

Midway City Council
3 May 2022
Work Meeting

RAP Tax /
Discussion



Memo

Date: 27 April 2022
To: Mayor, City Council and Staff
Cc: File
From: Brad Wilson, City Recorder
RE: RAP Tax

The City Council will discuss, at its 3 May 2022 work meeting, imposing a RAP tax. The following summary explains the tax. I have also attached the relevant section of the Utah Code.

- The tax is formally called the City or Town Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities.
- The tax cannot be imposed if the county, in which the city is located, has already imposed it.
- A majority of the city's governing body (council) must vote to put it on the ballot.
- Notice must be given to the county of the intent to put it on the ballot. This must be done before 26 June 2022.
- The county's governing body must respond within 60 days.
- The governing body may respond by passing a resolution and providing a written statement indicating that it will not seek to impose the tax. The city may then put the question on the ballot.
- The governing body may respond with a written notice stating that it will try to impose the tax by putting it on the ballot. If this is the case, the city may not put the question on the ballot.
- The ballot question must be approved by a majority of the voters.
- If a majority of the voters approve it, then a majority of the governing body must vote to impose the tax.
- It is 0.1% on all transactions in the city with some exceptions.
- The revenue is limited to funding for cultural facilities and organizations, recreational facilities, zoological facilities and organizations, and botanical organizations in the city or in the boundaries of parties to an interlocal agreement with the city.
- The governing body must adopt an ordinance providing for the distribution of the revenue.
- The tax must be reauthorized every 10 years.

Please contact me if you have any questions.

Part 14
**City or Town Option Funding for Botanical, Cultural,
Recreational, and Zoological Organizations or Facilities**

59-12-1401 Purpose statement -- Definitions -- Scope of part.

- (1) The purpose of the tax imposed by this part is the same for cities and towns as is stated in Section 59-12-701 for counties.
- (2) The definitions of Section 59-12-702 are incorporated into this part.
- (3) This part applies only to a city or town that is located within a county of the second, third, fourth, fifth, or sixth class as designated in Section 17-50-501.

Amended by Chapter 317, 2004 General Session

59-12-1402 Opinion question election -- Base -- Rate -- Imposition of tax -- Expenditure of revenue -- Enactment or repeal of tax -- Effective date -- Notice requirements.

- (1)
 - (a) Subject to the other provisions of this section, a city or town legislative body subject to this part may submit an opinion question to the residents of that city or town, by majority vote of all members of the legislative body, so that each resident of the city or town has an opportunity to express the resident's opinion on the imposition of a local sales and use tax of .1% on the transactions described in Subsection 59-12-103(1) located within the city or town, to:
 - (i) fund cultural facilities, recreational facilities, and zoological facilities and botanical organizations, cultural organizations, and zoological organizations in that city or town; or
 - (ii) provide funding for a botanical organization, cultural organization, or zoological organization to pay for use of a bus or facility rental if that use of the bus or facility rental is in furtherance of the botanical organization's, cultural organization's, or zoological organization's primary purpose.
 - (b) The opinion question required by this section shall state:

"Shall (insert the name of the city or town), Utah, be authorized to impose a .1% sales and use tax for (list the purposes for which the revenue collected from the sales and use tax shall be expended)?"
 - (c) A city or town legislative body may not impose a tax under this section:
 - (i) if the county in which the city or town is located imposes a tax under Part 7, County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities;
 - (ii) on the sales and uses described in Section 59-12-104 to the extent the sales and uses are exempt from taxation under Section 59-12-104; and
 - (iii) except as provided in Subsection (1)(e), on amounts paid or charged for food and food ingredients.
 - (d) For purposes of this Subsection (1), the location of a transaction shall be determined in accordance with Sections 59-12-211 through 59-12-215.
 - (e) A city or town legislative body imposing a tax under this section shall impose the tax on the purchase price or sales price for amounts paid or charged for food and food ingredients if the food and food ingredients are sold as part of a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients.
 - (f) Except as provided in Subsection (6), the election shall be held at a regular general election or a municipal general election, as those terms are defined in Section 20A-1-102, and shall follow the procedures outlined in Title 11, Chapter 14, Local Government Bonding Act.

- (2) If the city or town legislative body determines that a majority of the city's or town's registered voters voting on the imposition of the tax have voted in favor of the imposition of the tax as prescribed in Subsection (1), the city or town legislative body may impose the tax by a majority vote of all members of the legislative body.
- (3) Subject to Section 59-12-1403, revenue collected from a tax imposed under Subsection (2) shall be expended:
 - (a) to finance cultural facilities, recreational facilities, and zoological facilities within the city or town or within the geographic area of entities that are parties to an interlocal agreement, to which the city or town is a party, providing for cultural facilities, recreational facilities, or zoological facilities;
 - (b) to finance ongoing operating expenses of:
 - (i) recreational facilities described in Subsection (3)(a) within the city or town or within the geographic area of entities that are parties to an interlocal agreement, to which the city or town is a party, providing for recreational facilities; or
 - (ii) botanical organizations, cultural organizations, and zoological organizations within the city or town or within the geographic area of entities that are parties to an interlocal agreement, to which the city or town is a party, providing for the support of botanical organizations, cultural organizations, or zoological organizations; and
 - (c) as stated in the opinion question described in Subsection (1).
- (4)
 - (a) Except as provided in Subsection (4)(b), a tax authorized under this part shall be:
 - (i) administered, collected, and enforced in accordance with:
 - (A) the same procedures used to administer, collect, and enforce the tax under:
 - (I) Part 1, Tax Collection; or
 - (II) Part 2, Local Sales and Use Tax Act; and
 - (B) Chapter 1, General Taxation Policies; and
 - (ii)
 - (A) levied for a period of eight years; and
 - (B) may be reauthorized at the end of the eight-year period in accordance with this section.
 - (b)
 - (i) If a tax under this part is imposed for the first time on or after July 1, 2011, the tax shall be levied for a period of 10 years.
 - (ii) If a tax under this part is reauthorized in accordance with Subsection (4)(a) on or after July 1, 2011, the tax shall be reauthorized for a ten-year period.
 - (c) A tax under this section is not subject to Subsections 59-12-205(2) through (6).
- (5)
 - (a) For purposes of this Subsection (5):
 - (i) "Annexation" means an annexation to a city or town under Title 10, Chapter 2, Part 4, Annexation.
 - (ii) "Annexing area" means an area that is annexed into a city or town.
 - (b)
 - (i) Except as provided in Subsection (5)(c) or (d), if, on or after July 1, 2004, a city or town enacts or repeals a tax under this part, the enactment or repeal shall take effect:
 - (A) on the first day of a calendar quarter; and
 - (B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (5)(b)(ii) from the city or town.
 - (ii) The notice described in Subsection (5)(b)(i)(B) shall state:
 - (A) that the city or town will enact or repeal a tax under this part;

- (B) the statutory authority for the tax described in Subsection (5)(b)(ii)(A);
- (C) the effective date of the tax described in Subsection (5)(b)(ii)(A); and
- (D) if the city or town enacts the tax described in Subsection (5)(b)(ii)(A), the rate of the tax.

(c)

- (i) If the billing period for a transaction begins before the effective date of the enactment of the tax under this section, the enactment of the tax takes effect on the first day of the first billing period that begins on or after the effective date of the enactment of the tax.
- (ii) The repeal of a tax applies to a billing period if the billing statement for the billing period is produced on or after the effective date of the repeal of the tax imposed under this section.

(d)

- (i) If a tax due under this chapter on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment or repeal of a tax described in Subsection (5)(b)(i) takes effect:
 - (A) on the first day of a calendar quarter; and
 - (B) beginning 60 days after the effective date of the enactment or repeal under Subsection (5)(b)(i).
- (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

(e)

- (i) Except as provided in Subsection (5)(f) or (g), if, for an annexation that occurs on or after July 1, 2004, the annexation will result in the enactment or repeal of a tax under this part for an annexing area, the enactment or repeal shall take effect:
 - (A) on the first day of a calendar quarter; and
 - (B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (5)(e)(ii) from the city or town that annexes the annexing area.
- (ii) The notice described in Subsection (5)(e)(i)(B) shall state:
 - (A) that the annexation described in Subsection (5)(e)(i) will result in an enactment or repeal a tax under this part for the annexing area;
 - (B) the statutory authority for the tax described in Subsection (5)(e)(ii)(A);
 - (C) the effective date of the tax described in Subsection (5)(e)(ii)(A); and
 - (D) the rate of the tax described in Subsection (5)(e)(ii)(A).

(f)

- (i) If the billing period for a transaction begins before the effective date of the enactment of the tax under this section, the enactment of the tax takes effect on the first day of the first billing period that begins on or after the effective date of the enactment of the tax.
- (ii) The repeal of a tax applies to a billing period if the billing statement for the billing period is produced on or after the effective date of the repeal of the tax imposed under this section.

(g)

- (i) If a tax due under this chapter on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment or repeal of a tax described in Subsection (5)(e)(i) takes effect:
 - (A) on the first day of a calendar quarter; and
 - (B) beginning 60 days after the effective date of the enactment or repeal under Subsection (5)(e)(i).
- (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

(6)

- (a) Before a city or town legislative body submits an opinion question to the residents of the city or town under Subsection (1), the city or town legislative body shall:
 - (i) submit to the county legislative body in which the city or town is located a written notice of the intent to submit the opinion question to the residents of the city or town; and
 - (ii) receive from the county legislative body:
 - (A) a written resolution passed by the county legislative body stating that the county legislative body is not seeking to impose a tax under Part 7, County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities; or
 - (B) a written statement that in accordance with Subsection (6)(b) the results of a county opinion question submitted to the residents of the county under Part 7, County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities, permit the city or town legislative body to submit the opinion question to the residents of the city or town in accordance with this part.
- (b)
 - (i) Within 60 days after the day the county legislative body receives from a city or town legislative body described in Subsection (6)(a) the notice of the intent to submit an opinion question to the residents of the city or town, the county legislative body shall provide the city or town legislative body:
 - (A) the written resolution described in Subsection (6)(a)(ii)(A); or
 - (B) written notice that the county legislative body will submit an opinion question to the residents of the county under Part 7, County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities, for the county to impose a tax under that part.
 - (ii) If the county legislative body provides the city or town legislative body the written notice that the county legislative body will submit an opinion question as provided in Subsection (6)(b)(i)(B), the county legislative body shall submit the opinion question by no later than, from the date the county legislative body sends the written notice, the later of:
 - (A) a 12-month period;
 - (B) the next regular primary election; or
 - (C) the next regular general election.
 - (iii) Within 30 days of the date of the canvass of the election at which the opinion question under Subsection (6)(b)(ii) is voted on, the county legislative body shall provide the city or town legislative body described in Subsection (6)(a) written results of the opinion question submitted by the county legislative body under Part 7, County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities, indicating that:
 - (A)
 - (I) the city or town legislative body may not impose a tax under this part because a majority of the county's registered voters voted in favor of the county imposing the tax and the county legislative body by a majority vote approved the imposition of the tax; or
 - (II) for at least 12 months from the date the written results are submitted to the city or town legislative body, the city or town legislative body may not submit to the county legislative body a written notice of the intent to submit an opinion question under this part because a majority of the county's registered voters voted against the county imposing the tax and the majority of the registered voters who are residents of the city or town described in Subsection (6)(a) voted against the imposition of the county tax; or
 - (B) the city or town legislative body may submit the opinion question to the residents of the city or town in accordance with this part because although a majority of the county's

registered voters voted against the county imposing the tax, the majority of the registered voters who are residents of the city or town voted for the imposition of the county tax.

- (c) Notwithstanding Subsection (6)(b), at any time a county legislative body may provide a city or town legislative body described in Subsection (6)(a) a written resolution passed by the county legislative body stating that the county legislative body is not seeking to impose a tax under Part 7, County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities, which permits the city or town legislative body to submit under Subsection (1) an opinion question to the city's or town's residents.

Amended by Chapter 422, 2017 General Session

59-12-1403 Distribution of revenues -- Administrative costs.

- (1)
- (a) The city or town legislative body shall by ordinance provide for the distribution of the entire amount of the revenues collected from the tax imposed by this part:
- (i) in accordance with this section; and
 - (ii) as stated in the opinion question described in Subsection 59-12-1402(1).
- (b) A city or town may participate in an interlocal agreement provided for under Section 59-12-704 and distribute the revenues collected from the tax imposed by this part to participants in the interlocal agreement.
- (c) Subject to Subsection (1)(a), revenues collected from the tax shall be used for one or more organizations or facilities defined in Section 59-12-702.
- (2) The commission shall retain and deposit an administrative charge in accordance with Section 59-1-306 from the revenues the commission collects from a tax under this part.

Amended by Chapter 309, 2011 General Session

Amended by Chapter 416, 2011 General Session

59-12-1405 Seller or certified service provider reliance on commission information.

A seller or certified service provider is not liable for failing to collect a tax at a tax rate imposed under this part if the seller's or certified service provider's failure to collect the tax is as a result of the seller's or certified service provider's reliance on incorrect data provided by the commission in a database created by the commission:

- (1) containing tax rates, boundaries, or local taxing jurisdiction assignments; or
- (2) indicating the taxability of tangible personal property, a product transferred electronically, or a service.

Amended by Chapter 203, 2009 General Session

59-12-1406 Certified service provider or model 2 seller reliance on commission certified software.

- (1) Except as provided in Subsection (2) and subject to Subsection (4), a certified service provider or model 2 seller is not liable for failing to collect a tax required under this part if:
- (a) the certified service provider or model 2 seller relies on software the commission certifies; and
 - (b) the certified service provider's or model 2 seller's failure to collect a tax required under this part is as a result of the seller's or certified service provider's reliance on incorrect data:
 - (i) provided by the commission; or
 - (ii) in the software the commission certifies.

- (2) The relief from liability described in Subsection (1) does not apply if a certified service provider or model 2 seller incorrectly classifies an item or transaction into a product category the commission certifies.
- (3) If the taxability of a product category is incorrectly classified in software the commission certifies, the commission shall:
 - (a) notify a certified service provider or model 2 seller of the incorrect classification of the taxability of a product category in software the commission certifies; and
 - (b) state in the notice required by Subsection (3)(a) that the certified service provider or model 2 seller is liable for failing to collect the correct amount of tax under this part on the incorrectly classified product category if the certified service provider or model 2 seller fails to correct the taxability of the item or transaction within 10 days after the day on which the certified service provider or model 2 seller receives the notice.
- (4) If a certified service provider or model 2 seller fails to correct the taxability of an item or transaction within 10 days after the day on which the certified service provider or model 2 seller receives the notice described in Subsection (3), the certified service provider or model 2 seller is liable for failing to collect the correct amount of tax under this part on the item or transaction.

Enacted by Chapter 384, 2008 General Session

59-12-1407 Purchaser relief from liability.

- (1)
 - (a) Except as provided in Subsection (1)(b), a purchaser is relieved from a penalty under Section 59-1-401 for failure to pay a tax due under this part or an underpayment if:
 - (i) the purchaser's seller or certified service provider relies on incorrect data provided by the commission:
 - (A) on a tax rate;
 - (B) on a boundary;
 - (C) on a taxing jurisdiction; or
 - (D) in the taxability matrix the commission provides in accordance with the agreement; or
 - (ii) the purchaser, regardless of whether the purchaser holds a direct payment permit in accordance with Section 59-12-107.1, relies on incorrect data provided by the commission:
 - (A) on a tax rate;
 - (B) on a boundary;
 - (C) on a taxing jurisdiction; or
 - (D) in the taxability matrix the commission provides in accordance with the agreement.
 - (b) For purposes of Subsection (1)(a), a purchaser is not relieved from a penalty under Section 59-1-401 for failure to pay a tax due under this part or an underpayment if the purchaser's, the purchaser's seller's, or the purchaser's certified service provider's reliance on incorrect data provided by the commission is as a result of conduct that is:
 - (i) fraudulent;
 - (ii) intentional; or
 - (iii) willful.
- (2) In addition to the relief from a penalty described in Subsection (1), a purchaser is not liable for a tax or interest under Section 59-1-402 for failure to pay a tax due under this part or an underpayment if:
 - (a) the purchaser's seller or certified service provider relies on:
 - (i) incorrect data provided by the commission:
 - (A) on a tax rate;

- (B) on a boundary; or
- (C) on a taxing jurisdiction; or
- (ii) an erroneous classification by the commission:
 - (A) in the taxability matrix the commission provides in accordance with the agreement; and
 - (B) with respect to a term:
 - (I) in the library of definitions; and
 - (II) that is:
 - (Aa) listed as taxable or exempt;
 - (Bb) included in or excluded from "sales price"; or
 - (Cc) included in or excluded from a definition; or
- (b) the purchaser, regardless of whether the purchaser holds a direct payment permit in accordance with Section 59-12-107.1, relies on:
 - (i) incorrect data provided by the commission:
 - (A) on a tax rate;
 - (B) on a boundary; or
 - (C) on a taxing jurisdiction; or
 - (ii) an erroneous classification by the commission:
 - (A) in the taxability matrix the commission provides in accordance with the agreement; and
 - (B) with respect to a term:
 - (I) in the library of definitions; and
 - (II) that is:
 - (Aa) listed as taxable or exempt;
 - (Bb) included in or excluded from "sales price"; or
 - (Cc) included in or excluded from a definition.

Enacted by Chapter 384, 2008 General Session