

Senator Wayne A. Harper proposes the following substitute bill:

SALES TAX NOTIFICATION AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Mike K. McKell

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ imposes notice and reporting requirements on certain sellers that do not collect and remit sales and use tax for certain purchases;
- ▶ describes the contents of the notices and annual report; and
- ▶ provides the penalties for failure to comply with the notice and reporting requirements.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

ENACTS:

59-12-107.6, Utah Code Annotated 1953



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

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

28 **59-12-107.6. Definitions -- Noncollecting seller report to Utah purchaser --**

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

30 **Effective date.**

31 (1) As used in this part:

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

34 (b) "Good or service" means:

35 (i) tangible personal property, except VHS tapes, DVDs, Blu-Ray disks, or other video
36 materials to the extent that disclosure of the purchasers of these items would violate 18 U.S.C.
37 Sec. 2710;

38 (ii) a product transferred electronically, except video materials to the extent that
39 disclosure of the purchasers of the video materials would violate 18 U.S.C. Sec. 2710; or

40 (iii) a service that is taxable under this chapter.

41 (c) "Noncollecting seller" means a person that:

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

44 (ii) ships or transfers goods or services into the state for storage, use, or consumption in
45 the state; and

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

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

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

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

51 (B) if a billing address is not provided as part of the purchase transaction, uses a
52 shipping address within the state; and

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

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

56 (i) sales and use tax is due under this chapter on a good or service purchased from the

57 noncollecting seller, unless the good or service is not subject to sales and use tax under this
58 chapter;

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

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

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

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

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

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

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

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

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

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

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

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

87 (3) (a) (i) Except as provided in Subsection (5), on or before January 31, a

88 noncollecting seller shall send a notice to each Utah purchaser that purchased a total of \$500 or
89 more in goods or services from the noncollecting seller in the previous calendar year.

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

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

94 (i) the name of the noncollecting seller that sold the good or service to the Utah
95 purchaser;

96 (ii) for each purchase transaction:

97 (A) the date of the purchase;

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

99 (C) the amount of the purchase;

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

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

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

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

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

113 (ii) an indication, if reasonably known to the noncollecting seller, about whether the
114 purchase is subject to Utah sales and use tax.

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

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

119 last-known shipping address; or

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

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

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

126 (i) the Utah purchaser's name;

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

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

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

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

137 (d) The noncollecting seller shall file the annual statement required by this Subsection
138 (4) with the commission in an electronic format approved by the commission.

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

140 (a) sells only goods or services that are tangible personal property or products
141 transferred electronically that are not subject to sales and use tax under this chapter; or

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

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

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

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

150 failure to provide the notice;

151 (ii) for failure to provide the notice described in this Subsection (3)(a)(i), a penalty of
152 \$10 per failure to provide the notice; and

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

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

161 (B) The maximum single-year penalty assessed under Subsection (7)(a)(i) against a
162 noncollecting seller, other than a noncollecting seller described in Subsection (7)(b)(i)(A), is
163 \$50,000.

164 (ii) (A) The maximum single-year penalty assessed under Subsection (7)(a)(ii) against
165 a noncollecting seller that sends the notices required by Subsection (3)(a)(i) on or before March
166 1 is \$1,000.

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

172 (C) 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) or
174 (B) is \$100,000.

175 (iii) (A) The maximum single-year penalty assessed under Subsection (7)(a)(iii) against
176 a noncollecting seller that sends the statement required by Subsection (4)(a) on or before March
177 1 is \$1,000.

178 (B) The maximum single-year penalty assessed under Subsection (7)(a)(iii) against a
179 noncollecting seller, other than a noncollecting seller described in Subsection (7)(b)(iii)(A),
180 that has no actual knowledge of the statement required under Subsection (4)(a) and that files

181 the statement within 60 days after the day on which the commission demands, in writing, that
182 the noncollecting seller comply with this section is \$10,000.

183 (C) 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) or
185 (B) is \$100,000.

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

188 Section 2. **Effective date.**

189 This bill takes effect on July 1, 2017.