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SALES TAX COLLECTION AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

Cosponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill amends provisions related to sales and use tax.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses the circumstances under which a seller may be required to collect and remit sales and use tax to the State Tax Commission;
- ▶ provides a legal process for determining the application of certain sales and use tax collection obligations;
- ▶ repeals a requirement that certain sales and use tax revenue be deposited into a restricted account;
- ▶ repeals the provision allowing a seller that voluntarily collects and remits sales and use tax to retain 18% of collections;
- ▶ makes technical and conforming changes; and
- ▶ contains a severability clause.

Money Appropriated in this Bill:

This bill appropriates in fiscal year 2017:

- ▶ to the General Fund, as a one-time appropriation:



- 27 • from the Remote Sales Restricted Account, \$81,000.

28 **Other Special Clauses:**

29 This bill provides a severability clause.

30 This bill provides a special effective date.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **59-1-401**, as last amended by Laws of Utah 2015, Chapter 369

34 **59-12-103**, as last amended by Laws of Utah 2016, Chapters 184, 291, 348 and last
35 amended by Coordination Clause, Laws of Utah 2016, Chapter 291

36 **59-12-103.1**, as last amended by Laws of Utah 2016, Chapter 135

37 **59-12-107**, as last amended by Laws of Utah 2012, Chapters 178, 312, and 399

38 **59-12-108**, as last amended by Laws of Utah 2013, Chapter 50

39 **59-12-211**, as last amended by Laws of Utah 2012, Chapter 312

40 **59-12-211.1**, as last amended by Laws of Utah 2012, Chapter 312

41 **76-8-1101**, as last amended by Laws of Utah 2014, Chapter 52

42 **78A-3-102**, as last amended by Laws of Utah 2009, Chapter 344

43 REPEALS:

44 **59-12-103.2**, as last amended by Laws of Utah 2013, Chapter 150



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

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

48 **59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute**
49 **of limitations -- Commission authority to waive, reduce, or compromise penalty or**
50 **interest.**

51 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

75 ~~[(B)] (A) this title;~~

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

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

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

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

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

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

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

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

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

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

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

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

89 ~~[(H)]~~ (b) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:
 90 ~~[(A)]~~ (i) Title 41, Chapter 1a, Motor Vehicle Act, except for Section [41-1a-301](#);
 91 ~~[(B)]~~ (ii) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
 92 ~~[(C)]~~ (iii) Chapter 2, Property Tax Act, except for Section [59-2-1309](#);
 93 ~~[(D)]~~ (iv) Chapter 3, Tax Equivalent Property Act; or
 94 ~~[(E)]~~ (v) Chapter 4, Privilege Tax.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

119 ~~[(H)]~~ (C) 10% of the unpaid ~~[activated]~~ tax, fee, or charge due on the return if the

120 return is filed more than 15 days after the due date described in Subsection (2)(a).

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

122 (i) an amended return; or

123 (ii) a return with no tax due.

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

125 (i) the person files a return on or before the due date for filing a return described in

126 Subsection (2)(a), but fails to pay the tax, fee, or charge due on the return on or before that due

127 date;

128 (ii) the person:

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

130 (B) fails to pay the tax, fee, or charge due on a return within a 90-day period after the

131 due date for filing a return described in Subsection (2)(a);

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

133 (B) the commission estimates an amount of tax due for that person in accordance with

134 Subsection 59-1-1406(2);

135 (iv) the person:

136 (A) is mailed a notice of deficiency; and

137 (B) within a 30-day period after the day on which the notice of deficiency described in

138 Subsection (3)(a)(iv)(A) is mailed:

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

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

141 (v) (A) the commission:

142 (I) issues an order constituting final agency action resulting from a timely filed petition

143 for redetermination or a timely filed request for agency action; or

144 (II) is considered to have denied a request for reconsideration under Subsection

145 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed

146 request for agency action; and

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

148 after the [date] day on which the commission:

149 (I) issues the order constituting final agency action described in Subsection

150 (3)(a)(v)(A)(I); or

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

153 (vi) the person fails to pay the tax, fee, or charge within a 30-day period after the [date
154 of] day on which a court issues a final judicial decision resulting from a timely filed petition for
155 judicial review.

156 (b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:
157 [~~(i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with~~
158 ~~respect to an unactivated tax, fee, or charge:~~]

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

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

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

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

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

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

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

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

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

181 (ii) The period of the underpayment shall run from the due date for the installment to

182 whichever of the following dates is the earlier:

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

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

186 (iii) For purposes of this Subsection (4), a payment of estimated tax shall be credited
187 against unpaid required installments in the order in which the installments are required to be
188 paid.

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

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

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

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

202 (6) If a person does not file a return within an extension of time allowed by Section
203 59-7-505 or 59-10-516, the person:

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

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

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

207 (A) \$20; or

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

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

211 (A) \$20; or

212 (B) 10% of the unpaid tax due on the return, unpaid as of the day on which the return is

213 due as provided by law, not including the extension of time.

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

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

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

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

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

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

229 (i) The notice of proposed penalty shall:

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

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

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

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

235 or

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

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

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

243 (B) The commission shall mail the notice and demand for payment described in

244 Subsection (7)(b)(iv)(A):

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

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

247 (c) A seller that voluntarily collects a tax under Subsection 59-12-107[(2)(d)](5) is not

248 subject to the penalty under Subsection (7)(a)(i) if on or after July 1, 2001:

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

251 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)

252 or is a seller required to pay or collect and remit sales and use taxes under Subsection

253 59-12-107[(2)(b)](3) or (4); and

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

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

257 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)

258 or is a seller required to pay or collect and remit sales and use taxes under Subsection

259 59-12-107[(2)(b)](3) or (4); and

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

262 (d) A seller that voluntarily collects a tax under Subsection 59-12-107[(2)(d)](5) is not
263 subject to the penalty under Subsection (7)(a)(ii) if:

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

266 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)

267 or is a seller required to pay or collect and remit sales and use taxes under Subsection

268 59-12-107[(2)(b)](3) or (4); and

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

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

272 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)

273 or is a seller required to pay or collect and remit sales and use taxes under Subsection

274 59-12-107[(2)(b)](3) or (4); and

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

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

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

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

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

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

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

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

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

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

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

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

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

- 306 (i) commits an act described in Subsection (11)(b) with respect to one or more of the
307 following documents:
- 308 (A) a return;
309 (B) an affidavit;
310 (C) a claim; or
311 (D) a document similar to Subsections (11)(a)(i)(A) through (C);
- 312 (ii) knows or has reason to believe that the document described in Subsection (11)(a)(i)
313 will be used in connection with any material matter administered by the commission; and
- 314 (iii) knows that the document described in Subsection (11)(a)(i), if used in connection
315 with any material matter administered by the commission, would result in an understatement of
316 another person's liability for a tax, fee, or charge.
- 317 (b) The following acts apply to Subsection (11)(a)(i):
- 318 (i) preparing any portion of a document described in Subsection (11)(a)(i);
319 (ii) presenting any portion of a document described in Subsection (11)(a)(i);
320 (iii) procuring any portion of a document described in Subsection (11)(a)(i);
321 (iv) advising in the preparation or presentation of any portion of a document described
322 in Subsection (11)(a)(i);
- 323 (v) aiding in the preparation or presentation of any portion of a document described in
324 Subsection (11)(a)(i);
- 325 (vi) assisting in the preparation or presentation of any portion of a document described
326 in Subsection (11)(a)(i); or
- 327 (vii) counseling in the preparation or presentation of any portion of a document
328 described in Subsection (11)(a)(i).
- 329 (c) For purposes of Subsection (11)(a), the penalty:
- 330 (i) shall be imposed by the commission;
331 (ii) is \$500 for each document described in Subsection (11)(a)(i) with respect to which
332 the person described in Subsection (11)(a) meets the requirements of Subsection (11)(a); and
333 (iii) is in addition to any other penalty provided by law.
- 334 (d) The commission may seek a court order to enjoin a person from engaging in
335 conduct that is subject to a penalty under this Subsection (11).
- 336 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

337 commission may make rules prescribing the documents that are similar to Subsections
338 (11)(a)(i)(A) through (C).

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

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

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

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

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

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

350 (B) exceed \$1,000.

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

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

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

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

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

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

362 (B) exceed \$5,000.

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

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

- 368 (A) be less than \$1,500; or
- 369 (B) exceed \$25,000.
- 370 (e) (i) A person is guilty of a second degree felony if that person commits an act:
- 371 (A) described in Subsection (12)(e)(ii) with respect to one or more of the following
- 372 documents:
- 373 (I) a return;
- 374 (II) an affidavit;
- 375 (III) a claim; or
- 376 (IV) a document similar to Subsections (12)(e)(i)(A)(I) through (III); and
- 377 (B) subject to Subsection (12)(e)(iii), with knowledge that the document described in
- 378 Subsection (12)(e)(i)(A):
- 379 (I) is false or fraudulent as to any material matter; and
- 380 (II) could be used in connection with any material matter administered by the
- 381 commission.
- 382 (ii) The following acts apply to Subsection (12)(e)(i):
- 383 (A) preparing any portion of a document described in Subsection (12)(e)(i)(A);
- 384 (B) presenting any portion of a document described in Subsection (12)(e)(i)(A);
- 385 (C) procuring any portion of a document described in Subsection (12)(e)(i)(A);
- 386 (D) advising in the preparation or presentation of any portion of a document described
- 387 in Subsection (12)(e)(i)(A);
- 388 (E) aiding in the preparation or presentation of any portion of a document described in
- 389 Subsection (12)(e)(i)(A);
- 390 (F) assisting in the preparation or presentation of any portion of a document described
- 391 in Subsection (12)(e)(i)(A); or
- 392 (G) counseling in the preparation or presentation of any portion of a document
- 393 described in Subsection (12)(e)(i)(A).
- 394 (iii) This Subsection (12)(e) applies:
- 395 (A) regardless of whether the person for which the document described in Subsection
- 396 (12)(e)(i)(A) is prepared or presented:
- 397 (I) knew of the falsity of the document described in Subsection (12)(e)(i)(A); or
- 398 (II) consented to the falsity of the document described in Subsection (12)(e)(i)(A); and

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

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

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

403 (B) exceed \$25,000.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

432 (B) fails to file the form.

433 (14) Upon making a record of its actions, and upon reasonable cause shown, the

434 commission may waive, reduce, or compromise any of the penalties or interest imposed under

435 this part.

436 Section 2. Section 59-12-103 is amended to read:

437 **59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use**

438 **tax revenues.**

439 (1) A tax is imposed on the purchaser as provided in this part for amounts paid or

440 charged for the following transactions:

441 (a) retail sales of tangible personal property made within the state;

442 (b) amounts paid for:

443 (i) telecommunications service, other than mobile telecommunications service, that

444 originates and terminates within the boundaries of this state;

445 (ii) mobile telecommunications service that originates and terminates within the

446 boundaries of one state only to the extent permitted by the Mobile Telecommunications

447 Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or

448 (iii) an ancillary service associated with a:

449 (A) telecommunications service described in Subsection (1)(b)(i); or

450 (B) mobile telecommunications service described in Subsection (1)(b)(ii);

451 (c) sales of the following for commercial use:

452 (i) gas;

453 (ii) electricity;

454 (iii) heat;

455 (iv) coal;

456 (v) fuel oil; or

457 (vi) other fuels;

458 (d) sales of the following for residential use:

459 (i) gas;

460 (ii) electricity;

- 461 (iii) heat;
- 462 (iv) coal;
- 463 (v) fuel oil; or
- 464 (vi) other fuels;
- 465 (e) sales of prepared food;
- 466 (f) except as provided in Section 59-12-104, amounts paid or charged as admission or
- 467 user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,
- 468 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,
- 469 fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit
- 470 television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf
- 471 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,
- 472 tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises,
- 473 horseback rides, sports activities, or any other amusement, entertainment, recreation,
- 474 exhibition, cultural, or athletic activity;
- 475 (g) amounts paid or charged for services for repairs or renovations of tangible personal
- 476 property, unless Section 59-12-104 provides for an exemption from sales and use tax for:
- 477 (i) the tangible personal property; and
- 478 (ii) parts used in the repairs or renovations of the tangible personal property described
- 479 in Subsection (1)(g)(i), regardless of whether:
- 480 (A) any parts are actually used in the repairs or renovations of that tangible personal
- 481 property; or
- 482 (B) the particular parts used in the repairs or renovations of that tangible personal
- 483 property are exempt from a tax under this chapter;
- 484 (h) except as provided in Subsection 59-12-104(7), amounts paid or charged for
- 485 assisted cleaning or washing of tangible personal property;
- 486 (i) amounts paid or charged for tourist home, hotel, motel, or trailer court
- 487 accommodations and services that are regularly rented for less than 30 consecutive days;
- 488 (j) amounts paid or charged for laundry or dry cleaning services;
- 489 (k) amounts paid or charged for leases or rentals of tangible personal property if within
- 490 this state the tangible personal property is:
- 491 (i) stored;

492 (ii) used; or

493 (iii) otherwise consumed;

494 (l) amounts paid or charged for tangible personal property if within this state the

495 tangible personal property is:

496 (i) stored;

497 (ii) used; or

498 (iii) consumed; and

499 (m) amounts paid or charged for a sale:

500 (i) (A) of a product transferred electronically; or

501 (B) of a repair or renovation of a product transferred electronically; and

502 (ii) regardless of whether the sale provides:

503 (A) a right of permanent use of the product; or

504 (B) a right to use the product that is less than a permanent use, including a right:

505 (I) for a definite or specified length of time; and

506 (II) that terminates upon the occurrence of a condition.

507 (2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax

508 is imposed on a transaction described in Subsection (1) equal to the sum of:

509 (i) a state tax imposed on the transaction at a tax rate equal to the sum of:

510 (A) 4.70%; ~~[and]~~

511 (B) ~~[(f) the tax rate the state imposes in accordance with Part 18, Additional State Sales~~

512 ~~and Use Tax Act,]~~ if the location of the transaction as determined under Sections 59-12-211

513 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional

514 State Sales and Use Tax Act, the tax rate that the state imposes under that part; and

515 ~~[(H) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales~~

516 ~~and Use Tax Act,]~~

517 (C) if the location of the transaction as determined under Sections 59-12-211 through

518 59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes

519 the tax under Part 20, Supplemental State Sales and Use Tax Act, the tax rate that the state

520 imposes under that part; and

521 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the

522 transaction under this chapter other than this part.

523 (b) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed
524 on a transaction described in Subsection (1)(d) equal to the sum of:

525 (i) a state tax imposed on the transaction at a tax rate of 2%; and

526 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
527 transaction under this chapter other than this part.

528 (c) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed
529 on amounts paid or charged for food and food ingredients equal to the sum of:

530 (i) a state tax imposed on the amounts paid or charged for food and food ingredients at
531 a tax rate of 1.75%; and

532 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
533 amounts paid or charged for food and food ingredients under this chapter other than this part.

534 (d) (i) For a bundled transaction that is attributable to food and food ingredients and
535 tangible personal property other than food and food ingredients, a state tax and a local tax is
536 imposed on the entire bundled transaction equal to the sum of:

537 (A) a state tax imposed on the entire bundled transaction equal to the sum of:

538 (I) the tax rate described in Subsection (2)(a)(i)(A); ~~[and]~~

539 (II) ~~[(Aa) the tax rate the state imposes in accordance with Part 18, Additional State~~
540 ~~Sales and Use Tax Act,]~~ if the location of the transaction as determined under Sections
541 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18,
542 Additional State Sales and Use Tax Act, the tax rate that the state imposes under that part; and

543 ~~[(Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State~~
544 ~~Sales and Use Tax Act,]~~

545 (III) if the location of the transaction as determined under Sections 59-12-211 through
546 59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes
547 the tax under Part 20, Supplemental State Sales and Use Tax Act, the tax rate that the state
548 imposes under that part; and

549 (B) a local tax imposed on the entire bundled transaction at the sum of the tax rates
550 described in Subsection (2)(a)(ii).

551 (ii) If an optional computer software maintenance contract is a bundled transaction that
552 consists of taxable and nontaxable products that are not separately itemized on an invoice or
553 similar billing document, the purchase of the optional computer software maintenance contract

554 is 40% taxable under this chapter and 60% nontaxable under this chapter.

555 (iii) Subject to Subsection (2)(d)(iv), for a bundled transaction other than a bundled
556 transaction described in Subsection (2)(d)(i) or (ii):

557 (A) if the sales price of the bundled transaction is attributable to tangible personal
558 property, a product, or a service that is subject to taxation under this chapter and tangible
559 personal property, a product, or service that is not subject to taxation under this chapter, the
560 entire bundled transaction is subject to taxation under this chapter unless:

561 (I) the seller is able to identify by reasonable and verifiable standards the tangible
562 personal property, product, or service that is not subject to taxation under this chapter from the
563 books and records the seller keeps in the seller's regular course of business; or

564 (II) state or federal law provides otherwise; or

565 (B) if the sales price of a bundled transaction is attributable to two or more items of
566 tangible personal property, products, or services that are subject to taxation under this chapter
567 at different rates, the entire bundled transaction is subject to taxation under this chapter at the
568 higher tax rate unless:

569 (I) the seller is able to identify by reasonable and verifiable standards the tangible
570 personal property, product, or service that is subject to taxation under this chapter at the lower
571 tax rate from the books and records the seller keeps in the seller's regular course of business; or

572 (II) state or federal law provides otherwise.

573 (iv) For purposes of Subsection (2)(d)(iii), books and records that a seller keeps in the
574 seller's regular course of business includes books and records the seller keeps in the regular
575 course of business for nontax purposes.

576 (e) (i) Except as otherwise provided in this chapter and subject to Subsections (2)(e)(ii)
577 and (iii), if a transaction consists of the sale, lease, or rental of tangible personal property, a
578 product, or a service that is subject to taxation under this chapter, and the sale, lease, or rental
579 of tangible personal property, other property, a product, or a service that is not subject to
580 taxation under this chapter, the entire transaction is subject to taxation under this chapter unless
581 the seller, at the time of the transaction:

582 (A) separately states the portion of the transaction that is not subject to taxation under
583 this chapter on an invoice, bill of sale, or similar document provided to the purchaser; or

584 (B) is able to identify by reasonable and verifiable standards, from the books and

585 records the seller keeps in the seller's regular course of business, the portion of the transaction
586 that is not subject to taxation under this chapter.

587 (ii) A purchaser and a seller may correct the taxability of a transaction if:

588 (A) after the transaction occurs, the purchaser and the seller discover that the portion of
589 the transaction that is not subject to taxation under this chapter was not separately stated on an
590 invoice, bill of sale, or similar document provided to the purchaser because of an error or
591 ignorance of the law; and

592 (B) the seller is able to identify by reasonable and verifiable standards, from the books
593 and records the seller keeps in the seller's regular course of business, the portion of the
594 transaction that is not subject to taxation under this chapter.

595 (iii) For purposes of Subsections (2)(e)(i) and (ii), books and records that a seller keeps
596 in the seller's regular course of business includes books and records the seller keeps in the
597 regular course of business for nontax purposes.

598 (f) (i) If the sales price of a transaction is attributable to two or more items of tangible
599 personal property, products, or services that are subject to taxation under this chapter at
600 different rates, the entire purchase is subject to taxation under this chapter at the higher tax rate
601 unless the seller, at the time of the transaction:

602 (A) separately states the items subject to taxation under this chapter at each of the
603 different rates on an invoice, bill of sale, or similar document provided to the purchaser; or

604 (B) is able to identify by reasonable and verifiable standards the tangible personal
605 property, product, or service that is subject to taxation under this chapter at the lower tax rate
606 from the books and records the seller keeps in the seller's regular course of business.

607 (ii) For purposes of Subsection (2)(f)(i), books and records that a seller keeps in the
608 seller's regular course of business includes books and records the seller keeps in the regular
609 course of business for nontax purposes.

610 (g) Subject to Subsections (2)(h) and (i), a tax rate repeal or tax rate change for a tax
611 rate imposed under the following shall take effect on the first day of a calendar quarter:

612 (i) Subsection (2)(a)(i)(A);

613 (ii) Subsection (2)(b)(i);

614 (iii) Subsection (2)(c)(i); or

615 (iv) Subsection (2)(d)(i)(A)(I).

616 (h) (i) A tax rate increase takes effect on the first day of the first billing period that
617 begins on or after the effective date of the tax rate increase if the billing period for the
618 transaction begins before the effective date of a tax rate increase imposed under:

- 619 (A) Subsection (2)(a)(i)(A);
- 620 (B) Subsection (2)(b)(i);
- 621 (C) Subsection (2)(c)(i); or
- 622 (D) Subsection (2)(d)(i)(A)(I).

623 (ii) The repeal of a tax or a tax rate decrease applies to a billing period if the billing
624 statement for the billing period is rendered on or after the effective date of the repeal of the tax
625 or the tax rate decrease imposed under:

- 626 (A) Subsection (2)(a)(i)(A);
- 627 (B) Subsection (2)(b)(i);
- 628 (C) Subsection (2)(c)(i); or
- 629 (D) Subsection (2)(d)(i)(A)(I).

630 (i) (i) For a tax rate described in Subsection (2)(i)(ii), if a tax due on a catalogue sale is
631 computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal or
632 change in a tax rate takes effect:

- 633 (A) on the first day of a calendar quarter; and
- 634 (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.

635 (ii) Subsection (2)(i)(i) applies to the tax rates described in the following:

- 636 (A) Subsection (2)(a)(i)(A);
- 637 (B) Subsection (2)(b)(i);
- 638 (C) Subsection (2)(c)(i); or
- 639 (D) Subsection (2)(d)(i)(A)(I).

640 (iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
641 the commission may by rule define the term "catalogue sale."

642 (3) (a) The following state taxes shall be deposited into the General Fund:

- 643 (i) the tax imposed by Subsection (2)(a)(i)(A);
- 644 (ii) the tax imposed by Subsection (2)(b)(i);
- 645 (iii) the tax imposed by Subsection (2)(c)(i); or
- 646 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

647 (b) The following local taxes shall be distributed to a county, city, or town as provided
648 in this chapter:

- 649 (i) the tax imposed by Subsection (2)(a)(ii);
- 650 (ii) the tax imposed by Subsection (2)(b)(ii);
- 651 (iii) the tax imposed by Subsection (2)(c)(ii); and
- 652 (iv) the tax imposed by Subsection (2)(d)(i)(B).

653 (4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
654 2003, the lesser of the following amounts shall be expended as provided in Subsections (4)(b)
655 through (g):

- 656 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:
 - 657 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and
 - 658 (B) for the fiscal year; or
- 659 (ii) \$17,500,000.

660 (b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount
661 described in Subsection (4)(a) shall be transferred each year as dedicated credits to the
662 Department of Natural Resources to:

- 663 (A) implement the measures described in Subsections 79-2-303(3)(a) through (d) to
664 protect sensitive plant and animal species; or
- 665 (B) award grants, up to the amount authorized by the Legislature in an appropriations
666 act, to political subdivisions of the state to implement the measures described in Subsections
667 79-2-303(3)(a) through (d) to protect sensitive plant and animal species.

668 (ii) Money transferred to the Department of Natural Resources under Subsection
669 (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other
670 person to list or attempt to have listed a species as threatened or endangered under the
671 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

672 (iii) At the end of each fiscal year:

- 673 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
674 Conservation and Development Fund created in Section 73-10-24;
- 675 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
676 Program Subaccount created in Section 73-10c-5; and
- 677 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan

678 Program Subaccount created in Section 73-10c-5.

679 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in
680 Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund
681 created in Section 4-18-106.

682 (d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described
683 in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water
684 Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of
685 water rights.

686 (ii) At the end of each fiscal year:

687 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
688 Conservation and Development Fund created in Section 73-10-24;

689 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
690 Program Subaccount created in Section 73-10c-5; and

691 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
692 Program Subaccount created in Section 73-10c-5.

693 (e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described
694 in Subsection (4)(a) shall be deposited into the Water Resources Conservation and
695 Development Fund created in Section 73-10-24 for use by the Division of Water Resources.

696 (ii) In addition to the uses allowed of the Water Resources Conservation and
697 Development Fund under Section 73-10-24, the Water Resources Conservation and
698 Development Fund may also be used to:

699 (A) conduct hydrologic and geotechnical investigations by the Division of Water
700 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of
701 quantifying surface and ground water resources and describing the hydrologic systems of an
702 area in sufficient detail so as to enable local and state resource managers to plan for and
703 accommodate growth in water use without jeopardizing the resource;

704 (B) fund state required dam safety improvements; and

705 (C) protect the state's interest in interstate water compact allocations, including the
706 hiring of technical and legal staff.

707 (f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
708 in Subsection (4)(a) shall be deposited into the Utah Wastewater Loan Program Subaccount

709 created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

710 (g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
711 in Subsection (4)(a) shall be deposited into the Drinking Water Loan Program Subaccount
712 created in Section 73-10c-5 for use by the Division of Drinking Water to:

713 (i) provide for the installation and repair of collection, treatment, storage, and
714 distribution facilities for any public water system, as defined in Section 19-4-102;

715 (ii) develop underground sources of water, including springs and wells; and

716 (iii) develop surface water sources.

717 (5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
718 2006, the difference between the following amounts shall be expended as provided in this
719 Subsection (5), if that difference is greater than \$1:

720 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the
721 fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

722 (ii) \$17,500,000.

723 (b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:

724 (A) transferred each fiscal year to the Department of Natural Resources as dedicated
725 credits; and

726 (B) expended by the Department of Natural Resources for watershed rehabilitation or
727 restoration.

728 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described
729 in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund
730 created in Section 73-10-24.

731 (c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the
732 remaining difference described in Subsection (5)(a) shall be:

733 (A) transferred each fiscal year to the Division of Water Resources as dedicated
734 credits; and

735 (B) expended by the Division of Water Resources for cloud-seeding projects
736 authorized by Title 73, Chapter 15, Modification of Weather.

737 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described
738 in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund
739 created in Section 73-10-24.

740 (d) After making the transfers required by Subsections (5)(b) and (c), 94% of the
741 remaining difference described in Subsection (5)(a) shall be deposited into the Water
742 Resources Conservation and Development Fund created in Section 73-10-24 for use by the
743 Division of Water Resources for:

744 (i) preconstruction costs:

745 (A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter
746 26, Bear River Development Act; and

747 (B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project
748 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

749 (ii) the cost of employing a civil engineer to oversee any project authorized by Title 73,
750 Chapter 26, Bear River Development Act;

751 (iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project
752 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

753 (iv) other uses authorized under Sections 73-10-24, 73-10-25.1, and 73-10-30, and
754 Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

755 (e) After making the transfers required by Subsections (5)(b) and (c) and subject to
756 Subsection (5)(f), 6% of the remaining difference described in Subsection (5)(a) shall be
757 transferred each year as dedicated credits to the Division of Water Rights to cover the costs
758 incurred for employing additional technical staff for the administration of water rights.

759 (f) At the end of each fiscal year, any unexpended dedicated credits described in
760 Subsection (5)(e) over \$150,000 lapse to the Water Resources Conservation and Development
761 Fund created in Section 73-10-24.

762 (6) Notwithstanding Subsection (3)(a) and for taxes listed under Subsection (3)(a), the
763 amount of revenue generated by a 1/16% tax rate on the transactions described in Subsection
764 (1) for the fiscal year shall be deposited as follows:

765 (a) for fiscal year 2016-17 only, 100% of the revenue described in this Subsection (6)
766 shall be deposited into the Transportation Investment Fund of 2005 created by Section
767 72-2-124;

768 (b) for fiscal year 2017-18 only:

769 (i) 80% of the revenue described in this Subsection (6) shall be deposited into the
770 Transportation Investment Fund of 2005 created by Section 72-2-124; and

771 (ii) 20% of the revenue described in this Subsection (6) shall be deposited into the
772 Water Infrastructure Restricted Account created by Section 73-10g-103;
773 (c) for fiscal year 2018-19 only:
774 (i) 60% of the revenue described in this Subsection (6) shall be deposited into the
775 Transportation Investment Fund of 2005 created by Section 72-2-124; and
776 (ii) 40% of the revenue described in this Subsection (6) shall be deposited into the
777 Water Infrastructure Restricted Account created by Section 73-10g-103;
778 (d) for fiscal year 2019-20 only:
779 (i) 40% of the revenue described in this Subsection (6) shall be deposited into the
780 Transportation Investment Fund of 2005 created by Section 72-2-124; and
781 (ii) 60% of the revenue described in this Subsection (6) shall be deposited into the
782 Water Infrastructure Restricted Account created by Section 73-10g-103;
783 (e) for fiscal year 2020-21 only:
784 (i) 20% of the revenue described in this Subsection (6) shall be deposited into the
785 Transportation Investment Fund of 2005 created by Section 72-2-124; and
786 (ii) 80% of the revenue described in this Subsection (6) shall be deposited into the
787 Water Infrastructure Restricted Account created by Section 73-10g-103; and
788 (f) for a fiscal year beginning on or after July 1, 2021, 100% of the revenue described
789 in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account
790 created by Section 73-10g-103.
791 (7) (a) Notwithstanding Subsection (3)(a), in addition to the amounts deposited in
792 Subsection (6), and subject to Subsection (7)(b), for a fiscal year beginning on or after July 1,
793 2012, the Division of Finance shall deposit into the Transportation Investment Fund of 2005
794 created by Section 72-2-124:
795 (i) a portion of the taxes listed under Subsection (3)(a) in an amount equal to 8.3% of
796 the revenues collected from the following taxes, which represents a portion of the
797 approximately 17% of sales and use tax revenues generated annually by the sales and use tax
798 on vehicles and vehicle-related products:
799 (A) the tax imposed by Subsection (2)(a)(i)(A);
800 (B) the tax imposed by Subsection (2)(b)(i);
801 (C) the tax imposed by Subsection (2)(c)(i); and

802 (D) the tax imposed by Subsection (2)(d)(i)(A)(I); plus
803 (ii) an amount equal to 30% of the growth in the amount of revenues collected in the
804 current fiscal year from the sales and use taxes described in Subsections (7)(a)(i)(A) through
805 (D) that exceeds the amount collected from the sales and use taxes described in Subsections
806 (7)(a)(i)(A) through (D) in the 2010-11 fiscal year.

807 (b) (i) Subject to Subsections (7)(b)(ii) and (iii), in any fiscal year that the portion of
808 the sales and use taxes deposited under Subsection (7)(a) represents an amount that is a total
809 lower percentage of the sales and use taxes described in Subsections (7)(a)(i)(A) through (D)
810 generated in the current fiscal year than the total percentage of sales and use taxes deposited in
811 the previous fiscal year, the Division of Finance shall deposit an amount under Subsection
812 (7)(a) equal to the product of:

813 (A) the total percentage of sales and use taxes deposited under Subsection (7)(a) in the
814 previous fiscal year; and

815 (B) the total sales and use tax revenue generated by the taxes described in Subsections
816 (7)(a)(i)(A) through (D) in the current fiscal year.

817 (ii) In any fiscal year in which the portion of the sales and use taxes deposited under
818 Subsection (7)(a) would exceed 17% of the revenues collected from the sales and use taxes
819 described in Subsections (7)(a)(i)(A) through (D) in the current fiscal year, the Division of
820 Finance shall deposit 17% of the revenues collected from the sales and use taxes described in
821 Subsections (7)(a)(i)(A) through (D) for the current fiscal year under Subsection (7)(a).

822 (iii) In all subsequent fiscal years after a year in which 17% of the revenues collected
823 from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) was deposited
824 under Subsection (7)(a), the Division of Finance shall annually deposit 17% of the revenues
825 collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) in the
826 current fiscal year under Subsection (7)(a).

827 (8) (a) Notwithstanding Subsection (3)(a), and in addition to the amounts deposited
828 under Subsections (6) and (7), for the 2016-17 fiscal year only, the Division of Finance shall
829 deposit \$64,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into
830 the Transportation Investment Fund of 2005 created by Section [72-2-124](#).

831 (b) Notwithstanding Subsection (3)(a), and in addition to the amounts deposited under
832 Subsections (6) and (7), for the 2017-18 fiscal year only, the Division of Finance shall deposit

833 \$63,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the
834 Transportation Investment Fund of 2005 created by Section 72-2-124.

835 (c) Notwithstanding Subsection (3)(a), and in addition to the amounts deposited under
836 Subsections (6) and (7), for a fiscal year beginning on or after July 1, 2018, the Division of
837 Finance shall annually deposit into the Transportation Investment Fund of 2005 created by
838 Section 72-2-124 a portion of the taxes listed under Subsection (3)(a) in an amount equal to
839 3.68% of the revenues collected from the following taxes:

- 840 (i) the tax imposed by Subsection (2)(a)(i)(A);
- 841 (ii) the tax imposed by Subsection (2)(b)(i);
- 842 (iii) the tax imposed by Subsection (2)(c)(i); and
- 843 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

844 (9) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year
845 2009-10, \$533,750 shall be deposited into the Qualified Emergency Food Agencies Fund
846 created by Section 35A-8-1009 and expended as provided in Section 35A-8-1009.

847 (10) (a) Notwithstanding Subsection (3)(a), except as provided in Subsection (10)(c),
848 in addition to any amounts deposited under Subsections (6), (7), and (8), and for the 2016-17
849 fiscal year only, the Division of Finance shall deposit into the Transportation Investment Fund
850 of 2005 created by Section 72-2-124 the amount of tax revenue generated by a .05% tax rate on
851 the transactions described in Subsection (1).

852 (b) Notwithstanding Subsection (3)(a), except as provided in Subsection (10)(c), and in
853 addition to any amounts deposited under Subsections (6), (7), and (8), the Division of Finance
854 shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the
855 amount of revenue described as follows:

- 856 (i) for fiscal year 2017-18 only, 83.33% of the amount of revenue generated by a .05%
857 tax rate on the transactions described in Subsection (1);
- 858 (ii) for fiscal year 2018-19 only, 66.67% of the amount of revenue generated by a .05%
859 tax rate on the transactions described in Subsection (1);
- 860 (iii) for fiscal year 2019-20 only, 50% of the amount of revenue generated by a .05%
861 tax rate on the transactions described in Subsection (1);
- 862 (iv) for fiscal year 2020-21 only, 33.33% of the amount of revenue generated by a
863 .05% tax rate on the transactions described in Subsection (1); and

864 (v) for fiscal year 2021-22 only, 16.67% of the amount of revenue generated by a .05%
865 tax rate on the transactions described in Subsection (1).

866 (c) For purposes of Subsections (10)(a) and (b), the Division of Finance may not
867 deposit into the Transportation Investment Fund of 2005 any tax revenue generated by amounts
868 paid or charged for food and food ingredients, except for tax revenue generated by a bundled
869 transaction attributable to food and food ingredients and tangible personal property other than
870 food and food ingredients described in Subsection (2)(d).

871 (11) Notwithstanding Subsection (3)(a), beginning the second fiscal year after the
872 fiscal year during which the Division of Finance receives notice under Section 63N-2-510 that
873 construction on a qualified hotel, as defined in Section 63N-2-502, has begun, the Division of
874 Finance shall, for two consecutive fiscal years, annually deposit \$1,900,000 of the revenue
875 generated by the taxes listed under Subsection (3)(a) into the Hotel Impact Mitigation Fund,
876 created in Section 63N-2-512.

877 (12) (a) Notwithstanding Subsection (3)(a), for the 2016-17 fiscal year only, the
878 Division of Finance shall deposit \$26,000,000 of the revenues generated by the taxes listed
879 under Subsection (3)(a) into the Throughput Infrastructure Fund created by Section 35A-8-308.

880 (b) Notwithstanding Subsection (3)(a), for the 2017-18 fiscal year only, the Division of
881 Finance shall deposit \$27,000,000 of the revenues generated by the taxes listed under
882 Subsection (3)(a) into the Throughput Infrastructure Fund created by Section 35A-8-308.

883 ~~[(13) Notwithstanding Subsections (4) through (12), an amount required to be
884 expended or deposited in accordance with Subsections (4) through (12) may not include an
885 amount the Division of Finance deposits in accordance with Section 59-12-103.2.]~~

886 Section 3. Section 59-12-103.1 is amended to read:

887 **59-12-103.1. Action by Supreme Court of the United States authorizing or action**
888 **by Congress permitting a state to require certain sellers to collect a sales or use tax --**
889 **Collection of tax by commission -- Commission report to Revenue and Taxation Interim**
890 **Committee -- Revenue and Taxation Interim Committee study -- Division of Finance**
891 **requirement to make certain deposits.**

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

894 (a) the Supreme Court of the United States issues a decision authorizing a state to

895 require the following sellers to collect a sales or use tax:

896 (i) a seller that does not meet one or more of the criteria described in Subsection
897 59-12-107(2)(a); or

898 (ii) a seller that is not a seller required to pay or collect and remit sales and use taxes
899 under Subsection 59-12-107[(2)(b)](3) or (4); or

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

902 (i) a seller that does not meet one or more of the criteria described in Subsection
903 59-12-107(2)(a); or

904 (ii) a seller that is not a seller required to pay or collect and remit sales and use taxes
905 under Subsection 59-12-107[(2)(b)](3) or (4).

906 (2) The commission shall:

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

908 (i) to the extent:

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

910 (B) permitted by Congress; and

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

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

915 (i) regarding the actions taken by:

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

917 (B) Congress; and

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

919 and

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

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

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

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

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

930 (a) review the actions taken by:

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

932 (ii) Congress;

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

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

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

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

943 Section 4. Section 59-12-107 is amended to read:

944 **59-12-107. Definitions -- Collection, remittance, and payment of tax by sellers or**
945 **other persons -- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other**
946 **liability for collection -- Rulemaking authority -- Credits -- Treatment of bad debt --**
947 **Penalties and interest.**

948 [~~(1) As used in this section:~~]

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

951 [~~(b) "Related seller" means a seller that:~~]

952 [~~(i) meets one or more of the criteria described in Subsection (2)(a)(i); and]~~

953 [~~(ii) delivers tangible personal property, a service, or a product transferred~~
954 ~~electronically that is sold:]~~

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

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

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

961 (1) As used in this section:

962 (a) "Affiliate" means:

963 (i) a person that is a member of the same controlled group of corporations as the seller;

964 or

965 (ii) a pass-through entity or another type of entity that, regardless of how that entity is
966 organized, has an ownership relationship with the seller that would make the entity a member
967 of the same controlled group of corporations as the seller, if the entity and the seller were
968 organized as corporations.

969 (b) "Controlled group of corporations" means the same as that term is defined in
970 Section 1563, Internal Revenue Code.

971 (c) "Noncollecting seller" means a remote seller that:

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

973 (ii) during the 12-month period immediately preceding the current month, makes sales
974 totaling \$10,000 or more of tangible personal property, products transferred electronically, or
975 services:

976 (A) for storage, use, or consumption in the state; and

977 (B) as a result of an agreement with one or more persons that meet one or more of the
978 criteria described in Subsection (2)(a), under which the person or persons, for a commission or
979 other consideration, directly or indirectly makes a referral to the noncollecting seller of a
980 potential purchaser of tangible personal property, products transferred electronically, or
981 services.

982 (d) "Pass-through entity" means the same as that term is defined in Section
983 [59-10-1402](#).

984 (e) "Referral" means the act of sending a potential purchaser to a noncollecting seller
985 by:

986 (i) an Internet-based link;

987 (ii) an Internet website;

988 (iii) telemarketing;
 989 (iv) in-person marketing; or
 990 (v) other means similar to the means described in Subsections (1)(e)(i) through (iv), as
 991 the commission may define by rule made in accordance with Title 63G, Chapter 3, Utah
 992 Administrative Rulemaking Act.

993 (f) "Registered remitter" means a seller that is:
 994 (i) registered under the agreement;
 995 (ii) not required to pay or collect and remit sales and use tax under Subsection (2), (3),
 996 or (4); and
 997 (iii) not a model 1 seller, model 2 seller, or model 3 seller.

998 (g) "Remote seller" means a seller that is not required to pay or collect and remit sales
 999 and use tax under Subsection (2)(a).

1000 (h) "Solicitation" means a communication directly or indirectly to a specific person
 1001 within the state in a manner that is intended to and calculated to incite the person to purchase
 1002 tangible personal property, a service, or a product transferred electronically from a specific
 1003 seller.

1004 (2) (a) Except as provided in Subsection ~~[(2)(e)]~~ (6), Section 59-12-107.1, or Section
 1005 59-12-123, and subject to Subsection (2)~~[(f)]~~(b), each seller shall pay or collect and remit the
 1006 sales and use taxes imposed by this chapter if within this state the seller:

1007 (i) ~~[has or]~~ utilizes:
 1008 (A) an office;
 1009 (B) a distribution house;
 1010 (C) a sales house;
 1011 (D) a warehouse~~;~~ or other storage place; or
 1012 ~~[(E) a service enterprise; or]~~
 1013 ~~[(F)]~~ (E) a place of business similar to Subsections (2)(a)(i)(A) through ~~[(E)]~~ (D);
 1014 (ii) maintains a stock of goods;
 1015 (iii) regularly solicits orders, regardless of whether ~~[or not]~~ the orders are accepted in
 1016 the state, unless the seller's only activity in the state is:
 1017 (A) advertising; or
 1018 (B) solicitation by:

- 1019 (I) direct mail;
- 1020 (II) electronic mail;
- 1021 (III) except as provided in Subsection (4)(d), the Internet;
- 1022 (IV) telecommunications service; or
- 1023 (V) a means similar to Subsection (2)(a)(iii)(A) or (B);
- 1024 (iv) regularly engages in the delivery of property in the state other than by:
- 1025 (A) common carrier; or
- 1026 (B) United States mail; or
- 1027 (v) regularly engages in an activity directly related to the leasing or servicing of
- 1028 property located within the state.

1029 (b) The ownership of property that is located at the premises of a printer's facility with

1030 which the retailer has contracted for printing and that consists of final printed product, property

1031 that becomes part of the final printed product, or copy from which the printed product is

1032 produced does not result in the retailer being considered to have or maintain an office,

1033 distribution house, sales house, warehouse, or other place of business, or to maintain a stock of

1034 goods, within this state.

1035 (3) (a) (i) Subject to Subsection (3)(a)(ii), beginning on October 1, 2017, each remote

1036 seller shall pay or collect and remit the sales and use tax imposed by this chapter if the remote

1037 seller:

1038 (A) sells tangible personal property, products transferred electronically, or services for

1039 storage, use, or consumption in the state; and

1040 (B) in either the previous calendar year or the current calendar year, receives gross

1041 revenue from the sale of tangible personal property, products transferred electronically, or

1042 services for storage, use, or consumption in the state of \$100,000 or more.

1043 (ii) A remote seller's obligation to pay or collect and remit remote sales and use tax

1044 begins on the first day of the first calendar quarter after the remote seller meets the criteria

1045 described in Subsection (3)(a)(i).

1046 (b) (i) Regardless of whether the commission initiates an audit or other tax collection

1047 procedure, the commission may request a declaratory judgment in any district court in this state

1048 against a remote seller that the commission believes meets the criteria described in Subsection

1049 (3)(a) to establish:

1050 (A) that the remote seller meets the criteria described in Subsection (3)(a);
1051 (B) that Subsection (3)(a) is valid under federal and state law; and
1052 (C) if Subsections (3)(b)(i)(A) and (B) are satisfied, that the remote seller has an
1053 obligation to pay or collect and remit sales and use tax under this Subsection (3).
1054 (ii) The court may not award attorney fees to the prevailing party in a declaratory
1055 judgment request made in accordance with this Subsection (3)(b).
1056 (iii) If an aggrieved party wishes to appeal from the decision in a declaratory judgment
1057 request made in accordance with this Subsection (3)(b), the aggrieved party shall appeal to the
1058 Utah Supreme Court in accordance with Section [78A-3-102](#).
1059 (c) (i) Except as provided in Subsection (3)(c)(ii), the filing of a request for a
1060 declaratory judgment under Subsection (3)(b)(i) operates as an injunction during the pendency
1061 of the action, and the state may not enforce the obligation to pay or collect and remit sales and
1062 use tax described in Subsection (3)(a) against a remote seller that is a party to the declaratory
1063 judgment action, unless the remote seller agrees to voluntarily pay or collect and remit sales
1064 and use tax during the pendency of the action.
1065 (ii) The injunction described in Subsection (3)(c)(i) does not apply if there is a final,
1066 unappealable decision from a court of competent jurisdiction establishing the validity of the
1067 obligation described in Subsection (3)(a) with respect to the remote seller against which the
1068 commission seeks declaratory judgment.
1069 (iii) After the injunction described in Subsection (3)(c)(i) lifts or otherwise dissolves,
1070 the state shall assess and apply the obligation to pay or collect and remit sales and use tax
1071 prospectively beginning on the first day of the first calendar quarter after the day on which the
1072 injunction lifts or dissolves.
1073 (d) (i) A remote seller that voluntarily complies with Subsection (3)(a) while covered
1074 by the injunction described in Subsection (3)(c) may not claim a refund of taxes, penalties, or
1075 interest on the basis that the remote seller did not meet one or more of the criteria described in
1076 Subsection (2)(a).
1077 (ii) A remote seller complying with this Subsection (3) may request a refund of taxes,
1078 penalties, or interest on another basis by following the refund procedures described in Section
1079 [59-12-110](#).
1080 (e) (i) If a court of competent jurisdiction issues a final, unappealable decision that this

1081 Subsection (3) is unenforceable, a remote seller that collects sales and use tax under this
1082 Subsection (3) is not liable to a purchaser that claims that the sales and use tax was
1083 overcollected.

1084 (ii) Nothing in this Subsection (3) affects a person's obligation under Subsection (6) to
1085 pay a use tax.

1086 (4) (a) This Subsection (4) does not apply unless a court of competent jurisdiction
1087 issues a final, unappealable decision that Subsection (3) is unenforceable.

1088 (b) ~~[A]~~ There is a rebuttable presumption that a remote seller is [considered to be]
1089 engaged in the business of selling tangible personal property, [a service, or] a product
1090 transferred electronically, or a service for storage, use, or consumption in the state, and shall
1091 pay or collect and remit the sales and use taxes imposed by this chapter if:

1092 ~~[(i) the seller holds a substantial ownership interest in, or is owned in whole or in~~
1093 ~~substantial part by, a related seller; and]~~

1094 (i) a person that meets one or more of the criteria described in Subsection (2)(a) is an
1095 affiliate of the remote seller; or

1096 (ii) any person, other than a person acting in the capacity of a common carrier, that
1097 meets one or more of the criteria described in Subsection (2)(a):

1098 ~~[(ii)]~~ (A) ~~[the seller]~~ sells the same or a substantially similar line of products as the
1099 [related] remote seller and does so under the same or a substantially similar business name as
1100 the remote seller; [or]

1101 (B) ~~[the]~~ maintains a place of business described in Subsection (2)(a)(i) [of the related
1102 seller] or provides an [in-state] in-state employee [of the related seller is used] to advertise,
1103 promote, deliver, or facilitate sales by the remote seller to a purchaser[-];

1104 ~~[(c) A seller that does not meet one or more of the criteria provided for in Subsection~~
1105 ~~(2)(a) or is not a seller required to pay or collect and remit sales and use taxes under Subsection~~
1106 ~~(2)(b): (i) except as provided in Subsection (2)(c)(ii), may voluntarily:]~~

1107 (C) uses trademarks, service marks, or trade names in the state that are the same or
1108 substantially similar to those used by the remote seller;

1109 (D) delivers, installs, assembles, or performs maintenance service for the remote
1110 seller's purchaser within the state;

1111 (E) facilitates the remote seller's delivery of tangible personal property to a purchaser

1112 in the state by allowing the purchaser to pick up tangible personal property sold by the remote
1113 seller at an in-state office, distribution house, sales house, warehouse or other storage place, or
1114 similar place of business that is maintained by the person that meets one or more of the criteria
1115 described in Subsection (2)(a); or

1116 (F) conducts any other activity in the state that is significantly associated with the
1117 remote seller's ability to establish and maintain a market in the state for the remote seller's sales
1118 of tangible personal property, a product transferred electronically, or a service.

1119 (c) A remote seller may rebut the presumption described in Subsection (4)(b) by
1120 proving that the in-state activities of the person that meets one or more of the criteria described
1121 in Subsection (2)(a) are not significantly associated with the remote seller's ability to establish
1122 and maintain a market in the state for the sale of tangible personal property, a product
1123 transferred electronically, or a service.

1124 (d) (i) Subject to the other provisions of this Subsection (4)(d), there is a rebuttable
1125 presumption that a noncollecting seller is engaged in the business of selling tangible personal
1126 property, a product transferred electronically, or a service, for storage, use, or consumption in
1127 the state.

1128 (ii) The presumption described in Subsection (4)(d)(i) arises if, after October 1, 2017,
1129 the noncollecting seller makes sales in the state using an agreement, with a person that meets
1130 one or more of the criteria described in Subsection (2)(a), regardless of the date on which the
1131 noncollecting seller enters the agreement and regardless of whether the 12-month period
1132 immediately preceding the current month includes any period of time that occurred before
1133 October 1, 2017.

1134 (e) (i) (A) A noncollecting seller may rebut the presumption described in Subsection
1135 (4)(d) by proving that the person with which the noncollecting seller has an agreement has not
1136 engaged in an activity within the state that is significantly associated with the noncollecting
1137 seller's ability, during the preceding 12 months, to establish and maintain a market within the
1138 state for the sale of tangible personal property, a product transferred electronically, or a service.

1139 (B) Proof to rebut the presumption described in Subsection (4)(d) may include a
1140 written sworn statement, made in good faith, from each person within the state with which the
1141 noncollecting seller has an agreement that the person, during the previous 12 months, did not
1142 engage in any solicitation of a potential purchaser in the state on behalf of the noncollecting

1143 seller for the sale of tangible personal property, a product transferred electronically, or a
 1144 service.

1145 (ii) A noncollecting seller that does not rebut, in accordance with Subsection (4)(e)(i),
 1146 the presumption described in Subsection (4)(d) shall pay or collect and remit sales and use tax
 1147 on any sale the noncollecting seller makes to a purchaser in the state.

1148 (f) Nothing in this Subsection (4) affects a person's obligation under Subsection (6) to
 1149 pay a use tax.

1150 (5) (a) Except as provided in Subsection (5)(b), a seller that is not required to pay or
 1151 collect and remit sales and use tax under Subsection (2)(a), (3), or (4), may register as a
 1152 registered remitter to voluntarily:

1153 ~~[(A)]~~ (i) collect a tax on a transaction described in Subsection 59-12-103(1); and

1154 ~~[(B)]~~ (ii) remit the tax to the commission as provided in this part~~[-or]~~.

1155 ~~[(ii) notwithstanding Subsection (2)(c)(i);]~~

1156 (b) A seller that is not required to pay or collect and remit a sales and use tax under
 1157 Subsection (2)(a), (3), or (4), shall collect a tax on a transaction described in Subsection
 1158 59-12-103(1) if Section 59-12-103.1 requires the seller to collect the tax.

1159 ~~[(d)]~~ (c) The collection and remittance of a tax under this chapter by a seller that is
 1160 registered under the agreement may not be used as a factor in determining whether that seller is
 1161 required by Subsection (2) to:

1162 (i) pay a tax, fee, or charge under:

1163 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

1164 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

1165 (C) Section 19-6-714;

1166 (D) Section 19-6-805;

1167 (E) Section 69-2-5;

1168 (F) Section 69-2-5.5;

1169 (G) Section 69-2-5.6; or

1170 (H) this title; or

1171 (ii) collect and remit a tax, fee, or charge under:

1172 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

1173 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

1174 (C) Section [19-6-714](#);

1175 (D) Section [19-6-805](#);

1176 (E) Section [69-2-5](#);

1177 (F) Section [69-2-5.5](#);

1178 (G) Section [69-2-5.6](#); or

1179 (H) this title.

1180 ~~[(e) A person shall pay a use tax imposed by this chapter on a transaction described in~~
 1181 ~~Subsection [59-12-103](#)(1) if:]~~

1182 ~~[(i) the seller did not collect a tax imposed by this chapter on the transaction; and]~~

1183 ~~[(ii) the person:]~~

1184 ~~[(A) stores the tangible personal property or product transferred electronically in the~~
 1185 ~~state;]~~

1186 ~~[(B) uses the tangible personal property or product transferred electronically in the~~
 1187 ~~state; or]~~

1188 ~~[(C) consumes the tangible personal property or product transferred electronically in~~
 1189 ~~the state.]~~

1190 ~~[(f) The ownership of property that is located at the premises of a printer's facility with~~
 1191 ~~which the retailer has contracted for printing and that consists of the final printed product,~~
 1192 ~~property that becomes a part of the final printed product, or copy from which the printed~~
 1193 ~~product is produced, shall not result in the retailer being considered to have or maintain an~~
 1194 ~~office, distribution house, sales house, warehouse, service enterprise, or other place of~~
 1195 ~~business, or to maintain a stock of goods, within this state.]~~

1196 (6) A person shall pay a use tax imposed by this chapter on a transaction described in
 1197 Subsection [59-12-103](#)(1) if:

1198 (a) the seller did not collect a tax imposed under this chapter on the transaction; and

1199 (b) the person:

1200 (i) stores the tangible personal property or product transferred electronically in the
 1201 state;

1202 (ii) uses the tangible personal property or product transferred electronically in the state;
 1203 or

1204 (iii) consumes the tangible personal property or product transferred electronically in the

1205 state.

1206 ~~[(3)]~~ (7) (a) Except as provided in Section 59-12-107.1, a seller shall collect a tax due
1207 under this chapter ~~[shall be collected]~~ from a purchaser.

1208 (b) A seller may not collect as a tax an amount, without regard to fractional parts of
1209 one cent, in excess of the tax computed at the rates prescribed by this chapter.

1210 (c) (i) Each seller shall:

1211 (A) give the purchaser a receipt for the tax collected; or

1212 (B) bill the tax as a separate item and declare the name of this state and the seller's
1213 sales and use tax license number on the invoice for the sale.

1214 (ii) The receipt or invoice is prima facie evidence that the seller has collected the tax
1215 and relieves the purchaser of the liability for reporting the tax to the commission as a
1216 consumer.

1217 (d) A seller is not required to maintain a separate account for the tax collected~~;~~ but is
1218 considered to be a person charged with receipt, safekeeping, and transfer of public money.

1219 (e) Taxes collected by a seller pursuant to this chapter shall be held in trust for the
1220 benefit of the state and for payment to the commission in the manner and at the time provided
1221 for in this chapter.

1222 (f) If any seller, during any reporting period, collects as a tax an amount in excess of
1223 the lawful state and local percentage of total taxable sales allowed under this chapter, the seller
1224 shall remit to the commission the full amount of the tax imposed under this chapter, plus any
1225 excess.

1226 (g) If the accounting methods regularly employed by the seller in the transaction of the
1227 seller's business are such that reports of sales made during a calendar month or quarterly period
1228 will impose unnecessary hardships, the commission may accept reports at intervals that, in the
1229 commission's opinion, will~~;~~ ~~[in the commission's opinion,]~~ better suit the convenience of the
1230 taxpayer or seller and will not jeopardize collection of the tax.

1231 (h) (i) For a purchase paid with specie legal tender as defined in Section 59-1-1501.1,
1232 and until such time as the commission accepts specie legal tender for the payment of a tax
1233 under this chapter, if the commission requires a seller to remit a tax under this chapter in legal
1234 tender other than specie legal tender, the seller shall state on the seller's books and records and
1235 on an invoice, bill of sale, or similar document provided to the purchaser:

1236 (A) the purchase price in specie legal tender and in the legal tender the seller is
1237 required to remit to the commission;

1238 (B) subject to Subsection ~~[(3)]~~ (7)(h)(ii), the amount of tax due under this chapter in
1239 specie legal tender and in the legal tender the seller is required to remit to the commission;

1240 (C) the tax rate under this chapter applicable to the purchase; and

1241 (D) the date of the purchase.

1242 (ii) (A) Subject to Subsection ~~[(3)]~~ (7)(h)(ii)(B), for purposes of determining the
1243 amount of tax due under Subsection ~~[(3)]~~ (7)(h)(i), a seller shall use the most recent London
1244 fixing price for the specie legal tender the purchaser paid.

1245 (B) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1246 commission may make rules for determining the amount of tax due under Subsection (3)(h)(i)
1247 if the London fixing price is not available for a particular day.

1248 ~~[(4)]~~ (8) (a) Except as provided in Subsections ~~[(5)]~~ (9) through ~~[(7)]~~ (11) and Section
1249 59-12-108, the ~~[sales or use]~~ tax imposed by this chapter is due and payable to the commission
1250 quarterly on or before the last day of the month next succeeding each quarterly calendar
1251 ~~[quarterly]~~ period.

1252 (b) (i) Each seller shall, on or before the last day of the month next succeeding each
1253 quarterly calendar ~~[quarterly]~~ period, file with the commission a return for the preceding
1254 quarterly period.

1255 (ii) The seller shall remit with the return under Subsection ~~[(4)]~~ (8)(b)(i) the amount of
1256 the tax required under this chapter to be collected or paid for the period covered by the return.

1257 (c) Except as provided in Subsection ~~[(5)(c)]~~ (9)(b), a return shall contain information
1258 and be in a form the commission prescribes by rule.

1259 (d) (i) Subject to Subsection ~~[(4)]~~ (8)(d)(ii), the sales tax as computed in the return
1260 shall be based on the total nonexempt sales made during the period for which the return is filed,
1261 including both cash and charge sales.

1262 (ii) For a sale that includes the delivery or installation of tangible personal property at a
1263 location other than a seller's place of business described in Subsection (2)(a)(i), if the delivery
1264 or installation is separately stated on an invoice or receipt, a seller may compute the tax due ~~[on~~
1265 ~~the sale]~~ for purposes of Subsection ~~[(4)]~~ (8)(d)(i) based on the amount the seller receives for
1266 that sale during each period for which the seller receives payment for the sale.

1267 (e) (i) The use tax as computed in the return shall be based on the total amount of
1268 purchases for storage, use, or other consumption in this state made during the period for which
1269 the return is filed, including both cash and charge purchases.

1270 (ii) (A) As used in this Subsection [~~(4)~~] (8)(e)(ii), "qualifying purchaser" means a
1271 purchaser [~~who~~] that is required to remit taxes under this chapter[;] but is not required to remit
1272 taxes monthly in accordance with Section 59-12-108, and [~~who~~] that converts tangible personal
1273 property into real property.

1274 (B) Subject to Subsections [~~(4)~~] (8)(e)(ii)(C) and (D), a qualifying purchaser may remit
1275 the taxes due under this chapter on tangible personal property for which the qualifying
1276 purchaser claims an exemption as allowed under Subsection 59-12-104(23) or (25) based on
1277 the period in which the qualifying purchaser receives payment, in accordance with Subsection
1278 [~~(4)~~] (8)(e)(ii)(C), for the conversion of the tangible personal property into real property.

1279 (C) A qualifying purchaser remitting taxes due under this chapter in accordance with
1280 Subsection [~~(4)~~] (8)(e)(ii)(B) shall remit an amount equal to the total amount of tax due on the
1281 qualifying purchaser's purchase of the tangible personal property that was converted into real
1282 property multiplied by a fraction, the numerator of which is the payment received in the period
1283 for the qualifying purchaser's sale of the tangible personal property that was converted into real
1284 property and the denominator of which is the entire sales price for the qualifying purchaser's
1285 sale of the tangible personal property that was converted into real property.

1286 (D) A qualifying purchaser may remit taxes due under this chapter in accordance with
1287 this Subsection [~~(4)~~] (8)(e)(ii) only if the books and records that the qualifying purchaser keeps
1288 in the qualifying purchaser's regular course of business identify by reasonable and verifiable
1289 standards that the tangible personal property was converted into real property.

1290 (f) (i) Subject to Subsection [~~(4)~~] (8)(f)(ii) and in accordance with Title 63G, Chapter
1291 3, Utah Administrative Rulemaking Act, the commission may by rule extend the time for
1292 making returns and paying the taxes.

1293 (ii) An extension under Subsection [~~(4)~~] (8)(f)(i) may not be for more than 90 days.

1294 (g) The commission may require returns and payment of the tax to be made for other
1295 than quarterly periods if the commission considers it necessary in order to ensure the payment
1296 of the tax imposed by this chapter.

1297 (h) (i) The commission may require a seller that files a simplified electronic return with

1298 the commission to file an additional electronic report with the commission.

1299 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1300 commission may make rules providing:

1301 (A) the information required to be included in the additional electronic report described
1302 in Subsection ~~[(4)]~~ (8)(h)(i); and

1303 (B) one or more due dates for filing the additional electronic report described in
1304 Subsection ~~[(4)]~~ (8)(h)(i).

1305 ~~[(5)(a) As used in this Subsection (5) and Subsection (6)(b), "remote seller" means a~~
1306 ~~seller that is:]~~

1307 ~~[(i) registered under the agreement;]~~

1308 ~~[(ii) described in Subsection (2)(c); and]~~

1309 ~~[(iii) not a:]~~

1310 ~~[(A) model 1 seller;]~~

1311 ~~[(B) model 2 seller; or]~~

1312 ~~[(C) model 3 seller.]~~

1313 ~~[(b)]~~ (9) (a) (i) Except as provided in Subsection ~~[(5)(b)]~~ (9)(a)(ii), a tax a ~~[remote~~
1314 ~~seller]~~ registered remitter collects in accordance with Subsection ~~[(2)(c)]~~ (5)(a) is due and
1315 payable:

1316 (A) to the commission;

1317 (B) annually; and

1318 (C) on or before the last day of the month immediately following the last day of each
1319 calendar year.

1320 (ii) The commission may require that a tax a ~~[remote seller]~~ registered remitter collects
1321 in accordance with Subsection ~~[(2)(c)]~~ (5)(a) be due and payable:

1322 (A) to the commission; and

1323 (B) on the last day of the month immediately following any month in which the ~~[seller]~~
1324 registered remitter accumulates a total of at least \$1,000 in agreement sales and use tax.

1325 ~~[(c)]~~ (b) (i) If a ~~[remote seller]~~ registered remitter remits a tax to the commission in
1326 accordance with Subsection ~~[(5)(b)]~~ (9)(a), the ~~[remote seller]~~ registered remitter shall file a
1327 return:

1328 (A) with the commission;

- 1329 (B) with respect to the tax;
- 1330 (C) containing information prescribed by the commission; and
- 1331 (D) on a form prescribed by the commission.
- 1332 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1333 commission shall make rules prescribing:
- 1334 (A) the information required to be contained in a return described in Subsection
- 1335 ~~[(5)(c)]~~ (9)(b)(i); and
- 1336 (B) the form described in Subsection ~~[(5)(c)]~~ (9)(b)(i)(D).
- 1337 ~~[(d)]~~ (c) A tax a ~~[remote seller]~~ registered remitter collects in accordance with this
- 1338 Subsection ~~[(5)]~~ (9) shall be calculated on the basis of the total amount of taxable transactions
- 1339 under Subsection 59-12-103(1) the ~~[remote seller]~~ registered remitter completes, including~~[:]~~
- 1340 cash transactions and charge transactions.
- 1341 ~~[(i) a cash transaction; and]~~
- 1342 ~~[(ii) a charge transaction.]~~
- 1343 ~~[(6)]~~ (10) (a) Except as provided in Subsection ~~[(6)]~~ (10)(b), a tax a seller that files a
- 1344 simplified electronic return collects in accordance with this chapter is due and payable:
- 1345 (i) monthly on or before the last day of the month immediately following the month for
- 1346 which the seller collects a tax under this chapter; and
- 1347 (ii) for the month for which the seller collects a tax under this chapter.
- 1348 (b) A tax a ~~[remote seller]~~ registered remitter that files a simplified electronic return
- 1349 collects in accordance with this chapter is due and payable as provided in Subsection ~~[(5)]~~ (9).
- 1350 ~~[(7)]~~ (11) (a) On each vehicle sale made by other than a regular licensed vehicle dealer,
- 1351 the purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject
- 1352 to titling or registration under the laws of this state.
- 1353 (b) The commission shall collect the tax described in Subsection ~~[(7)]~~ (11)(a) when the
- 1354 vehicle is titled or registered.
- 1355 ~~[(8)]~~ (12) If any sale of tangible personal property or any other taxable transaction
- 1356 under Subsection 59-12-103(1)~~[:]~~ is made by a wholesaler to a retailer~~[:]~~:
- 1357 (a) the wholesaler is not responsible for the collection or payment of the tax imposed
- 1358 on the sale; and
- 1359 (b) the retailer is responsible for the collection or payment of the tax imposed on the

1360 sale if:

1361 ~~[(a)]~~ (i) the retailer represents that the tangible personal property, product transferred
 1362 electronically, or service is purchased by the retailer for resale; and

1363 ~~[(b)]~~ (ii) the tangible personal property, product transferred electronically, or service is
 1364 not subsequently resold.

1365 ~~[(9)]~~ (13) If any sale of property or service subject to the tax is made to a person
 1366 prepaying sales or use tax in accordance with Title 63M, Chapter 5, Resource Development
 1367 Act, or to a contractor or subcontractor of that person~~[-]~~:

1368 (a) the person to whom such payment or consideration is payable is not responsible for
 1369 the collection or payment of the sales or use tax; and

1370 (b) the person prepaying the sales or use tax is responsible for the collection or
 1371 payment of the sales or use tax if the person prepaying the sales or use tax represents that the
 1372 amount prepaid as sales or use tax has not been fully credited against sales or use tax due and
 1373 payable under the rules promulgated by the commission.

1374 ~~[(10)]~~ (14) (a) For purposes of this Subsection ~~[(10)]~~ (14):

1375 (i) Except as provided in Subsection ~~[(10)]~~ (14)(a)(ii), "bad debt" ~~[is as]~~ means the
 1376 same as that term is defined in Section 166, Internal Revenue Code.

1377 (ii) ~~[Notwithstanding Subsection (10)(a)(i), "bad"]~~ "Bad debt" does not include:

1378 (A) an amount included in the purchase price of tangible personal property, a product
 1379 transferred electronically, or a service that is:

1380 (I) not a transaction described in Subsection 59-12-103(1); or

1381 (II) exempt under Section 59-12-104;

1382 (B) a financing charge;

1383 (C) interest;

1384 (D) a tax imposed under this chapter on the purchase price of tangible personal
 1385 property, a product transferred electronically, or a service;

1386 (E) an uncollectible amount on tangible personal property or a product transferred
 1387 electronically that:

1388 (I) is subject to a tax under this chapter; and

1389 (II) remains in the possession of a seller until the full purchase price is paid;

1390 (F) an expense incurred in attempting to collect any debt; or

- 1391 (G) an amount that a seller does not collect on repossessed property.
- 1392 (b) (i) To the extent an amount remitted in accordance with Subsection [~~(4)(d)~~] (8)(c)
1393 later becomes bad debt, a seller may deduct the bad debt from the total amount from which a
1394 tax under this chapter is calculated on a return.
- 1395 (ii) A qualifying purchaser, as defined in Subsection [~~(4)~~] (8)(e)(ii)(A), may deduct
1396 from the total amount of taxes due under this chapter the amount of tax the qualifying
1397 purchaser paid on the qualifying purchaser's purchase of tangible personal property converted
1398 into real property to the extent that:
- 1399 (A) tax was remitted in accordance with Subsection [~~(4)~~] (8)(e) on that tangible
1400 personal property converted into real property;
- 1401 (B) the qualifying purchaser's sale of that tangible personal property converted into real
1402 property later becomes bad debt; and
- 1403 (C) the books and records that the qualifying purchaser keeps in the qualifying
1404 purchaser's regular course of business identify by reasonable and verifiable standards that the
1405 tangible personal property was converted into real property.
- 1406 (c) A seller may file a refund claim with the commission if:
- 1407 (i) the amount of bad debt for the time period described in Subsection [~~(10)~~] (14)(e)
1408 exceeds the amount of the seller's sales that are subject to a tax under this chapter for that same
1409 time period; and
- 1410 (ii) as provided in Section [59-1-1410](#).
- 1411 (d) A bad debt deduction under this section may not include interest.
- 1412 (e) A bad debt may be deducted under this Subsection [~~(10)~~] (14) on a return for the
1413 time period during which the bad debt:
- 1414 (i) is written off as uncollectible in the seller's books and records; and
- 1415 (ii) would be eligible for a bad debt deduction[~~-(A)~~], for federal income tax purposes[;
1416 ~~and-(B)~~], if the seller were required to file a federal income tax return.
- 1417 (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or
1418 claims a refund under this Subsection [~~(10)~~] (14), the seller shall report and remit a tax under
1419 this chapter:
- 1420 (i) on the portion of the bad debt the seller recovers; and
- 1421 (ii) on a return filed for the time period for which the portion of the bad debt is

1422 recovered.

1423 (g) For purposes of reporting a recovery of a portion of bad debt under Subsection
1424 ~~[(10)]~~ (14)(f), a seller shall apply amounts received on the bad debt in the following order:

1425 (i) in a proportional amount:

1426 (A) to the purchase price of the tangible personal property, product transferred
1427 electronically, or service; and

1428 (B) to the tax due under this chapter on the tangible personal property, product
1429 transferred electronically, or service; and

1430 (ii) to:

1431 (A) interest charges;

1432 (B) service charges; and

1433 (C) other charges.

1434 (h) A seller's certified service provider may make a deduction or claim a refund for bad
1435 debt on behalf of the seller~~[(11)]~~ in accordance with this Subsection ~~[(10); and (11)]~~ (14) if the
1436 certified service provider credits or refunds the entire amount of the bad debt deduction or
1437 refund to the seller.

1438 (i) A seller may allocate bad debt among the states that are members of the agreement
1439 if the seller's books and records support that allocation.

1440 ~~[(11)]~~ (15) (a) A seller may not, with intent to evade any tax, fail to timely remit the
1441 full amount of tax required by this chapter.

1442 (b) A violation of this section is punishable as provided in Section 59-1-401.

1443 (c) Each person ~~[who]~~ that fails to pay any tax to the state or any amount of tax
1444 required to be paid to the state, except amounts determined to be due by the commission under
1445 Chapter 1, Part 14, Assessment, Collections, and Refunds Act, or Section 59-12-111, within
1446 the time required by this chapter, or ~~[who]~~ that fails to file any return as required by this
1447 chapter, shall pay, in addition to the tax, penalties and interest as provided in Sections 59-1-401
1448 and 59-1-402.

1449 (d) For purposes of prosecution under this section, each quarterly tax period in which a
1450 seller, with intent to evade any tax, collects a tax and fails to timely remit the full amount of the
1451 tax required to be remitted~~[-]~~ constitutes a separate offense.

1452 Section 5. Section 59-12-108 is amended to read:

1453 **59-12-108. Monthly payment -- Amount of tax a seller may retain -- Penalty --**
1454 **Certain amounts allocated to local taxing jurisdictions.**

1455 (1) (a) Notwithstanding Section 59-12-107, a seller that has a tax liability under this
1456 chapter of \$50,000 or more for the previous calendar year shall:

1457 (i) file a return with the commission:

1458 (A) monthly on or before the last day of the month immediately following the month
1459 for which the seller collects a tax under this chapter; and

1460 (B) for the month for which the seller collects a tax under this chapter; and

1461 (ii) except as provided in Subsection (1)(b), remit₂ with the return required by
1462 Subsection (1)(a)(i)₂ the amount [~~the person is required to remit to the commission for each tax,~~
1463 ~~fee, or charge~~] described in Subsection (1)(c) as follows:

1464 (A) if that seller's tax liability under this chapter for the previous calendar year is less
1465 than \$96,000, by any method permitted by the commission; or

1466 (B) if that seller's tax liability under this chapter for the previous calendar year is
1467 \$96,000 or more, by electronic funds transfer.

1468 (b) A seller shall remit electronically with the return required by Subsection (1)(a)(i)
1469 the amount the seller is required to remit to the commission for each tax, fee, or charge
1470 described in Subsection (1)(c) if that seller:

1471 (i) is required by Section 59-12-107 to file the return electronically; or

1472 (ii) (A) is required to collect and remit a tax under Section 59-12-107; and

1473 (B) files a simplified electronic return.

1474 (c) Subsections (1)(a) and (b) apply to the following taxes, fees, or charges:

1475 (i) a tax under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

1476 (ii) a fee under Section 19-6-714;

1477 (iii) a fee under Section 19-6-805;

1478 (iv) a charge under Section 69-2-5;

1479 (v) a charge under Section 69-2-5.5;

1480 (vi) a charge under Section 69-2-5.6; [~~or~~] and

1481 (vii) a tax under this chapter.

1482 (d) Notwithstanding [~~Subsection~~] Subsections (1)(a)(ii) and (b) and in accordance with
1483 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules

1484 providing for a method for making same-day payments other than by electronic funds transfer
1485 if making payments by electronic funds transfer fails.

1486 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1487 commission shall establish by rule procedures and requirements for determining the amount a
1488 seller is required to remit to the commission under this Subsection (1).

1489 (2) (a) Except as provided in Subsection (3), a seller subject to Subsection (1) or a
1490 seller described in Subsection (4) may retain each month the amount allowed by this
1491 Subsection (2).

1492 (b) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain
1493 each month 1.31% of any amounts the seller is required to remit to the commission:

1494 (i) for a transaction described in Subsection 59-12-103(1) that is subject to a state tax
1495 and a local tax imposed in accordance with the following, for the month for which the seller is
1496 filing a return in accordance with Subsection (1):

1497 (A) Subsection 59-12-103(2)(a);

1498 (B) Subsection 59-12-103(2)(b); and

1499 (C) Subsection 59-12-103(2)(d); and

1500 (ii) for an agreement sales and use tax.

1501 (c) (i) A seller subject to Subsection (1) or a seller described in Subsection (4) may
1502 retain each month the amount calculated under Subsection (2)(c)(ii) for a transaction described
1503 in Subsection 59-12-103(1) that is subject to the state tax and the local tax imposed in
1504 accordance with Subsection 59-12-103(2)(c).

1505 (ii) For purposes of Subsection (2)(c)(i), the amount a seller may retain is an amount
1506 equal to the sum of:

1507 (A) 1.31% of any amounts the seller is required to remit to the commission for:

1508 (I) the state tax and the local tax imposed in accordance with Subsection

1509 59-12-103(2)(c);

1510 (II) the month for which the seller is filing a return in accordance with Subsection (1);

1511 and

1512 (III) an agreement sales and use tax; and

1513 (B) 1.31% of the difference between:

1514 (I) the amounts the seller would have been required to remit to the commission:

1515 (Aa) in accordance with Subsection 59-12-103(2)(a) if the transaction had been subject
1516 to the state tax and the local tax imposed in accordance with Subsection 59-12-103(2)(a);
1517 (Bb) for the month for which the seller is filing a return in accordance with Subsection
1518 (1); and
1519 (Cc) for an agreement sales and use tax; and
1520 (II) the amounts the seller is required to remit to the commission for:
1521 (Aa) the state tax and the local tax imposed in accordance with Subsection
1522 59-12-103(2)(c);
1523 (Bb) the month for which the seller is filing a return in accordance with Subsection (1);
1524 and
1525 (Cc) an agreement sales and use tax.
1526 (d) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain
1527 each month 1% of any amounts the seller is required to remit to the commission:
1528 (i) for the month for which the seller is filing a return in accordance with Subsection
1529 (1); and
1530 (ii) under:
1531 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
1532 (B) Subsection 59-12-603(1)(a)(i)(A); or
1533 (C) Subsection 59-12-603(1)(a)(i)(B).
1534 (3) A state government entity that is required to remit taxes monthly in accordance
1535 with Subsection (1) may not retain any amount under Subsection (2).
1536 (4) A seller that has a tax liability under this chapter for the previous calendar year of
1537 less than \$50,000 may:
1538 (a) voluntarily meet the requirements of Subsection (1); and
1539 (b) if the seller voluntarily meets the requirements of Subsection (1), retain the
1540 amounts allowed by Subsection (2).
1541 [~~(5) (a) Subject to Subsections (5)(b) through (d), a seller that voluntarily collects and~~
1542 ~~remits a tax in accordance with Subsection 59-12-107(2)(c)(i) may retain an amount equal to~~
1543 ~~18% of any amounts the seller would otherwise remit to the commission:]
1544 [(i) if the seller obtains a license under Section 59-12-106 for the first time on or after
1545 January 1, 2014; and]~~

1546 ~~[(ii) for:]~~

1547 ~~[(A) an agreement sales and use tax; and]~~

1548 ~~[(B) the time period for which the seller files a return in accordance with this section.]~~

1549 ~~[(b) If a seller retains an amount under this Subsection (5), the seller may not retain any~~

1550 ~~other amount under this section.]~~

1551 ~~[(c) If a seller retains an amount under this Subsection (5), the commission may require~~

1552 ~~the seller to file a return by:]~~

1553 ~~[(i) electronic means; or]~~

1554 ~~[(ii) a means other than electronic means.]~~

1555 ~~[(d) A seller may not retain an amount under this Subsection (5) if the seller is required~~

1556 ~~to collect or remit a tax under this section in accordance with Section ~~59-12-103.1.~~]~~

1557 ~~[(6)] (5) Penalties for late payment shall be as provided in Section ~~59-1-401.~~~~

1558 ~~[(7)] (6) (a) Except as provided in Subsection ~~[(7)] (6)(c)~~, for any amounts required to~~

1559 ~~be remitted to the commission under this part, the commission shall each month calculate an~~

1560 ~~amount equal to the difference between:~~

1561 (i) the total amount retained for that month by all sellers had the percentages listed

1562 ~~under Subsections (2)(b) and (2)(c)(ii) been 1.5%; and~~

1563 (ii) the total amount retained for that month by all sellers at the percentages listed

1564 ~~under Subsections (2)(b) and (2)(c)(ii).~~

1565 (b) The commission shall each month allocate the amount calculated under Subsection

1566 ~~[(7)] (6)(a) to each county, city, and town on the basis of the proportion of agreement sales and~~

1567 ~~use tax that the commission distributes to each county, city, and town for that month compared~~

1568 ~~to the total agreement sales and use tax that the commission distributes for that month to all~~

1569 ~~counties, cities, and towns.~~

1570 (c) The amount the commission calculates under Subsection ~~[(7)] (6)(a)~~ may not

1571 ~~include an amount collected from a tax that:~~

1572 (i) the state imposes within a county, city, or town, including the unincorporated area

1573 ~~of a county; and~~

1574 (ii) is not imposed within the entire state.

1575 Section 6. Section **59-12-211** is amended to read:

1576 **59-12-211. Definitions -- Location of certain transactions -- Reports to**

1577 **commission -- Direct payment provision for a seller making certain purchases --**

1578 **Exceptions.**

1579 (1) As used in this section:

1580 (a) (i) "Receipt" and "receive" mean:

1581 (A) taking possession of tangible personal property;

1582 (B) making first use of a service; or

1583 (C) for a product transferred electronically, the earlier of:

1584 (I) taking possession of the product transferred electronically; or

1585 (II) making first use of the product transferred electronically.

1586 (ii) "Receipt" and "receive" do not include possession by a shipping company on behalf

1587 of a purchaser.

1588 (b) "Transportation equipment" means:

1589 (i) a locomotive or rail car that is used to carry a person or property in interstate

1590 commerce;

1591 (ii) a truck or truck-tractor:

1592 (A) with a gross vehicle weight rating of 10,001 pounds or ~~more~~ greater;

1593 (B) registered under Section [41-1a-301](#); and

1594 (C) operated under the authority of a carrier authorized and certificated:

1595 (I) by the United States Department of Transportation or another federal authority; and

1596 (II) to engage in carrying a person or property in interstate commerce;

1597 (iii) a trailer, semitrailer, or passenger bus that is:

1598 (A) registered under Section [41-1a-301](#); and

1599 (B) operated under the authority of a carrier authorized and certificated:

1600 (I) by the United States Department of Transportation or another federal authority; and

1601 (II) to engage in carrying a person or property in interstate commerce;

1602 (iv) an aircraft that is operated by an air carrier authorized and certificated:

1603 (A) by the United States Department of Transportation or another federal or foreign

1604 authority; and

1605 (B) to engage in carrying a person or property in interstate commerce; or

1606 (v) a container designed for use on, or a component part attached or secured on, an

1607 item of equipment listed in Subsections (1)(b)(i) through (iv).

1608 (2) Except as provided in Subsections (8) and (14), if tangible personal property, a
1609 product transferred electronically, or a service that is subject to taxation under this chapter is
1610 received by a purchaser at a business location of a seller, the location of the transaction is the
1611 business location of the seller.

1612 (3) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
1613 and (14), if tangible personal property, a product transferred electronically, or a service that is
1614 subject to taxation under this chapter is not received by a purchaser at a business location of a
1615 seller, the location of the transaction is the location where the purchaser takes receipt of the
1616 tangible personal property or service.

1617 (4) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
1618 and (14), if Subsection (2) or (3) does not apply, the location of the transaction is the location
1619 indicated by an address for or other information on the purchaser if:

1620 (a) the address or other information is available from the seller's business records; and
1621 (b) use of the address or other information from the seller's records does not constitute
1622 bad faith.

1623 (5) (a) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9),
1624 (11), and (14), if Subsection (2), (3), or (4) does not apply, the location of the transaction is the
1625 location indicated by an address for the purchaser if:

1626 (i) the address is obtained during the consummation of the transaction; and
1627 (ii) use of the address described in Subsection (5)(a)(i) does not constitute bad faith.

1628 (b) An address used under Subsection (5)(a) includes the address of a purchaser's
1629 payment instrument if no other address is available.

1630 (6) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
1631 and (14), if Subsection (2), (3), (4), or (5) does not apply or if a seller does not have sufficient
1632 information to apply Subsection (2), (3), (4), or (5), the location of the transaction is the
1633 location:

1634 (a) indicated by the address from which:

1635 (i) except as provided in Subsection (6)(a)(ii), for tangible personal property that is
1636 subject to taxation under this chapter, the tangible personal property is shipped;

1637 (ii) for computer software delivered electronically or for a product transferred
1638 electronically that is subject to taxation under this chapter, the computer software or product

1639 transferred electronically is first available for transmission by the seller; or
1640 (iii) for a service that is subject to taxation under this chapter, the service is provided;

1641 or

1642 (b) as determined by the seller with respect to a prepaid wireless calling service:

1643 (i) provided in Subsection (6)(a)(iii); or

1644 (ii) associated with the mobile telephone number.

1645 (7) (a) For purposes of this Subsection (7), "shared ZIP Code" means a nine-digit ZIP
1646 Code that is located within two or more local taxing jurisdictions.

1647 (b) If the location of a transaction determined under Subsections (3) through (6) is in a
1648 shared ZIP Code, the location of the transaction is:

1649 (i) if there is only one local taxing jurisdiction that imposes the lowest agreement
1650 combined tax rate for the shared ZIP Code, the local taxing jurisdiction that imposes the lowest
1651 agreement combined tax rate; or

1652 (ii) if two or more local taxing jurisdictions impose the lowest agreement combined tax
1653 rate for the shared ZIP Code, the local taxing jurisdiction that:

1654 (A) imposes the lowest agreement combined tax rate for the shared ZIP Code; and

1655 (B) has located within the local taxing jurisdiction the largest number of street
1656 addresses within the shared ZIP Code.

1657 (c) Notwithstanding any provision under this chapter authorizing or requiring the
1658 imposition of a sales and use tax, for purposes of Subsection (7)(b), a seller shall collect a sales
1659 and use tax imposed under this chapter at the lowest agreement combined tax rate imposed
1660 within the local taxing jurisdiction in which the transaction is located under Subsection (7)(b).

1661 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1662 commission may make rules:

1663 (i) providing for the circumstances under which a seller has exercised due diligence in
1664 determining the nine-digit ZIP Code for an address; or

1665 (ii) notwithstanding Subsection (7)(b), for determining the local taxing jurisdiction
1666 within which a transaction is located if a seller is unable to determine the local taxing
1667 jurisdiction within which the transaction is located under Subsection (7)(b).

1668 (8) The location of a transaction made with a direct payment permit described in
1669 Section [59-12-107.1](#) is the location where receipt of the tangible personal property, product

1670 transferred electronically, or service by the purchaser occurs.

1671 (9) The location of a purchase of direct mail is the location determined in accordance
1672 with Section [59-12-123](#).

1673 (10) (a) Except as provided in Subsection (10)(b), the location of a transaction
1674 determined under Subsections (3) through (6), (8), or (9), is the local taxing jurisdiction within
1675 which:

1676 (i) the nine-digit ZIP Code assigned to the location determined under Subsections (3)
1677 through (6), (8), or (9) is located; or

1678 (ii) the five-digit ZIP Code assigned to the location determined under Subsections (3)
1679 through (6), (8), or (9) is located if:

1680 (A) a nine-digit ZIP Code is not available for the location determined under
1681 Subsections (3) through (6), (8), or (9); or

1682 (B) after exercising due diligence, a seller or certified service provider is unable to
1683 determine a nine-digit ZIP Code for the location determined under Subsections (3) through (6),
1684 (8), or (9).

1685 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1686 commission may make rules for determining the local taxing jurisdiction within which a
1687 transaction is located if a seller or certified service provider is unable to determine the local
1688 taxing jurisdiction within which the transaction is located under Subsection (10)(a).

1689 (11) (a) As used in this Subsection (11), "florist delivery transaction" means a
1690 transaction commenced by a florist that transmits an order:

1691 (i) by:

1692 (A) telegraph;

1693 (B) telephone; or

1694 (C) a means of communication similar to Subsection (11)(a)(i)(A) or (B); and

1695 (ii) for delivery to another place:

1696 (A) in this state; or

1697 (B) outside this state.

1698 ~~[(b) Notwithstanding Subsections (3) through (6), beginning on January 1, 2009, and~~
1699 ~~ending on December 31, 2009, the location of a florist delivery transaction is the business~~
1700 ~~location of the florist that commences the florist delivery transaction.]~~

1701 [~~(c)~~] (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
1702 Act, the commission may by rule:

1703 (i) define:

1704 (A) "business location"; and

1705 (B) "florist";

1706 (ii) define what constitutes a means of communication similar to Subsection

1707 (11)(a)(i)(A) or (B); and

1708 (iii) provide procedures for determining when a transaction is commenced.

1709 (12) (a) Notwithstanding any other provision of this section and except as provided in
1710 Subsection (12)(b), if a purchaser uses computer software and there is not a transfer of a copy
1711 of that software to the purchaser, the location of the transaction is determined in accordance
1712 with Subsections (4) and (5).

1713 (b) If a purchaser uses computer software described in Subsection (12)(a) at more than
1714 one location, the location of the transaction shall be determined in accordance with rules made
1715 by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
1716 Act.

1717 (13) (a) A tax collected under this chapter shall be reported to the commission on a
1718 form that identifies the location of each transaction that occurs during the return filing period.

1719 (b) The form described in Subsection (13)(a) shall be filed with the commission as
1720 required under this chapter.

1721 (14) This section does not apply to:

1722 (a) amounts charged by a seller for:

1723 (i) telecommunications service except for a prepaid calling service or a prepaid
1724 wireless calling service as provided in Subsection (6)(b) or Section [59-12-215](#); or

1725 (ii) the retail sale or transfer of:

1726 (A) a motor vehicle other than a motor vehicle that is transportation equipment;

1727 (B) an aircraft other than an aircraft that is transportation equipment;

1728 (C) a watercraft;

1729 (D) a modular home;

1730 (E) a manufactured home; or

1731 (F) a mobile home; or

- 1732 (iii) except as provided in Section 59-12-214, the lease or rental of tangible personal
 1733 property other than tangible personal property that is transportation equipment;
- 1734 (b) a tax a person pays in accordance with Subsection 59-12-107[(2)(e)](6); or
- 1735 (c) a retail sale of tangible personal property or a product transferred electronically if:
- 1736 (i) the seller receives the order for the tangible personal property or product transferred
 1737 electronically in this state;
- 1738 (ii) receipt of the tangible personal property or product transferred electronically by the
 1739 purchaser or the purchaser's donee occurs in this state;
- 1740 (iii) the location where receipt of the tangible personal property or product transferred
 1741 electronically by the purchaser occurs is determined in accordance with Subsections (3)
 1742 through (5); and
- 1743 (iv) at the time the seller receives the order, the record keeping system that the seller
 1744 uses to calculate the proper amount of tax imposed under this chapter captures the location
 1745 where the order is received.

1746 Section 7. Section 59-12-211.1 is amended to read:

1747 **59-12-211.1. Location of a transaction that is subject to a use tax.**

1748 (1) Subject to Subsection (2), a person that is required by Subsection
 1749 59-12-107[(2)(e)](6) to pay a use tax on a transaction shall report the location of that
 1750 transaction at the person's location.

1751 (2) For purposes of Subsection (1), if a person has more than one location in this state,
 1752 the person shall report the location of the transaction at the location at which tangible personal
 1753 property, a product transferred electronically, or a service is received.

1754 Section 8. Section 76-8-1101 is amended to read:

1755 **76-8-1101. Criminal offenses and penalties relating to revenue and taxation --**
 1756 **Rulemaking authority -- Statute of limitations.**

1757 (1) (a) As provided in Section 59-1-401, criminal offenses and penalties are as
 1758 provided in Subsections (1)(b) through (e).

1759 (b) (i) [Any] A person [who] is guilty of a class B misdemeanor if the person:
 1760 (A) is required by Title 59, Revenue and Taxation, or any laws the State Tax
 1761 Commission administers or regulates, to register with or obtain a license or permit from the
 1762 State Tax Commission[; who]; and

1763 (B) operates without having registered or secured a license or permit[;] or [who]
1764 operates when the registration, license, or permit is expired or not current[; ~~is guilty of a class~~
1765 ~~B misdemeanor~~].

1766 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(b)(i), the
1767 penalty may not:

1768 (A) be less than \$500; or

1769 (B) exceed \$1,000.

1770 (c) (i) With respect to a tax, fee, or charge as defined in Section 59-1-401, [any] a
1771 person [who] is guilty of a third degree felony if the person:

1772 (A) knowingly and intentionally, and without a reasonable good faith basis, fails to
1773 make, render, sign, or verify any return within the time required by law or to supply any
1774 information within the time required by law[; ~~or who~~];

1775 (B) makes, renders, signs, or verifies any false or fraudulent return or statement[;] or
1776 [who]

1777 (C) supplies any false or fraudulent information[; ~~is guilty of a third degree felony~~].

1778 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(c)(i), the penalty
1779 may not:

1780 (A) be less than \$1,000; or

1781 (B) exceed \$5,000.

1782 (d) (i) Any person who intentionally or willfully attempts to evade or defeat any tax,
1783 fee, or charge as defined in Section 59-1-401 or the payment of a tax, fee, or charge as defined
1784 in Section 59-1-401 is, in addition to other penalties provided by law, guilty of a second degree
1785 felony.

1786 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(d)(i), the penalty
1787 may not:

1788 (A) be less than \$1,500; or

1789 (B) exceed \$25,000.

1790 (e) (i) A person is guilty of a second degree felony if that person commits an act:

1791 (A) described in Subsection (1)(e)(ii) with respect to one or more of the following
1792 documents:

1793 (I) a return;

- 1794 (II) an affidavit;
- 1795 (III) a claim; or
- 1796 (IV) a document similar to Subsections (1)(e)(i)(A)(I) through (III); and
- 1797 (B) subject to Subsection (1)(e)(iii), with knowledge that the document described in
- 1798 Subsection (1)(e)(i)(A):
- 1799 (I) is false or fraudulent as to any material matter; and
- 1800 (II) could be used in connection with any material matter administered by the State Tax
- 1801 Commission.
- 1802 (ii) The following acts apply to Subsection (1)(e)(i):
- 1803 (A) preparing any portion of a document described in Subsection (1)(e)(i)(A);
- 1804 (B) presenting any portion of a document described in Subsection (1)(e)(i)(A);
- 1805 (C) procuring any portion of a document described in Subsection (1)(e)(i)(A);
- 1806 (D) advising in the preparation or presentation of any portion of a document described
- 1807 in Subsection (1)(e)(i)(A);
- 1808 (E) aiding in the preparation or presentation of any portion of a document described in
- 1809 Subsection (1)(e)(i)(A);
- 1810 (F) assisting in the preparation or presentation of any portion of a document described
- 1811 in Subsection (1)(e)(i)(A); or
- 1812 (G) counseling in the preparation or presentation of any portion of a document
- 1813 described in Subsection (1)(e)(i)(A).
- 1814 (iii) This Subsection (1)(e) applies:
- 1815 (A) regardless of whether the person for which the document described in Subsection
- 1816 (1)(e)(i)(A) is prepared or presented:
- 1817 (I) knew of the falsity of the document described in Subsection (1)(e)(i)(A); or
- 1818 (II) consented to the falsity of the document described in Subsection (1)(e)(i)(A); and
- 1819 (B) in addition to any other penalty provided by law.
- 1820 (iv) Notwithstanding Section [76-3-301](#), for purposes of this Subsection (1)(e), the
- 1821 penalty may not:
- 1822 (A) be less than \$1,500; or
- 1823 (B) exceed \$25,000.
- 1824 (v) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1825 State Tax Commission may make rules prescribing the documents that are similar to
1826 Subsections (1)(e)(i)(A)(I) through (III).

1827 (2) The statute of limitations for prosecution for a violation of this section is the later
1828 of six years:

1829 (a) from the date the tax should have been remitted; or

1830 (b) after the day on which the person commits the criminal offense.

1831 Section 9. Section **78A-3-102** is amended to read:

1832 **78A-3-102. Supreme Court jurisdiction.**

1833 (1) The Supreme Court has original jurisdiction to answer questions of state law
1834 certified by a court of the United States.

1835 (2) The Supreme Court has original jurisdiction to issue all extraordinary writs and
1836 authority to issue all writs and process necessary to carry into effect its orders, judgments, and
1837 decrees or in aid of its jurisdiction.

1838 (3) The Supreme Court has appellate jurisdiction, including jurisdiction of
1839 interlocutory appeals, over:

1840 (a) a judgment of the Court of Appeals;

1841 (b) cases certified to the Supreme Court by the Court of Appeals prior to final
1842 judgment by the Court of Appeals;

1843 (c) discipline of lawyers;

1844 (d) final orders of the Judicial Conduct Commission;

1845 (e) final orders and decrees in formal adjudicative proceedings originating with:

1846 (i) the Public Service Commission;

1847 (ii) the State Tax Commission;

1848 (iii) the School and Institutional Trust Lands Board of Trustees;

1849 (iv) the Board of Oil, Gas, and Mining;

1850 (v) the state engineer; or

1851 (vi) the executive director of the Department of Natural Resources reviewing actions of
1852 the Division of Forestry, Fire, and State Lands;

1853 (f) final orders and decrees of the district court review of informal adjudicative
1854 proceedings of agencies under Subsection (3)(e);

1855 (g) a final judgment or decree of any court of record holding a statute of the United

1856 States or this state unconstitutional on its face under the Constitution of the United States or the
1857 Utah Constitution;

1858 (h) interlocutory appeals from any court of record involving a charge of a first degree
1859 or capital felony;

1860 (i) appeals from the district court involving a conviction or charge of a first degree
1861 felony or capital felony;

1862 (j) orders, judgments, and decrees of any court of record over which the Court of
1863 Appeals does not have original appellate jurisdiction; [~~and~~]

1864 (k) appeals from the district court of orders, judgments, or decrees ruling on legislative
1865 subpoenas[~~;~~]; and

1866 (l) appeals from a district court's decision on a declaratory judgment request under
1867 Subsection 59-12-107(3)(b).

1868 (4) The Supreme Court may transfer to the Court of Appeals any of the matters over
1869 which the Supreme Court has original appellate jurisdiction, except:

1870 (a) capital felony convictions or an appeal of an interlocutory order of a court of record
1871 involving a charge of a capital felony;

1872 (b) election and voting contests;

1873 (c) reapportionment of election districts;

1874 (d) retention or removal of public officers;

1875 (e) matters involving legislative subpoenas; and

1876 (f) those matters described in Subsections (3)(a) through (d) and (l).

1877 (5) The Supreme Court has sole discretion in granting or denying a petition for writ of
1878 certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall
1879 review those cases certified to it by the Court of Appeals under Subsection (3)(b).

1880 (6) The Supreme Court shall comply with the requirements of Title 63G, Chapter 4,
1881 Administrative Procedures Act, in its review of agency adjudicative proceedings.

1882 **Section 10. Appropriation.**

1883 The following sums of money are appropriated for the fiscal year beginning July 1,
1884 2016, and ending June 30, 2017. These are additions to amounts previously appropriated for
1885 fiscal year 2017. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures
1886 Act, the Legislature appropriates the following sums of money from the funds or accounts

1887 indicated for the use and support of the government of the state of Utah.

1888 ITEM 1

1889 To the General Fund

1890 From Remote Sales Restricted Account, One-time \$81,000

1891 Schedule of Programs:

1892 General Fund, One-time \$81,000

1893 Section 11. **Severability clause.**

1894 The provisions of this bill are severable. If any provision of this bill, or the application
 1895 of any provision of this bill to any person or circumstance, is held invalid by a final,
 1896 unappealable decision of a court of competent jurisdiction, the remainder of this bill shall be
 1897 given effect without the invalid provision or application.

1898 Section 12. **Repealer.**

1899 This bill repeals:

1900 Section **59-12-103.2, Definitions -- Remote Sales Restricted Account -- Creation --**
 1901 **Funding for account -- Interest -- Division of Finance accounting.**

1902 Section 13. **Effective date.**

1903 (1) Except as provided in Subsection (2), this bill takes effect on May 9, 2017.

1904 (2) The amendments to Section **59-12-108** take effect on October 1, 2017.

Legislative Review Note

The Utah Legislature's Joint Rule 4-2-402 requires legislative general counsel to place a legislative review note on legislation. The Legislative Management Committee has further directed legislative general counsel to include legal analysis in the legislative review note only if legislative general counsel determines that there is a high probability that a court would declare the legislation to be unconstitutional under the Utah Constitution, the United States Constitution, or both. As explained in the legal analysis below, legislative general counsel has determined, based on applicable state and federal constitutional language and current interpretations of that language in state and federal court case law, that this legislation has a high probability of being declared unconstitutional by a court. The note is not written for the purpose of influencing whether the bill should become law but is written to provide information relevant to legislators' consideration of this bill. The note is not a substitute for the judgment of the judiciary, which has authority to determine the constitutionality of a law in the context of a specific case.

This bill requires sellers that have an economic presence, but that lack a physical presence

(such as a business location), in the state to pay or collect and remit state and local sales and use taxes. Under this bill, economic presence, sufficient to trigger sales and use tax collection obligations, occurs if the seller's gross revenue from sales of tangible personal property, products transferred electronically, or services in the state exceeds \$100,000.

Because this bill imposes obligations on sellers that do not have a physical presence in Utah, the bill raises issues under the Commerce Clause of the United States Constitution. The Constitution of the United States grants Congress the authority to "regulate Commerce with foreign Nations, and among the several States." U.S. Const. art. I, § 8, cl. 3. Case law has interpreted the Commerce Clause as having a dormant aspect that "prohibits certain state actions that interfere with interstate commerce." *Quill Corp. v. North Dakota By and Through Heitkamp*, 504 U.S. 298, 309 (1992) (citing *South Carolina State Highway Dept. v. Barnwell Brothers, Inc.*, 303 U.S. 177, 185 (1938)).

In evaluating a state statute under a dormant Commerce Clause challenge, the Supreme Court of the United States has held that a state may not require a seller to pay or collect and remit a sales and use tax unless the seller has a "substantial nexus" with the taxing state. *Quill*, 504 U.S. at 311. The Court has found that "a vendor whose only contacts with the taxing State are by mail or common carrier lacks the 'substantial nexus' required by the Commerce Clause." *Id.* (citing *National Bellas Hess, Inc. v. Department of Revenue of Illinois*, 368 U.S. 753, 758 (1967)). In *Quill*, the Supreme Court of the United States held that a seller has a substantial nexus with a state sufficient to allow the state to impose a sales and use tax collection obligation on the seller only if the seller has a physical presence in the state. *Id.* at 315 (noting that the bright-line rule means that "[w]hether or not a State may compel a vendor to collect a sales or use tax may turn on the presence in the taxing State of a small sales force, plant, or office."). In *Scripto v. Carson*, the Supreme Court of the United States found that independent contractors soliciting business within a state was sufficient presence for the state to impose sales and use tax collection obligations. *Scripto v. Carson*, 362 U.S. 207, 211 (1960).

This bill raises the issue of the application of the *Quill* case and its substantial nexus standard to an increasingly interconnected economy that has seen significant technological and social changes as well as an evolution in the model for doing business. Indeed, Justice Kennedy, in a concurring opinion of the recent *Direct Marketing Association v. Brohl* decision, noted, "Given these changes in technology and consumer sophistication, it is unwise to delay any longer a reconsideration of the Court's holding in *Quill*. A case questionable even when decided, *Quill* now harms States to a degree far greater than could have been anticipated earlier." *Direct Marketing Ass'n v. Brohl*, 135 S.Ct. 1124, 1135 (2016) (Kennedy, J., concurring). Justice Kennedy then stated, "The legal system should find an appropriate case for this Court to reexamine *Quill* and [its predecessor] *Bellas Hess*." *Id.* In addition, in *Quill* itself, the Supreme Court of the United States noted that the issue of what constitutes substantial nexus is "one that Congress may be better qualified to resolve" and also "has the ultimate power to resolve." *Quill*, 504 U.S. at 318. Thus, it is also possible that Congress may act on this interstate commerce issue.

Both the courts and Congress have an opportunity to more clearly define and articulate the legal contours of what constitutes substantial nexus with a taxing state because relevant cases

are moving through the judicial system and legislation on this question has been introduced in recent congressional sessions. It is impossible to predict the outcome of these actions and what changes, if any, they might have on the standards set forth in *Quill*. However, because current dormant Commerce Clause case law under *Quill* requires physical presence to satisfy the substantial nexus requirement, there is a high probability that, unless the United States Supreme Court overrules its holding in *Quill* or Congress takes action to redefine the substantial nexus requirement consistent with the provisions of this bill, a court that considers the constitutionality of the economic presence provisions of this bill will strike down those provisions.

Office of Legislative Research and General Counsel