

**SHORT-TERM RENTAL TAX AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Dixon M. Pitcher**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to sales and use tax licenses.

**Highlighted Provisions:**

This bill:

- ▶ addresses a hosting platform's authority to voluntarily collect and remit certain taxes; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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

Section 1. Section **59-12-107** is amended to read:

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



28 **Penalties and interest.**

29 (1) As used in this section:

30 (a) "Hosting platform" means a person that:

31 (i) provides a means by which a person may offer a short-term rental to one or more

32 prospective renters; and

33 (ii) collects amounts described in Subsection 59-12-103(1)(i) to facilitate payment for

34 the use of the person's short-term rental.

35 [~~(a)~~] (b) "Ownership" means direct ownership or indirect ownership through a parent,

36 subsidiary, or affiliate.

37 [~~(b)~~] (c) "Related seller" means a seller that:

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

39 (ii) delivers tangible personal property, a service, or a product transferred electronically

40 that is sold:

41 (A) by a seller that does not meet one or more of the criteria described in Subsection

42 (2)(a)(i); and

43 (B) to a purchaser in the state.

44 (d) "Residential unit" means a residential structure or any portion of a residential

45 structure that is occupied as a residence.

46 (e) "Short-term rental" means a residential unit or any portion of a residential unit that

47 is offered for occupancy for fewer than 30 consecutive days.

48 [~~(e)~~] (f) "Substantial ownership interest" means an ownership interest in a business

49 entity if that ownership interest is greater than the degree of ownership of equity interest

50 specified in 15 U.S.C. Sec. 78p, with respect to a person other than a director or an officer.

51 (2) (a) Except as provided in Subsection (2)(e), Section 59-12-107.1, or Section

52 59-12-123, and subject to Subsection (2)(f), each seller shall pay or collect and remit the sales

53 and use taxes imposed by this chapter if within this state the seller:

54 (i) has or utilizes:

55 (A) an office;

56 (B) a distribution house;

57 (C) a sales house;

58 (D) a warehouse;

- 59 (E) a service enterprise; or
- 60 (F) a place of business similar to Subsections (2)(a)(i)(A) through (E);
- 61 (ii) maintains a stock of goods;
- 62 (iii) regularly solicits orders, regardless of whether or not the orders are accepted in the
- 63 state, unless the seller's only activity in the state is:
  - 64 (A) advertising; or
  - 65 (B) solicitation by:
    - 66 (I) direct mail;
    - 67 (II) electronic mail;
    - 68 (III) the Internet;
    - 69 (IV) telecommunications service; or
    - 70 (V) a means similar to Subsection (2)(a)(iii)(A) or (B);
  - 71 (iv) regularly engages in the delivery of property in the state other than by:
    - 72 (A) common carrier; or
    - 73 (B) United States mail; or
    - 74 (v) regularly engages in an activity directly related to the leasing or servicing of
    - 75 property located within the state.
  - 76 (b) A seller is considered to be engaged in the business of selling tangible personal
  - 77 property, a service, or a product transferred electronically for use in the state, and shall pay or
  - 78 collect and remit the sales and use taxes imposed by this chapter if:
    - 79 (i) the seller holds a substantial ownership interest in, or is owned in whole or in
    - 80 substantial part by, a related seller; and
    - 81 (ii) (A) the seller sells the same or a substantially similar line of products as the related
    - 82 seller and does so under the same or a substantially similar business name; or
    - 83 (B) the place of business described in Subsection (2)(a)(i) of the related seller or an in
    - 84 state employee of the related seller is used to advertise, promote, or facilitate sales by the seller
    - 85 to a purchaser.
    - 86 (c) A seller that does not meet one or more of the criteria provided for in Subsection
    - 87 (2)(a) or is not a seller required to pay or collect and remit sales and use taxes under Subsection
    - 88 (2)(b):
      - 89 (i) except as provided in Subsection (2)(c)(ii), may voluntarily:

- 90 (A) collect a tax on a transaction described in Subsection 59-12-103(1); and
- 91 (B) remit the tax to the commission as provided in this part; or
- 92 (ii) notwithstanding Subsection (2)(c)(i), shall collect a tax on a transaction described
- 93 in Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to collect the tax.
- 94 (d) The collection and remittance of a tax under this chapter by a seller that is
- 95 registered under the agreement may not be used as a factor in determining whether that seller is
- 96 required by Subsection (2) to:
  - 97 (i) pay a tax, fee, or charge under:
    - 98 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
    - 99 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
    - 100 (C) Section 19-6-714;
    - 101 (D) Section 19-6-805;
    - 102 (E) Section 69-2-5;
    - 103 (F) Section 69-2-5.5;
    - 104 (G) Section 69-2-5.6; or
    - 105 (H) this title; or
  - 106 (ii) collect and remit a tax, fee, or charge under:
    - 107 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
    - 108 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
    - 109 (C) Section 19-6-714;
    - 110 (D) Section 19-6-805;
    - 111 (E) Section 69-2-5;
    - 112 (F) Section 69-2-5.5;
    - 113 (G) Section 69-2-5.6; or
    - 114 (H) this title.
  - 115 (e) A person shall pay a use tax imposed by this chapter on a transaction described in
  - 116 Subsection 59-12-103(1) if:
    - 117 (i) the seller did not collect a tax imposed by this chapter on the transaction; and
    - 118 (ii) the person:
      - 119 (A) stores the tangible personal property or product transferred electronically in the
      - 120 state;

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

123 (C) consumes the tangible personal property or product transferred electronically in the  
124 state.

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

131 (g) A hosting platform may voluntarily collect and remit a tax in accordance with  
132 Subsection (2)(c) as if the hosting platform were a seller.

133 (3) (a) Except as provided in Section [59-12-107.1](#), a tax under this chapter shall be  
134 collected from a purchaser.

135 (b) A seller may not collect as tax an amount, without regard to fractional parts of one  
136 cent, in excess of the tax computed at the rates prescribed by this chapter.

137 (c) (i) Each seller shall:

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

139 (B) bill the tax as a separate item and declare the name of this state and the seller's  
140 sales and use tax license number on the invoice for the sale.

141 (ii) The receipt or invoice is prima facie evidence that the seller has collected the tax  
142 and relieves the purchaser of the liability for reporting the tax to the commission as a  
143 consumer.

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

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

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

152 excess.

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

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

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

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

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

168 (D) the date of the purchase.

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

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

175 (4) (a) Except as provided in Subsections (5) through (7) and Section 59-12-108, the  
176 sales or use tax imposed by this chapter is due and payable to the commission quarterly on or  
177 before the last day of the month next succeeding each calendar quarterly period.

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

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

182 (c) Except as provided in Subsection (5)(c), a return shall contain information and be in

183 a form the commission prescribes by rule.

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

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

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

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

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

204 (C) A qualifying purchaser remitting taxes due under this chapter in accordance with  
205 Subsection (4)(e)(ii)(B) shall remit an amount equal to the total amount of tax due on the  
206 qualifying purchaser's purchase of the tangible personal property that was converted into real  
207 property multiplied by a fraction, the numerator of which is the payment received in the period  
208 for the qualifying purchaser's sale of the tangible personal property that was converted into real  
209 property and the denominator of which is the entire sales price for the qualifying purchaser's  
210 sale of the tangible personal property that was converted into real property.

211 (D) A qualifying purchaser may remit taxes due under this chapter in accordance with  
212 this Subsection (4)(e)(ii) only if the books and records that the qualifying purchaser keeps in  
213 the qualifying purchaser's regular course of business identify by reasonable and verifiable

214 standards that the tangible personal property was converted into real property.

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

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

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

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

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

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

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

230 (5) (a) As used in this Subsection (5) and Subsection (6)(b), "remote seller" means a  
231 seller that is:

232 (i) registered under the agreement;

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

234 (iii) not a:

235 (A) model 1 seller;

236 (B) model 2 seller; or

237 (C) model 3 seller.

238 (b) (i) Except as provided in Subsection (5)(b)(ii), a tax a remote seller collects in  
239 accordance with Subsection (2)(c) is due and payable:

240 (A) to the commission;

241 (B) annually; and

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

244 (ii) The commission may require that a tax a remote seller collects in accordance with



- 245 Subsection (2)(c) be due and payable:
- 246 (A) to the commission; and
- 247 (B) on the last day of the month immediately following any month in which the seller
- 248 accumulates a total of at least \$1,000 in agreement sales and use tax.
- 249 (c) (i) If a remote seller remits a tax to the commission in accordance with Subsection
- 250 (5)(b), the remote seller shall file a return:
- 251 (A) with the commission;
- 252 (B) with respect to the tax;
- 253 (C) containing information prescribed by the commission; and
- 254 (D) on a form prescribed by the commission.
- 255 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 256 commission shall make rules prescribing:
- 257 (A) the information required to be contained in a return described in Subsection
- 258 (5)(c)(i); and
- 259 (B) the form described in Subsection (5)(c)(i)(D).
- 260 (d) A tax a remote seller collects in accordance with this Subsection (5) shall be
- 261 calculated on the basis of the total amount of taxable transactions under Subsection
- 262 [59-12-103](#)(1) the remote seller completes, including:
- 263 (i) a cash transaction; and
- 264 (ii) a charge transaction.
- 265 (6) (a) Except as provided in Subsection (6)(b), a tax a seller that files a simplified
- 266 electronic return collects in accordance with this chapter is due and payable:
- 267 (i) monthly on or before the last day of the month immediately following the month for
- 268 which the seller collects a tax under this chapter; and
- 269 (ii) for the month for which the seller collects a tax under this chapter.
- 270 (b) A tax a remote seller that files a simplified electronic return collects in accordance
- 271 with this chapter is due and payable as provided in Subsection (5).
- 272 (7) (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the
- 273 purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to
- 274 titling or registration under the laws of this state.
- 275 (b) The commission shall collect the tax described in Subsection (7)(a) when the

276 vehicle is titled or registered.

277 (8) If any sale of tangible personal property or any other taxable transaction under  
278 Subsection 59-12-103(1), is made by a wholesaler to a retailer, the wholesaler is not  
279 responsible for the collection or payment of the tax imposed on the sale and the retailer is  
280 responsible for the collection or payment of the tax imposed on the sale if:

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

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

284 (9) If any sale of property or service subject to the tax is made to a person prepaying  
285 sales or use tax in accordance with Title 63M, Chapter 5, Resource Development Act, or to a  
286 contractor or subcontractor of that person, the person to whom such payment or consideration  
287 is payable is not responsible for the collection or payment of the sales or use tax and the person  
288 prepaying the sales or use tax is responsible for the collection or payment of the sales or use tax  
289 if the person prepaying the sales or use tax represents that the amount prepaid as sales or use  
290 tax has not been fully credited against sales or use tax due and payable under the rules  
291 promulgated by the commission.

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

293 (i) Except as provided in Subsection (10)(a)(ii), "bad debt" is as defined in Section  
294 166, Internal Revenue Code.

295 (ii) Notwithstanding Subsection (10)(a)(i), "bad debt" does not include:

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

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

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

300 (B) a financing charge;

301 (C) interest;

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

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

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

- 307 (II) remains in the possession of a seller until the full purchase price is paid;
- 308 (F) an expense incurred in attempting to collect any debt; or
- 309 (G) an amount that a seller does not collect on repossessed property.
- 310 (b) (i) To the extent an amount remitted in accordance with Subsection (4)(d) later
- 311 becomes bad debt, a seller may deduct the bad debt from the total amount from which a tax
- 312 under this chapter is calculated on a return.
- 313 (ii) A qualifying purchaser, as defined in Subsection (4)(e)(ii)(A), may deduct from the
- 314 total amount of taxes due under this chapter the amount of tax the qualifying purchaser paid on
- 315 the qualifying purchaser's purchase of tangible personal property converted into real property to
- 316 the extent that:
- 317 (A) tax was remitted in accordance with Subsection (4)(e) on that tangible personal
- 318 property converted into real property;
- 319 (B) the qualifying purchaser's sale of that tangible personal property converted into real
- 320 property later becomes bad debt; and
- 321 (C) the books and records that the qualifying purchaser keeps in the qualifying
- 322 purchaser's regular course of business identify by reasonable and verifiable standards that the
- 323 tangible personal property was converted into real property.
- 324 (c) A seller may file a refund claim with the commission if:
- 325 (i) the amount of bad debt for the time period described in Subsection (10)(e) exceeds
- 326 the amount of the seller's sales that are subject to a tax under this chapter for that same time
- 327 period; and
- 328 (ii) as provided in Section [59-1-1410](#).
- 329 (d) A bad debt deduction under this section may not include interest.
- 330 (e) A bad debt may be deducted under this Subsection (10) on a return for the time
- 331 period during which the bad debt:
- 332 (i) is written off as uncollectible in the seller's books and records; and
- 333 (ii) would be eligible for a bad debt deduction:
- 334 (A) for federal income tax purposes; and
- 335 (B) if the seller were required to file a federal income tax return.
- 336 (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or
- 337 claims a refund under this Subsection (10), the seller shall report and remit a tax under this

338 chapter:

339 (i) on the portion of the bad debt the seller recovers; and

340 (ii) on a return filed for the time period for which the portion of the bad debt is  
341 recovered.

342 (g) For purposes of reporting a recovery of a portion of bad debt under Subsection  
343 (10)(f), a seller shall apply amounts received on the bad debt in the following order:

344 (i) in a proportional amount:

345 (A) to the purchase price of the tangible personal property, product transferred  
346 electronically, or service; and

347 (B) to the tax due under this chapter on the tangible personal property, product  
348 transferred electronically, or service; and

349 (ii) to:

350 (A) interest charges;

351 (B) service charges; and

352 (C) other charges.

353 (h) A seller's certified service provider may make a deduction or claim a refund for bad  
354 debt on behalf of the seller:

355 (i) in accordance with this Subsection (10); and

356 (ii) if the certified service provider credits or refunds the entire amount of the bad debt  
357 deduction or refund to the seller.

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

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

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

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

368 (d) For purposes of prosecution under this section, each quarterly tax period in which a

369 seller, with intent to evade any tax, collects a tax and fails to timely remit the full amount of the  
370 tax required to be remitted, constitutes a separate offense.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**