

TAX COMMISSION BOND REQUIREMENT AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Steve Eliason

LONG TITLE

General Description:

This bill modifies provisions related to bond requirements for certain tax licensees.

Highlighted Provisions:

This bill:

- ▶ allows the State Tax Commission to waive the bond requirement for a person whose withholding tax license or sales and use tax license was revoked for a delinquency, if the person is in compliance with a payment agreement approved by the commission; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

59-10-405.5, as last amended by Laws of Utah 2008, Chapter 382

59-12-106, as last amended by Laws of Utah 2020, Chapter 284

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

Section 1. Section **59-10-405.5** is amended to read:

59-10-405.5. Definitions -- Withholding tax license requirements -- Penalty --

Application process and requirements -- Fee not required -- Bonds.

- 30 (1) As used in this section:
- 31 (a) "applicant" means a person that:
- 32 (i) is required by this section to obtain a license; and
- 33 (ii) submits an application:
- 34 (A) to the commission; and
- 35 (B) for a license under this section;
- 36 (b) "application" means an application for a license under this section;
- 37 (c) "fiduciary of the applicant" means a person that:
- 38 (i) is required to collect, truthfully account for, and pay over an amount under this part
- 39 for an applicant; and
- 40 (ii) (A) is a corporate officer of the applicant described in Subsection (1)(c)(i);
- 41 (B) is a director of the applicant described in Subsection (1)(c)(i);
- 42 (C) is an employee of the applicant described in Subsection (1)(c)(i);
- 43 (D) is a partner of the applicant described in Subsection (1)(c)(i);
- 44 (E) is a trustee of the applicant described in Subsection (1)(c)(i); or
- 45 (F) has a relationship to the applicant described in Subsection (1)(c)(i) that is similar to
- 46 a relationship described in Subsections (1)(c)(ii)(A) through (E) as determined by the
- 47 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 48 Rulemaking Act;
- 49 (d) "fiduciary of the licensee" means a person that:
- 50 (i) is required to collect, truthfully account for, and pay over an amount under this part
- 51 for a licensee; and
- 52 (ii) (A) is a corporate officer of the licensee described in Subsection (1)(d)(i);
- 53 (B) is a director of the licensee described in Subsection (1)(d)(i);
- 54 (C) is an employee of the licensee described in Subsection (1)(d)(i);
- 55 (D) is a partner of the licensee described in Subsection (1)(d)(i);
- 56 (E) is a trustee of the licensee described in Subsection (1)(d)(i); or
- 57 (F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to

a relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(e) "license" means a license under this section; and

(f) "licensee" means a person that is licensed under this section by the commission.

(2) The following persons are guilty of a criminal violation as provided in Section 59-1-401:

(a) a person that:

(i) is required to withhold, report, or remit any amounts under this part; and

(ii) engages in business within the state before obtaining a license under this section; or

(b) a person that:

(i) pays wages under this part; and

(ii) engages in business within the state before obtaining a license under this section.

(3) The license described in Subsection (2):

(a) shall be granted and issued:

(i) by the commission in accordance with this section;

(ii) without a license fee; and

(iii) if:

(A) an applicant:

(I) states the applicant's name and address in the application; and

(II) provides other information in the application that the commission may require; and

(B) the person meets the requirements of this section to be granted a license as determined by the commission;

(b) may not be assigned to another person; and

(c) is valid:

(i) only for the person named on the license; and

(ii) until:

(A) the person described in Subsection (3)(c)(i):

(I) ceases to do business; or

(II) changes that person's business address; or

(B) the commission revokes the license.

(4) The commission shall review an application and determine whether:

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

(b) a bond is required to be posted with the commission in accordance with

Subsections (5) and (6) before the applicant may be issued a license.

(5) (a) ~~[An]~~ Except as provided in Subsection (5)(c), an applicant shall post a bond with the commission before the commission may issue the applicant a license if:

(i) a license under this section was revoked for a delinquency under this part for:

(A) the applicant;

(B) a fiduciary of the applicant; or

(C) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over an amount under this part; or

(ii) there is a delinquency in withholding, reporting, or remitting any amount under this part for:

(A) an applicant;

(B) a fiduciary of the applicant; or

(C) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over an amount under this part.

(b) If the commission determines it is necessary to ensure compliance with this part, the commission may require a licensee to:

(i) for a licensee that has not posted a bond under this section with the commission, post a bond with the commission in accordance with Subsection (6); or

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

(c) The commission may waive the bond requirement described in Subsection (5)(a), if the applicant is in compliance with a payment agreement that:

114 (i) relates to the delinquency; and

115 (ii) is approved by the commission.

116 (6) (a) A bond required by Subsection (5) shall be:

117 (i) executed by:

118 (A) for an applicant, the applicant as principal, with a corporate surety; or

119 (B) for a licensee, the licensee as principal, with a corporate surety; and

120 (ii) payable to the commission conditioned upon the faithful performance of all of the
121 requirements of this part including:

122 (A) the withholding or remitting of any amount under this part;

123 (B) the payment of any:

124 (I) penalty as provided in Section 59-1-401; or

125 (II) interest as provided in Section 59-1-402; or

126 (C) any other obligation of the:

127 (I) applicant under this part; or

128 (II) licensee under this part.

129 (b) Except as provided in Subsection (6)(d), the commission shall calculate the amount
130 of a bond required by Subsection (5) on the basis of:

131 (i) commission estimates of:

132 (A) for an applicant, any amounts the applicant withholds, reports, or remits under this
133 part; or

134 (B) for a licensee, any amounts the licensee withholds, reports, or remits under this
135 part; and

136 (ii) any amount of a delinquency described in Subsection (6)(c).

137 (c) Except as provided in Subsection (6)(d), for purposes of Subsection (6)(b)(ii):

138 (i) for an applicant, the amount of the delinquency is the sum of:

139 (A) the amount of any delinquency that served as a basis for revoking the license under
140 this section of:

141 (I) the applicant;

142 (II) a fiduciary of the applicant; or
143 (III) a person for which the applicant or the fiduciary of the applicant is required to
144 collect, truthfully account for, and pay over an amount under this part; or
145 (B) the amount that any of the following owe under this part:
146 (I) the applicant;
147 (II) a fiduciary of the applicant; and
148 (III) a person for which the applicant or the fiduciary of the applicant is required to
149 collect, truthfully account for, and pay over an amount under this part; or
150 (ii) for a licensee, the amount of the delinquency is the sum of:
151 (A) the amount of any delinquency that served as a basis for revoking the license under
152 this section of:
153 (I) the licensee;
154 (II) a fiduciary of the licensee; or
155 (III) a person for which the licensee or the fiduciary of the licensee is required to
156 collect, truthfully account for, and pay over an amount under this part; or
157 (B) the amount that any of the following owe under this part:
158 (I) the licensee;
159 (II) a fiduciary of the licensee; and
160 (III) a person for which the licensee or the fiduciary of the licensee is required to
161 collect, truthfully account for, and pay over an amount under this part.
162 (d) Notwithstanding Subsection (6)(b) or (c), a bond required by Subsection (5) may
163 not:
164 (i) be less than \$25,000; or
165 (ii) exceed \$500,000.
166 (7) (a) The commission shall revoke a license under this section if:
167 (i) a licensee violates any provision of this part; and
168 (ii) before the commission revokes the license the commission provides the licensee:
169 (A) reasonable notice; and

(B) a hearing.

(b) If the commission revokes a licensee's license in accordance with Subsection (7)(a), the commission may not issue another license to that licensee until that licensee complies with the requirements of this part, including:

(i) paying any:

(A) amounts due under this part;

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

(C) interest as provided in Section 59-1-402; and

(ii) posting a bond in accordance with Subsections (5) and (6).

Section 2. Section 59-12-106 is amended to read:

59-12-106. Definitions -- Sales and use tax license requirements -- Penalty -- Application process and requirements -- No fee -- Bonds -- Presumption of taxability -- Exemption certificates -- Exemption certificate license number to accompany contract bids.

(1) As used in this section:

(a) "Applicant" means a person that:

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

(ii) submits an application:

(A) to the commission; and

(B) for a license under this section.

(b) "Application" means an application for a license under this section.

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

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

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

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

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

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

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

(F) has a relationship to the applicant described in Subsection (1)(c)(i) that is similar to a relationship described in Subsections (1)(c)(ii)(A) through (E) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(d) "Fiduciary of the licensee" means a person that:

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

(ii) (A) is a corporate officer of the licensee described in Subsection (1)(d)(i);

(B) is a director of the licensee described in Subsection (1)(d)(i);

(C) is an employee of the licensee described in Subsection (1)(d)(i);

(D) is a partner of the licensee described in Subsection (1)(d)(i);

(E) is a trustee of the licensee described in Subsection (1)(d)(i); or

(F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to a relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(e) "License" means a license under this section.

(f) "Licensee" means a person that is licensed under this section by the commission.

(g) "Special event" means an event that lasts six months or less where taxable sales occur.

(2) (a) It is unlawful for any person required to collect a tax under this chapter to engage in business within the state without first having obtained a license to do so.

(b) The license described in Subsection (2)(a):

(i) shall be granted and issued by the commission;

(ii) is not assignable;

(iii) is valid only for the person in whose name the license is issued;

(iv) is valid until:

- 226 (A) the person described in Subsection (2)(b)(iii):
227 (I) ceases to do business; or
228 (II) changes that person's business address; or
229 (B) the license is revoked by the commission; and
230 (v) subject to Subsection (2)(d), shall be granted by the commission only upon an
231 application that:
- 232 (A) states the name and address of the applicant; and
233 (B) provides other information the commission may require.
234 (c) At the time an applicant makes an application under Subsection (2)(b)(v), the
235 commission shall notify the applicant of the responsibilities and liability of a business owner
236 successor under Section 59-12-112.
- 237 (d) The commission shall review an application and determine whether the applicant:
238 (i) meets the requirements of this section to be issued a license; and
239 (ii) is required to post a bond with the commission in accordance with Subsections
240 (2)(e) and (f) before the applicant may be issued a license.
- 241 (e) (i) ~~An~~ Except as provided in Subsection (2)(e)(iii), an applicant shall post a bond
242 with the commission before the commission may issue the applicant a license if:
- 243 (A) a license under this section was revoked for a delinquency under this chapter for:
244 (I) the applicant;
245 (II) a fiduciary of the applicant; or
246 (III) a person for which the applicant or the fiduciary of the applicant is required to
247 collect, truthfully account for, and pay over a tax under this chapter; or
248 (B) there is a delinquency in paying a tax under this chapter for:
249 (I) the applicant;
250 (II) a fiduciary of the applicant; or
251 (III) a person for which the applicant or the fiduciary of the applicant is required to
252 collect, truthfully account for, and pay over a tax under this chapter.
253 (ii) If the commission determines it is necessary to ensure compliance with this

chapter, the commission may require a licensee to:

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

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

(iii) The commission may waive the bond requirement described in Subsection (2)(e)(i), if the applicant is in compliance with a payment agreement that:

(A) relates to the delinquency; and

(B) is approved by the commission.

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

(A) executed by:

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

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

(B) payable to the commission conditioned upon the faithful performance of all of the requirements of this chapter including:

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

(II) the payment of any:

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

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

(III) any other obligation of the:

(Aa) applicant under this chapter; or

(Bb) licensee under this chapter.

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

(A) commission estimates of:

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

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

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

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

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

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

(Aa) the applicant;

(Bb) a fiduciary of the applicant; or

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

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

(Aa) the applicant;

(Bb) a fiduciary of the applicant; and

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

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

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

(Aa) the licensee;

(Bb) a fiduciary of the licensee; or

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

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

(Aa) the licensee;

(Bb) a fiduciary of the licensee; and

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

(iv) Notwithstanding Subsection (2)(f)(ii) or (2)(f)(iii), a bond required by Subsection (2)(e) may not:

310 (A) be less than \$25,000; or
311 (B) exceed \$500,000.

312 (g) Subject to Subsection (2)(h), if business is transacted at two or more separate places
313 by one person, a separate license for each place of business is required.

314 (h) A license is not required for any person that is:

315 (i) engaged exclusively in the business of selling commodities that are exempt from
316 taxation under this chapter; or

317 (ii) exempt from collecting sales and use tax under Section 59-12-104 and the place of
318 business is a special event.

319 (i) (i) The commission shall, on a reasonable notice and after a hearing, revoke the
320 license of any licensee violating any provisions of this chapter.

321 (ii) A license may not be issued to a licensee described in Subsection (2)(i)(i) until the
322 licensee has complied with the requirements of this chapter, including:

323 (A) paying any:

324 (I) tax due under this chapter;

325 (II) penalty as provided in Section 59-1-401; or

326 (III) interest as provided in Section 59-1-402; and

327 (B) posting a bond in accordance with Subsections (2)(e) and (f).

328 (j) Any person required to collect a tax under this chapter within this state without
329 having secured a license to do so is guilty of a criminal violation as provided in Section
330 59-1-401.

331 (k) A license shall be issued to the person by the commission without a license fee.

332 (l) (i) The commission shall include on an application for a temporary sales tax license
333 and special event sales tax return the following statement:

334 "You are not required to complete or return this form or to collect sales and use tax if
335 you are not regularly engaged in the business of selling the items you are offering at this event
336 or all of the items that you are selling at this event are exempt from sales and use tax under
337 Section 59-12-104."

(ii) The notice described in Subsection (2)(l)(i) shall be in bold font no smaller than the font of the main content and shall appear at the top of the application form.

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

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

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

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

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

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

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

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

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

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

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

(B) subject to Subsection (3)(c)(iii), obtain an exemption certificate containing the

information required by Subsections (3)(a) and (b), taken in good faith.

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

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

(B) could be applicable to that transaction; and

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

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

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

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

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

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

(A) renew an exemption certificate;

(B) update an exemption certificate; or

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

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

(iii) If there is a recurring business relationship between a seller or certified service provider and a purchaser, the commission shall require an exemption certificate the seller or

394 certified service provider takes from the purchaser to meet the requirements of Subsections
395 (3)(a) and (b).

396 (4) A person filing a contract bid with the state or a political subdivision of the state for
397 the sale of tangible personal property or any other taxable transaction under Subsection
398 59-12-103(1) shall include with the bid the number of the license issued to that person under
399 Subsection (2).