

Representative Steve Eliason proposes the following substitute bill:

1 **SALES TAX COLLECTION AMENDMENTS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: Michael E. Noel

6 Cosponsor: Wayne A. Harper

7
8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions related to sales and use tax.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ addresses the circumstances under which a seller may be required to collect and
- 15 remit sales and use tax to the State Tax Commission;
- 16 ▶ provides a legal process for determining the application of certain sales and use tax
- 17 collection obligations;
- 18 ▶ repeals a requirement that certain sales and use tax revenue be deposited into a
- 19 restricted account;
- 20 ▶ makes technical and conforming changes; and
- 21 ▶ contains a severability clause.

22 **Money Appropriated in this Bill:**

23 This bill appropriates in fiscal year 2017:

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



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

26 **Other Special Clauses:**

27 This bill provides a severability clause.

28 This bill provides a special effective date.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **59-1-401**, as last amended by Laws of Utah 2015, Chapter 369

32 **59-12-103**, as last amended by Laws of Utah 2016, Chapters 184, 291, 348 and last
33 amended by Coordination Clause, Laws of Utah 2016, Chapter 291

34 **59-12-103.1**, as last amended by Laws of Utah 2016, Chapter 135

35 **59-12-107**, as last amended by Laws of Utah 2012, Chapters 178, 312, and 399

36 **59-12-108**, as last amended by Laws of Utah 2013, Chapter 50

37 **59-12-211**, as last amended by Laws of Utah 2012, Chapter 312

38 **59-12-211.1**, as last amended by Laws of Utah 2012, Chapter 312

39 **76-8-1101**, as last amended by Laws of Utah 2014, Chapter 52

40 **78A-3-102**, as last amended by Laws of Utah 2009, Chapter 344

41 REPEALS:

42 **59-12-103.2**, as last amended by Laws of Utah 2013, Chapter 150



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

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

46 **59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute**
47 **of limitations -- Commission authority to waive, reduce, or compromise penalty or**
48 **interest.**

49 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

73 ~~[(A) (A) this title;~~

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

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

76 ~~[(D) (D) Section 19-6-410.5;~~

77 ~~[(E) (E) Section 19-6-714;~~

78 ~~[(F) (F) Section 19-6-805;~~

79 ~~[(G) (G) Section 32B-2-304;~~

80 ~~[(H) (H) Section 34A-2-202;~~

81 ~~[(I) (I) Section 40-6-14;~~

82 ~~[(J) (J) Section 69-2-5;~~

83 ~~[(K) (K) Section 69-2-5.5; or~~

84 ~~[(L) (L) Section 69-2-5.6; or~~

85 ~~[(B) (ii) another amount that by statute is subject to a penalty imposed under this~~
86 ~~section.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

118 return is filed more than 15 days after the due date described in Subsection (2)(a).
119 (d) This Subsection (2) does not apply to:
120 (i) an amended return; or
121 (ii) a return with no tax due.
122 (3) (a) A person is subject to a penalty for failure to pay a tax, fee, or charge if:
123 (i) the person files a return on or before the due date for filing a return described in
124 Subsection (2)(a), but fails to pay the tax, fee, or charge due on the return on or before that due
125 date;
126 (ii) the person:
127 (A) is subject to a penalty under Subsection (2)(b); and
128 (B) fails to pay the tax, fee, or charge due on a return within a 90-day period after the
129 due date for filing a return described in Subsection (2)(a);
130 (iii) (A) the person is subject to a penalty under Subsection (2)(b); and
131 (B) the commission estimates an amount of tax due for that person in accordance with
132 Subsection 59-1-1406(2);
133 (iv) the person:
134 (A) is mailed a notice of deficiency; and
135 (B) within a 30-day period after the day on which the notice of deficiency described in
136 Subsection (3)(a)(iv)(A) is mailed:
137 (I) does not file a petition for redetermination or a request for agency action; and
138 (II) fails to pay the tax, fee, or charge due on a return;
139 (v) (A) the commission:
140 (I) issues an order constituting final agency action resulting from a timely filed petition
141 for redetermination or a timely filed request for agency action; or
142 (II) is considered to have denied a request for reconsideration under Subsection
143 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed
144 request for agency action; and
145 (B) the person fails to pay the tax, fee, or charge due on a return within a 30-day period
146 after the [date] day on which the commission:
147 (I) issues the order constituting final agency action described in Subsection
148 (3)(a)(v)(A)(I); or

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

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

154 (b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:

155 [~~(i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with~~
156 ~~respect to an unactivated tax, fee, or charge:]~~

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

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

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

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

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

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

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

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

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

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

180 whichever of the following dates is the earlier:

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

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

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

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

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

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

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

200 (6) If a person does not file a return within an extension of time allowed by Section
201 59-7-505 or 59-10-516, the person:

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

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

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

205 (A) \$20; or

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

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

209 (A) \$20; or

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

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

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

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

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

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

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

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

227 (i) The notice of proposed penalty shall:

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

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

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

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

233 or

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

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

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

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

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

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

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

245 (c) A seller that voluntarily collects a tax under Subsection 59-12-107[(2)(d)](5) is not
246 subject to the penalty under Subsection (7)(a)(i) if on or after July 1, 2001:

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

249 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
250 or is a seller required to pay or collect and remit sales and use taxes under Subsection
251 59-12-107[(2)(b)](3) or (4); and

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

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

255 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
256 or is a seller required to pay or collect and remit sales and use taxes under Subsection
257 59-12-107[(2)(b)](3) or (4); and

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

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

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

264 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
265 or is a seller required to pay or collect and remit sales and use taxes under Subsection
266 59-12-107[(2)(b)](3) or (4); and

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

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

270 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
271 or is a seller required to pay or collect and remit sales and use taxes under Subsection
272 59-12-107[(2)(b)](3) or (4); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

348 (B) exceed \$1,000.

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

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

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

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

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

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

360 (B) exceed \$5,000.

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

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

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

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

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

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

401 (B) exceed \$25,000.

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

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

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

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

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

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

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

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

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

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

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

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

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

428 (iii) \$100 per form, not to exceed \$500,000 in a calendar year, if the employer:
429 (A) files the form in accordance with Subsection 59-10-406(8) after June 1; or
430 (B) fails to file the form.
431 (14) Upon making a record of its actions, and upon reasonable cause shown, the
432 commission may waive, reduce, or compromise any of the penalties or interest imposed under
433 this part.

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

435 **59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use**
436 **tax revenues.**

437 (1) A tax is imposed on the purchaser as provided in this part for amounts paid or
438 charged for the following transactions:

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

440 (b) amounts paid for:

441 (i) telecommunications service, other than mobile telecommunications service, that
442 originates and terminates within the boundaries of this state;

443 (ii) mobile telecommunications service that originates and terminates within the
444 boundaries of one state only to the extent permitted by the Mobile Telecommunications
445 Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or

446 (iii) an ancillary service associated with a:

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

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

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

450 (i) gas;

451 (ii) electricity;

452 (iii) heat;

453 (iv) coal;

454 (v) fuel oil; or

455 (vi) other fuels;

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

457 (i) gas;

458 (ii) electricity;

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

490 (ii) used; or
491 (iii) otherwise consumed;
492 (l) amounts paid or charged for tangible personal property if within this state the
493 tangible personal property is:
494 (i) stored;
495 (ii) used; or
496 (iii) consumed; and
497 (m) amounts paid or charged for a sale:
498 (i) (A) of a product transferred electronically; or
499 (B) of a repair or renovation of a product transferred electronically; and
500 (ii) regardless of whether the sale provides:
501 (A) a right of permanent use of the product; or
502 (B) a right to use the product that is less than a permanent use, including a right:
503 (I) for a definite or specified length of time; and
504 (II) that terminates upon the occurrence of a condition.
505 (2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax
506 is imposed on a transaction described in Subsection (1) equal to the sum of:
507 (i) a state tax imposed on the transaction at a tax rate equal to the sum of:
508 (A) 4.70%; ~~[and]~~
509 (B) ~~[(f) the tax rate the state imposes in accordance with Part 18, Additional State Sales~~
510 ~~and Use Tax Act,]~~ if the location of the transaction as determined under Sections 59-12-211
511 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional
512 State Sales and Use Tax Act, the tax rate that the state imposes under that part; and
513 ~~[(H) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales~~
514 ~~and Use Tax Act,]~~
515 (C) if the location of the transaction as determined under Sections 59-12-211 through
516 59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes
517 the tax under Part 20, Supplemental State Sales and Use Tax Act, the tax rate that the state
518 imposes under that part; and
519 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
520 transaction under this chapter other than this part.

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

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

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

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

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

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

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

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

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

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

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

543 (III) if the location of the transaction as determined under Sections 59-12-211 through
544 59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes
545 the tax under Part 20, Supplemental State Sales and Use Tax Act, the tax rate that the state
546 imposes under that part; and

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

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

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

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

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

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

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

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

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

570 (II) state or federal law provides otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

651 (4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
652 2003, the lesser of the following amounts shall be expended as provided in Subsections (4)(b)
653 through (g):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

714 (iii) develop surface water sources.

715 (5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
716 2006, the difference between the following amounts shall be expended as provided in this
717 Subsection (5), if that difference is greater than \$1:

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

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

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

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

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

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

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

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

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

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

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

742 (i) preconstruction costs:

743 (A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter
744 26, Bear River Development Act; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

831 \$63,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the
832 Transportation Investment Fund of 2005 created by Section 72-2-124.

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

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

842 (9) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year
843 2009-10, \$533,750 shall be deposited into the Qualified Emergency Food Agencies Fund
844 created by Section 35A-8-1009 and expended as provided in Section 35A-8-1009.

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

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

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

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

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

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

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

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

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

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

885 **59-12-103.1. Action by Supreme Court of the United States authorizing or action**
886 **by Congress permitting a state to require certain sellers to collect a sales or use tax --**
887 **Collection of tax by commission -- Commission report to Revenue and Taxation Interim**
888 **Committee -- Revenue and Taxation Interim Committee study -- Division of Finance**
889 **requirement to make certain deposits.**

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

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

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

894 (i) a seller that does not meet one or more of the criteria described in Subsection
895 59-12-107(2)(a); or

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

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

900 (i) a seller that does not meet one or more of the criteria described in Subsection
901 59-12-107(2)(a); or

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

904 (2) The commission shall:

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

906 (i) to the extent:

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

908 (B) permitted by Congress; and

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

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

913 (i) regarding the actions taken by:

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

915 (B) Congress; and

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

917 and

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

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

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

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

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

928 (a) review the actions taken by:

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

930 (ii) Congress;

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

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

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

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

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

942 **59-12-107. Definitions -- Collection, remittance, and payment of tax by sellers or**
943 **other persons -- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other**
944 **liability for collection -- Rulemaking authority -- Credits -- Treatment of bad debt --**
945 **Penalties and interest.**

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

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

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

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

951 [~~(ii) delivers tangible personal property, a service, or a product transferred~~
952 ~~electronically that is sold.~~]

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

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

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

959 (1) As used in this section:

960 (a) "Affiliate" means:

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

962 or

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

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

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

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

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

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

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

980 (d) "Pass-through entity" means the same as that term is defined in Section
981 [59-10-1402](#).

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

984 (i) an Internet-based link;

985 (ii) an Internet website;

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

991 (f) "Registered remitter" means a seller that is:

992 (i) registered under the agreement;

993 (ii) not required to pay or collect and remit sales and use tax under Subsection (2), (3),
 994 or (4); and

995 (iii) not a model 1 seller, model 2 seller, or model 3 seller.

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

998 (h) "Service" means a service that is taxable under this chapter.

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

1003 (2) (a) Except as provided in Subsection ~~[(2)(e)]~~ (6), Section 59-12-107.1, or Section
 1004 59-12-123, and subject to Subsection (2)~~[(f)]~~(b), each seller shall pay or collect and remit the
 1005 sales and use taxes imposed by this chapter if within this state the seller:

1006 (i) ~~[has or]~~ utilizes:

1007 (A) an office;

1008 (B) a distribution house;

1009 (C) a sales house;

1010 (D) a warehouse~~;~~ or other storage place; or

1011 ~~[(E) a service enterprise; or]~~

1012 ~~[(F)]~~ (E) a place of business similar to Subsections (2)(a)(i)(A) through ~~[(E)]~~ (D);

1013 (ii) maintains a stock of goods;

1014 (iii) regularly solicits orders, regardless of whether ~~[or not]~~ the orders are accepted in
 1015 the state, unless the seller's only activity in the state is:

1016 (A) advertising; or

- 1017 (B) solicitation by:
- 1018 (I) direct mail;
- 1019 (II) electronic mail;
- 1020 (III) except as provided in Subsection (4)(d), the Internet;
- 1021 (IV) telecommunications service; or
- 1022 (V) a means similar to Subsection (2)(a)(iii)(A) or (B);
- 1023 (iv) regularly engages in the delivery of property in the state other than by:
- 1024 (A) common carrier; or
- 1025 (B) United States mail; or
- 1026 (v) regularly engages in an activity directly related to the leasing or servicing of
- 1027 property located within the state.

1028 (b) The ownership of property that is located at the premises of a printer's facility with
1029 which the retailer has contracted for printing and that consists of final printed product, property
1030 that becomes part of the final printed product, or copy from which the printed product is
1031 produced does not result in the retailer being considered to utilize an office, distribution house,
1032 sales house, warehouse or other storage place, or other place of business, or to maintain a stock
1033 of goods, within this state.

1034 (3) (a) (i) Subject to Subsection (3)(a)(ii), beginning on October 1, 2017, each remote
1035 seller shall pay or collect and remit the sales and use tax imposed by this chapter if the remote
1036 seller:

1037 (A) sells tangible personal property, products transferred electronically, or services for
1038 storage, use, or consumption in the state; and

1039 (B) in either the previous calendar year or the current calendar year, receives gross
1040 revenue from the sale of tangible personal property, products transferred electronically, or
1041 services for storage, use, or consumption in the state of \$100,000 or more.

1042 (ii) A remote seller's obligation to pay or collect and remit sales and use tax begins on
1043 the first day of the first calendar quarter after the remote seller meets the criteria described in
1044 Subsection (3)(a)(i).

1045 (b) (i) Regardless of whether the commission initiates an audit or other tax collection
1046 procedure, the commission may request a declaratory judgment in any district court in this state
1047 against a remote seller that the commission believes meets the criteria described in Subsection

1048 (3)(a) to establish:

1049 (A) that the remote seller meets the criteria described in Subsection (3)(a);

1050 (B) that Subsection (3)(a) is valid under federal and state law; and

1051 (C) if Subsections (3)(b)(i)(A) and (B) are satisfied, that the remote seller has an

1052 obligation to pay or collect and remit sales and use tax under this Subsection (3).

1053 (ii) The court may not award attorney fees to the prevailing party in a declaratory

1054 judgment request made in accordance with this Subsection (3)(b).

1055 (iii) If an aggrieved party wishes to appeal from the decision in a declaratory judgment

1056 request made in accordance with this Subsection (3)(b), the aggrieved party shall appeal to the

1057 Utah Supreme Court in accordance with Section [78A-3-102](#).

1058 (c) (i) Except as provided in Subsection (3)(c)(ii), the filing of a request for a

1059 declaratory judgment under Subsection (3)(b)(i) operates as an injunction during the pendency

1060 of the action, and the state may not enforce the obligation to pay or collect and remit sales and

1061 use tax described in Subsection (3)(a) against a remote seller that is a party to the declaratory

1062 judgment action, unless the remote seller agrees to voluntarily pay or collect and remit sales

1063 and use tax during the pendency of the action.

1064 (ii) The injunction described in Subsection (3)(c)(i) does not apply if there is a final,

1065 unappealable decision from a court of competent jurisdiction establishing the validity of the

1066 obligation described in Subsection (3)(a) with respect to the remote seller against which the

1067 commission seeks declaratory judgment.

1068 (iii) After the injunction described in Subsection (3)(c)(i) lifts or otherwise dissolves,

1069 the state shall assess and apply the obligation to pay or collect and remit sales and use tax to a

1070 remote seller:

1071 (A) that was a party to the declaratory judgment action;

1072 (B) that the court determined has a valid obligation to pay or collect and remit sales

1073 and use tax under this chapter; and

1074 (C) prospectively beginning on the first day of the first calendar quarter after the day on

1075 which the injunction lifts or dissolves.

1076 (d) (i) A remote seller that voluntarily complies with Subsection (3)(a) while covered

1077 by the injunction described in Subsection (3)(c) may not claim a refund of taxes, penalties, or

1078 interest on the basis that the remote seller did not meet one or more of the criteria described in

1079 Subsection (2)(a).

1080 (ii) A remote seller complying with this Subsection (3) may request a refund of taxes,
1081 penalties, or interest on another basis by following the refund procedures described in Section
1082 59-12-110.

1083 (e) (i) If a court of competent jurisdiction issues a final, unappealable decision that this
1084 Subsection (3) is unenforceable, a remote seller that collects sales and use tax under this
1085 Subsection (3) is not liable to a purchaser that claims that the sales and use tax was
1086 overcollected.

1087 (ii) Nothing in this Subsection (3) affects a person's obligation under Subsection (6) to
1088 pay a use tax.

1089 (4) (a) This Subsection (4) does not apply unless a court of competent jurisdiction
1090 issues a final, unappealable decision that Subsection (3) is unenforceable.

1091 (b) [A] There is a rebuttable presumption that a remote seller is [considered to be]
1092 engaged in the business of selling tangible personal property, [a service, or] a product
1093 transferred electronically, or a service for storage, use, or consumption in the state, and shall
1094 pay or collect and remit the sales and use taxes imposed by this chapter if:

1095 [~~(i) the seller holds a substantial ownership interest in, or is owned in whole or in~~
1096 ~~substantial part by, a related seller; and]~~

1097 (i) a person that meets one or more of the criteria described in Subsection (2)(a) is an
1098 affiliate of the remote seller; or

1099 (ii) any person, other than a person acting in the capacity of a common carrier, that
1100 meets one or more of the criteria described in Subsection (2)(a):

1101 [~~(ii) (A) [the seller] sells the same or a substantially similar line of products as the~~
1102 ~~[related] remote seller and does so under the same or a substantially similar business name as~~
1103 ~~the remote seller; [or]~~

1104 (B) [~~the~~] maintains a place of business described in Subsection (2)(a)(i) [~~of the related~~
1105 ~~seller] or provides an [in-state] in-state employee [~~of the related seller is used]~~ to advertise,~~
1106 promote, deliver, or facilitate sales by the remote seller to a purchaser[-];

1107 [~~(c) A seller that does not meet one or more of the criteria provided for in Subsection~~
1108 ~~(2)(a) or is not a seller required to pay or collect and remit sales and use taxes under Subsection~~
1109 ~~(2)(b): (i) except as provided in Subsection (2)(c)(ii), may voluntarily:]~~

1110 (C) uses trademarks, service marks, or trade names in the state that are the same or
1111 substantially similar to those used by the remote seller;

1112 (D) delivers, installs, assembles, or performs maintenance service for the remote
1113 seller's purchaser within the state;

1114 (E) facilitates the remote seller's delivery of tangible personal property to a purchaser
1115 in the state by allowing the purchaser to pick up tangible personal property sold by the remote
1116 seller at an in-state office, distribution house, sales house, warehouse or other storage place, or
1117 similar place of business that is maintained by the person that meets one or more of the criteria
1118 described in Subsection (2)(a); or

1119 (F) conducts any other activity in the state that is significantly associated with the
1120 remote seller's ability to establish and maintain a market in the state for the remote seller's sales
1121 of tangible personal property, a product transferred electronically, or a service.

1122 (c) A remote seller may rebut the presumption described in Subsection (4)(b) by
1123 proving that the in-state activities of the person that meets one or more of the criteria described
1124 in Subsection (2)(a) are not significantly associated with the remote seller's ability to establish
1125 and maintain a market in the state for the sale of tangible personal property, a product
1126 transferred electronically, or a service.

1127 (d) (i) Subject to the other provisions of this Subsection (4)(d), there is a rebuttable
1128 presumption that a noncollecting seller is engaged in the business of selling tangible personal
1129 property, a product transferred electronically, or a service, for storage, use, or consumption in
1130 the state.

1131 (ii) The presumption described in Subsection (4)(d)(i) arises if, after October 1, 2017,
1132 the noncollecting seller makes sales in the state using an agreement, with a person that meets
1133 one or more of the criteria described in Subsection (2)(a), regardless of the date on which the
1134 noncollecting seller enters the agreement and regardless of whether the 12-month period
1135 immediately preceding the current month includes any period of time that occurred before
1136 October 1, 2017.

1137 (e) (i) (A) A noncollecting seller may rebut the presumption described in Subsection
1138 (4)(d) by proving that the person with which the noncollecting seller has an agreement has not
1139 engaged in an activity within the state that is significantly associated with the noncollecting
1140 seller's ability, during the preceding 12 months, to establish and maintain a market within the

1141 state for the sale of tangible personal property, a product transferred electronically, or a service.

1142 (B) Proof to rebut the presumption described in Subsection (4)(d) may include a
1143 written sworn statement, made in good faith, from each person within the state with which the
1144 noncollecting seller has an agreement that the person, during the previous 12 months, did not
1145 engage in any solicitation of a potential purchaser in the state on behalf of the noncollecting
1146 seller for the sale of tangible personal property, a product transferred electronically, or a
1147 service.

1148 (ii) A noncollecting seller that does not rebut, in accordance with Subsection (4)(e)(i),
1149 the presumption described in Subsection (4)(d) shall pay or collect and remit sales and use tax
1150 on any sale the noncollecting seller makes to a purchaser in the state.

1151 (f) Nothing in this Subsection (4) affects a person's obligation under Subsection (6) to
1152 pay a use tax.

1153 (5) (a) Except as provided in Subsection (5)(b), a seller that is not required to pay or
1154 collect and remit sales and use tax under Subsection (2)(a), (3), or (4), may register as a
1155 registered remitter to voluntarily:

1156 ~~[(A)]~~ (i) collect a tax on a transaction described in Subsection 59-12-103(1); and

1157 ~~[(B)]~~ (ii) remit the tax to the commission as provided in this part~~[-or]~~.

1158 ~~[(ii) notwithstanding Subsection (2)(e)(i);]~~

1159 (b) A seller that is not required to pay or collect and remit a sales and use tax under
1160 Subsection (2)(a), (3), or (4), shall collect a tax on a transaction described in Subsection
1161 59-12-103(1) if Section 59-12-103.1 requires the seller to collect the tax.

1162 ~~[(C)]~~ (c) The collection and remittance of a tax under this chapter by a seller that is
1163 registered under the agreement may not be used as a factor in determining whether that seller is
1164 required by Subsection (2) to:

1165 (i) pay a tax, fee, or charge under:

1166 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

1167 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

1168 (C) Section 19-6-714;

1169 (D) Section 19-6-805;

1170 (E) Section 69-2-5;

1171 (F) Section 69-2-5.5;

1172 (G) Section 69-2-5.6; or

1173 (H) this title; or

1174 (ii) collect and remit a tax, fee, or charge under:

1175 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

1176 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

1177 (C) Section 19-6-714;

1178 (D) Section 19-6-805;

1179 (E) Section 69-2-5;

1180 (F) Section 69-2-5.5;

1181 (G) Section 69-2-5.6; or

1182 (H) this title.

1183 ~~[(e) A person shall pay a use tax imposed by this chapter on a transaction described in~~

1184 ~~Subsection 59-12-103(1) if:]~~

1185 ~~[(i) the seller did not collect a tax imposed by this chapter on the transaction; and]~~

1186 ~~[(ii) the person:]~~

1187 ~~[(A) stores the tangible personal property or product transferred electronically in the~~

1188 ~~state;]~~

1189 ~~[(B) uses the tangible personal property or product transferred electronically in the~~

1190 ~~state; or]~~

1191 ~~[(C) consumes the tangible personal property or product transferred electronically in~~

1192 ~~the state:]~~

1193 ~~[(f) The ownership of property that is located at the premises of a printer's facility with~~

1194 ~~which the retailer has contracted for printing and that consists of the final printed product,~~

1195 ~~property that becomes a part of the final printed product, or copy from which the printed~~

1196 ~~product is produced, shall not result in the retailer being considered to have or maintain an~~

1197 ~~office, distribution house, sales house, warehouse, service enterprise, or other place of~~

1198 ~~business, or to maintain a stock of goods, within this state.]~~

1199 (6) A person shall pay a use tax imposed by this chapter on a transaction described in

1200 Subsection 59-12-103(1) if:

1201 (a) the seller did not collect a tax imposed under this chapter on the transaction; and

1202 (b) the person:

1203 (i) stores the tangible personal property or product transferred electronically in the
1204 state;

1205 (ii) uses the tangible personal property or product transferred electronically in the state;
1206 or

1207 (iii) consumes the tangible personal property or product transferred electronically in the
1208 state.

1209 ~~[(3)]~~ (7) (a) Except as provided in Section 59-12-107.1, a seller shall collect a tax due
1210 under this chapter ~~[shall be collected]~~ from a purchaser.

1211 (b) A seller may not collect as a tax an amount, without regard to fractional parts of
1212 one cent, in excess of the tax computed at the rates prescribed by this chapter.

1213 (c) (i) Each seller shall:
1214 (A) give the purchaser a receipt for the tax collected; or
1215 (B) bill the tax as a separate item and declare the name of this state and the seller's
1216 sales and use tax license number on the invoice for the sale.

1217 (ii) The receipt or invoice is prima facie evidence that the seller has collected the tax
1218 and relieves the purchaser of the liability for reporting the tax to the commission as a
1219 consumer.

1220 (d) A seller is not required to maintain a separate account for the tax collected~~;~~ but is
1221 considered to be a person charged with receipt, safekeeping, and transfer of public money.

1222 (e) Taxes collected by a seller pursuant to this chapter shall be held in trust for the
1223 benefit of the state and for payment to the commission in the manner and at the time provided
1224 for in this chapter.

1225 (f) If any seller, during any reporting period, collects as a tax an amount in excess of
1226 the lawful state and local percentage of total taxable sales allowed under this chapter, the seller
1227 shall remit to the commission the full amount of the tax imposed under this chapter, plus any
1228 excess.

1229 (g) If the accounting methods regularly employed by the seller in the transaction of the
1230 seller's business are such that reports of sales made during a calendar month or quarterly period
1231 will impose unnecessary hardships, the commission may accept reports at intervals that, in the
1232 commission's opinion, will~~;~~ ~~[in the commission's opinion,]~~ better suit the convenience of the
1233 taxpayer or seller and will not jeopardize collection of the tax.

1234 (h) (i) For a purchase paid with specie legal tender as defined in Section [59-1-1501.1](#),
1235 and until such time as the commission accepts specie legal tender for the payment of a tax
1236 under this chapter, if the commission requires a seller to remit a tax under this chapter in legal
1237 tender other than specie legal tender, the seller shall state on the seller's books and records and
1238 on an invoice, bill of sale, or similar document provided to the purchaser:

1239 (A) the purchase price in specie legal tender and in the legal tender the seller is
1240 required to remit to the commission;

1241 (B) subject to Subsection ~~[(3)]~~ (7)(h)(ii), the amount of tax due under this chapter in
1242 specie legal tender and in the legal tender the seller is required to remit to the commission;

1243 (C) the tax rate under this chapter applicable to the purchase; and

1244 (D) the date of the purchase.

1245 (ii) (A) Subject to Subsection ~~[(3)]~~ (7)(h)(ii)(B), for purposes of determining the
1246 amount of tax due under Subsection ~~[(3)]~~ (7)(h)(i), a seller shall use the most recent London
1247 fixing price for the specie legal tender the purchaser paid.

1248 (B) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1249 commission may make rules for determining the amount of tax due under Subsection (3)(h)(i)
1250 if the London fixing price is not available for a particular day.

1251 ~~[(4)]~~ (8) (a) Except as provided in Subsections ~~[(5)]~~ (9) through ~~[(7)]~~ (11) and Section
1252 [59-12-108](#), the ~~[sales or use]~~ tax imposed by this chapter is due and payable to the commission
1253 quarterly on or before the last day of the month next succeeding each quarterly calendar
1254 ~~[quarterly]~~ period.

1255 (b) (i) Each seller shall, on or before the last day of the month next succeeding each
1256 quarterly calendar ~~[quarterly]~~ period, file with the commission a return for the preceding
1257 quarterly period.

1258 (ii) The seller shall remit with the return under Subsection ~~[(4)]~~ (8)(b)(i) the amount of
1259 the tax required under this chapter to be collected or paid for the period covered by the return.

1260 (c) Except as provided in Subsection ~~[(5)(c)]~~ (9)(b), a return shall contain information
1261 and be in a form the commission prescribes by rule.

1262 (d) (i) Subject to Subsection ~~[(4)]~~ (8)(d)(ii), the sales tax as computed in the return
1263 shall be based on the total nonexempt sales made during the period for which the return is filed,
1264 including both cash and charge sales.

1265 (ii) For a sale that includes the delivery or installation of tangible personal property at a
1266 location other than a seller's place of business described in Subsection (2)(a)(i), if the delivery
1267 or installation is separately stated on an invoice or receipt, a seller may compute the tax due [~~on~~
1268 ~~the sale~~] for purposes of Subsection [~~(4)~~] (8)(d)(i) based on the amount the seller receives for
1269 that sale during each period for which the seller receives payment for the sale.

1270 (e) (i) The use tax as computed in the return shall be based on the total amount of
1271 purchases for storage, use, or other consumption in this state made during the period for which
1272 the return is filed, including both cash and charge purchases.

1273 (ii) (A) As used in this Subsection [~~(4)~~] (8)(e)(ii), "qualifying purchaser" means a
1274 purchaser [~~who~~] that is required to remit taxes under this chapter[;] but is not required to remit
1275 taxes monthly in accordance with Section 59-12-108, and [~~who~~] that converts tangible personal
1276 property into real property.

1277 (B) Subject to Subsections [~~(4)~~] (8)(e)(ii)(C) and (D), a qualifying purchaser may remit
1278 the taxes due under this chapter on tangible personal property for which the qualifying
1279 purchaser claims an exemption as allowed under Subsection 59-12-104(23) or (25) based on
1280 the period in which the qualifying purchaser receives payment, in accordance with Subsection
1281 [~~(4)~~] (8)(e)(ii)(C), for the conversion of the tangible personal property into real property.

1282 (C) A qualifying purchaser remitting taxes due under this chapter in accordance with
1283 Subsection [~~(4)~~] (8)(e)(ii)(B) shall remit an amount equal to the total amount of tax due on the
1284 qualifying purchaser's purchase of the tangible personal property that was converted into real
1285 property multiplied by a fraction, the numerator of which is the payment received in the period
1286 for the qualifying purchaser's sale of the tangible personal property that was converted into real
1287 property and the denominator of which is the entire sales price for the qualifying purchaser's
1288 sale of the tangible personal property that was converted into real property.

1289 (D) A qualifying purchaser may remit taxes due under this chapter in accordance with
1290 this Subsection [~~(4)~~] (8)(e)(ii) only if the books and records that the qualifying purchaser keeps
1291 in the qualifying purchaser's regular course of business identify by reasonable and verifiable
1292 standards that the tangible personal property was converted into real property.

1293 (f) (i) Subject to Subsection [~~(4)~~] (8)(f)(ii) and in accordance with Title 63G, Chapter
1294 3, Utah Administrative Rulemaking Act, the commission may by rule extend the time for
1295 making returns and paying the taxes.

- 1296 (ii) An extension under Subsection [~~(4)~~] (8)(f)(i) may not be for more than 90 days.
- 1297 (g) The commission may require returns and payment of the tax to be made for other
1298 than quarterly periods if the commission considers it necessary in order to ensure the payment
1299 of the tax imposed by this chapter.
- 1300 (h) (i) The commission may require a seller that files a simplified electronic return with
1301 the commission to file an additional electronic report with the commission.
- 1302 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1303 commission may make rules providing:
- 1304 (A) the information required to be included in the additional electronic report described
1305 in Subsection [~~(4)~~] (8)(h)(i); and
- 1306 (B) one or more due dates for filing the additional electronic report described in
1307 Subsection [~~(4)~~] (8)(h)(i).
- 1308 [~~(5)(a) As used in this Subsection (5) and Subsection (6)(b), "remote seller" means a~~
1309 ~~seller that is:~~
- 1310 [~~(i) registered under the agreement;~~
- 1311 [~~(ii) described in Subsection (2)(c); and~~
- 1312 [~~(iii) not a:~~
- 1313 [~~(A) model 1 seller;~~
- 1314 [~~(B) model 2 seller; or~~
- 1315 [~~(C) model 3 seller.~~
- 1316 [~~(b)~~] (9)(a) (i) Except as provided in Subsection [~~(5)(b)~~] (9)(a)(ii), a tax a [~~remote~~
1317 ~~seller~~] registered remitter collects in accordance with Subsection [~~(2)(c)~~] (5)(a) is due and
1318 payable:
- 1319 (A) to the commission;
- 1320 (B) annually; and
- 1321 (C) on or before the last day of the month immediately following the last day of each
1322 calendar year.
- 1323 (ii) The commission may require that a tax a [~~remote seller~~] registered remitter collects
1324 in accordance with Subsection [~~(2)(c)~~] (5)(a) be due and payable:
- 1325 (A) to the commission; and
- 1326 (B) on the last day of the month immediately following any month in which the [~~seller~~]

1327 registered remitter accumulates a total of at least \$1,000 in agreement sales and use tax.

1328 ~~[(c)]~~ (b) (i) If a ~~[remote seller]~~ registered remitter remits a tax to the commission in
 1329 accordance with Subsection ~~[(5)(b)]~~ (9)(a), the ~~[remote seller]~~ registered remitter shall file a
 1330 return:

1331 (A) with the commission;

1332 (B) with respect to the tax;

1333 (C) containing information prescribed by the commission; and

1334 (D) on a form prescribed by the commission.

1335 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
 1336 commission shall make rules prescribing:

1337 (A) the information required to be contained in a return described in Subsection

1338 ~~[(5)(c)]~~ (9)(b)(i); and

1339 (B) the form described in Subsection ~~[(5)(c)]~~ (9)(b)(i)(D).

1340 ~~[(d)]~~ (c) A tax a ~~[remote seller]~~ registered remitter collects in accordance with this
 1341 Subsection ~~[(5)]~~ (9) shall be calculated on the basis of the total amount of taxable transactions
 1342 under Subsection 59-12-103(1) the ~~[remote seller]~~ registered remitter completes, including~~[:]~~
 1343 cash transactions and charge transactions.

1344 ~~[(i) a cash transaction; and]~~

1345 ~~[(ii) a charge transaction.]~~

1346 ~~[(6)]~~ (10) (a) Except as provided in Subsection ~~[(6)]~~ (10)(b), a tax a seller that files a
 1347 simplified electronic return collects in accordance with this chapter is due and payable:

1348 (i) monthly on or before the last day of the month immediately following the month for
 1349 which the seller collects a tax under this chapter; and

1350 (ii) for the month for which the seller collects a tax under this chapter.

1351 (b) A tax a ~~[remote seller]~~ registered remitter that files a simplified electronic return
 1352 collects in accordance with this chapter is due and payable as provided in Subsection ~~[(5)]~~ (9).

1353 ~~[(7)]~~ (11) (a) On each vehicle sale made by other than a regular licensed vehicle dealer,
 1354 the purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject
 1355 to titling or registration under the laws of this state.

1356 (b) The commission shall collect the tax described in Subsection ~~[(7)]~~ (11)(a) when the
 1357 vehicle is titled or registered.

1358 ~~[(8)]~~ (12) If any sale of tangible personal property or any other taxable transaction
1359 under Subsection 59-12-103(1)[;] is made by a wholesaler to a retailer[;]:

1360 (a) the wholesaler is not responsible for the collection or payment of the tax imposed
1361 on the sale; and

1362 (b) the retailer is responsible for the collection or payment of the tax imposed on the
1363 sale if:

1364 ~~[(a)]~~ (i) the retailer represents that the tangible personal property, product transferred
1365 electronically, or service is purchased by the retailer for resale; and

1366 ~~[(b)]~~ (ii) the tangible personal property, product transferred electronically, or service is
1367 not subsequently resold.

1368 ~~[(9)]~~ (13) If any sale of property or service [~~subject to the tax~~] is made to a person
1369 prepaying sales or use tax in accordance with Title 63M, Chapter 5, Resource Development
1370 Act, or to a contractor or subcontractor of that person[;]:

1371 (a) the person to whom such payment or consideration is payable is not responsible for
1372 the collection or payment of the sales or use tax; and

1373 (b) the person prepaying the sales or use tax is responsible for the collection or
1374 payment of the sales or use tax if the person prepaying the sales or use tax represents that the
1375 amount prepaid as sales or use tax has not been fully credited against sales or use tax due and
1376 payable under the rules promulgated by the commission.

1377 ~~[(10)]~~ (14) (a) For purposes of this Subsection [~~(10)]~~ (14):

1378 (i) Except as provided in Subsection [~~(10)]~~ (14)(a)(ii), "bad debt" [~~is as~~] means the
1379 same as that term is defined in Section 166, Internal Revenue Code.

1380 (ii) [~~Notwithstanding Subsection (10)(a)(i), "bad~~] "Bad debt" does not include:

1381 (A) an amount included in the purchase price of tangible personal property, a product
1382 transferred electronically, or a service that is:

1383 (I) not a transaction described in Subsection 59-12-103(1); or

1384 (II) exempt under Section 59-12-104;

1385 (B) a financing charge;

1386 (C) interest;

1387 (D) a tax imposed under this chapter on the purchase price of tangible personal
1388 property, a product transferred electronically, or a service;

1389 (E) an uncollectible amount on tangible personal property or a product transferred
1390 electronically that:

1391 (I) is subject to a tax under this chapter; and

1392 (II) remains in the possession of a seller until the full purchase price is paid;

1393 (F) an expense incurred in attempting to collect any debt; or

1394 (G) an amount that a seller does not collect on repossessed property.

1395 (b) (i) To the extent an amount remitted in accordance with Subsection [~~(4)(d)~~] (8)(c)
1396 later becomes bad debt, a seller may deduct the bad debt from the total amount from which a
1397 tax under this chapter is calculated on a return.

1398 (ii) A qualifying purchaser, as defined in Subsection [~~(4)~~] (8)(e)(ii)(A), may deduct
1399 from the total amount of taxes due under this chapter the amount of tax the qualifying
1400 purchaser paid on the qualifying purchaser's purchase of tangible personal property converted
1401 into real property to the extent that:

1402 (A) tax was remitted in accordance with Subsection [~~(4)~~] (8)(e) on that tangible
1403 personal property converted into real property;

1404 (B) the qualifying purchaser's sale of that tangible personal property converted into real
1405 property later becomes bad debt; and

1406 (C) the books and records that the qualifying purchaser keeps in the qualifying
1407 purchaser's regular course of business identify by reasonable and verifiable standards that the
1408 tangible personal property was converted into real property.

1409 (c) A seller may file a refund claim with the commission if:

1410 (i) the amount of bad debt for the time period described in Subsection [~~(10)~~] (14)(e)
1411 exceeds the amount of the seller's sales that are subject to a tax under this chapter for that same
1412 time period; and

1413 (ii) as provided in Section [59-1-1410](#).

1414 (d) A bad debt deduction under this section may not include interest.

1415 (e) A bad debt may be deducted under this Subsection [~~(10)~~] (14) on a return for the
1416 time period during which the bad debt:

1417 (i) is written off as uncollectible in the seller's books and records; and

1418 (ii) would be eligible for a bad debt deduction[~~:(A)~~], for federal income tax purposes[~~;~~
1419 and ~~(B)~~], if the seller were required to file a federal income tax return.

1420 (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or
1421 claims a refund under this Subsection [~~(10)~~] (14), the seller shall report and remit a tax under
1422 this chapter:

1423 (i) on the portion of the bad debt the seller recovers; and

1424 (ii) on a return filed for the time period for which the portion of the bad debt is
1425 recovered.

1426 (g) For purposes of reporting a recovery of a portion of bad debt under Subsection
1427 [~~(10)~~] (14)(f), a seller shall apply amounts received on the bad debt in the following order:

1428 (i) in a proportional amount:

1429 (A) to the purchase price of the tangible personal property, product transferred
1430 electronically, or service; and

1431 (B) to the tax due under this chapter on the tangible personal property, product
1432 transferred electronically, or service; and

1433 (ii) to:

1434 (A) interest charges;

1435 (B) service charges; and

1436 (C) other charges.

1437 (h) A seller's certified service provider may make a deduction or claim a refund for bad
1438 debt on behalf of the seller[~~-(i)~~] in accordance with this Subsection [~~(10)~~;~~and (ii)~~] (14) if the
1439 certified service provider credits or refunds the entire amount of the bad debt deduction or
1440 refund to the seller.

1441 (i) A seller may allocate bad debt among the states that are members of the agreement
1442 if the seller's books and records support that allocation.

1443 [~~(11)~~] (15) (a) A seller may not, with intent to evade any tax, fail to timely remit the
1444 full amount of tax required by this chapter.

1445 (b) A violation of this section is punishable as provided in Section 59-1-401.

1446 (c) Each person [~~who~~] that fails to pay any tax to the state or any amount of tax
1447 required to be paid to the state, except amounts determined to be due by the commission under
1448 Chapter 1, Part 14, Assessment, Collections, and Refunds Act, or Section 59-12-111, within
1449 the time required by this chapter, or [~~who~~] that fails to file any return as required by this
1450 chapter, shall pay, in addition to the tax, penalties and interest as provided in Sections 59-1-401

1451 and 59-1-402.

1452 (d) For purposes of prosecution under this section, each quarterly tax period in which a
1453 seller, with intent to evade any tax, collects a tax and fails to timely remit the full amount of the
1454 tax required to be remitted[;] constitutes a separate offense.

1455 Section 5. Section 59-12-108 is amended to read:

1456 **59-12-108. Monthly payment -- Amount of tax a seller may retain -- Penalty --**
1457 **Certain amounts allocated to local taxing jurisdictions.**

1458 (1) (a) Notwithstanding Section 59-12-107, a seller that has a tax liability under this
1459 chapter of \$50,000 or more for the previous calendar year shall:

1460 (i) file a return with the commission:

1461 (A) monthly on or before the last day of the month immediately following the month
1462 for which the seller collects a tax under this chapter; and

1463 (B) for the month for which the seller collects a tax under this chapter; and

1464 (ii) except as provided in Subsection (1)(b), remit, with the return required by
1465 Subsection (1)(a)(i), the amount [~~the person is required to remit to the commission for each tax,~~
1466 ~~fee, or charge~~] described in Subsection (1)(c) as follows:

1467 (A) if that seller's tax liability under this chapter for the previous calendar year is less
1468 than \$96,000, by any method permitted by the commission; or

1469 (B) if that seller's tax liability under this chapter for the previous calendar year is
1470 \$96,000 or more, by electronic funds transfer.

1471 (b) A seller shall remit electronically with the return required by Subsection (1)(a)(i)
1472 the amount the seller is required to remit to the commission for each tax, fee, or charge
1473 described in Subsection (1)(c) if that seller:

1474 (i) is required by Section 59-12-107 to file the return electronically; or

1475 (ii) (A) is required to collect and remit a tax under Section 59-12-107; and

1476 (B) files a simplified electronic return.

1477 (c) Subsections (1)(a) and (b) apply to the following taxes, fees, or charges:

1478 (i) a tax under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

1479 (ii) a fee under Section 19-6-714;

1480 (iii) a fee under Section 19-6-805;

1481 (iv) a charge under Section 69-2-5;

1482 (v) a charge under Section 69-2-5.5;

1483 (vi) a charge under Section 69-2-5.6; [or] and

1484 (vii) a tax under this chapter.

1485 (d) Notwithstanding [~~Subsection~~] Subsections (1)(a)(ii) and (b) and in accordance with
1486 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules
1487 providing for a method for making same-day payments other than by electronic funds transfer
1488 if making payments by electronic funds transfer fails.

1489 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1490 commission shall establish by rule procedures and requirements for determining the amount a
1491 seller is required to remit to the commission under this Subsection (1).

1492 (2) (a) Except as provided in Subsection (3), a seller subject to Subsection (1) or a
1493 seller described in Subsection (4) may retain each month the amount allowed by this
1494 Subsection (2).

1495 (b) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain
1496 each month 1.31% of any amounts the seller is required to remit to the commission:

1497 (i) for a transaction described in Subsection 59-12-103(1) that is subject to a state tax
1498 and a local tax imposed in accordance with the following, for the month for which the seller is
1499 filing a return in accordance with Subsection (1):

1500 (A) Subsection 59-12-103(2)(a);

1501 (B) Subsection 59-12-103(2)(b); and

1502 (C) Subsection 59-12-103(2)(d); and

1503 (ii) for an agreement sales and use tax.

1504 (c) (i) A seller subject to Subsection (1) or a seller described in Subsection (4) may
1505 retain each month the amount calculated under Subsection (2)(c)(ii) for a transaction described
1506 in Subsection 59-12-103(1) that is subject to the state tax and the local tax imposed in
1507 accordance with Subsection 59-12-103(2)(c).

1508 (ii) For purposes of Subsection (2)(c)(i), the amount a seller may retain is an amount
1509 equal to the sum of:

1510 (A) 1.31% of any amounts the seller is required to remit to the commission for:

1511 (I) the state tax and the local tax imposed in accordance with Subsection

1512 59-12-103(2)(c);

1513 (II) the month for which the seller is filing a return in accordance with Subsection (1);
1514 and
1515 (III) an agreement sales and use tax; and
1516 (B) 1.31% of the difference between:
1517 (I) the amounts the seller would have been required to remit to the commission:
1518 (Aa) in accordance with Subsection 59-12-103(2)(a) if the transaction had been subject
1519 to the state tax and the local tax imposed in accordance with Subsection 59-12-103(2)(a);
1520 (Bb) for the month for which the seller is filing a return in accordance with Subsection
1521 (1); and
1522 (Cc) for an agreement sales and use tax; and
1523 (II) the amounts the seller is required to remit to the commission for:
1524 (Aa) the state tax and the local tax imposed in accordance with Subsection
1525 59-12-103(2)(c);
1526 (Bb) the month for which the seller is filing a return in accordance with Subsection (1);
1527 and
1528 (Cc) an agreement sales and use tax.
1529 (d) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain
1530 each month 1% of any amounts the seller is required to remit to the commission:
1531 (i) for the month for which the seller is filing a return in accordance with Subsection
1532 (1); and
1533 (ii) under:
1534 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
1535 (B) Subsection 59-12-603(1)(a)(i)(A); or
1536 (C) Subsection 59-12-603(1)(a)(i)(B).
1537 (3) A state government entity that is required to remit taxes monthly in accordance
1538 with Subsection (1) may not retain any amount under Subsection (2).
1539 (4) A seller that has a tax liability under this chapter for the previous calendar year of
1540 less than \$50,000 may:
1541 (a) voluntarily meet the requirements of Subsection (1); and
1542 (b) if the seller voluntarily meets the requirements of Subsection (1), retain the
1543 amounts allowed by Subsection (2).

1544 (5) (a) Subject to Subsections (5)(b) through (d), a seller that voluntarily collects and
1545 remits a tax in accordance with Subsection ~~59-12-107(2)(c)(i)~~(5) may retain an amount equal
1546 to 18% of any amounts the seller would otherwise remit to the commission:

1547 (i) if the seller obtains a license under Section 59-12-106 for the first time on or after
1548 January 1, 2014; and

1549 (ii) for:

1550 (A) an agreement sales and use tax; and

1551 (B) the time period for which the seller files a return in accordance with this section.

1552 (b) If a seller retains an amount under this Subsection (5), the seller may not retain any
1553 other amount under this section.

1554 (c) If a seller retains an amount under this Subsection (5), the commission may require
1555 the seller to file a return by:

1556 (i) electronic means; or

1557 (ii) a means other than electronic means.

1558 (d) A seller may not retain an amount under this Subsection (5) if the seller is required
1559 to collect or remit a tax under this section in accordance with Section 59-12-103.1.

1560 (6) Penalties for late payment shall be as provided in Section 59-1-401.

1561 (7) (a) Except as provided in Subsection (7)(c), for any amounts required to be remitted
1562 to the commission under this part, the commission shall each month calculate an amount equal
1563 to the difference between:

1564 (i) the total amount retained for that month by all sellers had the percentages listed
1565 under Subsections (2)(b) and (2)(c)(ii) been 1.5%; and

1566 (ii) the total amount retained for that month by all sellers at the percentages listed
1567 under Subsections (2)(b) and (2)(c)(ii).

1568 (b) The commission shall each month allocate the amount calculated under Subsection
1569 (7)(a) to each county, city, and town on the basis of the proportion of agreement sales and use
1570 tax that the commission distributes to each county, city, and town for that month compared to
1571 the total agreement sales and use tax that the commission distributes for that month to all
1572 counties, cities, and towns.

1573 (c) The amount the commission calculates under Subsection (7)(a) may not include an
1574 amount collected from a tax that:

1575 (i) the state imposes within a county, city, or town, including the unincorporated area
1576 of a county; and

1577 (ii) is not imposed within the entire state.

1578 Section 6. Section **59-12-211** is amended to read:

1579 **59-12-211. Definitions -- Location of certain transactions -- Reports to**
1580 **commission -- Direct payment provision for a seller making certain purchases --**
1581 **Exceptions.**

1582 (1) As used in this section:

1583 (a) (i) "Receipt" and "receive" mean:

1584 (A) taking possession of tangible personal property;

1585 (B) making first use of a service; or

1586 (C) for a product transferred electronically, the earlier of:

1587 (I) taking possession of the product transferred electronically; or

1588 (II) making first use of the product transferred electronically.

1589 (ii) "Receipt" and "receive" do not include possession by a shipping company on behalf
1590 of a purchaser.

1591 (b) "Transportation equipment" means:

1592 (i) a locomotive or rail car that is used to carry a person or property in interstate
1593 commerce;

1594 (ii) a truck or truck-tractor:

1595 (A) with a gross vehicle weight rating of 10,001 pounds or ~~more~~ greater;

1596 (B) registered under Section [41-1a-301](#); and

1597 (C) operated under the authority of a carrier authorized and certificated:

1598 (I) by the United States Department of Transportation or another federal authority; and

1599 (II) to engage in carrying a person or property in interstate commerce;

1600 (iii) a trailer, semitrailer, or passenger bus that is:

1601 (A) registered under Section [41-1a-301](#); and

1602 (B) operated under the authority of a carrier authorized and certificated:

1603 (I) by the United States Department of Transportation or another federal authority; and

1604 (II) to engage in carrying a person or property in interstate commerce;

1605 (iv) an aircraft that is operated by an air carrier authorized and certificated:

1606 (A) by the United States Department of Transportation or another federal or foreign
1607 authority; and

1608 (B) to engage in carrying a person or property in interstate commerce; or

1609 (v) a container designed for use on, or a component part attached or secured on, an
1610 item of equipment listed in Subsections (1)(b)(i) through (iv).

1611 (2) Except as provided in Subsections (8) and (14), if tangible personal property, a
1612 product transferred electronically, or a service that is subject to taxation under this chapter is
1613 received by a purchaser at a business location of a seller, the location of the transaction is the
1614 business location of the seller.

1615 (3) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
1616 and (14), if tangible personal property, a product transferred electronically, or a service that is
1617 subject to taxation under this chapter is not received by a purchaser at a business location of a
1618 seller, the location of the transaction is the location where the purchaser takes receipt of the
1619 tangible personal property or service.

1620 (4) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
1621 and (14), if Subsection (2) or (3) does not apply, the location of the transaction is the location
1622 indicated by an address for or other information on the purchaser if:

1623 (a) the address or other information is available from the seller's business records; and

1624 (b) use of the address or other information from the seller's records does not constitute
1625 bad faith.

1626 (5) (a) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9),
1627 (11), and (14), if Subsection (2), (3), or (4) does not apply, the location of the transaction is the
1628 location indicated by an address for the purchaser if:

1629 (i) the address is obtained during the consummation of the transaction; and

1630 (ii) use of the address described in Subsection (5)(a)(i) does not constitute bad faith.

1631 (b) An address used under Subsection (5)(a) includes the address of a purchaser's
1632 payment instrument if no other address is available.

1633 (6) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
1634 and (14), if Subsection (2), (3), (4), or (5) does not apply or if a seller does not have sufficient
1635 information to apply Subsection (2), (3), (4), or (5), the location of the transaction is the
1636 location:

- 1637 (a) indicated by the address from which:
- 1638 (i) except as provided in Subsection (6)(a)(ii), for tangible personal property that is
- 1639 subject to taxation under this chapter, the tangible personal property is shipped;
- 1640 (ii) for computer software delivered electronically or for a product transferred
- 1641 electronically that is subject to taxation under this chapter, the computer software or product
- 1642 transferred electronically is first available for transmission by the seller; or
- 1643 (iii) for a service that is subject to taxation under this chapter, the service is provided;
- 1644 or
- 1645 (b) as determined by the seller with respect to a prepaid wireless calling service:
- 1646 (i) provided in Subsection (6)(a)(iii); or
- 1647 (ii) associated with the mobile telephone number.
- 1648 (7) (a) For purposes of this Subsection (7), "shared ZIP Code" means a nine-digit ZIP
- 1649 Code that is located within two or more local taxing jurisdictions.
- 1650 (b) If the location of a transaction determined under Subsections (3) through (6) is in a
- 1651 shared ZIP Code, the location of the transaction is:
- 1652 (i) if there is only one local taxing jurisdiction that imposes the lowest agreement
- 1653 combined tax rate for the shared ZIP Code, the local taxing jurisdiction that imposes the lowest
- 1654 agreement combined tax rate; or
- 1655 (ii) if two or more local taxing jurisdictions impose the lowest agreement combined tax
- 1656 rate for the shared ZIP Code, the local taxing jurisdiction that:
- 1657 (A) imposes the lowest agreement combined tax rate for the shared ZIP Code; and
- 1658 (B) has located within the local taxing jurisdiction the largest number of street
- 1659 addresses within the shared ZIP Code.
- 1660 (c) Notwithstanding any provision under this chapter authorizing or requiring the
- 1661 imposition of a sales and use tax, for purposes of Subsection (7)(b), a seller shall collect a sales
- 1662 and use tax imposed under this chapter at the lowest agreement combined tax rate imposed
- 1663 within the local taxing jurisdiction in which the transaction is located under Subsection (7)(b).
- 1664 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1665 commission may make rules:
- 1666 (i) providing for the circumstances under which a seller has exercised due diligence in
- 1667 determining the nine-digit ZIP Code for an address; or

1668 (ii) notwithstanding Subsection (7)(b), for determining the local taxing jurisdiction
1669 within which a transaction is located if a seller is unable to determine the local taxing
1670 jurisdiction within which the transaction is located under Subsection (7)(b).

1671 (8) The location of a transaction made with a direct payment permit described in
1672 Section [59-12-107.1](#) is the location where receipt of the tangible personal property, product
1673 transferred electronically, or service by the purchaser occurs.

1674 (9) The location of a purchase of direct mail is the location determined in accordance
1675 with Section [59-12-123](#).

1676 (10) (a) Except as provided in Subsection (10)(b), the location of a transaction
1677 determined under Subsections (3) through (6), (8), or (9), is the local taxing jurisdiction within
1678 which:

1679 (i) the nine-digit ZIP Code assigned to the location determined under Subsections (3)
1680 through (6), (8), or (9) is located; or

1681 (ii) the five-digit ZIP Code assigned to the location determined under Subsections (3)
1682 through (6), (8), or (9) is located if:

1683 (A) a nine-digit ZIP Code is not available for the location determined under
1684 Subsections (3) through (6), (8), or (9); or

1685 (B) after exercising due diligence, a seller or certified service provider is unable to
1686 determine a nine-digit ZIP Code for the location determined under Subsections (3) through (6),
1687 (8), or (9).

1688 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1689 commission may make rules for determining the local taxing jurisdiction within which a
1690 transaction is located if a seller or certified service provider is unable to determine the local
1691 taxing jurisdiction within which the transaction is located under Subsection (10)(a).

1692 (11) (a) As used in this Subsection (11), "florist delivery transaction" means a
1693 transaction commenced by a florist that transmits an order:

1694 (i) by:

1695 (A) telegraph;

1696 (B) telephone; or

1697 (C) a means of communication similar to Subsection (11)(a)(i)(A) or (B); and

1698 (ii) for delivery to another place:

1699 (A) in this state; or

1700 (B) outside this state.

1701 ~~[(b) Notwithstanding Subsections (3) through (6), beginning on January 1, 2009, and~~

1702 ~~ending on December 31, 2009, the location of a florist delivery transaction is the business~~

1703 ~~location of the florist that commences the florist delivery transaction.]~~

1704 ~~[(c)]~~ (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking

1705 Act, the commission may by rule:

1706 (i) define:

1707 (A) "business location"; and

1708 (B) "florist";

1709 (ii) define what constitutes a means of communication similar to Subsection

1710 (11)(a)(i)(A) or (B); and

1711 (iii) provide procedures for determining when a transaction is commenced.

1712 (12) (a) Notwithstanding any other provision of this section and except as provided in

1713 Subsection (12)(b), if a purchaser uses computer software and there is not a transfer of a copy

1714 of that software to the purchaser, the location of the transaction is determined in accordance

1715 with Subsections (4) and (5).

1716 (b) If a purchaser uses computer software described in Subsection (12)(a) at more than

1717 one location, the location of the transaction shall be determined in accordance with rules made

1718 by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking

1719 Act.

1720 (13) (a) A tax collected under this chapter shall be reported to the commission on a

1721 form that identifies the location of each transaction that occurs during the return filing period.

1722 (b) The form described in Subsection (13)(a) shall be filed with the commission as

1723 required under this chapter.

1724 (14) This section does not apply to:

1725 (a) amounts charged by a seller for:

1726 (i) telecommunications service except for a prepaid calling service or a prepaid

1727 wireless calling service as provided in Subsection (6)(b) or Section [59-12-215](#); or

1728 (ii) the retail sale or transfer of:

1729 (A) a motor vehicle other than a motor vehicle that is transportation equipment;

- 1730 (B) an aircraft other than an aircraft that is transportation equipment;
 1731 (C) a watercraft;
 1732 (D) a modular home;
 1733 (E) a manufactured home; or
 1734 (F) a mobile home; or
 1735 (iii) except as provided in Section 59-12-214, the lease or rental of tangible personal
 1736 property other than tangible personal property that is transportation equipment;
 1737 (b) a tax a person pays in accordance with Subsection 59-12-107[(2)(e)](6); or
 1738 (c) a retail sale of tangible personal property or a product transferred electronically if:
 1739 (i) the seller receives the order for the tangible personal property or product transferred
 1740 electronically in this state;
 1741 (ii) receipt of the tangible personal property or product transferred electronically by the
 1742 purchaser or the purchaser's donee occurs in this state;
 1743 (iii) the location where receipt of the tangible personal property or product transferred
 1744 electronically by the purchaser occurs is determined in accordance with Subsections (3)
 1745 through (5); and
 1746 (iv) at the time the seller receives the order, the record keeping system that the seller
 1747 uses to calculate the proper amount of tax imposed under this chapter captures the location
 1748 where the order is received.

1749 Section 7. Section 59-12-211.1 is amended to read:

1750 **59-12-211.1. Location of a transaction that is subject to a use tax.**

1751 (1) Subject to Subsection (2), a person that is required by Subsection
 1752 59-12-107[(2)(e)](6) to pay a use tax on a transaction shall report the location of that
 1753 transaction at the person's location.

1754 (2) For purposes of Subsection (1), if a person has more than one location in this state,
 1755 the person shall report the location of the transaction at the location at which tangible personal
 1756 property, a product transferred electronically, or a service is received.

1757 Section 8. Section 76-8-1101 is amended to read:

1758 **76-8-1101. Criminal offenses and penalties relating to revenue and taxation --**
 1759 **Rulemaking authority -- Statute of limitations.**

1760 (1) (a) As provided in Section 59-1-401, criminal offenses and penalties are as

1761 provided in Subsections (1)(b) through (e).

1762 (b) (i) ~~[Any]~~ A person [who] is guilty of a class B misdemeanor if the person:

1763 (A) is required by Title 59, Revenue and Taxation, or any laws the State Tax

1764 Commission administers or regulates, to register with or obtain a license or permit from the
1765 State Tax Commission~~[, who]~~; and

1766 (B) operates without having registered or secured a license or permit[;] or [who]
1767 operates when the registration, license, or permit is expired or not current~~[, is guilty of a class~~
1768 B-misdemeanor].

1769 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(b)(i), the
1770 penalty may not:

1771 (A) be less than \$500; or

1772 (B) exceed \$1,000.

1773 (c) (i) With respect to a tax, fee, or charge as defined in Section 59-1-401, ~~[any]~~ a
1774 person [who] is guilty of a third degree felony if the person:

1775 (A) knowingly and intentionally, and without a reasonable good faith basis, fails to
1776 make, render, sign, or verify any return within the time required by law or to supply any
1777 information within the time required by law~~[, or who]~~;

1778 (B) makes, renders, signs, or verifies any false or fraudulent return or statement[;] or
1779 [who]

1780 (C) supplies any false or fraudulent information~~[, is guilty of a third degree felony].~~

1781 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(c)(i), the penalty
1782 may not:

1783 (A) be less than \$1,000; or

1784 (B) exceed \$5,000.

1785 (d) (i) Any person who intentionally or willfully attempts to evade or defeat any tax,
1786 fee, or charge as defined in Section 59-1-401 or the payment of a tax, fee, or charge as defined
1787 in Section 59-1-401 is, in addition to other penalties provided by law, guilty of a second degree
1788 felony.

1789 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(d)(i), the penalty
1790 may not:

1791 (A) be less than \$1,500; or

1792 (B) exceed \$25,000.

1793 (e) (i) A person is guilty of a second degree felony if that person commits an act:

1794 (A) described in Subsection (1)(e)(ii) with respect to one or more of the following

1795 documents:

1796 (I) a return;

1797 (II) an affidavit;

1798 (III) a claim; or

1799 (IV) a document similar to Subsections (1)(e)(i)(A)(I) through (III); and

1800 (B) subject to Subsection (1)(e)(iii), with knowledge that the document described in

1801 Subsection (1)(e)(i)(A):

1802 (I) is false or fraudulent as to any material matter; and

1803 (II) could be used in connection with any material matter administered by the State Tax

1804 Commission.

1805 (ii) The following acts apply to Subsection (1)(e)(i):

1806 (A) preparing any portion of a document described in Subsection (1)(e)(i)(A);

1807 (B) presenting any portion of a document described in Subsection (1)(e)(i)(A);

1808 (C) procuring any portion of a document described in Subsection (1)(e)(i)(A);

1809 (D) advising in the preparation or presentation of any portion of a document described

1810 in Subsection (1)(e)(i)(A);

1811 (E) aiding in the preparation or presentation of any portion of a document described in

1812 Subsection (1)(e)(i)(A);

1813 (F) assisting in the preparation or presentation of any portion of a document described

1814 in Subsection (1)(e)(i)(A); or

1815 (G) counseling in the preparation or presentation of any portion of a document

1816 described in Subsection (1)(e)(i)(A).

1817 (iii) This Subsection (1)(e) applies:

1818 (A) regardless of whether the person for which the document described in Subsection

1819 (1)(e)(i)(A) is prepared or presented:

1820 (I) knew of the falsity of the document described in Subsection (1)(e)(i)(A); or

1821 (II) consented to the falsity of the document described in Subsection (1)(e)(i)(A); and

1822 (B) in addition to any other penalty provided by law.

1823 (iv) Notwithstanding Section 76-3-301, for purposes of this Subsection (1)(e), the
1824 penalty may not:

1825 (A) be less than \$1,500; or

1826 (B) exceed \$25,000.

1827 (v) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1828 State Tax Commission may make rules prescribing the documents that are similar to
1829 Subsections (1)(e)(i)(A)(I) through (III).

1830 (2) The statute of limitations for prosecution for a violation of this section is the later
1831 of six years:

1832 (a) from the date the tax should have been remitted; or

1833 (b) after the day on which the person commits the criminal offense.

1834 Section 9. Section 78A-3-102 is amended to read:

1835 **78A-3-102. Supreme Court jurisdiction.**

1836 (1) The Supreme Court has original jurisdiction to answer questions of state law
1837 certified by a court of the United States.

1838 (2) The Supreme Court has original jurisdiction to issue all extraordinary writs and
1839 authority to issue all writs and process necessary to carry into effect its orders, judgments, and
1840 decrees or in aid of its jurisdiction.

1841 (3) The Supreme Court has appellate jurisdiction, including jurisdiction of
1842 interlocutory appeals, over:

1843 (a) a judgment of the Court of Appeals;

1844 (b) cases certified to the Supreme Court by the Court of Appeals prior to final
1845 judgment by the Court of Appeals;

1846 (c) discipline of lawyers;

1847 (d) final orders of the Judicial Conduct Commission;

1848 (e) final orders and decrees in formal adjudicative proceedings originating with:

1849 (i) the Public Service Commission;

1850 (ii) the State Tax Commission;

1851 (iii) the School and Institutional Trust Lands Board of Trustees;

1852 (iv) the Board of Oil, Gas, and Mining;

1853 (v) the state engineer; or

1854 (vi) the executive director of the Department of Natural Resources reviewing actions of
1855 the Division of Forestry, Fire, and State Lands;

1856 (f) final orders and decrees of the district court review of informal adjudicative
1857 proceedings of agencies under Subsection (3)(e);

1858 (g) a final judgment or decree of any court of record holding a statute of the United
1859 States or this state unconstitutional on its face under the Constitution of the United States or the
1860 Utah Constitution;

1861 (h) interlocutory appeals from any court of record involving a charge of a first degree
1862 or capital felony;

1863 (i) appeals from the district court involving a conviction or charge of a first degree
1864 felony or capital felony;

1865 (j) orders, judgments, and decrees of any court of record over which the Court of
1866 Appeals does not have original appellate jurisdiction; ~~and~~

1867 (k) appeals from the district court of orders, judgments, or decrees ruling on legislative
1868 subpoenas[-]; and

1869 (l) appeals from a district court's decision on a declaratory judgment request under
1870 Subsection 59-12-107(3)(b).

1871 (4) The Supreme Court may transfer to the Court of Appeals any of the matters over
1872 which the Supreme Court has original appellate jurisdiction, except:

1873 (a) capital felony convictions or an appeal of an interlocutory order of a court of record
1874 involving a charge of a capital felony;

1875 (b) election and voting contests;

1876 (c) reapportionment of election districts;

1877 (d) retention or removal of public officers;

1878 (e) matters involving legislative subpoenas; and

1879 (f) those matters described in Subsections (3)(a) through (d) and (l).

1880 (5) The Supreme Court has sole discretion in granting or denying a petition for writ of
1881 certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall
1882 review those cases certified to it by the Court of Appeals under Subsection (3)(b).

1883 (6) The Supreme Court shall comply with the requirements of Title 63G, Chapter 4,
1884 Administrative Procedures Act, in its review of agency adjudicative proceedings.

1885 Section 10. **Appropriation.**

1886 The following sums of money are appropriated for the fiscal year beginning July 1,
 1887 2016, and ending June 30, 2017. These are additions to amounts previously appropriated for
 1888 fiscal year 2017. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures
 1889 Act, the Legislature appropriates the following sums of money from the funds or accounts
 1890 indicated for the use and support of the government of the state of Utah.

1891 ITEM 1

1892 To the General Fund

1893 From Remote Sales Restricted Account, One-time \$81,000

1894 Schedule of Programs:

1895 General Fund, One-time \$81,000

1896 Section 11. **Severability clause.**

1897 The provisions of this bill are severable. If any provision of this bill, or the application
 1898 of any provision of this bill to any person or circumstance, is held invalid by a final,
 1899 unappealable decision of a court of competent jurisdiction, the remainder of this bill shall be
 1900 given effect without the invalid provision or application.

1901 Section 12. **Repealer.**

1902 This bill repeals:

1903 Section **59-12-103.2, Definitions -- Remote Sales Restricted Account -- Creation --**
 1904 **Funding for account -- Interest -- Division of Finance accounting.**

1905 Section 13. **Effective date.**

1906 (1) Except as provided in Subsection (2), this bill takes effect on May 9, 2017.

1907 (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