

1 **SALES TAX NOTIFICATION AMENDMENTS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

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

5 House Sponsor: _____

6

7 **LONG TITLE**

8 **General Description:**

9 This bill adds provisions to the Sales and Use Tax Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
 - 13 ▶ imposes notice and reporting requirements for certain purchases; and
 - 14 ▶ provides for penalties and other means of enforcement for failure to comply with
- 15 the notice and reporting requirements.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 This bill provides a special effective date.

20 **Utah Code Sections Affected:**

21 ENACTS:

22 **59-12-107.6**, Utah Code Annotated 1953

23

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

25 Section 1. Section **59-12-107.6** is enacted to read:

26 **59-12-107.6. Definitions -- Noncollecting seller report to Utah purchaser --**

27 **Noncollecting seller report to the commission -- Rulemaking authority -- Penalties --**



28 **Effective date.**

29 (1) As used in this part:

30 (a) "Billing address" means the address associated with the credit card, debit card, or
31 other form of payment used by a person to make a purchase of a remote good or service.

32 (b) "Noncollecting seller" means a person that:

33 (i) made, during the previous calendar year, \$100,000 or more in aggregate sales of
34 remote goods or services to persons located in the state;

35 (ii) ships or transfers remote goods or services into the state for storage, use, or
36 consumption in the state; and

37 (iii) does not collect and remit a sales and use tax under this chapter.

38 (c) "Remote good or service" means:

39 (i) tangible personal property transferred from outside the state into the state, except
40 VHS tapes, DVDs, Blu-Ray disks, or other video materials to the extent that disclosure of the
41 purchasers of these items would violate 18 U.S.C. Sec. 2710;

42 (ii) a product transferred electronically from outside the state into the state, except
43 video materials to the extent that disclosure of the purchasers of the video materials would
44 violate 18 U.S.C. Sec. 2710;

45 (iii) a service purchased from outside the state to be performed in the state; or

46 (iv) a service performed outside the state on:

47 (A) tangible personal property transferred from the state that is returned to the state
48 after the service is performed;

49 (B) a product transferred electronically from the state that is returned to the state after
50 the service is performed; or

51 (C) tangible personal property that a service provider accesses electronically from
52 outside the state.

53 (d) "Shipping address" means the address to which a remote good or service is
54 delivered.

55 (e) "Utah purchaser" means a person that:

56 (i) (A) makes a purchase from a noncollecting seller using a billing address within the
57 state; or

58 (B) if a billing address is not provided as part of the purchase transaction, uses a

59 shipping address within the state; and

60 (ii) buys or receives, from a noncollecting seller, one or more remote goods or services.

61 (2) (a) Except as provided in Subsection (5), for each purchase transaction with a Utah
62 purchaser, a noncollecting seller shall notify a Utah purchaser that:

63 (i) sales and use tax is due under this chapter on a remote good or service purchased
64 from the noncollecting seller, unless the remote good or service is not subject to sales and use
65 tax under this chapter;

66 (ii) a remote good or service is not exempt or excluded from Utah sales and use tax
67 merely because the Utah purchaser made the purchase through the Internet, a catalog, or other
68 remote means;

69 (iii) the noncollecting seller has not collected and remitted sales and use tax due under
70 this chapter on the Utah purchaser's purchase; and

71 (iv) Utah law may require the Utah purchaser to report and pay the sales and use tax to
72 the commission on the Utah purchaser's Utah sales and use tax return or individual income tax
73 return.

74 (b) The notice described in Subsection (2)(a) may include:

75 (i) a notice that Utah law requires the noncollecting seller to send an annual summary
76 of the Utah purchaser's purchases from the noncollecting seller if the Utah purchaser buys more
77 than \$500 in remote goods or services from the noncollecting seller during a calendar year;

78 (ii) a notice that Utah law requires the noncollecting seller to provide, to the
79 commission, an annual statement that contains the name, billing and shipping addresses, and
80 total dollar amount of each Utah purchaser's annual purchases from the noncollecting seller but
81 that no other details of the purchase transactions may be disclosed; and

82 (iii) a referral to the commission's website, tax.utah.gov, for details on how and when
83 to remit any Utah sales and use tax that is due.

84 (c) (i) A noncollecting seller shall provide the notice described in Subsection (2)(a) at
85 the time of the purchase or with the delivery of the remote good or service:

86 (A) in a manner that is clearly legible and reasonably prominent;

87 (B) in close proximity to the total price; and

88 (C) in addition to the location described in Subsection (2)(c)(i)(B), in close proximity
89 to any indication that no sales and use tax is due on the purchase transaction.

90 (ii) A noncollecting seller may choose whether to provide the notice described in
91 Subsection (2)(a) electronically or in hard copy, but the noncollecting seller shall retain proof
92 of the contents and delivery of the notice for the time period in which an assessment may be
93 made under Section [59-1-1408](#).

94 (3) (a) (i) Except as provided in Subsection (5), on or before January 31, a
95 noncollecting seller shall send a notice to each Utah purchaser that purchased a total of \$500 or
96 more in remote goods or services from the noncollecting seller in the previous calendar year.

97 (ii) In identifying which Utah purchasers made purchases of \$500 or more in remote
98 goods or services, the noncollecting seller shall make commercially reasonable business efforts
99 to identify multiple purchases by the same Utah purchaser.

100 (b) The notice described in Subsection (3)(a)(i) shall include:

101 (i) the name of the noncollecting seller that sold the remote good or service to the Utah
102 purchaser;

103 (ii) for each purchase transaction:

104 (A) the date of the purchase;

105 (B) a description of the type of remote goods or services purchased; and

106 (C) the amount of the purchase;

107 (iii) a statement that sales and use tax is due under this chapter on any purchase of a
108 remote good or service from the noncollecting seller, unless the remote good or service is not
109 subject to sales and use tax under this chapter;

110 (iv) a statement that Utah law may require the Utah purchaser to report and pay the
111 sales and use tax to the commission on the Utah purchaser's Utah sales and use tax return or
112 individual income tax return; and

113 (v) a notice that Utah law requires the noncollecting seller to provide, to the
114 commission, an annual statement that contains the name, billing and shipping addresses, and
115 total dollar amount of each Utah purchaser's annual purchases from the noncollecting seller but
116 that no other details of the purchase transactions may be disclosed.

117 (c) The notice may include the following information:

118 (i) a referral to the commission's website, tax.utah.gov, for details on how and when to
119 remit any sales and use tax that is due; and

120 (ii) an indication, if reasonably known to the noncollecting seller, about whether the

121 purchase is subject to Utah sales and use tax.

122 (d) (i) A noncollecting seller shall send the notice described in Subsection (3)(a)(i)
123 separate from any other shipment:

124 (A) by first class or certified mail to the Utah purchaser's last-known billing address, or
125 if a billing address is not provided as part of the purchase transaction, to the Utah purchaser's
126 last-known shipping address; or

127 (B) through electronic means that are reasonably expected to reach the Utah purchaser.

128 (ii) The words "Important Tax Document Enclosed" shall appear on the exterior of the
129 mailing.

130 (4) (a) Except as provided in Subsection (5), on or before March 1, a noncollecting
131 seller shall file with the commission an annual statement, stating for each Utah purchaser that
132 purchased a remote good or service from the noncollecting seller during the previous calendar
133 year:

134 (i) the Utah purchaser's name;

135 (ii) if available to the noncollecting seller, the Utah purchaser's billing and shipping
136 addresses; and

137 (iii) the total dollar amount of each purchase.

138 (b) The annual statement described in Subsection (4)(a) may not include purchases or
139 rentals of VHS tapes, DVDs, Blu-Ray disks, or other video materials to the extent that
140 disclosure of the purchasers of these items would violate 18 U.S.C. Sec. 2710.

141 (c) Except as provided in Subsections (4)(b) and (5), the noncollecting seller shall
142 include in the annual statement required by this Subsection (4) the information described in
143 Subsection (4)(a) for each Utah purchaser, including a Utah purchaser to which the
144 noncollecting seller was not required to send notice under Subsection (3).

145 (5) The provisions of this section do not apply to a noncollecting seller that:

146 (a) only sells remote goods or services that are not taxable in Utah; or

147 (b) only sells remote goods or services to Utah purchasers that are not subject to the
148 sales and use tax under this chapter.

149 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
150 commission may make rules regarding the form and method of delivering the notices and
151 annual statement.

152 (7) (a) Subject to Subsection (7)(b), a noncollecting seller that fails to comply with the
153 provisions of this section is subject to the following penalties:

154 (i) for failure to provide the notice described in Subsection (2)(a), a penalty of \$5 per
155 failure to provide the notice;

156 (ii) for failure to provide the notice described in this Subsection (3)(a)(i), a penalty of
157 \$10 per failure to provide the notice; and

158 (iii) for failure to provide the annual statement described in Subsection (4)(a), a penalty
159 of \$10 per Utah purchaser that was required to be, but was not, included in the annual
160 statement.

161 (b) (i) (A) The maximum single-year penalty assessed under Subsection (7)(a)(i)
162 against a noncollecting seller that has no actual knowledge of the notice required under
163 Subsection (2)(a) and that begins sending the required notices within 60 days after the day on
164 which the commission demands, in writing, that the noncollecting seller comply with this
165 section is \$5,000.

166 (B) The maximum single-year penalty assessed under Subsection (7)(a)(i) against a
167 noncollecting seller, other than a noncollecting seller described in Subsection (7)(b)(i)(A), is
168 \$50,000.

169 (ii) (A) The maximum single-year penalty assessed under Subsection (7)(a)(ii) against
170 a noncollecting seller that sends the notices required by Subsection (3)(a)(i) on or before March
171 1 is \$1,000.

172 (B) The maximum single-year penalty assessed under Subsection (7)(a)(ii) against a
173 noncollecting seller, other than a noncollecting seller described in Subsection (7)(b)(ii)(A), that
174 has no actual knowledge of the notice required under Subsection (3)(a)(i) and that begins
175 sending the notices within 60 days after the day on which the commission demands, in writing,
176 that the noncollecting seller comply with this section is \$10,000.

177 (C) The maximum single-year penalty assessed under Subsection (7)(a)(ii) against a
178 noncollecting seller other than a noncollecting seller described in Subsection (7)(b)(ii)(A) or
179 (B) is \$100,000.

180 (iii) (A) The maximum single-year penalty assessed under Subsection (7)(a)(iii) against
181 a noncollecting seller that sends the statement required by Subsection (4)(a) on or before March
182 1 is \$1,000.

183 (B) The maximum single-year penalty assessed under Subsection (7)(a)(iii) against a
184 noncollecting seller, other than a noncollecting seller described in Subsection (7)(b)(iii)(A),
185 that has no actual knowledge of the statement required under Subsection (4)(a) and that files
186 the statement within 60 days after the day on which the commission demands, in writing, that
187 the noncollecting seller comply with this section is \$10,000.

188 (C) The maximum single-year penalty assessed under Subsection (7)(a)(iii) against a
189 noncollecting seller other than a noncollecting seller described in Subsection (7)(b)(iii)(A) or
190 (B) is \$100,000.

191 (c) The commission may waive, reduce, or compromise any penalties or interest in
192 accordance with Subsection [59-1-401\(14\)](#).

193 Section 2. **Effective date.**

194 This bill takes effect on July 1, 2017.

Legislative Review Note
Office of Legislative Research and General Counsel