

1 **RETENTION OF SALES AND USE TAX COLLECTIONS BY**
2 **CERTAIN REMOTE SELLERS**

3 2013 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Steve Eliason**

6 Senate Sponsor: Wayne A. Harper

8 **LONG TITLE**

9 **General Description:**

10 This bill amends the Sales and Use Tax Act to authorize certain remote sellers who
11 voluntarily collect a sales and use tax to retain certain sales and use taxes the remote
12 sellers would otherwise remit to the State Tax Commission.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ authorizes certain remote sellers who voluntarily collect a sales and use tax to retain
- 16 certain sales and use taxes the remote sellers would otherwise remit to the State Tax
- 17 Commission; and
- 18 ▶ makes technical and conforming changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 This bill takes effect on January 1, 2014.

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **59-12-108**, as last amended by Laws of Utah 2012, Chapter 312

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

28 Section 1. Section **59-12-108** is amended to read:

29 **59-12-108. Monthly payment -- Amount of tax a seller may retain -- Penalty --**

30 **Certain amounts allocated to local taxing jurisdictions.**

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

33 (i) file a return with the commission:

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

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

37 (ii) except as provided in Subsection (1)(b), remit with the return required by
38 Subsection (1)(a)(i) the amount the person is required to remit to the commission for each tax,
39 fee, or charge described in Subsection (1)(c):

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

42 (B) if that seller's tax liability under this chapter for the previous calendar year is
43 \$96,000 or more, by electronic funds transfer.

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

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

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

49 (B) files a simplified electronic return.

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

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

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

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

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

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

56 (vi) a charge under Section 69-2-5.6; or

57 (vii) a tax under this chapter.

58 (d) Notwithstanding Subsection (1)(a)(ii) and in accordance with Title 63G, Chapter 3,
59 Utah Administrative Rulemaking Act, the commission shall make rules providing for a method
60 for making same-day payments other than by electronic funds transfer if making payments by
61 electronic funds transfer fails.

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

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

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

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

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

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

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

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

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

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

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

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

85 59-12-103(2)(c);

86 (II) the month for which the seller is filing a return in accordance with Subsection (1);

87 and

88 (III) an agreement sales and use tax; and

89 (B) 1.31% of the difference between:

90 (I) the amounts the seller would have been required to remit to the commission:

91 (Aa) in accordance with Subsection 59-12-103(2)(a) if the transaction had been subject
92 to the state tax and the local tax imposed in accordance with Subsection 59-12-103(2)(a);

93 (Bb) for the month for which the seller is filing a return in accordance with Subsection
94 (1); and

95 (Cc) for an agreement sales and use tax; and

96 (II) the amounts the seller is required to remit to the commission for:

97 (Aa) the state tax and the local tax imposed in accordance with Subsection
98 59-12-103(2)(c);

99 (Bb) the month for which the seller is filing a return in accordance with Subsection (1);

100 and

101 (Cc) an agreement sales and use tax.

102 (d) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain
103 each month 1% of any amounts the seller is required to remit to the commission:

104 (i) for the month for which the seller is filing a return in accordance with Subsection
105 (1); and

106 (ii) under:

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

108 (B) Subsection 59-12-603(1)(a)(i)(A); or

109 (C) Subsection 59-12-603(1)(a)(i)(B).

110 (3) A state government entity that is required to remit taxes monthly in accordance
111 with Subsection (1) may not retain any amount under Subsection (2).

112 (4) A seller that has a tax liability under this chapter for the previous calendar year of
113 less than \$50,000 may:

114 (a) voluntarily meet the requirements of Subsection (1); and

115 (b) if the seller voluntarily meets the requirements of Subsection (1), retain the
116 amounts allowed by Subsection (2).

117 (5) (a) Subject to Subsections (5)(b) through (d), a seller that voluntarily collects and
118 remits a tax in accordance with Subsection 59-12-107(2)(c)(i) may retain an amount equal to
119 18% of any amounts the seller would otherwise remit to the commission:

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

122 (ii) for:

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

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

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

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

129 (i) electronic means; or

130 (ii) a means other than electronic means.

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

133 ~~[(5)]~~ (6) Penalties for late payment shall be as provided in Section 59-1-401.

134 ~~[(6)]~~ (7) (a) Except as provided in Subsection ~~[(6)]~~ (7)(c), for any amounts required to
135 be remitted to the commission under this part, the commission shall each month calculate an
136 amount equal to the difference between:

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

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

141 (b) The commission shall each month allocate the amount calculated under Subsection

142 [~~(6)~~] (7)(a) to each county, city, and town on the basis of the proportion of agreement sales and
143 use tax that the commission distributes to each county, city, and town for that month compared
144 to the total agreement sales and use tax that the commission distributes for that month to all
145 counties, cities, and towns.

146 (c) The amount the commission calculates under Subsection [~~(6)~~] (7)(a) may not
147 include an amount collected from a tax that:

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

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

151 **Section 2. Effective date.**

152 This bill takes effect on January 1, 2014.