

1 **SALES AND USE TAX AMENDMENTS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Wayne A. Harper**

5 House Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to sales and use taxes.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ addresses when a seller is required to collect sales and use taxes;
- 13 ▶ addresses deposits into the Remote Sales Restricted Account;
- 14 ▶ addresses sales and use tax license provisions;
- 15 ▶ requires certain sellers to obtain a sales and use tax license;
- 16 ▶ addresses sales and use tax return filing requirements;
- 17 ▶ requires the State Tax Commission to share certain sales and use tax license
- 18 information under certain circumstances; and
- 19 ▶ makes technical and conforming changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **59-12-103.1**, as last amended by Laws of Utah 2013, Chapter 150

27 **59-12-103.2**, as last amended by Laws of Utah 2013, Chapter 150



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

29 **59-12-107**, as last amended by Laws of Utah 2012, Chapters 178, 312, and 399



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

32 Section 1. Section **59-12-103.1** is amended to read:

33 **59-12-103.1. Action by Supreme Court of the United States authorizing or action**
34 **by Congress permitting a state to require certain sellers to collect a sales or use tax --**
35 **Collection of tax by commission -- Commission report to Revenue and Taxation Interim**
36 **Committee -- Revenue and Taxation Interim Committee study -- Division of Finance**
37 **requirement to make certain deposits.**

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

40 (a) the Supreme Court of the United States issues a decision authorizing a state to
41 require the following sellers to collect a sales or use tax:

42 (i) a seller that does not meet one or more of the criteria described in Subsection
43 **59-12-107(2)(a)**; [or]

44 (ii) a seller that is not a seller required to pay or collect and remit sales and use taxes
45 under Subsection **59-12-107(2)(b)**; or

46 (iii) a seller described in Subsection **59-12-107(4)(a)**; or

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

49 (i) a seller that does not meet one or more of the criteria described in Subsection
50 **59-12-107(2)(a)**; [or]

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

53 (iii) a seller described in Subsection **59-12-107(4)(a)**.

54 (2) The commission shall:

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

56 (i) to the extent:

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

58 (B) permitted by Congress; and

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

61 (b) make a report to the Revenue and Taxation Interim Committee:

62 (i) regarding the actions taken by:

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

64 (B) Congress;

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

66 and

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

69 (iii) (A) at the Revenue and Taxation Interim Committee meeting immediately
70 following the day on which the actions of the Supreme Court of the United States or Congress
71 become effective; and

72 (B) any other meeting of the Revenue and Taxation Interim Committee as requested by
73 the chairs of the committee.

74 (3) The Revenue and Taxation Interim Committee shall after hearing the commission's
75 report under Subsection (2)(b):

76 (a) review the actions taken by:

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

78 (ii) Congress;

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

81 (c) make recommendations to the Legislative Management Committee:

82 (i) regarding whether as a result of the actions of the Supreme Court of the United
83 States or Congress any provisions of this chapter should be amended or repealed; and

84 (ii) within a one-year period after the day on which the commission makes a report
85 under Subsection (2)(b).

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

88 Section 2. Section **59-12-103.2** is amended to read:

89 **59-12-103.2. Definitions -- Remote Sales Restricted Account -- Creation --**

90 **Funding for account -- Interest -- Division of Finance accounting.**

91 (1) As used in this section:

92 (a) "Qualified local revenue collected from remote sellers" means the local revenue the
93 commission collects under Section 59-12-103.1 for a fiscal year from:

94 (i) sellers who obtain a license under Section 59-12-106 for the first time on or after
95 the earlier of:

96 [(†)] (A) the date a decision described in Subsection 59-12-103.1(1)(a) becomes a final,
97 unappealable decision; or

98 [(†)] (B) the effective date of the action by Congress described in Subsection
99 59-12-103.1(1)(b)[-]; or

100 (ii) sellers described in Subsection 59-12-107(4)(a).

101 (b) "Qualified state revenue collected from remote sellers" means the state revenue the
102 commission collects under Section 59-12-103.1 for a fiscal year from:

103 (i) sellers who obtain a license under Section 59-12-106 for the first time on or after
104 the earlier of:

105 [(†)] (A) the date a decision described in Subsection 59-12-103.1(1)(a) becomes a final,
106 unappealable decision; or

107 [(†)] (B) the effective date of the action by Congress described in Subsection
108 59-12-103.1(1)(b)[-]; or

109 (ii) sellers described in Subsection 59-12-107(4)(a).

110 (2) There is created within the General Fund a restricted account known as the
111 "Remote Sales Restricted Account."

112 (3) The account shall be funded by:

113 (a) the qualified local revenue collected from remote sellers; and

114 (b) the qualified state revenue collected from remote sellers.

115 (4) (a) The account shall earn interest.

116 (b) The interest described in Subsection (4)(a) shall be deposited into the account.

117 (5) The Division of Finance shall deposit the revenue described in Subsection (3) into
118 the account.

119 (6) The Division of Finance shall separately account for:

120 (a) (i) the qualified local revenue collected from remote sellers; and

121 (ii) interest earned on the amount described in Subsection (6)(a)(i); and

122 (b) (i) the qualified state revenue collected from remote sellers; and

123 (ii) interest earned on the amount described in Subsection (6)(b)(i).

124 (7) (a) The revenue and interest described in Subsection (6)(a) may be used to lower

125 local sales and use tax rates as the Legislature may provide by statute.

126 (b) The revenue and interest described in Subsection (6)(b) may be used to lower state

127 sales and use tax rates as the Legislature may provide by statute.

128 Section 3. Section **59-12-106** is amended to read:

129 **59-12-106. Definitions -- Sales and use tax license requirements -- Penalty --**

130 **Application process and requirements -- No fee -- Bonds -- Presumption of taxability --**

131 **Exemption certificates -- Exemption certificate license number to accompany contract**

132 **bids.**

133 (1) As used in this section:

134 (a) "Applicant" means a person that:

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

136 (ii) submits an application:

137 (A) to the commission; and

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

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

140 (c) "Fiduciary of the applicant" means a person that:

141 (i) is required to collect, truthfully account for, and pay over a tax under this chapter

142 for an applicant; and

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

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

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

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

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

148 (F) has a relationship to the applicant described in Subsection (1)(c)(i) that is similar to

149 a relationship described in Subsections (1)(c)(ii)(A) through (E) as determined by the

150 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative

151 Rulemaking Act[;].

152 (d) "Fiduciary of the licensee" means a person that:
153 (i) is required to collect, truthfully account for, and pay over a tax under this chapter
154 for a licensee; and
155 (ii) (A) is a corporate officer of the licensee described in Subsection (1)(d)(i);
156 (B) is a director of the licensee described in Subsection (1)(d)(i);
157 (C) is an employee of the licensee described in Subsection (1)(d)(i);
158 (D) is a partner of the licensee described in Subsection (1)(d)(i);
159 (E) is a trustee of the licensee described in Subsection (1)(d)(i); or
160 (F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to
161 a relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the
162 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
163 Rulemaking Act[?].
164 (e) "License" means a license under this section[; and].
165 (f) "Licensee" means a person that is licensed under this section by the commission.
166 (2) (a) It is unlawful for [~~any person required to collect a tax under this chapter~~] the
167 following to engage in business within the state without first having obtained a license to do
168 so[:]:
169 (i) a person required to collect a tax under this chapter; or
170 a person described in Subsection 59-12-107(4).
171 (b) The license described in Subsection (2)(a):
172 (i) shall be granted and issued by the commission;
173 (ii) is not assignable;
174 (iii) is valid only for the person in whose name the license is issued;
175 (iv) is valid until:
176 (A) the person described in Subsection (2)(b)(iii):
177 (I) ceases to do business; or
178 (II) changes that person's business address; or
179 (B) the license is revoked by the commission; and
180 (v) subject to Subsection (2)(d), shall be granted by the commission only upon an
181 application that:
182 (A) states the name and address of the applicant; and

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

184 (c) At the time an applicant makes an application under Subsection (2)(b)(v), the
185 commission shall notify the applicant of the responsibilities and liability of a business owner
186 successor under Section 59-12-112.

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

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

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

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

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

194 (I) the applicant;

195 (II) a fiduciary of the applicant; or

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

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

199 (I) the applicant;

200 (II) a fiduciary of the applicant; or

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

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

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

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

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

210 (A) executed by:

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

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

213 (B) payable to the commission conditioned upon the faithful performance of all of the

214 requirements of this chapter including:

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

216 (II) the payment of any:

217 (Aa) penalty as provided in Section 59-1-401; or

218 (Bb) interest as provided in Section 59-1-402; or

219 (III) any other obligation of the:

220 (Aa) applicant under this chapter; or

221 (Bb) licensee under this chapter.

222 (ii) Except as provided in Subsection (2)(f)(iv), the commission shall calculate the
223 amount of a bond required by Subsection (2)(e) on the basis of:

224 (A) commission estimates of:

225 (I) an applicant's tax liability under this chapter; or

226 (II) a licensee's tax liability under this chapter; and

227 (B) any amount of a delinquency described in Subsection (2)(f)(iii).

228 (iii) Except as provided in Subsection (2)(f)(iv), for purposes of Subsection
229 (2)(f)(ii)(B):

230 (A) for an applicant, the amount of the delinquency is the sum of:

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

233 (Aa) the applicant;

234 (Bb) a fiduciary of the applicant; or

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

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

238 (Aa) the applicant;

239 (Bb) a fiduciary of the applicant; and

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

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

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

- 245 (Aa) the licensee;
- 246 (Bb) a fiduciary of the licensee; or
- 247 (Cc) a person for which the licensee or the fiduciary of the licensee is required to
- 248 collect, truthfully account for, and pay over a tax under this chapter; or
- 249 (II) the amount of tax that any of the following owe under this chapter:
- 250 (Aa) the licensee;
- 251 (Bb) a fiduciary of the licensee; and
- 252 (Cc) a person for which the licensee or the fiduciary of the licensee is required to
- 253 collect, truthfully account for, and pay over a tax under this chapter.
- 254 (iv) Notwithstanding Subsection (2)(f)(ii) or (2)(f)(iii), a bond required by Subsection
- 255 (2)(e) may not:
- 256 (A) be less than \$25,000; or
- 257 (B) exceed \$500,000.
- 258 (g) If business is transacted at two or more separate places by one person, a separate
- 259 license for each place of business is required.
- 260 (h) (i) The commission shall, on a reasonable notice and after a hearing, revoke the
- 261 license of any licensee violating any provisions of this chapter.
- 262 (ii) A license may not be issued to a licensee described in Subsection (2)(h)(i) until the
- 263 licensee has complied with the requirements of this chapter, including:
- 264 (A) paying any:
- 265 (I) tax due under this chapter;
- 266 (II) penalty as provided in Section 59-1-401; or
- 267 (III) interest as provided in Section 59-1-402; and
- 268 (B) posting a bond in accordance with Subsections (2)(e) and (f).
- 269 (i) Any person required to collect a tax under this chapter within this state without
- 270 having secured a license to do so is guilty of a criminal violation as provided in Section
- 271 59-1-401.
- 272 (j) A license:
- 273 (i) except as provided in Subsection (2)(a)(ii), is not required for any person engaged
- 274 exclusively in the business of selling commodities that are exempt from taxation under this
- 275 chapter; and

276 (ii) shall be issued to the person by the commission without a license fee.

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

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

284 (ii) providing that the property, item, or service was exempted under Section
285 59-12-104.

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

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

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

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

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

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

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

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

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

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

306 (A) was allowed by statute on the date of the transaction in the jurisdiction of the

307 location of the transaction;

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

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

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

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

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

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

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

323 (A) renew an exemption certificate;

324 (B) update an exemption certificate; or

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

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

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

333 (4) A person filing a contract bid with the state or a political subdivision of the state for
334 the sale of tangible personal property or any other taxable transaction under Subsection
335 [59-12-103](#)(1) shall include with the bid the number of the license issued to that person under
336 Subsection (2).

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

338 **59-12-107. Definitions -- Collection, remittance, and payment of tax by sellers or**
339 **other persons -- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other**
340 **liability for collection -- Rulemaking authority -- Credits -- Treatment of bad debt --**
341 **Penalties and interest.**

342 (1) As used in this section:

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

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

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

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

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

351 (B) to a purchaser in the state.

352 (c) "Remote seller" means a seller that is:

353 (i) registered under the agreement;

354 (ii) described in Subsection (2)(c); and

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

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

359 (2) (a) Except as provided in Subsection (2)(e), Section [59-12-107.1](#), or Section
360 [59-12-123](#), and subject to Subsection (2)(f), each seller shall pay or collect and remit the sales
361 and use taxes imposed by this chapter if within this state the seller:

362 (i) has or utilizes:

363 (A) an office;

364 (B) a distribution house;

365 (C) a sales house;

366 (D) a warehouse;

367 (E) a service enterprise; or

368 (F) a place of business similar to Subsections (2)(a)(i)(A) through (E);

369 (ii) maintains a stock of goods;
370 (iii) regularly solicits orders, regardless of whether or not the orders are accepted in the
371 state, unless the seller's only activity in the state is:

372 (A) advertising; or

373 (B) solicitation by:

374 (I) direct mail;

375 (II) electronic mail;

376 (III) the Internet;

377 (IV) telecommunications service; or

378 (V) a means similar to Subsection (2)(a)(iii)(A) or (B);

379 (iv) regularly engages in the delivery of property in the state other than by:

380 (A) common carrier; or

381 (B) United States mail; or

382 (v) regularly engages in an activity directly related to the leasing or servicing of
383 property located within the state.

384 (b) A seller is considered to be engaged in the business of selling tangible personal
385 property, a service, or a product transferred electronically for use in the state, and shall pay or
386 collect and remit the sales and use taxes imposed by this chapter if:

387 (i) the seller holds a substantial ownership interest in, or is owned in whole or in
388 substantial part by, a related seller; and

389 (ii) (A) the seller sells the same or a substantially similar line of products as the related
390 seller and does so under the same or a substantially similar business name; or

391 (B) the place of business described in Subsection (2)(a)(i) of the related seller or an in
392 state employee of the related seller is used to advertise, promote, or facilitate sales by the seller
393 to a purchaser.

394 (c) A seller that does not meet one or more of the criteria provided for in Subsection
395 (2)(a) or is not a seller required to pay or collect and remit sales and use taxes under Subsection
396 (2)(b):

397 (i) except as provided in Subsection (2)(c)(ii), may voluntarily:

398 (A) collect [a] the tax on a transaction described in Subsection 59-12-103(1) as
399 provided in this chapter; and

400 (B) remit the full amount of the tax to the commission by filing a return as provided in
401 this part; or

402 (ii) notwithstanding Subsection (2)(c)(i), shall collect a tax on a transaction described
403 in Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to collect the tax.

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

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

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

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

410 (C) Section 19-6-714;

411 (D) Section 19-6-805;

412 (E) Section 69-2-5;

413 (F) Section 69-2-5.5;

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

415 (H) this title; or

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

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

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

419 (C) Section 19-6-714;

420 (D) Section 19-6-805;

421 (E) Section 69-2-5;

422 (F) Section 69-2-5.5;

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

424 (H) this title.

425 (e) A person shall pay a use tax imposed by this chapter on a transaction described in
426 Subsection 59-12-103(1) if:

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

428 (ii) the person:

429 (A) stores the tangible personal property or product transferred electronically in the
430 state;

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

433 (C) consumes the tangible personal property or product transferred electronically in the
434 state.

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

441 (3) (a) Except as provided in Subsection (3)(b), a tax a remote seller collects in
442 accordance with Subsection (2)(c) is due and payable:

443 (i) to the commission;

444 (ii) annually; and

445 (iii) on or before the last day of the month immediately following the last day of each
446 calendar year.

447 (b) The commission may require that a tax a remote seller collects in accordance with
448 Subsection (2)(c) be due and payable:

449 (i) to the commission; and

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

452 (c) (i) Except as provided in Subsection (3)(c)(ii), if a remote seller remits a tax to the
453 commission in accordance with Subsection (3)(a), the remote seller shall file a return:

454 (A) with the commission;

455 (B) with respect to the tax;

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

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

458 (ii) A remote seller is not required to file a return under this chapter if, at the time the
459 remote seller registers under the agreement, the remote seller does not anticipate making a sale
460 that is located in this state under Sections [59-12-211](#) through [59-12-215](#).

461 (d) A tax a remote seller collects in accordance with this Subsection (3) shall be

462 calculated on the basis of the total amount of taxable transactions under Subsection
463 59-12-103(1) the remote seller completes, including:
464 (i) a cash transaction; and
465 (ii) a charge transaction.
466 (4) (a) Beginning on July 1, 2015, a seller described in Subsection (2)(c) that is not a
467 remote seller shall obtain a license from the commission in accordance with Section 59-12-106
468 before the seller makes a sale, lease, or rental of tangible personal property, a product
469 transferred electronically, or a service in the state.
470 (b) A seller described in Subsection (4)(a) is not required to file a return under this
471 chapter for any time period for which the seller is not required to collect and remit a tax under
472 this chapter.
473 (c) If a seller voluntarily collects a tax under this chapter, the seller shall collect and
474 remit the tax in accordance with Subsection (2)(c).
475 (d) The commission shall provide the information contained on a license the
476 commission issues to a seller described in this Subsection (4) to another state, the District of
477 Columbia, or a political subdivision of another state if the other state, District of Columbia, or
478 political subdivision:
479 (i) provides a similar licensing requirement to the licensing requirement of Subsection
480 (4)(a); and
481 (ii) grants substantially similar disclosure of information described in Subsection (4) to
482 this state.
483 ~~[(3)]~~ (5) (a) Except as provided in Section 59-12-107.1, a tax under this chapter shall
484 be collected from a purchaser.
485 (b) A seller may not collect as tax an amount, without regard to fractional parts of one
486 cent, in excess of the tax computed at the rates prescribed by this chapter.
487 (c) (i) Each seller shall:
488 (A) give the purchaser a receipt for the tax collected; or
489 (B) bill the tax as a separate item and declare the name of this state and the seller's
490 sales and use tax license number on the invoice for the sale.
491 (ii) The receipt or invoice is prima facie evidence that the seller has collected the tax
492 and relieves the purchaser of the liability for reporting the tax to the commission as a

493 consumer.

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

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

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

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

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

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

515 (B) subject to Subsection ~~[(3)]~~ (5)(h)(ii), the amount of tax due under this chapter in
516 specie legal tender and in the legal tender the seller is required to remit to the commission;

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

518 (D) the date of the purchase.

519 (ii) (A) Subject to Subsection ~~[(3)]~~ (5)(h)(ii)(B), for purposes of determining the
520 amount of tax due under Subsection ~~[(3)]~~ (5)(h)(i), a seller shall use the most recent London
521 fixing price for the specie legal tender the purchaser paid.

522 (B) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
523 commission may make rules for determining the amount of tax due under Subsection ~~[(3)]~~

524 (5)(h)(i) if the London fixing price is not available for a particular day.

525 ~~[(4)]~~ (6) (a) Except as provided in ~~[Subsections (5) through (7)]~~ Subsection (3), (4),
526 (7), or (8) and Section 59-12-108, the sales or use tax imposed by this chapter is due and
527 payable to the commission quarterly on or before the last day of the month next succeeding
528 each calendar quarterly period.

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

531 (ii) The seller shall remit with the return under Subsection ~~[(4)]~~ (6)(b)(i) the amount of
532 the tax required under this chapter to be collected or paid for the period covered by the return.

533 (c) Except as provided in Subsection ~~[(5)]~~ (3)(c), a return shall contain information and
534 be in a form the commission prescribes by rule.

535 (d) (i) Subject to Subsection ~~[(4)]~~ (6)(d)(ii), the sales tax as computed in the return
536 shall be based on the total nonexempt sales made during the period for which the return is filed,
537 including both cash and charge sales.

538 (ii) For a sale that includes the delivery or installation of tangible personal property at a
539 location other than a seller's place of business described in Subsection (2)(a)(i), if the delivery
540 or installation is separately stated on an invoice or receipt, a seller may compute the tax due on
541 the sale for purposes of Subsection ~~[(4)]~~ (6)(d)(i) based on the amount the seller receives for
542 that sale during each period for which the seller receives payment for the sale.

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

546 (ii) (A) As used in this Subsection ~~[(4)]~~ (6)(e)(ii), "qualifying purchaser" means a
547 purchaser who is required to remit taxes under this chapter, but is not required to remit taxes
548 monthly in accordance with Section 59-12-108, and who converts tangible personal property
549 into real property.

550 (B) Subject to Subsections ~~[(4)]~~ (6)(e)(ii)(C) and (D), a qualifying purchaser may remit
551 the taxes due under this chapter on tangible personal property for which the qualifying
552 purchaser claims an exemption as allowed under Subsection 59-12-104(23) or (25) based on
553 the period in which the qualifying purchaser receives payment, in accordance with Subsection
554 ~~[(4)]~~ (6)(e)(ii)(C), for the conversion of the tangible personal property into real property.

555 (C) A qualifying purchaser remitting taxes due under this chapter in accordance with
 556 Subsection ~~[(4)]~~ (6)(e)(ii)(B) shall remit an amount equal to the total amount of tax due on the
 557 qualifying purchaser's purchase of the tangible personal property that was converted into real
 558 property multiplied by a fraction, the numerator of which is the payment received in the period
 559 for the qualifying purchaser's sale of the tangible personal property that was converted into real
 560 property and the denominator of which is the entire sales price for the qualifying purchaser's
 561 sale of the tangible personal property that was converted into real property.

562 (D) A qualifying purchaser may remit taxes due under this chapter in accordance with
 563 this Subsection ~~[(4)]~~ (6)(e)(ii) only if the books and records that the qualifying purchaser keeps
 564 in the qualifying purchaser's regular course of business identify by reasonable and verifiable
 565 standards that the tangible personal property was converted into real property.

566 (f) (i) Subject to Subsection ~~[(4)]~~ (6)(f)(ii) and in accordance with Title 63G, Chapter
 567 3, Utah Administrative Rulemaking Act, the commission may by rule extend the time for
 568 making returns and paying the taxes.

569 (ii) An extension under Subsection ~~[(4)]~~ (6)(f)(i) may not be for more than 90 days.

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

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

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

577 (A) the information required to be included in the additional electronic report described
 578 in Subsection ~~[(4)]~~ (6)(h)(i); and

579 (B) one or more due dates for filing the additional electronic report described in
 580 Subsection ~~[(4)]~~ (6)(h)(i).

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

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

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

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

586 ~~[(A) model 1 seller;]~~
587 ~~[(B) model 2 seller; or]~~
588 ~~[(C) model 3 seller.]~~
589 ~~[(b) (i) Except as provided in Subsection (5)(b)(ii), a tax a remote seller collects in~~
590 ~~accordance with Subsection (2)(c) is due and payable:]~~
591 ~~[(A) to the commission;]~~
592 ~~[(B) annually; and]~~
593 ~~[(C) on or before the last day of the month immediately following the last day of each~~
594 ~~calendar year.]~~
595 ~~[(ii) The commission may require that a tax a remote seller collects in accordance with~~
596 ~~Subsection (2)(c) be due and payable:]~~
597 ~~[(A) to the commission; and]~~
598 ~~[(B) on the last day of the month immediately following any month in which the seller~~
599 ~~accumulates a total of at least \$1,000 in agreement sales and use tax.]~~
600 ~~[(c) (i) If a remote seller remits a tax to the commission in accordance with Subsection~~
601 ~~(5)(b), the remote seller shall file a return:]~~
602 ~~[(A) with the commission;]~~
603 ~~[(B) with respect to the tax;]~~
604 ~~[(C) containing information prescribed by the commission; and]~~
605 ~~[(D) on a form prescribed by the commission.]~~
606 ~~[(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~
607 ~~the commission shall make rules prescribing:]~~
608 ~~[(A) the information required to be contained in a return described in Subsection~~
609 ~~(5)(c)(i); and]~~
610 ~~[(B) the form described in Subsection (5)(c)(i)(D).]~~
611 ~~[(d) A tax a remote seller collects in accordance with this Subsection (5) shall be~~
612 ~~calculated on the basis of the total amount of taxable transactions under Subsection~~
613 ~~59-12-103(1) the remote seller completes, including:]~~
614 ~~[(i) a cash transaction; and]~~
615 ~~[(ii) a charge transaction.]~~
616 ~~[(6) (7) (a) Except as provided in Subsection [(6) (7)(b), a tax a seller that files a~~

617 simplified electronic return collects in accordance with this chapter is due and payable:

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

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

621 (b) A tax a remote seller that files a simplified electronic return collects in accordance
622 with this chapter is due and payable as provided in Subsection [~~(5)~~] (3).

623 [~~(7)~~] (8) (a) On each vehicle sale made by other than a regular licensed vehicle dealer,
624 the purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject
625 to titling or registration under the laws of this state.

626 (b) The commission shall collect the tax described in Subsection [~~(7)~~] (8)(a) when the
627 vehicle is titled or registered.

628 [~~(8)~~] (9) If any sale of tangible personal property or any other taxable transaction under
629 Subsection 59-12-103(1), is made by a wholesaler to a retailer, the wholesaler is not
630 responsible for the collection or payment of the tax imposed on the sale and the retailer is
631 responsible for the collection or payment of the tax imposed on the sale if:

632 (a) the retailer represents that the personal property is purchased by the retailer for
633 resale; and

634 (b) the personal property is not subsequently resold.

635 [~~(9)~~] (10) If any sale of property or service subject to the tax is made to a person
636 prepaying sales or use tax in accordance with Title 63M, Chapter 5, Resource Development
637 Act, or to a contractor or subcontractor of that person, the person to whom such payment or
638 consideration is payable is not responsible for the collection or payment of the sales or use tax
639 and the person prepaying the sales or use tax is responsible for the collection or payment of the
640 sales or use tax if the person prepaying the sales or use tax represents that the amount prepaid
641 as sales or use tax has not been fully credited against sales or use tax due and payable under the
642 rules promulgated by the commission.

643 [~~(10)~~] (11) (a) For purposes of this Subsection [~~(10)~~] (11):

644 (i) Except as provided in Subsection [~~(10)~~] (11)(a)(ii), "bad debt" is as defined in
645 Section 166, Internal Revenue Code.

646 (ii) Notwithstanding Subsection [~~(10)~~] (11)(a)(i), "bad debt" does not include:

647 (A) an amount included in the purchase price of tangible personal property, a product

648 transferred electronically, or a service that is:

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

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

651 (B) a financing charge;

652 (C) interest;

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

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

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

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

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

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

661 (b) (i) To the extent an amount remitted in accordance with Subsection ~~[(4)]~~ (6)(d) later
662 becomes bad debt, a seller may deduct the bad debt from the total amount from which a tax
663 under this chapter is calculated on a return.

664 (ii) A qualifying purchaser, as defined in Subsection ~~[(4)]~~ (6)(e)(ii)(A), may deduct
665 from the total amount of taxes due under this chapter the amount of tax the qualifying
666 purchaser paid on the qualifying purchaser's purchase of tangible personal property converted
667 into real property to the extent that:

668 (A) tax was remitted in accordance with Subsection ~~[(4)]~~ (6)(e) on that tangible
669 personal property converted into real property;

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

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

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

676 (i) the amount of bad debt for the time period described in Subsection ~~[(10)]~~ (11)(e)
677 exceeds the amount of the seller's sales that are subject to a tax under this chapter for that same
678 time period; and

- 679 (ii) as provided in Section [59-1-1410](#).
- 680 (d) A bad debt deduction under this section may not include interest.
- 681 (e) A bad debt may be deducted under this Subsection [~~(10)~~] (11) on a return for the
- 682 time period during which the bad debt:
- 683 (i) is written off as uncollectible in the seller's books and records; and
- 684 (ii) would be eligible for a bad debt deduction:
- 685 (A) for federal income tax purposes; and
- 686 (B) if the seller were required to file a federal income tax return.
- 687 (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or
- 688 claims a refund under this Subsection [~~(10)~~] (11), the seller shall report and remit a tax under
- 689 this chapter:
- 690 (i) on the portion of the bad debt the seller recovers; and
- 691 (ii) on a return filed for the time period for which the portion of the bad debt is
- 692 recovered.
- 693 (g) For purposes of reporting a recovery of a portion of bad debt under Subsection
- 694 [~~(10)~~] (11)(f), a seller shall apply amounts received on the bad debt in the following order:
- 695 (i) in a proportional amount:
- 696 (A) to the purchase price of the tangible personal property, product transferred
- 697 electronically, or service; and
- 698 (B) to the tax due under this chapter on the tangible personal property, product
- 699 transferred electronically, or service; and
- 700 (ii) to:
- 701 (A) interest charges;
- 702 (B) service charges; and
- 703 (C) other charges.
- 704 (h) A seller's certified service provider may make a deduction or claim a refund for bad
- 705 debt on behalf of the seller:
- 706 (i) in accordance with this Subsection [~~(10)~~] (11); and
- 707 (ii) if the certified service provider credits or refunds the entire amount of the bad debt
- 708 deduction or refund to the seller.
- 709 (i) A seller may allocate bad debt among the states that are members of the agreement

710 if the seller's books and records support that allocation.

711 ~~[(H)]~~ (12) (a) A seller may not, with intent to evade any tax, fail to timely remit the
712 full amount of tax required by this chapter.

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

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

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

Legislative Review Note
as of 1-29-15 3:04 PM

Office of Legislative Research and General Counsel