

(D) Section 19-6-805;

(E) Section 69-2-5;

(F) Section 69-2-5.5;

(G) Section 69-2-5.6; or

(H) this title; or

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

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

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

(C) Section 19-6-714;

(D) Section 19-6-805;

(E) Section 69-2-5;

(F) Section 69-2-5.5;

(G) Section 69-2-5.6; or

(H) this title.

## SB0182S01 compared with SB0182

~~[(e) A person shall pay a use tax imposed by this chapter on a transaction described in Subsection 59-12-103(1) if:]~~

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

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

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

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

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

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

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

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

(ii) the person:

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

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

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

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

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

(c) (i) Each seller shall:

## SB0182S01 compared with SB0182

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

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

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

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

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

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

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

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

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

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

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

(D) the date of the purchase.



## SB0182S01 compared with SB0182

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

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

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

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

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

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

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

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

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

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

## **SB0182S01 compared with SB0182**

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

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

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

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

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

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

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

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

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

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

## SB0182S01 compared with SB0182

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

"registered remitter" means a seller that is:

- (i) registered under the agreement;
- (ii) described in Subsection (2)(c); and
- (iii) not a:
  - (A) model 1 seller;
  - (B) model 2 seller; or
  - (C) model 3 seller.

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

- (A) to the commission;
- (B) annually; and
- (C) on or before the last day of the month immediately following the last day of each calendar year.

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

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

(c) (i) If a [~~remote seller~~] registered seller remits a tax to the commission in accordance with Subsection (5)(b), the [~~remote seller~~] registered remitter shall file a return:

- (A) with the commission;
- (B) with respect to the tax;
- (C) containing information prescribed by the commission; and
- (D) on a form prescribed by the commission.

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

(A) the information required to be contained in a return described in Subsection (5)(c)(i); and

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

(d) A tax a [~~remote seller~~] registered remitter collects in accordance with this

## SB0182S01 compared with SB0182

Subsection (5) shall be calculated on the basis of the total amount of taxable transactions under Subsection 59-12-103(1) the ~~[remote seller]~~ registered remitter completes, including ~~[(i) a cash transaction; and (ii) a charge transaction.]~~ cash transactions and charge transactions.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) the person prepaying the sales or use tax is responsible for the collection or

## SB0182S01 compared with SB0182

payment of the sales or use tax if the person prepaying the sales or use tax represents that the amount prepaid as sales or use tax has not been fully credited against sales or use tax due and payable under the rules promulgated by the commission.

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

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

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

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

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

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

(B) a financing charge;

(C) interest;

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

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

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

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

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

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

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

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

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

(B) the qualifying purchaser's sale of that tangible personal property converted into real

## SB0182S01 compared with SB0182

property later becomes bad debt; and

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

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

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

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

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

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

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

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

(A) for federal income tax purposes; and

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

(f) If a seller recovers any portion of bad debt for which the seller makes a deduction or claims a refund under this Subsection (10), the seller shall report and remit a tax under this chapter:

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

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

(g) For purposes of reporting a recovery of a portion of bad debt under Subsection (10)(f), a seller shall apply amounts received on the bad debt in the following order:

(i) in a proportional amount:

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

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

(ii) to:

(A) interest charges;

## SB0182S01 compared with SB0182

(B) service charges; and

(C) other charges.

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

(i) in accordance with this Subsection (10); and

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

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

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

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

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

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

Section 4. Section **59-12-107.6** is enacted to read:

### **59-12-107.6. Expedited judicial review.**

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

(a) a ~~remote~~ qualified seller's or a noncollecting seller's obligation to pay or collect and remit sales and use tax under Section 59-12-107; or

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

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

(a) makes only a facial challenge to the constitutionality of Section 59-12-107,

## SB0182S01 compared with SB0182

59-12-107.6, or both; and

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

Section 5. Section **59-12-108** is amended to read:

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

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

(i) file a return with the commission:

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

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

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

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

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

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

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

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

(B) files a simplified electronic return.

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

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

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

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

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

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



## SB0182S01 compared with SB0182

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

(vii) a tax under this chapter.

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

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

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

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

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

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

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

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

(ii) for an agreement sales and use tax.

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

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

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

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

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

## SB0182S01 compared with SB0182

and

(III) an agreement sales and use tax; and

(B) 1.31% of the difference between:

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

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

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

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

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

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

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

and

(Cc) an agreement sales and use tax.

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

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

(ii) under:

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

(B) Subsection 59-12-603(1)(a)(i)(A); or

(C) Subsection 59-12-603(1)(a)(i)(B).

(3) A state government entity that is required to remit taxes monthly in accordance with Subsection (1) may not retain any amount under Subsection (2).

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

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

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

(5) (a) Subject to Subsections (5)(b) through (d), a seller that voluntarily collects and

## SB0182S01 compared with SB0182

remits a tax in accordance with Subsection 59-12-107(2)(~~e~~)(e)(i) may retain an amount equal to 18% of any amounts the seller would otherwise remit to the commission:

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

(ii) for:

(A) an agreement sales and use tax; and

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

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

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

(i) electronic means; or

(ii) a means other than electronic means.

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

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

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

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

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

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

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

(i) the state imposes within a county, city, or town, including the unincorporated area

## SB0182S01 compared with SB0182

of a county; and

(ii) is not imposed within the entire state.

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

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

(1) As used in this section:

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

(A) taking possession of tangible personal property;

(B) making first use of a service; or

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

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

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

(ii) "Receipt" and "receive" do not include possession by a shipping company on behalf

of a purchaser.

(b) "Transportation equipment" means:

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

(ii) a truck or truck-tractor:

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

(B) registered under Section 41-1a-301; and

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

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

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

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

(A) registered under Section 41-1a-301; and

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

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

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

(iv) an aircraft that is operated by an air carrier authorized and certificated:

(A) by the United States Department of Transportation or another federal or foreign

## SB0182S01 compared with SB0182

authority; and

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

(v) a container designed for use on, or a component part attached or secured on, an item of equipment listed in Subsections (1)(b)(i) through (iv).

(2) Except as provided in Subsections (8) and (14), if tangible personal property, a product transferred electronically, or a service that is subject to taxation under this chapter is received by a purchaser at a business location of a seller, the location of the transaction is the business location of the seller.

(3) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11), and (14), if tangible personal property, a product transferred electronically, or a service that is subject to taxation under this chapter is not received by a purchaser at a business location of a seller, the location of the transaction is the location where the purchaser takes receipt of the tangible personal property or service.

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

(a) the address or other information is available from the seller's business records; and

(b) use of the address or other information from the seller's records does not constitute bad faith.

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

(i) the address is obtained during the consummation of the transaction; and

(ii) use of the address described in Subsection (5)(a)(i) does not constitute bad faith.

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

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

(a) indicated by the address from which:

## **SB0182S01 compared with SB0182**

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

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

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

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

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

(ii) associated with the mobile telephone number.

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

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

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

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

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

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

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

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

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

(ii) notwithstanding Subsection (7)(b), for determining the local taxing jurisdiction

## SB0182S01 compared with SB0182

within which a transaction is located if a seller is unable to determine the local taxing jurisdiction within which the transaction is located under Subsection (7)(b).

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

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

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

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

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

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

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

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

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

(i) by:

(A) telegraph;

(B) telephone; or

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

(ii) for delivery to another place:

(A) in this state; or

## SB0182S01 compared with SB0182

(B) outside this state.

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

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

(i) define:

(A) "business location"; and

(B) "florist";

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

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

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

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

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

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

(14) This section does not apply to:

(a) amounts charged by a seller for:

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

(ii) the retail sale or transfer of:

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

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



## SB0182S01 compared with SB0182

- (C) a watercraft;
- (D) a modular home;
- (E) a manufactured home; or
- (F) a mobile home; or
- (iii) except as provided in Section 59-12-214, the lease or rental of tangible personal property other than tangible personal property that is transportation equipment;
- (b) a tax a person pays in accordance with Subsection 59-12-107(2)[~~(e)~~](h); or
- (c) a retail sale of tangible personal property or a product transferred electronically if:
  - (i) the seller receives the order for the tangible personal property or product transferred electronically in this state;
  - (ii) receipt of the tangible personal property or product transferred electronically by the purchaser or the purchaser's donee occurs in this state;
  - (iii) the location where receipt of the tangible personal property or product transferred electronically by the purchaser occurs is determined in accordance with Subsections (3) through (5); and
  - (iv) at the time the seller receives the order, the record keeping system that the seller uses to calculate the proper amount of tax imposed under this chapter captures the location where the order is received.

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

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

- (1) Subject to Subsection (2), a person that is required by Subsection 59-12-107(2)[~~(e)~~](h) to pay a use tax on a transaction shall report the location of that transaction at the person's location.
- (2) For purposes of Subsection (1), if a person has more than one location in this state, the person shall report the location of the transaction at the location at which tangible personal property, a product transferred electronically, or a service is received.

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

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

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

## SB0182S01 compared with SB0182

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

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

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

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

(A) be less than \$500; or

(B) exceed \$1,000.

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

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

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

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

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

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

(B) exceed \$5,000.

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

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

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

(B) exceed \$25,000.

## SB0182S01 compared with SB0182

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

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

(I) a return;

(II) an affidavit;

(III) a claim; or

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

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

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

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

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

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

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

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

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

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

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

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

(iii) This Subsection (1)(e) applies:

(A) regardless of whether the person for which the document described in Subsection (1)(e)(i)(A) is prepared or presented:

(I) knew of the falsity of the document described in Subsection (1)(e)(i)(A); or

(II) consented to the falsity of the document described in Subsection (1)(e)(i)(A); and

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

(iv) Notwithstanding Section 76-3-301, for purposes of this Subsection (1)(e), the

## SB0182S01 compared with SB0182

penalty may not:

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

(B) exceed \$25,000.

(v) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Tax Commission may make rules prescribing the documents that are similar to Subsections (1)(e)(i)(A)(I) through (III).

(2) The statute of limitations for prosecution for a violation of this section is the later of six years:

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

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

**Section 9. Severability clause.**

The provisions of this bill are severable. If any provision of this bill, or the application of any provision to any person or circumstance, is held invalid by a final decision of a court of competent jurisdiction, the remainder of this bill shall be given effect without the invalid provision or application.

**Section 10. Effective date.**

This bill takes effect on July 1, 2016.

†

**Legislative Review Note**

**Office of Legislative Research and General Counsel**