

TAX ADMINISTRATION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Robert M. Spendlove

LONG TITLE

General Description:

This bill modifies provisions related to the administration and enforcement of taxes.

Highlighted Provisions:

This bill:

► clarifies that the parties to an administrative garnishment order issued by the State Tax Commission must file certain requests and motions in the district court; and

► changes the term "remote seller" to "voluntary seller."

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

59-1-1420, as enacted by Laws of Utah 2021, Chapter 393

59-12-107, as last amended by Laws of Utah 2020, Chapter 294

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

Section 1. Section **59-1-1420** is amended to read:

59-1-1420. Administrative garnishment order for liability.

(1) As used in this section:



28 (a) "Administrative garnishment order" includes a continuing administrative
29 garnishment order issued under this section.

30 (b) "Disposable earnings" means the same as that term is defined in Section
31 [70C-7-103](#).

32 (c) "Garnishee" means a person to whom the commission issues an administrative
33 garnishment order under this section.

34 (d) "Nonexempt periodic payment" means any recurring payment that, under Title 78B,
35 Chapter 5, Part 5, Utah Exemptions Act, is not exempt from the judicial process to collect an
36 unsecured debt.

37 (2) (a) Subject to Subsection (3), if a taxpayer owes a liability, the commission may
38 issue an administrative garnishment order against the taxpayer's personal property, including
39 wages, in the possession or control of a person other than the taxpayer in the same manner and
40 with the same effect as if the order were a writ of garnishment issued by a court with
41 jurisdiction.

42 (b) In addition to the underlying liability, the commission may satisfy through an
43 administrative garnishment any costs or fees incurred by the commission as a result of issuing
44 the administrative garnishment order.

45 (3) The commission may issue an administrative garnishment order to a person
46 described in Subsection (2) if:

47 (a) the commission has filed a warrant against the taxpayer for the underlying liability
48 in accordance with Section [59-1-1414](#); and

49 (b) the commission's executive director or the executive director's designee signs the
50 administrative garnishment order.

51 (4) An administrative garnishment order issued in accordance with this section is
52 subject to the procedures and due process protections provided by Rule 64D, Utah Rules of
53 Civil Procedure.

54 (5) The maximum portion of a taxpayer's disposable earnings subject to garnishment
55 under this section is the lesser of:

56 (a) 25% of the taxpayer's disposable earnings; or

57 (b) the amount by which the taxpayer's disposable earnings for a pay period exceeds
58 the number of weeks in that pay period multiplied by 30 times the federal minimum wage as

59 provided in 29 U.S.C. Sec. 201 et seq., Fair Labor Standards Act of 1938.

60 (6) Upon agreement by the garnishee, the parties to an administrative garnishment
61 order may accept and transmit documents relating to the administrative garnishment order by
62 electronic means, including service of process, proof of service, interrogatories, answers, and
63 any other information shared between the garnishee and the commission.

64 (7) In an administrative garnishment order issued under this section, the commission
65 shall:

66 (a) identify the taxpayer, including:

67 (i) the taxpayer's name and address; and

68 (ii) if known:

69 (A) the last four digits of the taxpayer's social security number, or the taxpayer's full
70 social security number, if the taxpayer's full social security number is required by federal law;
71 and

72 (B) the taxpayer's date of birth;

73 (b) contain a statement that includes:

74 (i) if known, the nature, location, account number, and estimated value of the property
75 subject to administrative garnishment;

76 (ii) if known, the name, address, and phone number of the person holding the property
77 subject to administrative garnishment; and

78 (iii) the name, address, and phone number of any person claiming an interest in the
79 property described in Subsection (7)(b)(i) or (ii);

80 (c) state whether any of the property subject to administrative garnishment consists of
81 earnings;

82 (d) state the outstanding amount owed under the warrant described in Subsection
83 (3)(a);

84 (e) state the amount of any applicable costs or fees included in the administrative
85 garnishment;

86 (f) state the manner in which the garnishee shall deliver the property to the
87 commission; and

88 (g) state that the commission shall pay the garnishee the fee described in Section
89 [78A-2-216](#).

90 (8) As part of the administrative garnishment order, the commission shall serve on the
91 garnishee the following interrogatories:

92 (a) whether the garnishee is indebted to the taxpayer and, if so, the nature of the
93 indebtedness;

94 (b) whether the garnishee possesses or controls any property of the taxpayer, and, if so,
95 the nature, location, and estimated value of the property;

96 (c) whether the garnishee knows of any property of the taxpayer in the possession or
97 control of another person, and if so, the following information about the property:

98 (i) the nature;

99 (ii) the location; and

100 (iii) the estimated value;

101 (d) (i) whether the garnishee intends to deduct from the property a liquidated claim
102 against the taxpayer;

103 (ii) a description of any claim described in Subsection (8)(d)(i); and

104 (iii) the amount deducted, if any;

105 (e) the date and manner of the garnishee's service of the documents described in
106 Subsection (9)(c) on the taxpayer and any third party;

107 (f) the date on which the taxpayer was previously served with any continuing
108 administrative garnishment order;

109 (g) any other relevant information the commission requests, including:

110 (i) the taxpayer's position;

111 (ii) the taxpayer's rate of pay;

112 (iii) the taxpayer's compensation method;

113 (iv) the taxpayer's pay period; and

114 (v) a computation of the taxpayer's disposable earnings.

115 (9) Within seven days after the day on which an administrative garnishment order is
116 served, the garnishee shall:

117 (a) answer each interrogatory described in Subsection (8);

118 (b) serve the answers to the interrogatories on the commission;

119 (c) serve the taxpayer and any other person known to the garnishee to have an interest
120 in the property a copy of:

121 (i) the administrative garnishment order; and
122 (ii) the answers to the interrogatories described in Subsection (9)(b); and
123 (d) inform the taxpayer of the taxpayer's right to reply to the answers described in
124 Subsection (9)(b) and request a hearing in district court as provided by Rule 64D, Utah Rules
125 of Civil Procedure.

126 (10) (a) A garnishee who acts in accordance with this section and the administrative
127 garnishment order is released from liability unless an answer to an interrogatory is successfully
128 controverted.

129 (b) Except as provided in Subsection (10)(c), if a garnishee fails to comply with the
130 administrative garnishment order without a court or final administrative order directing
131 otherwise, the garnishee is liable for an amount including:

132 (i) the lesser of the value of the property or the balance owed under the warrant
133 described in Subsection (3)(a);

134 (ii) reasonable costs and fees; and

135 (iii) attorney fees incurred by the parties as a result of the garnishee's failure.

136 (c) If a garnishee demonstrates that the garnishee took reasonable steps to secure the
137 property, the commission may excuse the garnishee of liability in whole or in part.

138 (11) If the commission files a motion for an order to show cause to enforce an
139 administrative garnishment order under this section, the commission shall file the motion in
140 district court and attach to the motion a statement that the commission has in good faith
141 conferred or attempted to confer with the garnishee in an effort to settle the issue without court
142 action.

143 (12) A garnishee is not liable for drawing, accepting, making, or endorsing a negotiable
144 instrument that is not in the possession or control of the garnishee at the time the administrative
145 garnishment order is served.

146 (13) A garnishee may deduct from the property any liquidated claim against the
147 taxpayer.

148 (14) (a) If a debt owed by the taxpayer to the garnishee is secured by the property
149 subject to the administrative garnishment order, the commission may apply the property to the
150 debt.

151 (b) An administrative garnishment order described in Subsection (14)(a) remains in

152 effect regardless of whether the commission applies the property to the debt.

153 (15) (a) The commission may issue a continuing administrative garnishment order
154 against any nonexempt periodic payment.

155 (b) A continuing administrative garnishment order applies to payments to the taxpayer:

156 (i) beginning on the day on which the continuing administrative garnishment order is
157 served; and

158 (ii) ending on the earlier of:

159 (A) subject to Subsection (15)(c), one year after the day on which the continuing
160 administrative garnishment order is served;

161 (B) 120 days after the day on which a second or subsequent continuing administrative
162 garnishment against the taxpayer is served;

163 (C) the day on which the last nonexempt periodic payment subject to the continuing
164 administrative garnishment order occurs;

165 (D) the day on which the warrant described in Subsection (3)(a) is stayed, vacated, or
166 satisfied in full; or

167 (E) the day on which the commission releases the continuing administrative
168 garnishment order.

169 (c) If the commission issues a continuing administrative garnishment order during the
170 term of another continuing administrative garnishment order against the same taxpayer, the
171 period described in Subsection (15)(b)(i) is tolled if the other continuing administrative
172 garnishment order:

173 (i) is in effect at the time the commission serves the subsequent continuing
174 administrative garnishment order; and

175 (ii) requires payments greater than or equal to the maximum portion of disposable
176 earnings described in Subsection (5).

177 (d) For each periodic payment period, no later than seven days after the day on which
178 the periodic payment period ends, the garnishee shall:

179 (i) answer each interrogatory described in Subsection (8);

180 (ii) serve the answers to the interrogatories on the commission, the taxpayer, and any
181 other person known to the garnishee to have an interest in the property; and

182 (iii) deliver the property to the commission in the manner specified in the continuing

183 administrative garnishment order.

184 (16) (a) The commission may not name more than one garnishee in an administrative
185 garnishment order.

186 (b) Priority among garnishments is according to the order of service on the garnishee.

187 (c) An administrative garnishment order applies to earnings accruing during the pay
188 period in which the order is effective.

189 (17) This section is subject to Title 78B, Chapter 5, Part 5, Utah Exemptions Act.
190 Section 2. Section **59-12-107** is amended to read:

191 **59-12-107. Definitions -- Collection, remittance, and payment of tax by sellers or**
192 **other persons -- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other**
193 **liability for collection -- Rulemaking authority -- Credits -- Treatment of bad debt --**
194 **Penalties and interest.**

195 (1) As used in this section:

196 (a) "Ownership" means direct ownership or indirect ownership through a parent,
197 subsidiary, or affiliate.

198 (b) "Related seller" means a seller that:

199 (i) meets one or more of the criteria described in Subsection (2)(a)(i); and

200 (ii) delivers tangible personal property, a service, or a product transferred electronically
201 that is sold:

202 (A) by a seller that does not meet one or more of the criteria described in Subsection
203 (2)(a)(i); and

204 (B) to a purchaser in the state.

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

208 (2) (a) Except as provided in Subsection (2)(f), Section **59-12-107.1**, or Section
209 **59-12-123**, and subject to Subsection (2)(g), each seller shall pay or collect and remit the sales
210 and use taxes imposed by this chapter if within this state the seller:

211 (i) has or utilizes:

212 (A) an office;

213 (B) a distribution house;

- 214 (C) a sales house;
- 215 (D) a warehouse;
- 216 (E) a service enterprise; or
- 217 (F) a place of business similar to Subsections (2)(a)(i)(A) through (E);
- 218 (ii) maintains a stock of goods;
- 219 (iii) regularly solicits orders, regardless of whether or not the orders are accepted in the
- 220 state, unless the seller's only activity in the state is:
 - 221 (A) advertising; or
 - 222 (B) solicitation by:
 - 223 (I) direct mail;
 - 224 (II) electronic mail;
 - 225 (III) the Internet;
 - 226 (IV) telecommunications service; or
 - 227 (V) a means similar to Subsection (2)(a)(iii)(A) or (B);
 - 228 (iv) regularly engages in the delivery of property in the state other than by:
 - 229 (A) common carrier; or
 - 230 (B) United States mail; or
 - 231 (v) regularly engages in an activity directly related to the leasing or servicing of
 - 232 property located within the state.
- 233 (b) A seller is considered to be engaged in the business of selling tangible personal
- 234 property, a product transferred electronically, or a service for use in the state, and shall pay or
- 235 collect and remit the sales and use taxes imposed by this chapter if:
 - 236 (i) the seller holds a substantial ownership interest in, or is owned in whole or in
 - 237 substantial part by, a related seller; and
 - 238 (ii) (A) the seller sells the same or a substantially similar line of products as the related
 - 239 seller and does so under the same or a substantially similar business name; or
 - 240 (B) the place of business described in Subsection (2)(a)(i) of the related seller or an in
 - 241 state employee of the related seller is used to advertise, promote, or facilitate sales by the seller
 - 242 to a purchaser.
- 243 (c) Subject to Section [59-12-107.6](#), each seller that does not meet one or more of the
- 244 criteria provided for in Subsection (2)(a) or is not a seller required to pay or collect and remit

245 the sales and use taxes imposed by this chapter under Subsection (2)(b) shall pay or collect and
246 remit the sales and use tax imposed by this chapter if the seller:

247 (i) sells tangible personal property, products transferred electronically, or services for
248 storage, use, or consumption in the state; and

249 (ii) in either the previous calendar year or the current calendar year:

250 (A) receives gross revenue from the sale of tangible personal property, products
251 transferred electronically, or services for storage, use, or consumption in the state of more than
252 \$100,000; or

253 (B) sells tangible personal property, products transferred electronically, or services for
254 storage, use, or consumption in the state in 200 or more separate transactions.

255 (d) A seller that does not meet one or more of the criteria provided for in Subsection
256 (2)(a) or is not a seller required to pay or collect and remit sales and use taxes under Subsection
257 (2)(b), Subsection (2)(c), or Section 59-12-107.6 may voluntarily:

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

259 (ii) remit the tax to the commission as provided in this part.

260 (e) The collection and remittance of a tax under this chapter by a seller that is
261 registered under the agreement may not be used as a factor in determining whether that seller is
262 required by this Subsection (2) to:

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

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

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

266 (C) Section 19-6-714;

267 (D) Section 19-6-805;

268 (E) Title 69, Chapter 2, Part 4, Prepaid Wireless Telecommunications Service Charges;

269 or

270 (F) this title; or

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

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

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

274 (C) Section 19-6-714;

275 (D) Section 19-6-805;

276 (E) Title 69, Chapter 2, Part 4, Prepaid Wireless Telecommunications Service Charges;

277 or

278 (F) this title.

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

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

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

282 (ii) the person:

283 (A) stores the tangible personal property or product transferred electronically in the

284 state;

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

286 or

287 (C) consumes the tangible personal property or product transferred electronically in the

288 state.

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

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

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

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

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

294 business, or to maintain a stock of goods, within this state.

295 (3) (a) Except as provided in Section 59-12-107.1, a seller shall collect a tax under this

296 chapter from a purchaser.

297 (b) A seller may not collect as tax an amount, without regard to fractional parts of one

298 cent, in excess of the tax computed at the rates prescribed by this chapter.

299 (c) (i) Each seller shall:

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

301 (B) bill the tax as a separate item and declare the name of this state and the seller's

302 sales and use tax license number on the invoice for the sale.

303 (ii) The receipt or invoice is prima facie evidence that the seller has collected the tax

304 and relieves the purchaser of the liability for reporting the tax to the commission as a

305 consumer.

306 (d) A seller is not required to maintain a separate account for the tax collected, but is

307 considered to be a person charged with receipt, safekeeping, and transfer of public money.

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

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

315 (g) If the accounting methods regularly employed by the seller in the transaction of the
316 seller's business are such that reports of sales made during a calendar month or quarterly period
317 will impose unnecessary hardships, the commission may accept reports at intervals that, in the
318 commission's opinion, will better suit the convenience of the taxpayer or seller and will not
319 jeopardize collection of the tax.

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

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

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

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

330 (D) the date of the purchase.

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

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

337 (4) (a) Except as provided in Subsections (5) through (7) and Section [59-12-108](#), the

338 sales or use tax imposed by this chapter is due and payable to the commission quarterly on or
339 before the last day of the month next succeeding each quarterly calendar period.

340 (b) (i) Each seller shall, on or before the last day of the month next succeeding each
341 quarterly calendar period, file with the commission a return for the preceding quarterly period.

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

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

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

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

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

357 (ii) (A) As used in this Subsection (4)(e)(ii), "qualifying purchaser" means a purchaser
358 that is required to remit taxes under this chapter, but is not required to remit taxes monthly in
359 accordance with Section [59-12-108](#), and that converts tangible personal property into real
360 property.

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

366 (C) A qualifying purchaser remitting taxes due under this chapter in accordance with
367 Subsection (4)(e)(ii)(B) shall remit an amount equal to the total amount of tax due on the
368 qualifying purchaser's purchase of the tangible personal property that was converted into real

369 property multiplied by a fraction, the numerator of which is the payment received in the period
370 for the qualifying purchaser's sale of the tangible personal property that was converted into real
371 property and the denominator of which is the entire sales price for the qualifying purchaser's
372 sale of the tangible personal property that was converted into real property.

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

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

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

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

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

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

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

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

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

394 (i) registered under the agreement;

395 (ii) described in Subsection (2)(d); and

396 (iii) not a:

397 (A) model 1 seller;

398 (B) model 2 seller; or

399 (C) model 3 seller.

400 (b) (i) Except as provided in Subsection (5)(b)(ii), a tax a [remote] voluntary seller
401 collects in accordance with Subsection (2)(d) is due and payable:

402 (A) to the commission;

403 (B) annually; and

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

406 (ii) The commission may require that a tax a [remote] voluntary seller collects in
407 accordance with Subsection (2)(d) be due and payable:

408 (A) to the commission; and

409 (B) on the last day of the month immediately following any month in which the seller
410 accumulates a total of at least \$1,000 in agreement sales and use tax.

411 (c) (i) If a [remote] voluntary seller remits a tax to the commission in accordance with
412 Subsection (5)(b), the [remote] voluntary seller shall file a return:

413 (A) with the commission;

414 (B) with respect to the tax;

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

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

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

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

420 (5)(c)(i); and

421 (B) the form described in Subsection (5)(c)(i)(D).

422 (d) A tax a [remote] voluntary seller collects in accordance with this Subsection (5)
423 shall be calculated on the basis of the total amount of taxable transactions under Subsection
424 59-12-103(1) the [remote] voluntary seller completes, including:

425 (i) a cash transaction; and

426 (ii) a charge transaction.

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

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

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

432 (b) A tax a [remote] voluntary seller that files a simplified electronic return collects in
433 accordance with this chapter is due and payable as provided in Subsection (5).

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

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

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

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

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

445 (i) the retailer represents that the tangible personal property, product transferred
446 electronically, or service is purchased by the retailer for resale; and

447 (ii) the tangible personal property, product transferred electronically, or service is not
448 subsequently resold.

449 (9) If any sale of property or service subject to the tax is made to a person prepaying
450 sales or use tax in accordance with Title 63M, Chapter 5, Resource Development Act, or to a
451 contractor or subcontractor of that person:

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

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

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

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

461 (ii) "Bad debt" does not include:

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

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

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

466 (B) a financing charge;

467 (C) interest;

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

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

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

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

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

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

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

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

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

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

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

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

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

- 493 period; and
- 494 (ii) as provided in Section 59-1-1410.
- 495 (d) A bad debt deduction under this section may not include interest.
- 496 (e) A bad debt may be deducted under this Subsection (10) on a return for the time
- 497 period during which the bad debt:
- 498 (i) is written off as uncollectible in the seller's books and records; and
- 499 (ii) would be eligible for a bad debt deduction:
- 500 (A) for federal income tax purposes; and
- 501 (B) if the seller were required to file a federal income tax return.
- 502 (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or
- 503 claims a refund under this Subsection (10), the seller shall report and remit a tax under this
- 504 chapter:
- 505 (i) on the portion of the bad debt the seller recovers; and
- 506 (ii) on a return filed for the time period for which the portion of the bad debt is
- 507 recovered.
- 508 (g) For purposes of reporting a recovery of a portion of bad debt under Subsection
- 509 (10)(f), a seller shall apply amounts received on the bad debt in the following order:
- 510 (i) in a proportional amount:
- 511 (A) to the purchase price of the tangible personal property, product transferred
- 512 electronically, or service; and
- 513 (B) to the tax due under this chapter on the tangible personal property, product
- 514 transferred electronically, or service; and
- 515 (ii) to:
- 516 (A) interest charges;
- 517 (B) service charges; and
- 518 (C) other charges.
- 519 (h) A seller's certified service provider may make a deduction or claim a refund for bad
- 520 debt on behalf of the seller:
- 521 (i) in accordance with this Subsection (10); and
- 522 (ii) if the certified service provider credits or refunds the entire amount of the bad debt
- 523 deduction or refund to the seller.

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

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

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

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

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