

28 **59-12-106**, as last amended by Laws of Utah 2011, Chapter 285



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

31 Section 1. Section **59-12-106** is amended to read:

32 **59-12-106. Definitions -- Sales and use tax license requirements -- Penalty --**
33 **Application process and requirements -- No fee -- Bonds -- Presumption of taxability --**
34 **Exemption certificates -- Exemption certificate license number to accompany contract**
35 **bids.**

36 (1) As used in this section:

37 (a) [~~"applicant"~~] "Applicant" means a person that:

38 (i) is required by this section to obtain a license; and

39 (ii) submits an application:

40 (A) to the commission; and

41 (B) for a license under this section[;].

42 (b) [~~"application"~~] "Application" means an application for a license under this
43 section[;].

44 (c) [~~"fiduciary"~~] "Fiduciary of the applicant" means a person that:

45 (i) is required to collect, truthfully account for, and pay over a tax under this chapter
46 for an applicant; and

47 (ii) (A) is a corporate officer of the applicant described in Subsection (1)(c)(i);

48 (B) is a director of the applicant described in Subsection (1)(c)(i);

49 (C) is an employee of the applicant described in Subsection (1)(c)(i);

50 (D) is a partner of the applicant described in Subsection (1)(c)(i);

51 (E) is a trustee of the applicant described in Subsection (1)(c)(i); or

52 (F) has a relationship to the applicant described in Subsection (1)(c)(i) that is similar to
53 a relationship described in Subsections (1)(c)(ii)(A) through (E) as determined by the
54 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
55 Rulemaking Act[;].

56 (d) [~~"fiduciary"~~] "Fiduciary of the licensee" means a person that:

57 (i) is required to collect, truthfully account for, and pay over a tax under this chapter
58 for a licensee; and

59 (ii) (A) is a corporate officer of the licensee described in Subsection (1)(d)(i);
 60 (B) is a director of the licensee described in Subsection (1)(d)(i);
 61 (C) is an employee of the licensee described in Subsection (1)(d)(i);
 62 (D) is a partner of the licensee described in Subsection (1)(d)(i);
 63 (E) is a trustee of the licensee described in Subsection (1)(d)(i); or
 64 (F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to
 65 a relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the
 66 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
 67 Rulemaking Act[;].

68 (e) [~~"license"~~] "License" means a license under this section[~~;~~and].

69 (f) [~~"licensee"~~] "Licensee" means a person that is licensed under this section by the
 70 commission.

71 (g) "Special event" means an event that lasts six months or less where taxable sales
 72 occur.

73 (2) (a) It is unlawful for any person required to collect a tax under this chapter to
 74 engage in business within the state without first having obtained a license to do so.

75 (b) The license described in Subsection (2)(a):

76 (i) shall be granted and issued by the commission;

77 (ii) is not assignable;

78 (iii) is valid only for the person in whose name the license is issued;

79 (iv) is valid until:

80 (A) the person described in Subsection (2)(b)(iii):

81 (I) ceases to do business; or

82 (II) changes that person's business address; or

83 (B) the license is revoked by the commission; and

84 (v) subject to Subsection (2)(d), shall be granted by the commission only upon an
 85 application that:

86 (A) states the name and address of the applicant; and

87 (B) provides other information the commission may require.

88 (c) At the time an applicant makes an application under Subsection (2)(b)(v), the
 89 commission shall notify the applicant of the responsibilities and liability of a business owner

90 successor under Section 59-12-112.

91 (d) The commission shall review an application and determine whether the applicant:

92 (i) meets the requirements of this section to be issued a license; and

93 (ii) is required to post a bond with the commission in accordance with Subsections

94 (2)(e) and (f) before the applicant may be issued a license.

95 (e) (i) An applicant shall post a bond with the commission before the commission may
96 issue the applicant a license if:

97 (A) a license under this section was revoked for a delinquency under this chapter for:

98 (I) the applicant;

99 (II) a fiduciary of the applicant; or

100 (III) a person for which the applicant or the fiduciary of the applicant is required to
101 collect, truthfully account for, and pay over a tax under this chapter; or

102 (B) there is a delinquency in paying a tax under this chapter for:

103 (I) the applicant;

104 (II) a fiduciary of the applicant; or

105 (III) a person for which the applicant or the fiduciary of the applicant is required to
106 collect, truthfully account for, and pay over a tax under this chapter.

107 (ii) If the commission determines it is necessary to ensure compliance with this
108 chapter, the commission may require a licensee to:

109 (A) for a licensee that has not posted a bond under this section with the commission,
110 post a bond with the commission in accordance with Subsection (2)(f); or

111 (B) for a licensee that has posted a bond under this section with the commission,
112 increase the amount of the bond posted with the commission.

113 (f) (i) A bond required by Subsection (2)(e) shall be:

114 (A) executed by:

115 (I) for an applicant, the applicant as principal, with a corporate surety; or

116 (II) for a licensee, the licensee as principal, with a corporate surety; and

117 (B) payable to the commission conditioned upon the faithful performance of all of the
118 requirements of this chapter including:

119 (I) the payment of any tax under this chapter;

120 (II) the payment of any:

- 121 (Aa) penalty as provided in Section 59-1-401; or
- 122 (Bb) interest as provided in Section 59-1-402; or
- 123 (III) any other obligation of the:
 - 124 (Aa) applicant under this chapter; or
 - 125 (Bb) licensee under this chapter.
- 126 (ii) Except as provided in Subsection (2)(f)(iv), the commission shall calculate the
- 127 amount of a bond required by Subsection (2)(e) on the basis of:
 - 128 (A) commission estimates of:
 - 129 (I) an applicant's tax liability under this chapter; or
 - 130 (II) a licensee's tax liability under this chapter; and
 - 131 (B) any amount of a delinquency described in Subsection (2)(f)(iii).
 - 132 (iii) Except as provided in Subsection (2)(f)(iv), for purposes of Subsection
 - 133 (2)(f)(ii)(B):
 - 134 (A) for an applicant, the amount of the delinquency is the sum of:
 - 135 (I) the amount of any delinquency that served as a basis for revoking the license under
 - 136 this section of:
 - 137 (Aa) the applicant;
 - 138 (Bb) a fiduciary of the applicant; or
 - 139 (Cc) a person for which the applicant or the fiduciary of the applicant is required to
 - 140 collect, truthfully account for, and pay over a tax under this chapter; or
 - 141 (II) the amount of tax that any of the following owe under this chapter:
 - 142 (Aa) the applicant;
 - 143 (Bb) a fiduciary of the applicant; and
 - 144 (Cc) a person for which the applicant or the fiduciary of the applicant is required to
 - 145 collect, truthfully account for, and pay over a tax under this chapter; or
 - 146 (B) for a licensee, the amount of the delinquency is the sum of:
 - 147 (I) the amount of any delinquency that served as a basis for revoking the license under
 - 148 this section of:
 - 149 (Aa) the licensee;
 - 150 (Bb) a fiduciary of the licensee; or
 - 151 (Cc) a person for which the licensee or the fiduciary of the licensee is required to

152 collect, truthfully account for, and pay over a tax under this chapter; or

153 (II) the amount of tax that any of the following owe under this chapter:

154 (Aa) the licensee;

155 (Bb) a fiduciary of the licensee; and

156 (Cc) a person for which the licensee or the fiduciary of the licensee is required to
157 collect, truthfully account for, and pay over a tax under this chapter.

158 (iv) Notwithstanding Subsection (2)(f)(ii) or (2)(f)(iii), a bond required by Subsection
159 (2)(e) may not:

160 (A) be less than \$25,000; or

161 (B) exceed \$500,000.

162 (g) ~~[H]~~ Subject to Subsection (2)(h), if business is transacted at two or more separate
163 places by one person, a separate license for each place of business is required.

164 (h) A license is not required for any person that is:

165 (i) engaged exclusively in the business of selling commodities that are exempt from
166 taxation under this chapter; or

167 (ii) exempt from collecting sales and use tax under Section 59-12-104 and the place of
168 business is a special event.

169 ~~[(h)]~~ (i) (i) The commission shall, on a reasonable notice and after a hearing, revoke
170 the license of any licensee violating any provisions of this chapter.

171 (ii) A license may not be issued to a licensee described in Subsection ~~[(2)(h)(i)]~~

172 (2)(i)(i) until the licensee has complied with the requirements of this chapter, including:

173 (A) paying any:

174 (I) tax due under this chapter;

175 (II) penalty as provided in Section 59-1-401; or

176 (III) interest as provided in Section 59-1-402; and

177 (B) posting a bond in accordance with Subsections (2)(e) and (f).

178 ~~[(i)]~~ (i) Any person required to collect a tax under this chapter within this state without
179 having secured a license to do so is guilty of a criminal violation as provided in Section
180 59-1-401.

181 ~~[(j) A license:]~~

182 ~~[(i) is not required for any person engaged exclusively in the business of selling~~

183 ~~commodities that are exempt from taxation under this chapter; and]~~

184 ~~[(ii)]~~ (k) A license shall be issued to the person by the commission without a license
185 fee.

186 (l) (i) The commission shall include on an application for a temporary sales tax license
187 and special event sales tax return the following statement:

188 "You are not required to complete or return this form or to collect sales and use tax if
189 you are not regularly engaged in the business of selling the items you are offering at this event
190 or all of the items that you are selling at this event are exempt from sales and use tax under
191 Section 59-12-104."

192 (ii) The notice described in Subsection (2)(l)(i) shall be in bold font no smaller than the
193 font of the main content and shall appear at the top of the application form.

194 (3) (a) For the purpose of the proper administration of this chapter and to prevent
195 evasion of the tax and the duty to collect the tax, it shall be presumed that tangible personal
196 property or any other taxable transaction under Subsection 59-12-103(1) sold by any person for
197 delivery in this state is sold for storage, use, or other consumption in this state unless the
198 person selling the property, item, or service has taken from the purchaser an exemption
199 certificate:

200 (i) bearing the name and address of the purchaser; and

201 (ii) providing that the property, item, or service was exempted under Section
202 59-12-104.

203 (b) An exemption certificate described in Subsection (3)(a):

204 (i) shall contain information as prescribed by the commission; and

205 (ii) if a paper exemption certificate is used, shall be signed by the purchaser.

206 (c) (i) Subject to Subsection (3)(c)(ii), a seller or certified service provider is not liable
207 to collect a tax under this chapter if the seller or certified service provider obtains within 90
208 days after a transaction is complete:

209 (A) an exemption certificate containing the information required by Subsections (3)(a)
210 and (b); or

211 (B) the information required by Subsections (3)(a) and (b).

212 (ii) A seller or certified service provider that does not obtain the exemption certificate
213 or information described in Subsection (3)(c)(i) with respect to a transaction is allowed 120

214 days after the commission requests the seller or certified service provider to substantiate the
215 exemption to:

216 (A) establish that the transaction is not subject to taxation under this chapter by a
217 means other than providing an exemption certificate containing the information required by
218 Subsections (3)(a) and (b); or

219 (B) subject to Subsection (3)(c)(iii), obtain an exemption certificate containing the
220 information required by Subsections (3)(a) and (b), taken in good faith.

221 (iii) For purposes of Subsection (3)(c)(ii)(B), an exemption certificate is taken in good
222 faith if the exemption certificate claims an exemption that:

223 (A) was allowed by statute on the date of the transaction in the jurisdiction of the
224 location of the transaction;

225 (B) could be applicable to that transaction; and

226 (C) is reasonable for the purchaser's type of business.

227 (d) Except as provided in Subsection (3)(e), a seller or certified service provider that
228 takes an exemption certificate from a purchaser in accordance with this Subsection (3) with
229 respect to a transaction is not liable to collect a tax under this chapter on that transaction.

230 (e) Subsection (3)(d) does not apply to a seller or certified service provider if the
231 commission establishes through an audit that the seller or certified service provider:

232 (i) knew or had reason to know at the time the purchaser provided the seller or certified
233 service provider the information described in Subsection (3)(a) or (b) that the information
234 related to the exemption claimed was materially false; or

235 (ii) otherwise knowingly participated in activity intended to purposefully evade the tax
236 due on the transaction.

237 (f) (i) Subject to Subsection (3)(f)(ii) and except as provided in Subsection (3)(f)(iii), if
238 there is a recurring business relationship between a seller or certified service provider and a
239 purchaser, the commission may not require the seller or certified service provider to:

240 (A) renew an exemption certificate;

241 (B) update an exemption certificate; or

242 (C) update a data element of an exemption certificate.

243 (ii) For purposes of Subsection (3)(f)(i), a recurring business relationship exists if no
244 more than a 12-month period elapses between transactions between a seller or certified service

245 provider and a purchaser.

246 (iii) If there is a recurring business relationship between a seller or certified service
247 provider and a purchaser, the commission shall require an exemption certificate the seller or
248 certified service provider takes from the purchaser to meet the requirements of Subsections
249 (3)(a) and (b).

250 (4) A person filing a contract bid with the state or a political subdivision of the state for
251 the sale of tangible personal property or any other taxable transaction under Subsection
252 [59-12-103](#)(1) shall include with the bid the number of the license issued to that person under
253 Subsection (2).