

Senator Wayne A. Harper proposes the following substitute bill:

SALES AND USE TAX REVISIONS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Mike K. McKell

LONG TITLE

General Description:

This bill amends provisions related to sales and use taxes.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses the circumstances under which a person may be required to collect and remit sales and use taxes to the State Tax Commission;
- ▶ provides for expedited judicial review;
- ▶ makes technical and conforming changes; and
- ▶ contains a severability clause.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a severability clause.

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

59-1-401, as last amended by Laws of Utah 2015, Chapter 369



- 26 [59-12-103.1](#), as last amended by Laws of Utah 2013, Chapter 150
- 27 [59-12-107](#), as last amended by Laws of Utah 2012, Chapters 178, 312, and 399
- 28 [59-12-108](#), as last amended by Laws of Utah 2013, Chapter 50
- 29 [59-12-211](#), as last amended by Laws of Utah 2012, Chapter 312
- 30 [59-12-211.1](#), as last amended by Laws of Utah 2012, Chapter 312
- 31 [76-8-1101](#), as last amended by Laws of Utah 2014, Chapter 52
- 32 [78A-3-102](#), as last amended by Laws of Utah 2009, Chapter 344

33 ENACTS:

34 [59-12-107.6](#), Utah Code Annotated 1953



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

37 Section 1. Section **59-1-401** is amended to read:

38 **59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute**
39 **of limitations -- Commission authority to waive, reduce, or compromise penalty or**
40 **interest.**

41 (1) As used in this section:

42 [~~(a) "Activated tax, fee, or charge" means a tax, fee, or charge with respect to which the~~
43 ~~commission:~~]

44 [~~(i) has implemented the commission's GenTax system; and]~~

45 [~~(ii) at least 30 days before implementing the commission's GenTax system as~~
46 ~~described in Subsection (1)(a)(i), has provided notice in a conspicuous place on the~~
47 ~~commission's website stating:]~~

48 [~~(A) the date the commission will implement the GenTax system with respect to the~~
49 ~~tax, fee, or charge; and]~~

50 [~~(B) that, at the time the commission implements the GenTax system with respect to~~
51 ~~the tax, fee, or charge:]~~

52 [~~(f) a person that files a return after the due date as described in Subsection (2)(a) is~~
53 ~~subject to the penalty described in Subsection (2)(c)(ii); and]~~

54 [~~(H) a person that fails to pay the tax, fee, or charge as described in Subsection (3)(a) is~~
55 ~~subject to the penalty described in Subsection (3)(b)(ii).]~~

56 [~~(b) "Activation date for a tax, fee, or charge" means with respect to a tax, fee, or~~

57 charge, the later of:]

58 [(i) the date on which the commission implements the commission's GenTax system
59 with respect to the tax, fee, or charge; or]

60 [(ii) 30 days after the date the commission provides the notice described in Subsection
61 (1)(a)(ii) with respect to the tax, fee, or charge.]

62 [(e)(i)] (a) Except as provided in Subsection (1)[(e)(ii)](b), "tax, fee, or charge"
63 means:

64 [(A)] (i) a tax, fee, or charge the commission administers under:

65 [(F)] (A) this title;

66 [(H)] (B) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

67 [(H)] (C) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

68 [(V)] (D) Section 19-6-410.5;

69 [(V)] (E) Section 19-6-714;

70 [(V)] (F) Section 19-6-805;

71 [(V)] (G) Section 32B-2-304;

72 [(V)] (H) Section 34A-2-202;

73 [(X)] (I) Section 40-6-14;

74 [(X)] (J) Section 69-2-5;

75 [(X)] (K) Section 69-2-5.5; or

76 [(X)] (L) Section 69-2-5.6; or

77 [(B)] (ii) another amount that by statute is subject to a penalty imposed under this
78 section.

79 [(ii)] (b) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:

80 [(A)] (i) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;

81 [(B)] (ii) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;

82 [(C)] (iii) Chapter 2, Property Tax Act, except for Section 59-2-1309;

83 [(D)] (iv) Chapter 3, Tax Equivalent Property Act; or

84 [(E)] (v) Chapter 4, Privilege Tax.

85 [(d) "Unactivated tax, fee, or charge" means a tax, fee, or charge except for an
86 activated tax, fee, or charge.]

87 (2) (a) The due date for filing a return is:

- 88 (i) if the person filing the return is not allowed by law an extension of time for filing
89 the return, the day on which the return is due as provided by law; or
- 90 (ii) if the person filing the return is allowed by law an extension of time for filing the
91 return, the earlier of:
- 92 (A) the date the person files the return; or
- 93 (B) the last day of that extension of time as allowed by law.
- 94 (b) A penalty in the amount described in Subsection (2)(c) is imposed if a person files a
95 return after the due date described in Subsection (2)(a).
- 96 (c) For purposes of Subsection (2)(b), the penalty is an amount equal to the greater of:
- 97 ~~[(i) if the return described in Subsection (2)(b) is filed with respect to an unactivated~~
98 ~~tax, fee, or charge:]~~
- 99 ~~[(A) \$20; or]~~
- 100 ~~[(B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or]~~
- 101 ~~[(ii) if the return described in Subsection (2)(b) is filed with respect to an activated tax,~~
102 ~~fee, or charge, beginning on the activation date for the tax, fee, or charge:]~~
- 103 ~~[(A)] (i) \$20; or~~
- 104 ~~[(B)-(F)] (ii) (A) 2% of the unpaid [activated] tax, fee, or charge due on the return if the~~
105 ~~return is filed no later than five days after the due date described in Subsection (2)(a);~~
- 106 ~~[(H)] (B) 5% of the unpaid [activated] tax, fee, or charge due on the return if the return~~
107 ~~is filed more than five days after the due date but no later than 15 days after the due date~~
108 ~~described in Subsection (2)(a); or~~
- 109 ~~[(H)] (C) 10% of the unpaid [activated] tax, fee, or charge due on the return if the~~
110 ~~return is filed more than 15 days after the due date described in Subsection (2)(a).~~
- 111 (d) This Subsection (2) does not apply to:
- 112 (i) an amended return; or
- 113 (ii) a return with no tax due.
- 114 (3) (a) A person is subject to a penalty for failure to pay a tax, fee, or charge if:
- 115 (i) the person files a return on or before the due date for filing a return described in
116 Subsection (2)(a), but fails to pay the tax, fee, or charge due on the return on or before that due
117 date;
- 118 (ii) the person:

119 (A) is subject to a penalty under Subsection (2)(b); and
120 (B) fails to pay the tax, fee, or charge due on a return within a 90-day period after the
121 due date for filing a return described in Subsection (2)(a);
122 (iii) (A) the person is subject to a penalty under Subsection (2)(b); and
123 (B) the commission estimates an amount of tax due for that person in accordance with
124 Subsection 59-1-1406(2);
125 (iv) the person:
126 (A) is mailed a notice of deficiency; and
127 (B) within a 30-day period after the day on which the notice of deficiency described in
128 Subsection (3)(a)(iv)(A) is mailed:
129 (I) does not file a petition for redetermination or a request for agency action; and
130 (II) fails to pay the tax, fee, or charge due on a return;
131 (v) (A) the commission:
132 (I) issues an order constituting final agency action resulting from a timely filed petition
133 for redetermination or a timely filed request for agency action; or
134 (II) is considered to have denied a request for reconsideration under Subsection
135 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed
136 request for agency action; and
137 (B) the person fails to pay the tax, fee, or charge due on a return within a 30-day period
138 after the date the commission:
139 (I) issues the order constituting final agency action described in Subsection
140 (3)(a)(v)(A)(I); or
141 (II) is considered to have denied the request for reconsideration described in
142 Subsection (3)(a)(v)(A)(II); or
143 (vi) the person fails to pay the tax, fee, or charge within a 30-day period after the date
144 of a final judicial decision resulting from a timely filed petition for judicial review.
145 (b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:
146 [~~(i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with~~
147 ~~respect to an unactivated tax, fee, or charge:]~~
148 [~~(A) \$20; or~~]
149 [~~(B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or~~]

150 ~~[(ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with~~
151 ~~respect to an activated tax, fee, or charge, beginning on the activation date:]~~

152 ~~[(A)]~~ (i) \$20; or

153 ~~[(B)-(F)]~~ (ii) (A) 2% of the unpaid ~~[activated]~~ tax, fee, or charge due on the return if the
154 activated tax, fee, or charge due on the return is paid no later than five days after the due date
155 for filing a return described in Subsection (2)(a);

156 ~~[(H)]~~ (B) 5% of the unpaid ~~[activated]~~ tax, fee, or charge due on the return if the
157 activated tax, fee, or charge due on the return is paid more than five days after the due date for
158 filing a return described in Subsection (2)(a) but no later than 15 days after that due date; or

159 ~~[(H)]~~ (C) 10% of the unpaid ~~[activated]~~ tax, fee, or charge due on the return if the
160 activated tax, fee, or charge due on the return is paid more than 15 days after the due date for
161 filing a return described in Subsection (2)(a).

162 (4) (a) Beginning January 1, 1995, in the case of any underpayment of estimated tax or
163 quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104, there
164 shall be added a penalty in an amount determined by applying the interest rate provided under
165 Section 59-1-402 plus four percentage points to the amount of the underpayment for the period
166 of the underpayment.

167 (b) (i) For purposes of Subsection (4)(a), the amount of the underpayment shall be the
168 excess of the required installment over the amount, if any, of the installment paid on or before
169 the due date for the installment.

170 (ii) The period of the underpayment shall run from the due date for the installment to
171 whichever of the following dates is the earlier:

172 (A) the original due date of the tax return, without extensions, for the taxable year; or

173 (B) with respect to any portion of the underpayment, the date on which that portion is
174 paid.

175 (iii) For purposes of this Subsection (4), a payment of estimated tax shall be credited
176 against unpaid required installments in the order in which the installments are required to be
177 paid.

178 (5) (a) Notwithstanding Subsection (2) and except as provided in Subsection (6), a
179 person allowed by law an extension of time for filing a corporate franchise or income tax return
180 under Chapter 7, Corporate Franchise and Income Taxes, or an individual income tax return

181 under Chapter 10, Individual Income Tax Act, is subject to a penalty in the amount described in
182 Subsection (5)(b) if, on or before the day on which the return is due as provided by law, not
183 including the extension of time, the person fails to pay:

184 (i) for a person filing a corporate franchise or income tax return under Chapter 7,
185 Corporate Franchise and Income Taxes, the payment required by Subsection 59-7-507(1)(b); or

186 (ii) for a person filing an individual income tax return under Chapter 10, Individual
187 Income Tax Act, the payment required by Subsection 59-10-516(2).

188 (b) For purposes of Subsection (5)(a), the penalty per month during the period of the
189 extension of time for filing the return is an amount equal to 2% of the tax due on the return,
190 unpaid as of the day on which the return is due as provided by law.

191 (6) If a person does not file a return within an extension of time allowed by Section
192 59-7-505 or 59-10-516, the person:

193 (a) is not subject to a penalty in the amount described in Subsection (5)(b); and

194 (b) is subject to a penalty in an amount equal to the sum of:

195 (i) a late file penalty in an amount equal to the greater of:

196 (A) \$20; or

197 (B) 10% of the tax due on the return, unpaid as of the day on which the return is due as
198 provided by law, not including the extension of time; and

199 (ii) a late pay penalty in an amount equal to the greater of:

200 (A) \$20; or

201 (B) 10% of the unpaid tax due on the return, unpaid as of the day on which the return is
202 due as provided by law, not including the extension of time.

203 (7) (a) Additional penalties for an underpayment of a tax, fee, or charge are as provided
204 in this Subsection (7)(a).

205 (i) Except as provided in Subsection (7)(c), if any portion of an underpayment of a tax,
206 fee, or charge is due to negligence, the penalty is 10% of the portion of the underpayment that
207 is due to negligence.

208 (ii) Except as provided in Subsection (7)(d), if any portion of an underpayment of a
209 tax, fee, or charge is due to intentional disregard of law or rule, the penalty is 15% of the entire
210 underpayment.

211 (iii) If any portion of an underpayment is due to an intent to evade a tax, fee, or charge,

212 the penalty is the greater of \$500 per period or 50% of the entire underpayment.

213 (iv) If any portion of an underpayment is due to fraud with intent to evade a tax, fee, or
214 charge, the penalty is the greater of \$500 per period or 100% of the entire underpayment.

215 (b) If the commission determines that a person is liable for a penalty imposed under
216 Subsection (7)(a)(ii), (iii), or (iv), the commission shall notify the person of the proposed
217 penalty.

218 (i) The notice of proposed penalty shall:

219 (A) set forth the basis of the assessment; and

220 (B) be mailed by certified mail, postage prepaid, to the person's last-known address.

221 (ii) Upon receipt of the notice of proposed penalty, the person against whom the
222 penalty is proposed may:

223 (A) pay the amount of the proposed penalty at the place and time stated in the notice;

224 or

225 (B) proceed in accordance with the review procedures of Subsection (7)(b)(iii).

226 (iii) A person against whom a penalty is proposed in accordance with this Subsection
227 (7) may contest the proposed penalty by filing a petition for an adjudicative proceeding with
228 the commission.

229 (iv) (A) If the commission determines that a person is liable for a penalty under this
230 Subsection (7), the commission shall assess the penalty and give notice and demand for
231 payment.

232 (B) The commission shall mail the notice and demand for payment described in
233 Subsection (7)(b)(iv)(A):

234 (I) to the person's last-known address; and

235 (II) in accordance with Section 59-1-1404.

236 (c) A seller that voluntarily collects a tax under Subsection 59-12-107(2)(~~d~~)(e)(i) is
237 not subject to the penalty under Subsection (7)(a)(i) if on or after July 1, 2001:

238 (i) a court of competent jurisdiction issues a final, unappealable judgment or order
239 determining that:

240 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)

241 or is a seller required to pay or collect and remit sales and use taxes under Subsection

242 59-12-107(2)(b) or (d); and

243 (B) the commission or a county, city, or town may require the seller to collect a tax
244 under Subsections 59-12-103(2)(a) through (d); or

245 (ii) the commission issues a final, unappealable administrative order determining that:

246 (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
247 or is a seller required to pay or collect and remit sales and use taxes under Subsection
248 59-12-107(2)(b) or (d); and

249 (B) the commission or a county, city, or town may require the seller to collect a tax
250 under Subsections 59-12-103(2)(a) through (d).

251 (d) A seller that voluntarily collects a tax under Subsection 59-12-107(2)(~~(d)~~)(e)(i) is
252 not subject to the penalty under Subsection (7)(a)(ii) if:

253 (i) (A) a court of competent jurisdiction issues a final, unappealable judgment or order
254 determining that:

255 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
256 or is a seller required to pay or collect and remit sales and use taxes under Subsection
257 59-12-107(2)(b) or (d); and

258 (II) the commission or a county, city, or town may require the seller to collect a tax
259 under Subsections 59-12-103(2)(a) through (d); or

260 (B) the commission issues a final, unappealable administrative order determining that:

261 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a)
262 or is a seller required to pay or collect and remit sales and use taxes under Subsection
263 59-12-107(2)(b) or (d); and

264 (II) the commission or a county, city, or town may require the seller to collect a tax
265 under Subsections 59-12-103(2)(a) through (d); and

266 (ii) the seller's intentional disregard of law or rule is warranted by existing law or by a
267 nonfrivolous argument for the extension, modification, or reversal of existing law or the
268 establishment of new law.

269 (8) (a) Subject to Subsections (8)(b) and (c), the penalty for failure to file an
270 information return, information report, or a complete supporting schedule is \$50 for each
271 information return, information report, or supporting schedule up to a maximum of \$1,000.

272 (b) If an employer is subject to a penalty under Subsection (13), the employer may not
273 be subject to a penalty under Subsection (8)(a).

274 (c) If an employer is subject to a penalty under this Subsection (8) for failure to file a
275 return in accordance with Subsection 59-10-406(3) on or before the due date described in
276 Subsection 59-10-406(3)(b)(ii), the commission may not impose a penalty under this
277 Subsection (8) unless the return is filed more than 14 days after the due date described in
278 Subsection 59-10-406(3)(b)(ii).

279 (9) If a person, in furtherance of a frivolous position, has a prima facie intent to delay
280 or impede administration of a law relating to a tax, fee, or charge and files a purported return
281 that fails to contain information from which the correctness of reported tax, fee, or charge
282 liability can be determined or that clearly indicates that the tax, fee, or charge liability shown is
283 substantially incorrect, the penalty is \$500.

284 (10) (a) A seller that fails to remit a tax, fee, or charge monthly as required by
285 Subsection 59-12-108(1)(a):

286 (i) is subject to a penalty described in Subsection (2); and

287 (ii) may not retain the percentage of sales and use taxes that would otherwise be
288 allowable under Subsection 59-12-108(2).

289 (b) A seller that fails to remit a tax, fee, or charge by electronic funds transfer as
290 required by Subsection 59-12-108(1)(a)(ii)(B):

291 (i) is subject to a penalty described in Subsection (2); and

292 (ii) may not retain the percentage of sales and use taxes that would otherwise be
293 allowable under Subsection 59-12-108(2).

294 (11) (a) A person is subject to the penalty provided in Subsection (11)(c) if that person:

295 (i) commits an act described in Subsection (11)(b) with respect to one or more of the
296 following documents:

297 (A) a return;

298 (B) an affidavit;

299 (C) a claim; or

300 (D) a document similar to Subsections (11)(a)(i)(A) through (C);

301 (ii) knows or has reason to believe that the document described in Subsection (11)(a)(i)
302 will be used in connection with any material matter administered by the commission; and

303 (iii) knows that the document described in Subsection (11)(a)(i), if used in connection
304 with any material matter administered by the commission, would result in an understatement of

305 another person's liability for a tax, fee, or charge.

306 (b) The following acts apply to Subsection (11)(a)(i):

307 (i) preparing any portion of a document described in Subsection (11)(a)(i);

308 (ii) presenting any portion of a document described in Subsection (11)(a)(i);

309 (iii) procuring any portion of a document described in Subsection (11)(a)(i);

310 (iv) advising in the preparation or presentation of any portion of a document described
311 in Subsection (11)(a)(i);

312 (v) aiding in the preparation or presentation of any portion of a document described in
313 Subsection (11)(a)(i);

314 (vi) assisting in the preparation or presentation of any portion of a document described
315 in Subsection (11)(a)(i); or

316 (vii) counseling in the preparation or presentation of any portion of a document
317 described in Subsection (11)(a)(i).

318 (c) For purposes of Subsection (11)(a), the penalty:

319 (i) shall be imposed by the commission;

320 (ii) is \$500 for each document described in Subsection (11)(a)(i) with respect to which
321 the person described in Subsection (11)(a) meets the requirements of Subsection (11)(a); and

322 (iii) is in addition to any other penalty provided by law.

323 (d) The commission may seek a court order to enjoin a person from engaging in
324 conduct that is subject to a penalty under this Subsection (11).

325 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
326 commission may make rules prescribing the documents that are similar to Subsections
327 (11)(a)(i)(A) through (C).

328 (12) (a) As provided in Section [76-8-1101](#), criminal offenses and penalties are as
329 provided in Subsections (12)(b) through (e).

330 (b) (i) A person ~~[who]~~ is guilty of a class B misdemeanor if the person:

331 (A) is required by this title or any laws the commission administers or regulates to
332 register with or obtain a license or permit from the commission~~[, who]~~; and

333 (B) operates without having registered or secured a license or permit~~;~~ or ~~[who]~~
334 operates when the registration, license, or permit is expired or not current~~[, is guilty of a class~~
335 ~~B misdemeanor]~~.

336 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(b)(i), the
337 penalty may not:

338 (A) be less than \$500; or

339 (B) exceed \$1,000.

340 (c) (i) With respect to a tax, fee, or charge, a person ~~[who]~~ is guilty of a third degree
341 felony if the person:

342 (A) knowingly and intentionally, and without a reasonable good faith basis, fails to
343 make, render, sign, or verify a return within the time required by law or to supply information
344 within the time required by law~~[-or who]~~;

345 (B) makes, renders, signs, or verifies a false or fraudulent return or statement~~[-]~~; or
346 ~~[who]~~

347 (C) supplies false or fraudulent information~~[-is guilty of a third degree felony]~~.

348 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(c)(i), the
349 penalty may not:

350 (A) be less than \$1,000; or

351 (B) exceed \$5,000.

352 (d) (i) A person who intentionally or willfully attempts to evade or defeat a tax, fee, or
353 charge or the payment of a tax, fee, or charge is, in addition to other penalties provided by law,
354 guilty of a second degree felony.

355 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(d)(i), the
356 penalty may not:

357 (A) be less than \$1,500; or

358 (B) exceed \$25,000.

359 (e) (i) A person is guilty of a second degree felony if that person commits an act:

360 (A) described in Subsection (12)(e)(ii) with respect to one or more of the following
361 documents:

362 (I) a return;

363 (II) an affidavit;

364 (III) a claim; or

365 (IV) a document similar to Subsections (12)(e)(i)(A)(I) through (III); and

366 (B) subject to Subsection (12)(e)(iii), with knowledge that the document described in

367 Subsection (12)(e)(i)(A):

368 (I) is false or fraudulent as to any material matter; and

369 (II) could be used in connection with any material matter administered by the
370 commission.

371 (ii) The following acts apply to Subsection (12)(e)(i):

372 (A) preparing any portion of a document described in Subsection (12)(e)(i)(A);

373 (B) presenting any portion of a document described in Subsection (12)(e)(i)(A);

374 (C) procuring any portion of a document described in Subsection (12)(e)(i)(A);

375 (D) advising in the preparation or presentation of any portion of a document described
376 in Subsection (12)(e)(i)(A);

377 (E) aiding in the preparation or presentation of any portion of a document described in
378 Subsection (12)(e)(i)(A);

379 (F) assisting in the preparation or presentation of any portion of a document described
380 in Subsection (12)(e)(i)(A); or

381 (G) counseling in the preparation or presentation of any portion of a document
382 described in Subsection (12)(e)(i)(A).

383 (iii) This Subsection (12)(e) applies:

384 (A) regardless of whether the person for which the document described in Subsection
385 (12)(e)(i)(A) is prepared or presented:

386 (I) knew of the falsity of the document described in Subsection (12)(e)(i)(A); or

387 (II) consented to the falsity of the document described in Subsection (12)(e)(i)(A); and

388 (B) in addition to any other penalty provided by law.

389 (iv) Notwithstanding Section [76-3-301](#), for purposes of this Subsection (12)(e), the
390 penalty may not:

391 (A) be less than \$1,500; or

392 (B) exceed \$25,000.

393 (v) The commission may seek a court order to enjoin a person from engaging in
394 conduct that is subject to a penalty under this Subsection (12)(e).

395 (vi) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
396 the commission may make rules prescribing the documents that are similar to Subsections
397 (12)(e)(i)(A)(I) through (III).

398 (f) The statute of limitations for prosecution for a violation of this Subsection (12) is
399 the later of six years:

- 400 (i) from the date the tax should have been remitted; or
- 401 (ii) after the day on which the person commits the criminal offense.

402 (13) (a) Subject to Subsection (13)(b), an employer that is required to file a form with
403 the commission in accordance with Subsection 59-10-406(8) is subject to a penalty described
404 in Subsection (13)(b) if the employer:

- 405 (i) fails to file the form with the commission in an electronic format approved by the
406 commission as required by Subsection 59-10-406(8);
- 407 (ii) fails to file the form on or before the due date provided in Subsection 59-10-406(8);
- 408 (iii) fails to provide accurate information on the form; or
- 409 (iv) fails to provide all of the information required by the Internal Revenue Service to
410 be contained on the form.

411 (b) For purposes of Subsection (13)(a), the penalty is:

- 412 (i) \$30 per form, not to exceed \$75,000 in a calendar year, if the employer files the
413 form in accordance with Subsection 59-10-406(8), more than 14 days after the due date
414 provided in Subsection 59-10-406(8) but no later than 30 days after the due date provided in
415 Subsection 59-10-406(8);

- 416 (ii) \$60 per form, not to exceed \$200,000 in a calendar year, if the employer files the
417 form in accordance with Subsection 59-10-406(8), more than 30 days after the due date
418 provided in Subsection 59-10-406(8) but on or before June 1; or

419 (iii) \$100 per form, not to exceed \$500,000 in a calendar year, if the employer:

- 420 (A) files the form in accordance with Subsection 59-10-406(8) after June 1; or
- 421 (B) fails to file the form.

422 (14) Upon making a record of its actions, and upon reasonable cause shown, the
423 commission may waive, reduce, or compromise any of the penalties or interest imposed under
424 this part.

425 Section 2. Section 59-12-103.1 is amended to read:

426 **59-12-103.1. Action by Supreme Court of the United States authorizing or action**
427 **by Congress permitting a state to require certain sellers to collect a sales or use tax --**
428 **Collection of tax by commission -- Commission report to Revenue and Taxation Interim**

429 **Committee -- Revenue and Taxation Interim Committee study -- Division of Finance**
 430 **requirement to make certain deposits.**

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

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

435 (i) a seller that does not meet one or more of the criteria described in Subsection
 436 59-12-107(2)(a); or

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

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

441 (i) a seller that does not meet one or more of the criteria described in Subsection
 442 59-12-107(2)(a); or

443 (ii) a seller that is not a seller required to pay or collect and remit sales and use taxes
 444 under Subsection 59-12-107(2)(b) or (d).

445 (2) The commission shall:

446 [~~(a) collect the tax described in Subsection (1) from the seller;~~]

447 [~~(i) to the extent;~~]

448 [~~(A) authorized by the Supreme Court of the United States; or~~]

449 [~~(B) permitted by Congress; and~~]

450 [~~(ii) beginning on the first day of a calendar quarter as prescribed by the Revenue and
 451 Taxation Interim Committee; and~~]

452 [~~(b)~~] (a) make a report to the Revenue and Taxation Interim Committee:

453 (i) regarding the actions taken by:

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

455 (B) Congress;

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

457 and

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

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

463 (B) any other meeting of the Revenue and Taxation Interim Committee as requested by
464 the chairs of the committee[-]; and

465 (b) collect the tax described in Subsection (1) from the seller:

466 (i) to the extent:

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

468 (B) permitted by Congress; and

469 (ii) beginning on the first day of a calendar quarter as prescribed by the Revenue and
470 Taxation Interim Committee.

471 (3) The Revenue and Taxation Interim Committee shall after hearing the commission's
472 report under Subsection (2)~~(b)~~(a):

473 (a) review the actions taken by:

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

475 (ii) Congress;

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

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

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

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

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

485 Section 3. Section **59-12-107** is amended to read:

486 **59-12-107. Definitions -- Collection, remittance, and payment of tax by sellers or**
487 **other persons -- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other**
488 **liability for collection -- Rulemaking authority -- Credits -- Treatment of bad debt --**
489 **Penalties and interest.**

490 (1) As used in this section:

491 ~~[(a) "Ownership" means direct ownership or indirect ownership through a parent,~~
492 ~~subsidiary, or affiliate.]~~

493 (a) (i) "Advertising" means:

494 (A) announcing by graphic, pictorial, verbal, written, or other similar means the
495 availability of a product for sale; or

496 (B) employing purchased space or time in print or electronic media if that purchased
497 space or time is used to communicate an announcement of a product for sale.

498 (ii) "Advertising" includes online advertising.

499 (b) (i) "Arrangement" means an agreement between a noncollecting seller and a
500 referring party, under which the referring party:

501 (A) directly or indirectly makes a referral to the noncollecting seller of a potential
502 purchaser of tangible personal property, a product transferred electronically, or a service;

503 (B) uses trademarks, service marks, or trade names in the state that are the same or
504 substantially similar to those used by the noncollecting seller;

505 (C) delivers, on behalf of the noncollecting seller, tangible personal property to a
506 purchaser in the state; or

507 (D) facilitates the noncollecting seller's delivery of tangible personal property to a
508 purchaser in the state by allowing the purchaser to pick up tangible personal property sold by
509 the noncollecting seller at an in-state office, distribution house, warehouse or other storage
510 place, or similar place of business that is maintained by the referring party.

511 (ii) "Arrangement" does not include any agreement under which a noncollecting seller
512 purchases advertising from a person in the state, unless the person also directs a solicitation
513 toward one or more potential purchasers in the state.

514 (c) "Noncollecting seller" means a qualified seller that, during the 12-month period
515 immediately preceding the current month, makes sales totaling \$100,000 or more in tangible
516 personal property, products transferred electronically, or services:

517 (i) for storage, use, or consumption in the state; and

518 (ii) as a result of an arrangement with one or more referring parties.

519 (d) (i) "Online advertising" means advertising delivered through the Internet.

520 (ii) "Online advertising" includes:

521 (A) an email communication generated as a result of generic algorithmic functions if

522 the email communication does not target a specific person;

523 (B) an advertisement tied to an Internet search engine;

524 (C) a banner announcement;

525 (D) a cost-per-action advertisement; or

526 (E) an online advertising service similar to the online advertising described in

527 Subsections (1)(d)(ii)(A) through (D), as the commission may define by rule made in

528 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

529 (iii) "Online advertising" does not include an Internet-based link to a seller's website.

530 (e) "Qualified seller" means a seller that is not required to pay or collect and remit sales
531 and use taxes under Subsection (2)(a).

532 (f) (i) "Referral" means the act of sending a potential purchaser in the state to a
533 noncollecting seller by:

534 (A) an Internet-based link;

535 (B) an Internet website;

536 (C) telemarketing;

537 (D) catalog;

538 (E) in-person marketing; or

539 (F) other means similar to the means described in Subsections (1)(f)(i)(A) through (E),
540 as the commission may define by rule made in accordance with Title 63G, Chapter 3, Utah
541 Administrative Rulemaking Act.

542 (ii) "Referral" does not include online advertising.

543 (g) "Referring party" means a person other than a common carrier:

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

545 (ii) with which a noncollecting seller enters an arrangement.

546 ~~[(b)]~~ (h) "Related [seller] party" means a [seller that] person:

547 (i) that meets one or more of the criteria described in Subsection (2)(a)[(†)]; and

548 ~~[(ii) delivers tangible personal property, a service, or a product transferred~~
549 ~~electronically that is sold:]~~

550 ~~[(A) by a seller that does not meet one or more of the criteria described in Subsection~~
551 ~~(2)(a)(i); and]~~

552 ~~[(B) to a purchaser in the state.]~~

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

556 (ii) with whom a qualified seller has one of the relationships described in 26 U.S.C.
557 Sec. 267(b) or (c) or 26 U.S.C. Sec. 707(b)(1).

558 (i) "Remote seller" means a seller that:

559 (i) is not required to pay or collect and remit sales and use taxes under Subsection
560 (2)(a); and

561 (ii) is not subject to, or rebuts, a presumption described in Subsection (2)(b) or (d).

562 (j) "Solicitation" means a communication directly or indirectly to a specific person
563 within the state in a manner that is intended and calculated to incite the person to purchase
564 tangible personal property, a service, or a product transferred electronically from a specific
565 seller.

566 (2) (a) Except as provided in Subsection (2)~~[(f)]~~[(h)], Section [59-12-107.1](#), or Section
567 [59-12-123](#), and subject to Subsection (2)~~[(f)]~~[(g)], each seller shall pay or collect and remit the
568 sales and use taxes imposed by this chapter if within this state the seller:

569 (i) has or utilizes:

570 (A) an office, including a home office of a resident employee;

571 (B) a distribution house;

572 (C) a sales house;

573 (D) a warehouse or other storage place;

574 (E) a service enterprise; or

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

576 (ii) maintains a stock of goods;

577 (iii) regularly solicits orders, regardless of whether ~~[or not]~~ the orders are accepted in
578 the state, unless the seller's only activity in the state is:

579 (A) advertising; or

580 (B) solicitation by:

581 (I) direct mail;

582 (II) electronic mail;

583 (III) except as provided in Subsection (2)(d), the Internet;

584 (IV) telecommunications service; or

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

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

587 (A) common carrier; or

588 (B) United States mail; or

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

591 (b) ~~[A] There is a rebuttable presumption that a qualified seller [is considered to be~~
592 ~~engaged in the business of selling tangible personal property, a service, or a product transferred~~
593 ~~electronically for use in the state, and]~~ shall pay or collect and remit the sales and use taxes
594 imposed by this chapter ~~[if] for a sale within the state if a related party:~~

595 ~~[(i) the seller holds a substantial ownership interest in, or is owned in whole or in~~
596 ~~substantial part by, a related seller; and (ii) (A) the seller]~~

597 (i) sells the same or a substantially similar line of products or services as the ~~[related]~~
598 qualified seller and ~~[does so]~~ sells under the same or a substantially similar business name as
599 the qualified seller; [or]

600 ~~[(B) the]~~ (ii) maintains a place of business described in Subsection (2)(a)(i) ~~[of the~~
601 ~~related seller]~~ or provides an [in-state] in-state employee [of the related seller is used] to
602 advertise, promote, deliver, or facilitate sales by the qualified seller to a purchaser~~[-];~~

603 (iii) uses, with the qualified seller's knowledge or consent, trademarks, service marks,
604 or trade names in the state that are the same or substantially similar to those used by the
605 qualified seller;

606 (iv) delivers, installs, or assembles tangible personal property or performs maintenance
607 or repair services on tangible personal property or a product delivered electronically that the
608 qualified seller has sold or will sell to a purchaser within the state;

609 (v) facilitates the qualified seller's delivery of tangible personal property to a purchaser
610 in the state by allowing the purchaser to pick up tangible personal property sold by the
611 qualified seller at an in-state office, distribution house, sales house, warehouse or other storage
612 place, or similar place of business that is maintained by a related party; or

613 (vi) shares management, business systems, or employees with the qualified seller, or
614 engages in intercompany transactions with a qualified seller, for the purpose of the qualified

615 seller being able to establish or maintain a market in the state.

616 (c) A qualified seller may rebut the presumption described in Subsection (2)(b) by
617 proving that the in-state activities of the related party are not significantly associated with the
618 qualified seller's ability to establish and maintain a market in the state for the qualified seller's
619 sales of tangible personal property, a service, or a product transferred electronically.

620 (d) (i) Subject to the other provisions of this Subsection (2)(d), there is a rebuttable
621 presumption that a noncollecting seller shall pay or collect and remit sales and use tax on any
622 sale the noncollecting seller makes, through an arrangement, to a purchaser in the state.

623 (ii) A noncollecting seller may rebut the presumption described in Subsection (2)(d)(i)
624 by proving, in accordance with Subsection (2)(d)(iii) that a referring party has not engaged in a
625 referral activity within the state on behalf of the noncollecting seller during the preceding 12
626 months.

627 (iii) To rebut the presumption described in Subsection (2)(d)(i), a noncollecting seller
628 shall provide:

629 (A) proof that any arrangement with the referring party prohibits the referring party
630 from engaging in solicitation of a potential purchaser on behalf of the seller in the state; and

631 (B) an annual, written, sworn statement from each referring party that the referring
632 party did not engage in any prohibited solicitation of a potential purchaser in the state on behalf
633 of the noncollecting seller.

634 ~~[(c) A seller that does not meet one or more of the criteria provided for in Subsection~~
635 ~~(2)(a) or is not a seller required to pay or collect and remit sales and use taxes under Subsection~~
636 ~~(2)(b): (i) except as provided in Subsection (2)(c)(ii);]~~

637 (e) (i) Except as provided in Subsection (2)(e)(ii), a remote seller may voluntarily:

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

639 (B) remit the tax to the commission as provided in this part[; or].

640 (ii) [notwithstanding Subsection (2)(c)(i);] A remote seller shall collect a tax on a
641 transaction described in Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to
642 collect the tax.

643 ~~[(d)]~~ (f) The collection and remittance of a tax under this chapter by a seller that is
644 registered under the agreement may not be used as a factor in determining whether that seller is
645 required by Subsection (2) to:

- 646 (i) pay a tax, fee, or charge under:
- 647 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 648 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 649 (C) Section 19-6-714;
- 650 (D) Section 19-6-805;
- 651 (E) Section 69-2-5;
- 652 (F) Section 69-2-5.5;
- 653 (G) Section 69-2-5.6; or
- 654 (H) this title; or
- 655 (ii) collect and remit a tax, fee, or charge under:
- 656 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 657 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 658 (C) Section 19-6-714;
- 659 (D) Section 19-6-805;
- 660 (E) Section 69-2-5;
- 661 (F) Section 69-2-5.5;
- 662 (G) Section 69-2-5.6; or
- 663 (H) this title.
- 664 ~~[(e) A person shall pay a use tax imposed by this chapter on a transaction described in~~
- 665 ~~Subsection 59-12-103(1) if:]~~
- 666 ~~[(i) the seller did not collect a tax imposed by this chapter on the transaction; and]~~
- 667 ~~[(ii) the person:]~~
- 668 ~~[(A) stores the tangible personal property or product transferred electronically in the~~
- 669 ~~state;]~~
- 670 ~~[(B) uses the tangible personal property or product transferred electronically in the~~
- 671 ~~state; or]~~
- 672 ~~[(C) consumes the tangible personal property or product transferred electronically in~~
- 673 ~~the state.]~~
- 674 [(f)] (g) The ownership of property that is located at the premises of a printer's facility
- 675 with which the retailer has contracted for printing and that consists of the final printed product,
- 676 property that becomes a part of the final printed product, or copy from which the printed

677 product is produced, shall not result in the retailer being considered to have or maintain an
678 office, distribution house, sales house, warehouse, service enterprise, or other place of
679 business, or to maintain a stock of goods, within this state.

680 (h) A person shall pay a use tax imposed under this chapter on a transaction described
681 in Subsection 59-12-103(1) if:

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

683 (ii) the person:

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

685 state;

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

687 or

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

689 state.

690 (3) (a) Except as provided in Section 59-12-107.1, a seller shall collect a tax due under
691 this chapter [~~shall be collected~~] from a purchaser.

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

694 (c) (i) Each seller shall:

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

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

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

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

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

706 (f) If any seller, during any reporting period, collects as a tax an amount in excess of
707 the lawful state and local percentage of total taxable sales allowed under this chapter, the seller

708 shall remit to the commission the full amount of the tax imposed under this chapter, plus any
709 excess.

710 (g) If the accounting methods regularly employed by the seller in the transaction of the
711 seller's business are such that reports of sales made during a calendar month or quarterly period
712 will impose unnecessary hardships, the commission may accept reports at intervals that, in the
713 commission's opinion, will~~[-, in the commission's opinion,]~~ better suit the convenience of the
714 taxpayer or seller and will not jeopardize collection of the tax.

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

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

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

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

725 (D) the date of the purchase.

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

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

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

735 (b) (i) Each seller shall, on or before the last day of the month next succeeding each
736 quarterly calendar ~~[quarterly]~~ period, file with the commission a return for the preceding
737 quarterly period.

738 (ii) The seller shall remit with the return under Subsection (4)(b)(i) the amount of the

739 tax required under this chapter to be collected or paid for the period covered by the return.

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

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

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

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

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

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

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

769 (D) A qualifying purchaser may remit taxes due under this chapter in accordance with

770 this Subsection (4)(e)(ii) only if the books and records that the qualifying purchaser keeps in
771 the qualifying purchaser's regular course of business identify by reasonable and verifiable
772 standards that the tangible personal property was converted into real property.

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

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

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

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

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

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

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

788 (5) (a) As used in this Subsection (5) and Subsection (6)(b), [~~remote seller~~]
789 "registered remitter" means a seller that is:

- 790 (i) registered under the agreement;
- 791 (ii) described in Subsection (2)[~~(c)~~](e); and
- 792 (iii) not a:

793 (A) model 1 seller;

794 (B) model 2 seller; or

795 (C) model 3 seller.

796 (b) (i) Except as provided in Subsection (5)(b)(ii), a tax a [~~remote seller~~] registered
797 remitter collects in accordance with Subsection (2)[~~(c)~~](e) is due and payable:

798 (A) to the commission;

799 (B) annually; and

800 (C) on or before the last day of the month immediately following the last day of each

801 calendar year.

802 (ii) The commission may require that a tax a ~~[remote seller]~~ registered remitter collects
803 in accordance with Subsection (2)~~(c)~~(e) be due and payable:

804 (A) to the commission; and

805 (B) on the last day of the month immediately following any month in which the ~~[seller]~~
806 registered remitter accumulates a total of at least \$1,000 in agreement sales and use tax.

807 (c) (i) If a ~~[remote seller]~~ registered seller remits a tax to the commission in accordance
808 with Subsection (5)(b), the ~~[remote seller]~~ registered remitter shall file a return:

809 (A) with the commission;

810 (B) with respect to the tax;

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

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

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

815 (A) the information required to be contained in a return described in Subsection
816 (5)(c)(i); and

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

818 (d) A tax a ~~[remote seller]~~ registered remitter collects in accordance with this
819 Subsection (5) shall be calculated on the basis of the total amount of taxable transactions under
820 Subsection 59-12-103(1) the ~~[remote seller]~~ registered remitter completes, including~~[(i) a cash~~
821 ~~transaction; and (ii) a charge transaction.]~~ cash transactions and charge transactions.

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

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

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

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

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

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

834 (8) If any sale of tangible personal property or any other taxable transaction under
835 Subsection 59-12-103(1)[;] is made by a wholesaler to a retailer[;]:

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

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

840 [(a)] (i) the retailer represents that the tangible personal property, product transferred
841 electronically, or service is purchased by the retailer for resale; and

842 [(b)] (ii) the tangible personal property, product transferred electronically, or service is
843 not subsequently resold.

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

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

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

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

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

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

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

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

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

861 (B) a financing charge;

862 (C) interest;

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

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

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

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

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

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

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

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

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

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

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

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

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

889 (ii) as provided in Section [59-1-1410](#).

890 (d) A bad debt deduction under this section may not include interest.

891 (e) A bad debt may be deducted under this Subsection (10) on a return for the time
892 period during which the bad debt:

893 (i) is written off as uncollectible in the seller's books and records; and

- 894 (ii) would be eligible for a bad debt deduction:
- 895 (A) for federal income tax purposes; and
- 896 (B) if the seller were required to file a federal income tax return.
- 897 (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or
- 898 claims a refund under this Subsection (10), the seller shall report and remit a tax under this
- 899 chapter:
- 900 (i) on the portion of the bad debt the seller recovers; and
- 901 (ii) on a return filed for the time period for which the portion of the bad debt is
- 902 recovered.
- 903 (g) For purposes of reporting a recovery of a portion of bad debt under Subsection
- 904 (10)(f), a seller shall apply amounts received on the bad debt in the following order:
- 905 (i) in a proportional amount:
- 906 (A) to the purchase price of the tangible personal property, product transferred
- 907 electronically, or service; and
- 908 (B) to the tax due under this chapter on the tangible personal property, product
- 909 transferred electronically, or service; and
- 910 (ii) to:
- 911 (A) interest charges;
- 912 (B) service charges; and
- 913 (C) other charges.
- 914 (h) A seller's certified service provider may make a deduction or claim a refund for bad
- 915 debt on behalf of the seller:
- 916 (i) in accordance with this Subsection (10); and
- 917 (ii) if the certified service provider credits or refunds the entire amount of the bad debt
- 918 deduction or refund to the seller.
- 919 (i) A seller may allocate bad debt among the states that are members of the agreement
- 920 if the seller's books and records support that allocation.
- 921 (11) (a) A seller may not, with intent to evade any tax, fail to timely remit the full
- 922 amount of tax required by this chapter.
- 923 (b) A violation of this section is punishable as provided in Section [59-1-401](#).
- 924 (c) Each person who fails to pay any tax to the state or any amount of tax required to be

925 paid to the state, except amounts determined to be due by the commission under Chapter 1,
 926 Part 14, Assessment, Collections, and Refunds Act, or Section 59-12-111, within the time
 927 required by this chapter, or who fails to file any return as required by this chapter, shall pay, in
 928 addition to the tax, penalties and interest as provided in Sections 59-1-401 and 59-1-402.

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

932 Section 4. Section 59-12-107.6 is enacted to read:

933 **59-12-107.6. Expedited judicial review.**

934 (1) Subject to the limitations described in Subsection (2), and notwithstanding the
 935 judicial review procedures described in Chapter 1, Part 6, Judicial Review, any aggrieved party
 936 may directly petition the Utah Supreme Court for judicial review of the commission's final
 937 determination on a qualified seller's or a noncollecting seller's obligation to pay, or collect and
 938 remit, sales and use tax under Section 59-12-107.

939 (2) Direct judicial review is available if the petitioner:

940 (a) makes only a facial challenge to the constitutionality of Section 59-12-107; and

941 (b) files the petition for judicial review within 30 days after the day on which the
 942 commission issues the commission's final determination.

943 Section 5. Section 59-12-108 is amended to read:

944 **59-12-108. Monthly payment -- Amount of tax a seller may retain -- Penalty --**
 945 **Certain amounts allocated to local taxing jurisdictions.**

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

948 (i) file a return with the commission:

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

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

952 (ii) except as provided in Subsection (1)(b), remit, with the return required by
 953 Subsection (1)(a)(i), the amount [~~the person is required to remit to the commission for each tax,~~
 954 ~~fee, or charge~~] described in Subsection (1)(c) as follows:

955 (A) if that seller's tax liability under this chapter for the previous calendar year is less

956 than \$96,000, by any method permitted by the commission; or

957 (B) if that seller's tax liability under this chapter for the previous calendar year is
958 \$96,000 or more, by electronic funds transfer.

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

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

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

964 (B) files a simplified electronic return.

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

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

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

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

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

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

971 (vi) a charge under Section 69-2-5.6; [or] and

972 (vii) a tax under this chapter.

973 (d) Notwithstanding [~~Subsection~~] Subsections (1)(a)(ii) and (b) and in accordance with
974 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules
975 providing for a method for making same-day payments other than by electronic funds transfer
976 if making payments by electronic funds transfer fails.

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

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

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

985 (i) for a transaction described in Subsection 59-12-103(1) that is subject to a state tax
986 and a local tax imposed in accordance with the following, for the month for which the seller is

987 filing a return in accordance with Subsection (1):

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

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

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

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

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

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

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

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

1000 59-12-103(2)(c);

1001 (II) the month for which the seller is filing a return in accordance with Subsection (1);

1002 and

1003 (III) an agreement sales and use tax; and

1004 (B) 1.31% of the difference between:

1005 (I) the amounts the seller would have been required to remit to the commission:

1006 (Aa) in accordance with Subsection 59-12-103(2)(a) if the transaction had been subject
1007 to the state tax and the local tax imposed in accordance with Subsection 59-12-103(2)(a);

1008 (Bb) for the month for which the seller is filing a return in accordance with Subsection
1009 (1); and

1010 (Cc) for an agreement sales and use tax; and

1011 (II) the amounts the seller is required to remit to the commission for:

1012 (Aa) the state tax and the local tax imposed in accordance with Subsection

1013 59-12-103(2)(c);

1014 (Bb) the month for which the seller is filing a return in accordance with Subsection (1);

1015 and

1016 (Cc) an agreement sales and use tax.

1017 (d) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain

1018 each month 1% of any amounts the seller is required to remit to the commission:
1019 (i) for the month for which the seller is filing a return in accordance with Subsection
1020 (1); and
1021 (ii) under:
1022 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
1023 (B) Subsection 59-12-603(1)(a)(i)(A); or
1024 (C) Subsection 59-12-603(1)(a)(i)(B).
1025 (3) A state government entity that is required to remit taxes monthly in accordance
1026 with Subsection (1) may not retain any amount under Subsection (2).
1027 (4) A seller that has a tax liability under this chapter for the previous calendar year of
1028 less than \$50,000 may:
1029 (a) voluntarily meet the requirements of Subsection (1); and
1030 (b) if the seller voluntarily meets the requirements of Subsection (1), retain the
1031 amounts allowed by Subsection (2).
1032 (5) (a) Subject to Subsections (5)(b) through (d), a seller that voluntarily collects and
1033 remits a tax in accordance with Subsection 59-12-107(2)~~(f)~~(e)(i) may retain an amount equal
1034 to 18% of any amounts the seller would otherwise remit to the commission:
1035 (i) if the seller obtains a license under Section 59-12-106 for the first time on or after
1036 January 1, 2014; and
1037 (ii) for:
1038 (A) an agreement sales and use tax; and
1039 (B) the time period for which the seller files a return in accordance with this section.
1040 (b) If a seller retains an amount under this Subsection (5), the seller may not retain any
1041 other amount under this section.
1042 (c) If a seller retains an amount under this Subsection (5), the commission may require
1043 the seller to file a return by:
1044 (i) electronic means; or
1045 (ii) a means other than electronic means.
1046 (d) A seller may not retain an amount under this Subsection (5) if the seller is required
1047 to collect or remit a tax under this section in accordance with Section 59-12-103.1.
1048 (6) Penalties for late payment shall be as provided in Section 59-1-401.

1049 (7) (a) Except as provided in Subsection (7)(c), for any amounts required to be remitted
1050 to the commission under this part, the commission shall each month calculate an amount equal
1051 to the difference between:

1052 (i) the total amount retained for that month by all sellers had the percentages listed
1053 under Subsections (2)(b) and (2)(c)(ii) been 1.5%; and

1054 (ii) the total amount retained for that month by all sellers at the percentages listed
1055 under Subsections (2)(b) and (2)(c)(ii).

1056 (b) The commission shall each month allocate the amount calculated under Subsection
1057 (7)(a) to each county, city, and town on the basis of the proportion of agreement sales and use
1058 tax that the commission distributes to each county, city, and town for that month compared to
1059 the total agreement sales and use tax that the commission distributes for that month to all
1060 counties, cities, and towns.

1061 (c) The amount the commission calculates under Subsection (7)(a) may not include an
1062 amount collected from a tax that:

1063 (i) the state imposes within a county, city, or town, including the unincorporated area
1064 of a county; and

1065 (ii) is not imposed within the entire state.

1066 Section 6. Section **59-12-211** is amended to read:

1067 **59-12-211. Definitions -- Location of certain transactions -- Reports to**
1068 **commission -- Direct payment provision for a seller making certain purchases --**
1069 **Exceptions.**

1070 (1) As used in this section:

1071 (a) (i) "Receipt" and "receive" mean:

1072 (A) taking possession of tangible personal property;

1073 (B) making first use of a service; or

1074 (C) for a product transferred electronically, the earlier of:

1075 (I) taking possession of the product transferred electronically; or

1076 (II) making first use of the product transferred electronically.

1077 (ii) "Receipt" and "receive" do not include possession by a shipping company on behalf
1078 of a purchaser.

1079 (b) "Transportation equipment" means:

- 1080 (i) a locomotive or rail car that is used to carry a person or property in interstate
1081 commerce;
- 1082 (ii) a truck or truck-tractor:
- 1083 (A) with a gross vehicle weight rating of 10,001 pounds or ~~more~~ greater;
- 1084 (B) registered under Section 41-1a-301; and
- 1085 (C) operated under the authority of a carrier authorized and certificated:
- 1086 (I) by the United States Department of Transportation or another federal authority; and
- 1087 (II) to engage in carrying a person or property in interstate commerce;
- 1088 (iii) a trailer, semitrailer, or passenger bus that is:
- 1089 (A) registered under Section 41-1a-301; and
- 1090 (B) operated under the authority of a carrier authorized and certificated:
- 1091 (I) by the United States Department of Transportation or another federal authority; and
- 1092 (II) to engage in carrying a person or property in interstate commerce;
- 1093 (iv) an aircraft that is operated by an air carrier authorized and certificated:
- 1094 (A) by the United States Department of Transportation or another federal or foreign
1095 authority; and
- 1096 (B) to engage in carrying a person or property in interstate commerce; or
- 1097 (v) a container designed for use on, or a component part attached or secured on, an
1098 item of equipment listed in Subsections (1)(b)(i) through (iv).
- 1099 (2) Except as provided in Subsections (8) and (14), if tangible personal property, a
1100 product transferred electronically, or a service that is subject to taxation under this chapter is
1101 received by a purchaser at a business location of a seller, the location of the transaction is the
1102 business location of the seller.
- 1103 (3) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
1104 and (14), if tangible personal property, a product transferred electronically, or a service that is
1105 subject to taxation under this chapter is not received by a purchaser at a business location of a
1106 seller, the location of the transaction is the location where the purchaser takes receipt of the
1107 tangible personal property or service.
- 1108 (4) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
1109 and (14), if Subsection (2) or (3) does not apply, the location of the transaction is the location
1110 indicated by an address for or other information on the purchaser if:

1111 (a) the address or other information is available from the seller's business records; and
1112 (b) use of the address or other information from the seller's records does not constitute
1113 bad faith.

1114 (5) (a) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9),
1115 (11), and (14), if Subsection (2), (3), or (4) does not apply, the location of the transaction is the
1116 location indicated by an address for the purchaser if:

1117 (i) the address is obtained during the consummation of the transaction; and
1118 (ii) use of the address described in Subsection (5)(a)(i) does not constitute bad faith.

1119 (b) An address used under Subsection (5)(a) includes the address of a purchaser's
1120 payment instrument if no other address is available.

1121 (6) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
1122 and (14), if Subsection (2), (3), (4), or (5) does not apply or if a seller does not have sufficient
1123 information to apply Subsection (2), (3), (4), or (5), the location of the transaction is the
1124 location:

1125 (a) indicated by the address from which:

1126 (i) except as provided in Subsection (6)(a)(ii), for tangible personal property that is
1127 subject to taxation under this chapter, the tangible personal property is shipped;

1128 (ii) for computer software delivered electronically or for a product transferred
1129 electronically that is subject to taxation under this chapter, the computer software or product
1130 transferred electronically is first available for transmission by the seller; or

1131 (iii) for a service that is subject to taxation under this chapter, the service is provided;
1132 or

1133 (b) as determined by the seller with respect to a prepaid wireless calling service:

1134 (i) provided in Subsection (6)(a)(iii); or

1135 (ii) associated with the mobile telephone number.

1136 (7) (a) For purposes of this Subsection (7), "shared ZIP Code" means a nine-digit ZIP
1137 Code that is located within two or more local taxing jurisdictions.

1138 (b) If the location of a transaction determined under Subsections (3) through (6) is in a
1139 shared ZIP Code, the location of the transaction is:

1140 (i) if there is only one local taxing jurisdiction that imposes the lowest agreement
1141 combined tax rate for the shared ZIP Code, the local taxing jurisdiction that imposes the lowest

1142 agreement combined tax rate; or

1143 (ii) if two or more local taxing jurisdictions impose the lowest agreement combined tax
1144 rate for the shared ZIP Code, the local taxing jurisdiction that:

1145 (A) imposes the lowest agreement combined tax rate for the shared ZIP Code; and

1146 (B) has located within the local taxing jurisdiction the largest number of street
1147 addresses within the shared ZIP Code.

1148 (c) Notwithstanding any provision under this chapter authorizing or requiring the
1149 imposition of a sales and use tax, for purposes of Subsection (7)(b), a seller shall collect a sales
1150 and use tax imposed under this chapter at the lowest agreement combined tax rate imposed
1151 within the local taxing jurisdiction in which the transaction is located under Subsection (7)(b).

1152 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1153 commission may make rules:

1154 (i) providing for the circumstances under which a seller has exercised due diligence in
1155 determining the nine-digit ZIP Code for an address; or

1156 (ii) notwithstanding Subsection (7)(b), for determining the local taxing jurisdiction
1157 within which a transaction is located if a seller is unable to determine the local taxing
1158 jurisdiction within which the transaction is located under Subsection (7)(b).

1159 (8) The location of a transaction made with a direct payment permit described in
1160 Section [59-12-107.1](#) is the location where receipt of the tangible personal property, product
1161 transferred electronically, or service by the purchaser occurs.

1162 (9) The location of a purchase of direct mail is the location determined in accordance
1163 with Section [59-12-123](#).

1164 (10) (a) Except as provided in Subsection (10)(b), the location of a transaction
1165 determined under Subsections (3) through (6), (8), or (9), is the local taxing jurisdiction within
1166 which:

1167 (i) the nine-digit ZIP Code assigned to the location determined under Subsections (3)
1168 through (6), (8), or (9) is located; or

1169 (ii) the five-digit ZIP Code assigned to the location determined under Subsections (3)
1170 through (6), (8), or (9) is located if:

1171 (A) a nine-digit ZIP Code is not available for the location determined under
1172 Subsections (3) through (6), (8), or (9); or

1173 (B) after exercising due diligence, a seller or certified service provider is unable to
1174 determine a nine-digit ZIP Code for the location determined under Subsections (3) through (6),
1175 (8), or (9).

1176 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1177 commission may make rules for determining the local taxing jurisdiction within which a
1178 transaction is located if a seller or certified service provider is unable to determine the local
1179 taxing jurisdiction within which the transaction is located under Subsection (10)(a).

1180 (11) (a) As used in this Subsection (11), "florist delivery transaction" means a
1181 transaction commenced by a florist that transmits an order:

1182 (i) by:

1183 (A) telegraph;

1184 (B) telephone; or

1185 (C) a means of communication similar to Subsection (11)(a)(i)(A) or (B); and

1186 (ii) for delivery to another place:

1187 (A) in this state; or

1188 (B) outside this state.

1189 ~~[(b) Notwithstanding Subsections (3) through (6), beginning on January 1, 2009, and~~
1190 ~~ending on December 31, 2009, the location of a florist delivery transaction is the business~~
1191 ~~location of the florist that commences the florist delivery transaction.]~~

1192 ~~[(c)]~~ (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
1193 Act, the commission may by rule:

1194 (i) define:

1195 (A) "business location"; and

1196 (B) "florist";

1197 (ii) define what constitutes a means of communication similar to Subsection
1198 (11)(a)(i)(A) or (B); and

1199 (iii) provide procedures for determining when a transaction is commenced.

1200 (12) (a) Notwithstanding any other provision of this section and except as provided in
1201 Subsection (12)(b), if a purchaser uses computer software and there is not a transfer of a copy
1202 of that software to the purchaser, the location of the transaction is determined in accordance
1203 with Subsections (4) and (5).

1204 (b) If a purchaser uses computer software described in Subsection (12)(a) at more than
1205 one location, the location of the transaction shall be determined in accordance with rules made
1206 by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
1207 Act.

1208 (13) (a) A tax collected under this chapter shall be reported to the commission on a
1209 form that identifies the location of each transaction that occurs during the return filing period.

1210 (b) The form described in Subsection (13)(a) shall be filed with the commission as
1211 required under this chapter.

1212 (14) This section does not apply to:

1213 (a) amounts charged by a seller for:

1214 (i) telecommunications service except for a prepaid calling service or a prepaid
1215 wireless calling service as provided in Subsection (6)(b) or Section 59-12-215; or

1216 (ii) the retail sale or transfer of:

1217 (A) a motor vehicle other than a motor vehicle that is transportation equipment;

1218 (B) an aircraft other than an aircraft that is transportation equipment;

1219 (C) a watercraft;

1220 (D) a modular home;

1221 (E) a manufactured home; or

1222 (F) a mobile home; or

1223 (iii) except as provided in Section 59-12-214, the lease or rental of tangible personal
1224 property other than tangible personal property that is transportation equipment;

1225 (b) a tax a person pays in accordance with Subsection 59-12-107(2)~~(e)~~(h); or

1226 (c) a retail sale of tangible personal property or a product transferred electronically if:

1227 (i) the seller receives the order for the tangible personal property or product transferred
1228 electronically in this state;

1229 (ii) receipt of the tangible personal property or product transferred electronically by the
1230 purchaser or the purchaser's donee occurs in this state;

1231 (iii) the location where receipt of the tangible personal property or product transferred
1232 electronically by the purchaser occurs is determined in accordance with Subsections (3)
1233 through (5); and

1234 (iv) at the time the seller receives the order, the record keeping system that the seller

1235 uses to calculate the proper amount of tax imposed under this chapter captures the location
1236 where the order is received.

1237 Section 7. Section **59-12-211.1** is amended to read:

1238 **59-12-211.1. Location of a transaction that is subject to a use tax.**

1239 (1) Subject to Subsection (2), a person that is required by Subsection
1240 **59-12-107(2)**~~(c)~~(h) to pay a use tax on a transaction shall report the location of that
1241 transaction at the person's location.

1242 (2) For purposes of Subsection (1), if a person has more than one location in this state,
1243 the person shall report the location of the transaction at the location at which tangible personal
1244 property, a product transferred electronically, or a service is received.

1245 Section 8. Section **76-8-1101** is amended to read:

1246 **76-8-1101. Criminal offenses and penalties relating to revenue and taxation --**
1247 **Rulemaking authority -- Statute of limitations.**

1248 (1) (a) As provided in Section **59-1-401**, criminal offenses and penalties are as
1249 provided in Subsections (1)(b) through (e).

1250 (b) (i) ~~Any~~ A person [who] is guilty of a class B misdemeanor if the person:

1251 (A) is required by Title 59, Revenue and Taxation, or any laws the State Tax
1252 Commission administers or regulates, to register with or obtain a license or permit from the
1253 State Tax Commission~~[-, who]~~; and

1254 (B) operates without having registered or secured a license or permit~~[-]~~ or [who]
1255 operates when the registration, license, or permit is expired or not current~~[-, is guilty of a class~~
1256 B misdemeanor].

1257 (ii) Notwithstanding Section **76-3-301**, for purposes of Subsection (1)(b)(i), the
1258 penalty may not:

1259 (A) be less than \$500; or

1260 (B) exceed \$1,000.

1261 (c) (i) With respect to a tax, fee, or charge as defined in Section **59-1-401**, ~~any~~ a
1262 person [who] is guilty of a third degree felony if the person:

1263 (A) knowingly and intentionally, and without a reasonable good faith basis, fails to
1264 make, render, sign, or verify any return within the time required by law or to supply any
1265 information within the time required by law~~[-, or who]~~;

1266 (B) makes, renders, signs, or verifies any false or fraudulent return or statement[~~;~~]; or
1267 [~~who~~]

1268 (C) supplies any false or fraudulent information[~~, is guilty of a third degree felony~~].

1269 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(c)(i), the penalty
1270 may not:

1271 (A) be less than \$1,000; or

1272 (B) exceed \$5,000.

1273 (d) (i) Any person who intentionally or willfully attempts to evade or defeat any tax,
1274 fee, or charge as defined in Section 59-1-401 or the payment of a tax, fee, or charge as defined
1275 in Section 59-1-401 is, in addition to other penalties provided by law, guilty of a second degree
1276 felony.

1277 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(d)(i), the penalty
1278 may not:

1279 (A) be less than \$1,500; or

1280 (B) exceed \$25,000.

1281 (e) (i) A person is guilty of a second degree felony if that person commits an act:

1282 (A) described in Subsection (1)(e)(ii) with respect to one or more of the following
1283 documents:

1284 (I) a return;

1285 (II) an affidavit;

1286 (III) a claim; or

1287 (IV) a document similar to Subsections (1)(e)(i)(A)(I) through (III); and

1288 (B) subject to Subsection (1)(e)(iii), with knowledge that the document described in
1289 Subsection (1)(e)(i)(A):

1290 (I) is false or fraudulent as to any material matter; and

1291 (II) could be used in connection with any material matter administered by the State Tax
1292 Commission.

1293 (ii) The following acts apply to Subsection (1)(e)(i):

1294 (A) preparing any portion of a document described in Subsection (1)(e)(i)(A);

1295 (B) presenting any portion of a document described in Subsection (1)(e)(i)(A);

1296 (C) procuring any portion of a document described in Subsection (1)(e)(i)(A);

1297 (D) advising in the preparation or presentation of any portion of a document described
1298 in Subsection (1)(e)(i)(A);

1299 (E) aiding in the preparation or presentation of any portion of a document described in
1300 Subsection (1)(e)(i)(A);

1301 (F) assisting in the preparation or presentation of any portion of a document described
1302 in Subsection (1)(e)(i)(A); or

1303 (G) counseling in the preparation or presentation of any portion of a document
1304 described in Subsection (1)(e)(i)(A).

1305 (iii) This Subsection (1)(e) applies:

1306 (A) regardless of whether the person for which the document described in Subsection
1307 (1)(e)(i)(A) is prepared or presented:

1308 (I) knew of the falsity of the document described in Subsection (1)(e)(i)(A); or

1309 (II) consented to the falsity of the document described in Subsection (1)(e)(i)(A); and

1310 (B) in addition to any other penalty provided by law.

1311 (iv) Notwithstanding Section 76-3-301, for purposes of this Subsection (1)(e), the
1312 penalty may not:

1313 (A) be less than \$1,500; or

1314 (B) exceed \$25,000.

1315 (v) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1316 State Tax Commission may make rules prescribing the documents that are similar to
1317 Subsections (1)(e)(i)(A)(I) through (III).

1318 (2) The statute of limitations for prosecution for a violation of this section is the later
1319 of six years:

1320 (a) from the date the tax should have been remitted; or

1321 (b) after the day on which the person commits the criminal offense.

1322 Section 9. Section 78A-3-102 is amended to read:

1323 **78A-3-102. Supreme Court jurisdiction.**

1324 (1) The Supreme Court has original jurisdiction to answer questions of state law
1325 certified by a court of the United States.

1326 (2) The Supreme Court has original jurisdiction to issue all extraordinary writs and
1327 authority to issue all writs and process necessary to carry into effect its orders, judgments, and

1328 decrees or in aid of its jurisdiction.

1329 (3) The Supreme Court has appellate jurisdiction, including jurisdiction of
1330 interlocutory appeals, over:

1331 (a) a judgment of the Court of Appeals;

1332 (b) cases certified to the Supreme Court by the Court of Appeals prior to final
1333 judgment by the Court of Appeals;

1334 (c) discipline of lawyers;

1335 (d) final orders of the Judicial Conduct Commission;

1336 (e) final orders and decrees in formal adjudicative proceedings originating with:

1337 (i) the Public Service Commission;

1338 (ii) the State Tax Commission;

1339 (iii) the School and Institutional Trust Lands Board of Trustees;

1340 (iv) the Board of Oil, Gas, and Mining;

1341 (v) the state engineer; or

1342 (vi) the executive director of the Department of Natural Resources reviewing actions of
1343 the Division of Forestry, Fire, and State Lands;

1344 (f) final orders and decrees of the district court review of informal adjudicative
1345 proceedings of agencies under Subsection (3)(e);

1346 (g) a final judgment or decree of any court of record holding a statute of the United
1347 States or this state unconstitutional on its face under the Constitution of the United States or the
1348 Utah Constitution;

1349 (h) interlocutory appeals from any court of record involving a charge of a first degree
1350 or capital felony;

1351 (i) appeals from the district court involving a conviction or charge of a first degree
1352 felony or capital felony;

1353 (j) orders, judgments, and decrees of any court of record over which the Court of
1354 Appeals does not have original appellate jurisdiction; and

1355 (k) appeals from the district court of orders, judgments, or decrees ruling on legislative
1356 subpoenas.

1357 (4) The Supreme Court may transfer to the Court of Appeals any of the matters over
1358 which the Supreme Court has original appellate jurisdiction, except:

- 1359 (a) capital felony convictions or an appeal of an interlocutory order of a court of record
1360 involving a charge of a capital felony;
1361 (b) election and voting contests;
1362 (c) reapportionment of election districts;
1363 (d) retention or removal of public officers;
1364 (e) matters involving legislative subpoenas; ~~and~~
1365 (f) those matters described in Subsections (3)(a) through (d)~~;~~; or
1366 (g) a challenge to the facial constitutionality of Section 59-12-107, in accordance with
1367 Section 59-12-107.6.

1368 (5) The Supreme Court has sole discretion in granting or denying a petition for writ of
1369 certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall
1370 review those cases certified to it by the Court of Appeals under Subsection (3)(b).

1371 (6) The Supreme Court shall comply with the requirements of Title 63G, Chapter 4,
1372 Administrative Procedures Act, in its review of agency adjudicative proceedings.

1373 Section 10. **Severability clause.**

1374 The provisions of this bill are severable. If any provision of this bill, or the application
1375 of any provision to any person or circumstance, is held invalid by a final decision of a court of
1376 competent jurisdiction, the remainder of this bill shall be given effect without the invalid
1377 provision or application.

1378 Section 11. **Effective date.**

1379 This bill takes effect on July 1, 2016.