

## SB0083S01 compared with SB0083

~~text~~ shows text that was in SB0083 but was deleted in SB0083S01.

Inserted text shows text that was not in SB0083 but was inserted into SB0083S01.

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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: \_\_\_\_\_

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#### 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 ~~for~~the penalties ~~and other means of enforcement~~ for failure to comply with the notice and reporting requirements.

##### Money Appropriated in this Bill:

None

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### Other Special Clauses:

This bill provides a special effective date.

### Utah Code Sections Affected:

ENACTS:

59-12-107.6, Utah Code Annotated 1953

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

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

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

**Noncollecting seller report to the commission -- Rulemaking authority -- Penalties --  
Effective date.**

(1) As used in this part:

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

(b) "{Noncollecting seller} means a person that:

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

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

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

—— (c) "Remote good}{Good} or service" means:

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

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

(iii) a service {purchased from outside the state to be performed}{that is taxable under this chapter.

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

(i) made, during the previous calendar year, \$100,000 or more in aggregate sales of

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goods or services to persons located in the state; ~~{ or }~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) Utah law may require the Utah purchaser to report and pay the sales and use tax to

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the commission on the Utah purchaser's Utah sales and use tax return or individual income tax return.

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

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

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

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

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

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

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

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

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

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

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

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

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

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(ii) for each purchase transaction:

(A) the date of the purchase;

(B) a description of the type of [{remote}](#) goods or services purchased; and

(C) the amount of the purchase;

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

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

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

(c) The notice may include the following information:

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

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

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

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

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

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

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

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(i) the Utah purchaser's name;

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

(iii) the total dollar amount of each purchase.

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

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

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

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

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

~~(b) only sells remote~~ tangible personal property or products transferred electronically that are not subject to sales and use tax under this chapter; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The commission may waive, reduce, or compromise any penalties or interest in

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accordance with Subsection 59-1-401(14).

Section 2. **Effective date.**

This bill takes effect on July 1, 2017.

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**Legislative Review Note**

**Office of Legislative Research and General Counsel†**