

Representative Marc K. Roberts proposes the following substitute bill:

TAX COMMISSION AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

House Sponsor: A. Cory Maloy

LONG TITLE

General Description:

This bill modifies provisions related to the State Tax Commission.

Highlighted Provisions:

This bill:

- ▶ requires the State Tax Commission to stay a case before the commission, if a commission decision involving the same taxpayer, the same tax type, and similar issues, is before a court on judicial review;
- ▶ defines "special event";
- ▶ provides that the State Tax Commission may not require a person that is exempt from collecting sales and use tax to have a sales and use tax license if the person is selling items at a special event;
- ▶ requires the State Tax Commission to include a notice on an application for a temporary sales tax license and special event sales tax return that a person not regularly engaged in selling items or that sells exempt items is not required to complete the form or to collect sales and use tax;
- ▶ provides the requirements for the notice; and
- ▶ makes technical changes.

Money Appropriated in this Bill:



26 None

27 **Other Special Clauses:**

28 This bill provides a special effective date.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **59-12-106**, as last amended by Laws of Utah 2011, Chapter 285

32 ENACTS:

33 **59-1-613**, Utah Code Annotated 1953



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

36 Section 1. Section **59-1-613** is enacted to read:

37 **59-1-613. Judicial review -- Mandatory stay of certain commission cases.**

38 (1) When a commission decision is before a court on judicial review, the commission shall, unless all parties otherwise agree, stay an appeal before the commission, if the judicial review before the court and the appeal before the commission involve the same:

- 41 (a) taxpayer;
- 42 (b) type of tax; and
- 43 (c) legal issue or valuation principle.

44 (2) An appeal stayed in accordance with Subsection (1) is stayed until the court issues a final decision after judicial review of the commission decision.

46 Section 2. Section **59-12-106** is amended to read:

47 **59-12-106. Definitions -- Sales and use tax license requirements -- Penalty -- Application process and requirements -- No fee -- Bonds -- Presumption of taxability -- Exemption certificates -- Exemption certificate license number to accompany contract bids.**

- 51 (1) As used in this section:
- 52 (a) [~~"applicant"~~] "Applicant" means a person that:
 - 53 (i) is required by this section to obtain a license; and
 - 54 (ii) submits an application:
 - 55 (A) to the commission; and
 - 56 (B) for a license under this section[?].

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

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

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

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

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

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

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

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

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

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

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

74 (ii) (A) is a corporate officer of the licensee described in Subsection (1)(d)(i);

75 (B) is a director of the licensee described in Subsection (1)(d)(i);

76 (C) is an employee of the licensee described in Subsection (1)(d)(i);

77 (D) is a partner of the licensee described in Subsection (1)(d)(i);

78 (E) is a trustee of the licensee described in Subsection (1)(d)(i); or

79 (F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to
80 a relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the
81 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
82 Rulemaking Act[;].

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

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

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

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

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

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

92 (ii) is not assignable;

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

94 (iv) is valid until:

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

96 (I) ceases to do business; or

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

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

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

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

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

103 (c) At the time an applicant makes an application under Subsection (2)(b)(v), the
104 commission shall notify the applicant of the responsibilities and liability of a business owner
105 successor under Section [59-12-112](#).

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

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

108 (ii) is required to post a bond with the commission in accordance with Subsections
109 (2)(e) and (f) before the applicant may be issued a license.

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

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

113 (I) the applicant;

114 (II) a fiduciary of the applicant; or

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

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

118 (I) the applicant;

- 119 (II) a fiduciary of the applicant; or
- 120 (III) a person for which the applicant or the fiduciary of the applicant is required to
- 121 collect, truthfully account for, and pay over a tax under this chapter.
- 122 (ii) If the commission determines it is necessary to ensure compliance with this
- 123 chapter, the commission may require a licensee to:
- 124 (A) for a licensee that has not posted a bond under this section with the commission,
- 125 post a bond with the commission in accordance with Subsection (2)(f); or
- 126 (B) for a licensee that has posted a bond under this section with the commission,
- 127 increase the amount of the bond posted with the commission.
- 128 (f) (i) A bond required by Subsection (2)(e) shall be:
- 129 (A) executed by:
- 130 (I) for an applicant, the applicant as principal, with a corporate surety; or
- 131 (II) for a licensee, the licensee as principal, with a corporate surety; and
- 132 (B) payable to the commission conditioned upon the faithful performance of all of the
- 133 requirements of this chapter including:
- 134 (I) the payment of any tax under this chapter;
- 135 (II) the payment of any:
- 136 (Aa) penalty as provided in Section 59-1-401; or
- 137 (Bb) interest as provided in Section 59-1-402; or
- 138 (III) any other obligation of the:
- 139 (Aa) applicant under this chapter; or
- 140 (Bb) licensee under this chapter.
- 141 (ii) Except as provided in Subsection (2)(f)(iv), the commission shall calculate the
- 142 amount of a bond required by Subsection (2)(e) on the basis of:
- 143 (A) commission estimates of:
- 144 (I) an applicant's tax liability under this chapter; or
- 145 (II) a licensee's tax liability under this chapter; and
- 146 (B) any amount of a delinquency described in Subsection (2)(f)(iii).
- 147 (iii) Except as provided in Subsection (2)(f)(iv), for purposes of Subsection
- 148 (2)(f)(ii)(B):
- 149 (A) for an applicant, the amount of the delinquency is the sum of:

150 (I) the amount of any delinquency that served as a basis for revoking the license under
151 this section of:

152 (Aa) the applicant;

153 (Bb) a fiduciary of the applicant; or

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

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

157 (Aa) the applicant;

158 (Bb) a fiduciary of the applicant; and

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

161 (B) for a licensee, the amount of the delinquency is the sum of:

162 (I) the amount of any delinquency that served as a basis for revoking the license under
163 this section of:

164 (Aa) the licensee;

165 (Bb) a fiduciary of the licensee; or

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

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

169 (Aa) the licensee;

170 (Bb) a fiduciary of the licensee; and

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

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

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

176 (B) exceed \$500,000.

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

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

180 (i) engaged exclusively in the business of selling commodities that are exempt from

181 taxation under this chapter; or

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

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

186 (ii) A license may not be issued to a licensee described in Subsection ~~[(2)(h)(i)]~~
187 (2)(i)(i) until the licensee has complied with the requirements of this chapter, including:

188 (A) paying any:

189 (I) tax due under this chapter;

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

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

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

193 ~~[(i)]~~ (j) Any person required to collect a tax under this chapter within this state without
194 having secured a license to do so is guilty of a criminal violation as provided in Section
195 59-1-401.

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

197 ~~[(i) is not required for any person engaged exclusively in the business of selling~~
198 ~~commodities that are exempt from taxation under this chapter; and]~~

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

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

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

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

209 (3) (a) For the purpose of the proper administration of this chapter and to prevent
210 evasion of the tax and the duty to collect the tax, it shall be presumed that tangible personal
211 property or any other taxable transaction under Subsection 59-12-103(1) sold by any person for

212 delivery in this state is sold for storage, use, or other consumption in this state unless the
213 person selling the property, item, or service has taken from the purchaser an exemption
214 certificate:

- 215 (i) bearing the name and address of the purchaser; and
- 216 (ii) providing that the property, item, or service was exempted under Section
217 59-12-104.

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

- 219 (i) shall contain information as prescribed by the commission; and
- 220 (ii) if a paper exemption certificate is used, shall be signed by the purchaser.

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

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

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

227 (ii) A seller or certified service provider that does not obtain the exemption certificate
228 or information described in Subsection (3)(c)(i) with respect to a transaction is allowed 120
229 days after the commission requests the seller or certified service provider to substantiate the
230 exemption to:

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

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

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

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

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

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

242 (d) Except as provided in Subsection (3)(e), a seller or certified service provider that

243 takes an exemption certificate from a purchaser in accordance with this Subsection (3) with
244 respect to a transaction is not liable to collect a tax under this chapter on that transaction.

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

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

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

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

255 (A) renew an exemption certificate;

256 (B) update an exemption certificate; or

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

258 (ii) For purposes of Subsection (3)(f)(i), a recurring business relationship exists if no
259 more than a 12-month period elapses between transactions between a seller or certified service
260 provider and a purchaser.

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

265 (4) A person filing a contract bid with the state or a political subdivision of the state for
266 the sale of tangible personal property or any other taxable transaction under Subsection
267 [59-12-103](#)(1) shall include with the bid the number of the license issued to that person under
268 Subsection (2).

269 Section 3. **Effective date.**

270 (1) Except as provided in Subsection (2), this bill takes effect on May 12, 2020.

271 (2) The changes to Section [59-12-106](#) take effect on July 1, 2020.

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