

Senator Wayne A. Harper proposes the following substitute bill:

SALES AND USE TAX MODIFICATIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Steve Eliason

LONG TITLE

General Description:

This bill amends provisions related to sales and use taxes.

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a severability clause.

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

59-1-401, as last amended by Laws of Utah 2015, Chapter 369



- 26 [59-12-103.1](#), as last amended by Laws of Utah 2016, Chapter 135
- 27 [59-12-107](#), as last amended by Laws of Utah 2012, Chapters 178, 312, and 399
- 28 [59-12-108](#), as last amended by Laws of Utah 2013, Chapter 50
- 29 [59-12-211](#), as last amended by Laws of Utah 2012, Chapter 312
- 30 [59-12-211.1](#), as last amended by Laws of Utah 2012, Chapter 312
- 31 [76-8-1101](#), as last amended by Laws of Utah 2014, Chapter 52
- 32 [78A-3-102](#), as last amended by Laws of Utah 2009, Chapter 344

33 ENACTS:

34 [59-12-107.6](#), Utah Code Annotated 1953



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

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

38 **59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute**
39 **of limitations -- Commission authority to waive, reduce, or compromise penalty or**
40 **interest.**

41 (1) As used in this section:

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

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

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

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

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

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

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

56 [~~(b) "Activation date for a tax, fee, or charge" means with respect to a tax, fee, or~~

57 charge, the later of:]

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

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

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

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

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

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

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

68 [(V)] (D) Section 19-6-410.5;

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

70 [(V)] (F) Section 19-6-805;

71 [(V)] (G) Section 32B-2-304;

72 [(V)] (H) Section 34A-2-202;

73 [(X)] (I) Section 40-6-14;

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

75 [(X)] (K) Section 69-2-5.5; or

76 [(X)] (L) Section 69-2-5.6; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

112 (i) an amended return; or

113 (ii) a return with no tax due.

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

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

118 (ii) the person:

119 (A) is subject to a penalty under Subsection (2)(b); and
120 (B) fails to pay the tax, fee, or charge due on a return within a 90-day period after the
121 due date for filing a return described in Subsection (2)(a);
122 (iii) (A) the person is subject to a penalty under Subsection (2)(b); and
123 (B) the commission estimates an amount of tax due for that person in accordance with
124 Subsection 59-1-1406(2);
125 (iv) the person:
126 (A) is mailed a notice of deficiency; and
127 (B) within a 30-day period after the day on which the notice of deficiency described in
128 Subsection (3)(a)(iv)(A) is mailed:
129 (I) does not file a petition for redetermination or a request for agency action; and
130 (II) fails to pay the tax, fee, or charge due on a return;
131 (v) (A) the commission:
132 (I) issues an order constituting final agency action resulting from a timely filed petition
133 for redetermination or a timely filed request for agency action; or
134 (II) is considered to have denied a request for reconsideration under Subsection
135 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed
136 request for agency action; and
137 (B) the person fails to pay the tax, fee, or charge due on a return within a 30-day period
138 after the ~~[date]~~ day on which the commission:
139 (I) issues the order constituting final agency action described in Subsection
140 (3)(a)(v)(A)(I); or
141 (II) is considered to have denied the request for reconsideration described in
142 Subsection (3)(a)(v)(A)(II); or
143 (vi) the person fails to pay the tax, fee, or charge within ~~[a 30-day period]~~ 30 days after
144 the ~~[date of]~~ day on which a court issues a final judicial decision resulting from a timely filed
145 petition for judicial review.
146 (b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:
147 ~~[(i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with~~
148 ~~respect to an unactivated tax, fee, or charge:]~~
149 ~~[(A) \$20; or]~~

150 ~~[(B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or]~~
151 ~~[(ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with~~
152 ~~respect to an activated tax, fee, or charge, beginning on the activation date:]~~
153 ~~[(A)] (i) \$20; or~~
154 ~~[(B) (F)] (ii) (A) 2% of the unpaid [activated] tax, fee, or charge due on the return if the~~
155 ~~[activated] tax, fee, or charge due on the return is paid no later than five days after the due date~~
156 ~~for filing a return described in Subsection (2)(a);~~
157 ~~[(H)] (B) 5% of the unpaid [activated] tax, fee, or charge due on the return if the~~
158 ~~[activated] tax, fee, or charge due on the return is paid more than five days after the due date~~
159 ~~for filing a return described in Subsection (2)(a) but no later than 15 days after that due date; or~~
160 ~~[(H)] (C) 10% of the unpaid [activated] tax, fee, or charge due on the return if the~~
161 ~~[activated] tax, fee, or charge due on the return is paid more than 15 days after the due date for~~
162 ~~filing a return described in Subsection (2)(a).~~
163 (4) (a) Beginning January 1, 1995, in the case of any underpayment of estimated tax or
164 quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104, there
165 shall be added a penalty in an amount determined by applying the interest rate provided under
166 Section 59-1-402 plus four percentage points to the amount of the underpayment for the period
167 of the underpayment.
168 (b) (i) For purposes of Subsection (4)(a), the amount of the underpayment shall be the
169 excess of the required installment over the amount, if any, of the installment paid on or before
170 the due date for the installment.
171 (ii) The period of the underpayment shall run from the due date for the installment to
172 whichever of the following dates is the earlier:
173 (A) the original due date of the tax return, without extensions, for the taxable year; or
174 (B) with respect to any portion of the underpayment, the date on which that portion is
175 paid.
176 (iii) For purposes of this Subsection (4), a payment of estimated tax shall be credited
177 against unpaid required installments in the order in which the installments are required to be
178 paid.
179 (5) (a) Notwithstanding Subsection (2) and except as provided in Subsection (6), a
180 person allowed by law an extension of time for filing a corporate franchise or income tax return

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

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

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

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

192 (6) If a person does not file a return within an extension of time allowed by Section
193 59-7-505 or 59-10-516, the person:

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

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

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

197 (A) \$20; or

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

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

201 (A) \$20; or

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

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

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

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

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

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

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

219 (i) The notice of proposed penalty shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

243 59-12-107(2)(b) or (d); and

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

246 (ii) the commission issues a final₂ unappealable administrative order determining that:

247 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
248 or is a seller required to pay or collect and remit sales and use taxes under Subsection
249 59-12-107(2)(b) or (d); and

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

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

254 (i) (A) a court of competent jurisdiction issues a final₂ unappealable judgment or order
255 determining that:

256 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
257 or is a seller required to pay or collect and remit sales and use taxes under Subsection
258 59-12-107(2)(b) or (d); and

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

261 (B) the commission issues a final₂ unappealable administrative order determining that:

262 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
263 or is a seller required to pay or collect and remit sales and use taxes under Subsection
264 59-12-107(2)(b) or (d); and

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

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

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

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

274 be subject to a penalty under Subsection (8)(a).

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

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

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

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

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

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

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

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

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

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

298 (A) a return;

299 (B) an affidavit;

300 (C) a claim; or

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

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

304 (iii) knows that the document described in Subsection (11)(a)(i), if used in connection

305 with any material matter administered by the commission, would result in an understatement of
306 another person's liability for a tax, fee, or charge.

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

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

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

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

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

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

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

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

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

320 (i) shall be imposed by the commission;

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

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

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

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

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

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

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

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

336 ~~B-misdemeanor~~].

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

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

340 (B) exceed \$1,000.

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

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

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

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

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

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

352 (B) exceed \$5,000.

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

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

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

359 (B) exceed \$25,000.

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

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

363 (I) a return;

364 (II) an affidavit;

365 (III) a claim; or

366 (IV) a document similar to Subsections (12)(e)(i)(A)(I) through (III); and

367 (B) subject to Subsection (12)(e)(iii), with knowledge that the document described in
368 Subsection (12)(e)(i)(A):

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

370 (II) could be used in connection with any material matter administered by the
371 commission.

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

373 (A) preparing any portion of a document described in Subsection (12)(e)(i)(A);

374 (B) presenting any portion of a document described in Subsection (12)(e)(i)(A);

375 (C) procuring any portion of a document described in Subsection (12)(e)(i)(A);

376 (D) advising in the preparation or presentation of any portion of a document described
377 in Subsection (12)(e)(i)(A);

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

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

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

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

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

387 (I) knew of the falsity of the document described in Subsection (12)(e)(i)(A); or

388 (II) consented to the falsity of the document described in Subsection (12)(e)(i)(A); and

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

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

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

393 (B) exceed \$25,000.

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

396 (vi) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
397 the commission may make rules prescribing the documents that are similar to Subsections

398 (12)(e)(i)(A)(I) through (III).

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

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

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

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

406 (i) fails to file the form with the commission in an electronic format approved by the
407 commission as required by Subsection 59-10-406(8);

408 (ii) fails to file the form on or before the due date provided in Subsection 59-10-406(8);

409 (iii) fails to provide accurate information on the form; or

410 (iv) fails to provide all of the information required by the Internal Revenue Service to
411 be contained on the form.

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

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

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

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

421 (A) files the form in accordance with Subsection 59-10-406(8) after June 1; or

422 (B) fails to file the form.

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

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

427 **59-12-103.1. Action by Supreme Court of the United States authorizing or action**
428 **by Congress permitting a state to require certain sellers to collect a sales or use tax --**

429 **Collection of tax by commission -- Commission report to Revenue and Taxation Interim**
430 **Committee -- Revenue and Taxation Interim Committee study -- Division of Finance**
431 **requirement to make certain deposits.**

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

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

436 (i) a seller that does not meet one or more of the criteria described in Subsection
437 59-12-107(2)(a); or

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

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

442 (i) a seller that does not meet one or more of the criteria described in Subsection
443 59-12-107(2)(a); or

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

446 (2) The commission shall:

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

448 (i) to the extent:

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

450 (B) permitted by Congress; and

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

453 (b) make a report to the Revenue and Taxation Interim Committee by electronic
454 means:

455 (i) regarding the actions taken by:

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

457 (B) Congress; and

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

459 and

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

462 (c) report to the Revenue and Taxation Interim Committee at:

463 (i) the Revenue and Taxation Interim Committee meeting immediately following the
464 day on which the actions of the Supreme Court of the United States or Congress become
465 effective; and

466 (ii) any other meeting of the Revenue and Taxation Interim Committee as requested by
467 the chairs of the committee.

468 (3) The Revenue and Taxation Interim Committee shall after receiving the
469 commission's reports under Subsections (2)(b) and (c):

470 (a) review the actions taken by:

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

472 (ii) Congress;

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

475 (c) within a one-year period after the day on which the commission makes a report
476 under Subsection (2)(c), make recommendations to the Legislative Management Committee[
477 (†)] regarding whether as a result of the actions of the Supreme Court of the United States or
478 Congress any provisions of this chapter should be amended or repealed[~~and~~].

479 [~~(ii) within a one-year period after the day on which the commission makes a report~~
480 ~~under Subsection (2)(c).~~]

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

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

484 **59-12-107. Definitions -- Collection, remittance, and payment of tax by sellers or**
485 **other persons -- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other**
486 **liability for collection -- Rulemaking authority -- Credits -- Treatment of bad debt --**
487 **Penalties and interest.**

488 (1) As used in this section:

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

- 491 (a) "Noncollecting seller" means a qualified seller that:
492 (i) does not voluntarily collect and remit sales and use tax under this chapter; and
493 (ii) during the 12-month period immediately preceding the current month, makes sales
494 totaling \$100,000 or more of tangible personal property, products transferred electronically, or
495 services:
496 (A) for storage, use, or consumption in the state; and
497 (B) as a result of an agreement with one or more persons that meet one or more of the
498 criteria described in Subsection (2)(a), under which the person or persons, for a commission or
499 other consideration, directly or indirectly makes a referral to the noncollecting seller of a
500 potential purchaser of tangible personal property, products transferred electronically, or
501 services for storage, use, or consumption in the state.
- 502 (b) "Qualified seller" means a seller that is not required to pay or collect and remit
503 sales and use taxes under Subsection (2)(a).
- 504 (c) "Referral" means the act of sending a potential purchaser in the state to a
505 noncollecting seller by:
506 (i) an Internet-based link;
507 (ii) an Internet website;
508 (iii) telemarketing;
509 (iv) catalog;
510 (v) in-person marketing; or
511 (vi) other means similar to the means described in Subsections (1)(c)(i) through (v), as
512 the commission may define by rule made in accordance with Title 63G, Chapter 3, Utah
513 Administrative Rulemaking Act.
- 514 (d) "Registered remitter" means a seller that is:
515 (i) registered under the agreement;
516 (ii) not required to pay or collect and remit sales and use tax under Subsection (2)(a),
517 (b), or (d); and
518 (iii) is not a model 1, model 2, or model 3 seller.
- 519 ~~[(b)]~~ (e) "Related [seller] party" means a [seller that] person:
520 (i) ~~that~~ meets one or more of the criteria described in Subsection (2)(a)~~[(i)]~~; and
521 ~~[(ii)] delivers tangible personal property, a service, or a product transferred~~

522 electronically that is sold:]

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

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

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

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

531 (f) "Service" means a service that is taxable under this chapter.

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

536 (2) (a) Except as provided in Subsection (2)[~~(e)~~](h), Section 59-12-107.1, or Section
537 59-12-123, and subject to Subsection (2)[~~(f)~~](g), each seller shall pay or collect and remit the
538 sales and use taxes imposed by this chapter if within this state the seller:

539 (i) has or utilizes:

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

541 (B) a distribution house;

542 (C) a sales house;

543 (D) a warehouse or other storage place;

544 (E) a service enterprise; or

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

546 (ii) maintains a stock of goods;

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

549 (A) advertising; or

550 (B) solicitation by:

551 (I) direct mail;

552 (II) electronic mail;

553 (III) except as provided in Subsection (2)(d), the Internet;
554 (IV) telecommunications service; or
555 (V) a means similar to Subsection (2)(a)(iii)(A) or (B);
556 (iv) regularly engages in the delivery of property in the state other than by:
557 (A) common carrier; or
558 (B) United States mail; or
559 (v) regularly engages in an activity directly related to the leasing or servicing of
560 property located within the state.

561 (b) ~~[A] There is a rebuttable presumption that a qualified seller [is considered to be~~
562 ~~engaged in the business of selling tangible personal property, a service, or a product transferred~~
563 ~~electronically for use in the state, and shall] is required to pay or collect and remit the sales and~~
564 ~~use taxes imposed by this chapter [if] for a sale within the state if a related party:~~
565 ~~[(i) the seller holds a substantial ownership interest in, or is owned in whole or in~~
566 ~~substantial part by, a related seller; and (ii) (A) the seller]~~

567 (i) sells the same or a substantially similar line of products or services as the [related]
568 qualified seller and [does so] sells under the same or a substantially similar business name as
569 the qualified seller; [or]

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

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

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

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

583 (vi) shares management, business systems, or employees with the qualified seller, or

584 engages in intercompany transactions with a qualified seller, for the purpose of the qualified
585 seller being able to establish or maintain a market in the state.

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

590 (d) (i) Subject to the provisions of this Subsection (2)(d), there is a rebuttable
591 presumption that a noncollecting seller is required to pay or collect and remit the sales and use
592 tax on any sale the noncollecting seller makes, through an agreement, with a person that meets
593 one or more of the criteria described in Subsection (2)(a), to a purchaser in the state.

594 (ii) A noncollecting seller may rebut the presumption described in Subsection (2)(d)(i)
595 by proving, in accordance with Subsection (2)(d)(iii), that any person with which the
596 noncollecting seller has an agreement has not engaged in a referral within the state on behalf of
597 the noncollecting seller during the preceding 12 months.

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

600 (A) proof that any agreement, with a person that meets one or more of the criteria
601 described in Subsection (2)(a), prohibits the person from engaging in solicitation of a potential
602 purchaser on behalf of the noncollecting seller in the state; and

603 (B) from each person that meets one or more of the criteria described in Subsection
604 (2)(a) and with which the noncollecting seller has an agreement, an annual, written, sworn
605 statement that the person did not engage in any prohibited solicitation of a potential purchaser
606 in the state on behalf of the noncollecting seller.

607 (iv) A noncollecting seller that does not rebut the presumption described in Subsection
608 (2)(d)(i) shall pay or collect and remit sales and use tax on any sale that the noncollecting seller
609 makes, though an agreement, to a purchaser in the state.

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

613 (e) (i) Except as provided in Subsection (2)(e)(ii), a seller that is not required to pay or
614 collect and remit sales and use taxes under Subsection (2)(a), (b), or (d) may register as a

615 registered remitter to voluntarily:

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

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

618 (ii) ~~[notwithstanding Subsection (2)(c)(i);]~~ A seller that is not required to pay or collect
619 and remit sales and use tax under Subsection (2)(a), (b), or (d) shall collect a tax on a
620 transaction described in Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to
621 collect the tax.

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

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

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

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

628 (C) Section 19-6-714;

629 (D) Section 19-6-805;

630 (E) Section 69-2-5;

631 (F) Section 69-2-5.5;

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

633 (H) this title; or

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

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

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

637 (C) Section 19-6-714;

638 (D) Section 19-6-805;

639 (E) Section 69-2-5;

640 (F) Section 69-2-5.5;

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

642 (H) this title.

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

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

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

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

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

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

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

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

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

662 (ii) the person:

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

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

666 or

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

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

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

673 (c) (i) Each seller shall:

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

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

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

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

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

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

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

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

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

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

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

704 (D) the date of the purchase.

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

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

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

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

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

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

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

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

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

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

736 (B) Subject to Subsections (4)(e)(ii)(C) and (D), a qualifying purchaser may remit the
737 taxes due under this chapter on tangible personal property for which the qualifying purchaser
738 claims an exemption as allowed under Subsection 59-12-104(23) or (25) based on the period in

739 which the qualifying purchaser receives payment, in accordance with Subsection (4)(e)(ii)(C),
740 for the conversion of the tangible personal property into real property.

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

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

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

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

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

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

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

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

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

767 ~~[(5) (a) As used in this Subsection (5) and Subsection (6)(b), "remote seller" means a~~
768 ~~seller that is:]~~

769 ~~[(i) registered under the agreement;]~~

770 ~~[(ii) described in Subsection (2)(c); and]~~
771 ~~[(iii) not a:]~~
772 ~~[(A) model 1 seller;]~~
773 ~~[(B) model 2 seller; or]~~
774 ~~[(C) model 3 seller.]~~
775 ~~[(b)]~~ (5) (a) (i) Except as provided in Subsection (5)~~[(b)]~~(a)(ii), a tax a ~~[remote seller]~~
776 registered remitter collects in accordance with Subsection (2)~~[(c)]~~(e) is due and payable:
777 (A) to the commission;
778 (B) annually; and
779 (C) on or before the last day of the month immediately following the last day of each
780 calendar year.
781 (ii) The commission may require that a tax a ~~[remote seller]~~ registered remitter collects
782 in accordance with Subsection (2)~~[(c)]~~(e) be due and payable:
783 (A) to the commission; and
784 (B) on the last day of the month immediately following any month in which the ~~[seller]~~
785 registered remitter accumulates a total of at least \$1,000 in agreement sales and use tax.
786 ~~[(c)]~~ (b) (i) If a ~~[remote seller]~~ registered remitter remits a tax to the commission in
787 accordance with Subsection (5)~~[(b)]~~(a), the ~~[remote seller]~~ registered remitter shall file a return:
788 (A) with the commission;
789 (B) with respect to the tax;
790 (C) containing information prescribed by the commission; and
791 (D) on a form prescribed by the commission.
792 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
793 commission shall make rules prescribing:
794 (A) the information required to be contained in a return described in Subsection
795 (5)~~[(c)]~~(b)(i); and
796 (B) the form described in Subsection (5)~~[(c)]~~(b)(i)(D).
797 ~~[(d)]~~ (c) A tax a ~~[remote seller]~~ registered remitter collects in accordance with this
798 Subsection (5) shall be calculated on the basis of the total amount of taxable transactions under
799 Subsection 59-12-103(1) the ~~[remote seller]~~ registered remitter completes, including~~[(i) a cash~~
800 transaction; and (ii) a charge transaction.] cash transactions and charge transactions.

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

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

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

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

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

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

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

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

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

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

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

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

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

829 (b) the person prepaying the sales or use tax is responsible for the collection or
830 payment of the sales or use tax if the person prepaying the sales or use tax represents that the
831 amount prepaid as sales or use tax has not been fully credited against sales or use tax due and

832 payable under the rules promulgated by the commission.

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

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

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

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

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

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

841 (B) a financing charge;

842 (C) interest;

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

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

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

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

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

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

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

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

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

860 (B) the qualifying purchaser's sale of that tangible personal property converted into real
861 property later becomes bad debt; and

862 (C) the books and records that the qualifying purchaser keeps in the qualifying

863 purchaser's regular course of business identify by reasonable and verifiable standards that the
864 tangible personal property was converted into real property.

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

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

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

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

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

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

874 (ii) would be eligible for a bad debt deduction[~~-(A)~~], for federal income tax purposes[~~;~~
875 ~~and (B)~~], if the seller were required to file a federal income tax return.

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

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

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

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

884 (i) in a proportional amount:

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

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

889 (ii) to:

890 (A) interest charges;

891 (B) service charges; and

892 (C) other charges.

893 (h) A seller's certified service provider may make a deduction or claim a refund for bad

894 debt on behalf of the seller[~~(i)~~] in accordance with this Subsection (10)[~~and (ii)~~] if the
895 certified service provider credits or refunds the entire amount of the bad debt deduction or
896 refund to the seller.

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

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

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

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

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

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

911 **59-12-107.6. Expedited judicial review.**

912 (1) Notwithstanding the judicial review procedures described in Chapter 1, Part 6,
913 Judicial Review, any aggrieved party that wishes to make a facial challenge to the
914 constitutionality of Section 59-12-107 shall petition the Utah Supreme Court for judicial
915 review of the commission's final determination of a qualified seller's or a noncollecting seller's
916 obligation to pay or collect and remit sales and use tax under Section 59-12-107.

917 (2) An aggrieved party shall file the petition for judicial review within 30 days after the
918 day on which the commission issues the commission's final determination.

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

920 **59-12-108. Monthly payment -- Amount of tax a seller may retain -- Penalty --**
921 **Certain amounts allocated to local taxing jurisdictions.**

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

924 (i) file a return with the commission:

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

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

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

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

933 (B) if that seller's tax liability under this chapter for the previous calendar year is
934 \$96,000 or more, by electronic funds transfer.

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

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

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

940 (B) files a simplified electronic return.

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

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

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

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

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

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

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

948 (vii) a tax under this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

975 (I) the state tax and the local tax imposed in accordance with Subsection

976 59-12-103(2)(c);

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

978 and

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

980 (B) 1.31% of the difference between:

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

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

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

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

987 (II) the amounts the seller is required to remit to the commission for:
988 (Aa) the state tax and the local tax imposed in accordance with Subsection
989 59-12-103(2)(c);
990 (Bb) the month for which the seller is filing a return in accordance with Subsection (1);
991 and
992 (Cc) an agreement sales and use tax.
993 (d) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain
994 each month 1% of any amounts the seller is required to remit to the commission:
995 (i) for the month for which the seller is filing a return in accordance with Subsection
996 (1); and
997 (ii) under:
998 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
999 (B) Subsection 59-12-603(1)(a)(i)(A); or
1000 (C) Subsection 59-12-603(1)(a)(i)(B).
1001 (3) A state government entity that is required to remit taxes monthly in accordance
1002 with Subsection (1) may not retain any amount under Subsection (2).
1003 (4) A seller that has a tax liability under this chapter for the previous calendar year of
1004 less than \$50,000 may:
1005 (a) voluntarily meet the requirements of Subsection (1); and
1006 (b) if the seller voluntarily meets the requirements of Subsection (1), retain the
1007 amounts allowed by Subsection (2).
1008 (5) (a) Subject to Subsections (5)(b) through (d), a seller that voluntarily collects and
1009 remits a tax in accordance with Subsection 59-12-107(2)[(e)](e)(i) may retain an amount equal
1010 to 18% of any amounts the seller would otherwise remit to the commission:
1011 (i) if the seller obtains a license under Section 59-12-106 for the first time on or after
1012 January 1, 2014; and
1013 (ii) for:
1014 (A) an agreement sales and use tax; and
1015 (B) the time period for which the seller files a return in accordance with this section.
1016 (b) If a seller retains an amount under this Subsection (5), the seller may not retain any
1017 other amount under this section.

1018 (c) If a seller retains an amount under this Subsection (5), the commission may require
1019 the seller to file a return by:

1020 (i) electronic means; or

1021 (ii) a means other than electronic means.

1022 (d) A seller may not retain an amount under this Subsection (5) if the seller is required
1023 to collect or remit a tax under this section in accordance with Section 59-12-103.1.

1024 (6) Penalties for late payment shall be as provided in Section 59-1-401.

1025 (7) (a) Except as provided in Subsection (7)(c), for any amounts required to be remitted
1026 to the commission under this part, the commission shall each month calculate an amount equal
1027 to the difference between:

1028 (i) the total amount retained for that month by all sellers had the percentages listed
1029 under Subsections (2)(b) and (2)(c)(ii) been 1.5%; and

1030 (ii) the total amount retained for that month by all sellers at the percentages listed
1031 under Subsections (2)(b) and (2)(c)(ii).

1032 (b) The commission shall each month allocate the amount calculated under Subsection
1033 (7)(a) to each county, city, and town on the basis of the proportion of agreement sales and use
1034 tax that the commission distributes to each county, city, and town for that month compared to
1035 the total agreement sales and use tax that the commission distributes for that month to all
1036 counties, cities, and towns.

1037 (c) The amount the commission calculates under Subsection (7)(a) may not include an
1038 amount collected from a tax that:

1039 (i) the state imposes within a county, city, or town, including the unincorporated area
1040 of a county; and

1041 (ii) is not imposed within the entire state.

1042 Section 6. Section 59-12-211 is amended to read:

1043 **59-12-211. Definitions -- Location of certain transactions -- Reports to**
1044 **commission -- Direct payment provision for a seller making certain purchases --**
1045 **Exceptions.**

1046 (1) As used in this section:

1047 (a) (i) "Receipt" and "receive" mean:

1048 (A) taking possession of tangible personal property;

- 1049 (B) making first use of a service; or
1050 (C) for a product transferred electronically, the earlier of:
1051 (I) taking possession of the product transferred electronically; or
1052 (II) making first use of the product transferred electronically.
1053 (ii) "Receipt" and "receive" do not include possession by a shipping company on behalf
1054 of a purchaser.
- 1055 (b) "Transportation equipment" means:
1056 (i) a locomotive or rail car that is used to carry a person or property in interstate
1057 commerce;
1058 (ii) a truck or truck-tractor:
1059 (A) with a gross vehicle weight rating of 10,001 pounds or ~~more~~ greater;
1060 (B) registered under Section 41-1a-301; and
1061 (C) operated under the authority of a carrier authorized and certificated:
1062 (I) by the United States Department of Transportation or another federal authority; and
1063 (II) to engage in carrying a person or property in interstate commerce;
1064 (iii) a trailer, semitrailer, or passenger bus that is:
1065 (A) registered under Section 41-1a-301; and
1066 (B) operated under the authority of a carrier authorized and certificated:
1067 (I) by the United States Department of Transportation or another federal authority; and
1068 (II) to engage in carrying a person or property in interstate commerce;
1069 (iv) an aircraft that is operated by an air carrier authorized and certificated:
1070 (A) by the United States Department of Transportation or another federal or foreign
1071 authority; and
1072 (B) to engage in carrying a person or property in interstate commerce; or
1073 (v) a container designed for use on, or a component part attached or secured on, an
1074 item of equipment listed in Subsections (1)(b)(i) through (iv).
- 1075 (2) Except as provided in Subsections (8) and (14), if tangible personal property, a
1076 product transferred electronically, or a service that is subject to taxation under this chapter is
1077 received by a purchaser at a business location of a seller, the location of the transaction is the
1078 business location of the seller.
- 1079 (3) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),

1080 and (14), if tangible personal property, a product transferred electronically, or a service that is
1081 subject to taxation under this chapter is not received by a purchaser at a business location of a
1082 seller, the location of the transaction is the location where the purchaser takes receipt of the
1083 tangible personal property or service.

1084 (4) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
1085 and (14), if Subsection (2) or (3) does not apply, the location of the transaction is the location
1086 indicated by an address for or other information on the purchaser if:

- 1087 (a) the address or other information is available from the seller's business records; and
- 1088 (b) use of the address or other information from the seller's records does not constitute
1089 bad faith.

1090 (5) (a) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9),
1091 (11), and (14), if Subsection (2), (3), or (4) does not apply, the location of the transaction is the
1092 location indicated by an address for the purchaser if:

- 1093 (i) the address is obtained during the consummation of the transaction; and
- 1094 (ii) use of the address described in Subsection (5)(a)(i) does not constitute bad faith.
- 1095 (b) An address used under Subsection (5)(a) includes the address of a purchaser's
1096 payment instrument if no other address is available.

1097 (6) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
1098 and (14), if Subsection (2), (3), (4), or (5) does not apply or if a seller does not have sufficient
1099 information to apply Subsection (2), (3), (4), or (5), the location of the transaction is the
1100 location:

- 1101 (a) indicated by the address from which:
 - 1102 (i) except as provided in Subsection (6)(a)(ii), for tangible personal property that is
1103 subject to taxation under this chapter, the tangible personal property is shipped;
 - 1104 (ii) for computer software delivered electronically or for a product transferred
1105 electronically that is subject to taxation under this chapter, the computer software or product
1106 transferred electronically is first available for transmission by the seller; or
 - 1107 (iii) for a service that is subject to taxation under this chapter, the service is provided;
- 1108 or
- 1109 (b) as determined by the seller with respect to a prepaid wireless calling service:
 - 1110 (i) provided in Subsection (6)(a)(iii); or

- 1111 (ii) associated with the mobile telephone number.
- 1112 (7) (a) For purposes of this Subsection (7), "shared ZIP Code" means a nine-digit ZIP
1113 Code that is located within two or more local taxing jurisdictions.
- 1114 (b) If the location of a transaction determined under Subsections (3) through (6) is in a
1115 shared ZIP Code, the location of the transaction is:
- 1116 (i) if there is only one local taxing jurisdiction that imposes the lowest agreement
1117 combined tax rate for the shared ZIP Code, the local taxing jurisdiction that imposes the lowest
1118 agreement combined tax rate; or
- 1119 (ii) if two or more local taxing jurisdictions impose the lowest agreement combined tax
1120 rate for the shared ZIP Code, the local taxing jurisdiction that:
- 1121 (A) imposes the lowest agreement combined tax rate for the shared ZIP Code; and
1122 (B) has located within the local taxing jurisdiction the largest number of street
1123 addresses within the shared ZIP Code.
- 1124 (c) Notwithstanding any provision under this chapter authorizing or requiring the
1125 imposition of a sales and use tax, for purposes of Subsection (7)(b), a seller shall collect a sales
1126 and use tax imposed under this chapter at the lowest agreement combined tax rate imposed
1127 within the local taxing jurisdiction in which the transaction is located under Subsection (7)(b).
- 1128 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1129 commission may make rules:
- 1130 (i) providing for the circumstances under which a seller has exercised due diligence in
1131 determining the nine-digit ZIP Code for an address; or
- 1132 (ii) notwithstanding Subsection (7)(b), for determining the local taxing jurisdiction
1133 within which a transaction is located if a seller is unable to determine the local taxing
1134 jurisdiction within which the transaction is located under Subsection (7)(b).
- 1135 (8) The location of a transaction made with a direct payment permit described in
1136 Section [59-12-107.1](#) is the location where receipt of the tangible personal property, product
1137 transferred electronically, or service by the purchaser occurs.
- 1138 (9) The location of a purchase of direct mail is the location determined in accordance
1139 with Section [59-12-123](#).
- 1140 (10) (a) Except as provided in Subsection (10)(b), the location of a transaction
1141 determined under Subsections (3) through (6), (8), or (9), is the local taxing jurisdiction within

1142 which:

1143 (i) the nine-digit ZIP Code assigned to the location determined under Subsections (3)
1144 through (6), (8), or (9) is located; or

1145 (ii) the five-digit ZIP Code assigned to the location determined under Subsections (3)
1146 through (6), (8), or (9) is located if:

1147 (A) a nine-digit ZIP Code is not available for the location determined under
1148 Subsections (3) through (6), (8), or (9); or

1149 (B) after exercising due diligence, a seller or certified service provider is unable to
1150 determine a nine-digit ZIP Code for the location determined under Subsections (3) through (6),
1151 (8), or (9).

1152 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1153 commission may make rules for determining the local taxing jurisdiction within which a
1154 transaction is located if a seller or certified service provider is unable to determine the local
1155 taxing jurisdiction within which the transaction is located under Subsection (10)(a).

1156 (11) (a) As used in this Subsection (11), "florist delivery transaction" means a
1157 transaction commenced by a florist that transmits an order:

1158 (i) by:

1159 (A) telegraph;

1160 (B) telephone; or

1161 (C) a means of communication similar to Subsection (11)(a)(i)(A) or (B); and

1162 (ii) for delivery to another place:

1163 (A) in this state; or

1164 (B) outside this state.

1165 [~~(b) Notwithstanding Subsections (3) through (6), beginning on January 1, 2009, and~~
1166 ~~ending on December 31, 2009, the location of a florist delivery transaction is the business~~
1167 ~~location of the florist that commences the florist delivery transaction.~~]

1168 [(c)] (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
1169 Act, the commission may by rule:

1170 (i) define:

1171 (A) "business location"; and

1172 (B) "florist";

- 1173 (ii) define what constitutes a means of communication similar to Subsection
1174 (11)(a)(i)(A) or (B); and
- 1175 (iii) provide procedures for determining when a transaction is commenced.
- 1176 (12) (a) Notwithstanding any other provision of this section and except as provided in
1177 Subsection (12)(b), if a purchaser uses computer software and there is not a transfer of a copy
1178 of that software to the purchaser, the location of the transaction is determined in accordance
1179 with Subsections (4) and (5).
- 1180 (b) If a purchaser uses computer software described in Subsection (12)(a) at more than
1181 one location, the location of the transaction shall be determined in accordance with rules made
1182 by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
1183 Act.
- 1184 (13) (a) A tax collected under this chapter shall be reported to the commission on a
1185 form that identifies the location of each transaction that occurs during the return filing period.
- 1186 (b) The form described in Subsection (13)(a) shall be filed with the commission as
1187 required under this chapter.
- 1188 (14) This section does not apply to:
- 1189 (a) amounts charged by a seller for:
- 1190 (i) telecommunications service except for a prepaid calling service or a prepaid
1191 wireless calling service as provided in Subsection (6)(b) or Section [59-12-215](#); or
- 1192 (ii) the retail sale or transfer of:
- 1193 (A) a motor vehicle other than a motor vehicle that is transportation equipment;
- 1194 (B) an aircraft other than an aircraft that is transportation equipment;
- 1195 (C) a watercraft;
- 1196 (D) a modular home;
- 1197 (E) a manufactured home; or
- 1198 (F) a mobile home; or
- 1199 (iii) except as provided in Section [59-12-214](#), the lease or rental of tangible personal
1200 property other than tangible personal property that is transportation equipment;
- 1201 (b) a tax a person pays in accordance with Subsection [59-12-107\(2\)](#)~~(f)~~(h); or
- 1202 (c) a retail sale of tangible personal property or a product transferred electronically if:
- 1203 (i) the seller receives the order for the tangible personal property or product transferred

1204 electronically in this state;

1205 (ii) receipt of the tangible personal property or product transferred electronically by the
1206 purchaser or the purchaser's donee occurs in this state;

1207 (iii) the location where receipt of the tangible personal property or product transferred
1208 electronically by the purchaser occurs is determined in accordance with Subsections (3)
1209 through (5); and

1210 (iv) at the time the seller receives the order, the record keeping system that the seller
1211 uses to calculate the proper amount of tax imposed under this chapter captures the location
1212 where the order is received.

1213 Section 7. Section **59-12-211.1** is amended to read:

1214 **59-12-211.1. Location of a transaction that is subject to a use tax.**

1215 (1) Subject to Subsection (2), a person that is required by Subsection
1216 **59-12-107(2)[(e)](h)** to pay a use tax on a transaction shall report the location of that
1217 transaction at the person's location.

1218 (2) For purposes of Subsection (1), if a person has more than one location in this state,
1219 the person shall report the location of the transaction at the location at which tangible personal
1220 property, a product transferred electronically, or a service is received.

1221 Section 8. Section **76-8-1101** is amended to read:

1222 **76-8-1101. Criminal offenses and penalties relating to revenue and taxation --**
1223 **Rulemaking authority -- Statute of limitations.**

1224 (1) (a) As provided in Section **59-1-401**, criminal offenses and penalties are as
1225 provided in Subsections (1)(b) through (e).

1226 (b) (i) ~~[Any]~~ A person ~~[who]~~ is guilty of a class B misdemeanor if the person:

1227 (A) is required by Title 59, Revenue and Taxation, or any laws the State Tax
1228 Commission administers or regulates, to register with or obtain a license or permit from the
1229 State Tax Commission~~[-, who]~~; and

1230 (B) operates without having registered or secured a license or permit~~[-]~~ or ~~[who]~~
1231 operates when the registration, license, or permit is expired or not current~~[-, is guilty of a class~~
1232 ~~B misdemeanor]~~.

1233 (ii) Notwithstanding Section **76-3-301**, for purposes of Subsection (1)(b)(i), the
1234 penalty may not:

1235 (A) be less than \$500; or

1236 (B) exceed \$1,000.

1237 (c) (i) With respect to a tax, fee, or charge as defined in Section 59-1-401, ~~any~~ a

1238 person ~~who~~ is guilty of a third degree felony if the person:

1239 (A) knowingly and intentionally, and without a reasonable good faith basis, fails to

1240 make, render, sign, or verify any return within the time required by law or to supply any

1241 information within the time required by law~~;~~ ~~or who~~;

1242 (B) makes, renders, signs, or verifies any false or fraudulent return or statement~~;~~; or

1243 ~~who~~

1244 (C) supplies any false or fraudulent information~~;~~ ~~is guilty of a third degree felony~~].

1245 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(c)(i), the penalty

1246 may not:

1247 (A) be less than \$1,000; or

1248 (B) exceed \$5,000.

1249 (d) (i) Any person who intentionally or willfully attempts to evade or defeat any tax,

1250 fee, or charge as defined in Section 59-1-401 or the payment of a tax, fee, or charge as defined

1251 in Section 59-1-401 is, in addition to other penalties provided by law, guilty of a second degree

1252 felony.

1253 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(d)(i), the penalty

1254 may not:

1255 (A) be less than \$1,500; or

1256 (B) exceed \$25,000.

1257 (e) (i) A person is guilty of a second degree felony if that person commits an act:

1258 (A) described in Subsection (1)(e)(ii) with respect to one or more of the following

1259 documents:

1260 (I) a return;

1261 (II) an affidavit;

1262 (III) a claim; or

1263 (IV) a document similar to Subsections (1)(e)(i)(A)(I) through (III); and

1264 (B) subject to Subsection (1)(e)(iii), with knowledge that the document described in

1265 Subsection (1)(e)(i)(A):

- 1266 (I) is false or fraudulent as to any material matter; and
1267 (II) could be used in connection with any material matter administered by the State Tax
1268 Commission.
- 1269 (ii) The following acts apply to Subsection (1)(e)(i):
1270 (A) preparing any portion of a document described in Subsection (1)(e)(i)(A);
1271 (B) presenting any portion of a document described in Subsection (1)(e)(i)(A);
1272 (C) procuring any portion of a document described in Subsection (1)(e)(i)(A);
1273 (D) advising in the preparation or presentation of any portion of a document described
1274 in Subsection (1)(e)(i)(A);
1275 (E) aiding in the preparation or presentation of any portion of a document described in
1276 Subsection (1)(e)(i)(A);
1277 (F) assisting in the preparation or presentation of any portion of a document described
1278 in Subsection (1)(e)(i)(A); or
1279 (G) counseling in the preparation or presentation of any portion of a document
1280 described in Subsection (1)(e)(i)(A).
- 1281 (iii) This Subsection (1)(e) applies:
1282 (A) regardless of whether the person for which the document described in Subsection
1283 (1)(e)(i)(A) is prepared or presented:
1284 (I) knew of the falsity of the document described in Subsection (1)(e)(i)(A); or
1285 (II) consented to the falsity of the document described in Subsection (1)(e)(i)(A); and
1286 (B) in addition to any other penalty provided by law.
1287 (iv) Notwithstanding Section [76-3-301](#), for purposes of this Subsection (1)(e), the
1288 penalty may not:
1289 (A) be less than \$1,500; or
1290 (B) exceed \$25,000.
- 1291 (v) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1292 State Tax Commission may make rules prescribing the documents that are similar to
1293 Subsections (1)(e)(i)(A)(I) through (III).
1294 (2) The statute of limitations for prosecution for a violation of this section is the later
1295 of six years:
1296 (a) from the date the tax should have been remitted; or

1297 (b) after the day on which the person commits the criminal offense.

1298 Section 9. Section **78A-3-102** is amended to read:

1299 **78A-3-102. Supreme Court jurisdiction.**

1300 (1) The Supreme Court has original jurisdiction to answer questions of state law
1301 certified by a court of the United States.

1302 (2) The Supreme Court has original jurisdiction to issue all extraordinary writs and
1303 authority to issue all writs and process necessary to carry into effect its orders, judgments, and
1304 decrees or in aid of its jurisdiction.

1305 (3) The Supreme Court has appellate jurisdiction, including jurisdiction of
1306 interlocutory appeals, over:

1307 (a) a judgment of the Court of Appeals;

1308 (b) cases certified to the Supreme Court by the Court of Appeals prior to final
1309 judgment by the Court of Appeals;

1310 (c) discipline of lawyers;

1311 (d) final orders of the Judicial Conduct Commission;

1312 (e) final orders and decrees in formal adjudicative proceedings originating with:

1313 (i) the Public Service Commission;

1314 (ii) the State Tax Commission;

1315 (iii) the School and Institutional Trust Lands Board of Trustees;

1316 (iv) the Board of Oil, Gas, and Mining;

1317 (v) the state engineer; or

1318 (vi) the executive director of the Department of Natural Resources reviewing actions of
1319 the Division of Forestry, Fire, and State Lands;

1320 (f) final orders and decrees of the district court review of informal adjudicative
1321 proceedings of agencies under Subsection (3)(e);

1322 (g) a final judgment or decree of any court of record holding a statute of the United
1323 States or this state unconstitutional on its face under the Constitution of the United States or the
1324 Utah Constitution;

1325 (h) interlocutory appeals from any court of record involving a charge of a first degree
1326 or capital felony;

1327 (i) appeals from the district court involving a conviction or charge of a first degree

1328 felony or capital felony;

1329 (j) orders, judgments, and decrees of any court of record over which the Court of
1330 Appeals does not have original appellate jurisdiction; [~~and~~]

1331 (k) appeals from the district court of orders, judgments, or decrees ruling on legislative
1332 subpoenas[-]; and

1333 (l) a challenge to the facial constitutionality of Section 59-12-107 made in accordance
1334 with Section 59-12-107.6.

1335 (4) The Supreme Court may transfer to the Court of Appeals any of the matters over
1336 which the Supreme Court has original appellate jurisdiction, except:

1337 (a) capital felony convictions or an appeal of an interlocutory order of a court of record
1338 involving a charge of a capital felony;

1339 (b) election and voting contests;

1340 (c) reapportionment of election districts;

1341 (d) retention or removal of public officers;

1342 (e) matters involving legislative subpoenas; and

1343 (f) those matters described in Subsections (3)(a) through (d) and (l).

1344 (5) The Supreme Court has sole discretion in granting or denying a petition for writ of
1345 certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall
1346 review those cases certified to it by the Court of Appeals under Subsection (3)(b).

1347 (6) The Supreme Court shall comply with the requirements of Title 63G, Chapter 4,
1348 Administrative Procedures Act, in its review of agency adjudicative proceedings.

1349 Section 10. **Severability clause.**

1350 The provisions of this bill are severable. If any provision of this bill, or the application
1351 of any provision to any person or circumstance, is held invalid by a final decision of a court of
1352 competent jurisdiction, the remainder of this bill shall be given effect without the invalid
1353 provision or application.

1354 Section 11. **Effective date.**

1355 This bill takes effect on July 1, 2017.