



# THE UTAH TAXPAYER

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## July Special Session Ensures Manufacturing Sales Tax Exemption, Collection of Remote Sales Taxes

Taxpayers enjoyed significant victories during July’s special session held by the Utah Legislature. Lawmakers addressed three tax related bills that included issues such as Utah’s treatment of collection of sales taxes from online retailers, sales tax exemptions for manufacturers and mining operations, corporate income tax changes and the creation of a Utah personal exemption in the individual income tax code.

Here is a recap of the tax related bills the legislature passed in the session:

**SB 2001:** This legislation is a result of the Wayfair Inc. vs. South Dakota ruling the Supreme Court issued in June dealing with remote sales taxes. The bill put a structure in place for Utah to begin requiring out-of-state online retailers to collect and remit sales taxes to the state of Utah. The bill follows the South Dakota law framework and calls for Utah to begin requiring the retailers to collect and remit on January 1, 2019.

The legislation contains a small business exemption. Meaning only those who have a total of sales greater than \$100,000 to Utahns or have 200 or more transactions in the state will have to collect and remit sales taxes to the state. This protects those individuals who sell online but not in a significant manner from having to deal with compliance in collecting and remitting sales taxes.

This change in how Utah handles online sales tax collection is significant as it levels the playing field among retailers. No longer will online retailers have a leg up on physical stores because they don’t have to collect sales tax. Now all retailers should be collecting and remitting. The legislation will allow the free market to determine the destiny of these retail competitors and not out of date tax laws that were not written for a 21<sup>st</sup> century economy.

The legislation also changes the effective date for the manufacturing sales tax exemption also nicknamed the 3-year-life bill around the Capitol. Earlier this year your Taxpayers Association passed legislation

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# My Corner: The Legislature Must Keep its Promise to Cut Taxes in Proportion to Remote Sales Tax Revenues



Association President  
Howard Stephenson

Finally, Utah's brick and mortar retailers now are placed on an equal sales tax footing with out-of-state retailers through the collection of remote sales taxes.

For years, out-of-state retailers have been able to bypass the collection and remittance of sales taxes across the country giving them an approximate 7% tax advantage

when selling to Utah customers. But thanks to action taken by the Supreme Court in *Wayfair v. South Dakota*, and legislation ([SB 2001](#)) passed by the Utah Legislature in a July 2018 Special Session, remote sellers are now required to remit sales taxes to the state effective January 1, 2019. While the state has already collected roughly 60% of estimated \$200 million in sales taxes from online purchases due to voluntary compliance agreements from large vendors such as Amazon, this legislation now requires all remaining out-of-state retailers to collect and remit sales taxes to the state.

## Senator Bramble Urges Congress to Leave Wayfair Alone

Senator Curtis Bramble (R – Provo) testified in Washington, D.C. before the House Judiciary Committee in July urging Congress to react to the *Wayfair* decision in the same way they have toward the remote sales tax issue in the past, by doing nothing.

Included in the panel were prominent persons calling for Congress to undo the *Wayfair* decision by passing legislation prohibiting the state collection of sales taxes from remote sellers. Bramble's eloquence and [convincing arguments](#) were powerful in countering those who wanted Congress to undo *Wayfair*.

According to Bramble, in 1999, the National Governors Association and National Conference of State Legislatures convened elected policymakers, tax administrators and retailers from over 40 states to develop a sales tax system that was less complex in order to resolve the issue of "undue burdens" outlined by the [Supreme Court's 1992 Quill decision](#).

This culminated in the creation of the Streamlined Sales and Use Tax Agreement, which has been adopted by over half of the states that levy a sales tax. Bramble reminded the committee that in 2003, the Streamlined states petitioned Congress for the authority to require out-of-state sellers to collect and remit applicable sales taxes, but Congress did not act.

The Marketplace Fairness Act (MFA), legislation that would grant states that met certain simplification requirements the ability to collect already owed sales taxes on out-of-state purchases, overwhelmingly passed the United States Senate, 69-27, in May of 2013, but the House never even held a hearing on the bill. To address the concerns of this committee, members of Congress from both parties who believe that all businesses should compete on a level playing



Sen. Curt Bramble



Sen. Wayne Harper



Sen. Curt Bramble testifies before the House Judiciary Committee in Washington, D.C. on July 24, 2018.

field introduced the Remote Transactions Parity Act (RTPA), which states reluctantly supported given that they would be ceding state sovereignty in order to achieve sales tax parity, but Congress did not act.

Senator Bramble noted that although the Court eliminated the physical presence standard in its recent decision, it also established guidelines and safeguards that states must follow in order to enforce their sales tax laws on remote sales: (1) a safe harbor for small sellers; (2) no retroactive tax collection; (3) single, state-level administration of sales taxes; (4) a simplified tax rate structure; (5) uniform definitions and other rules; and (6) access to software provided by the state, with immunity for those who rely on it. He said there is no reason to believe that states will not follow these guidelines, which is proven by the laws and actions that states have already implemented since the June 21 decision.

Bramble's work on this issue cannot be ignored. He has represented Utah taxpayers well in fighting for fairness among competitors and sought to keep the tax code easy to comply with.

### **Senator Harper Calls on the Legislature to Keep its Promise**

One of the first principles of sound tax policy is equity among competitors, according to Senator Wayne Harper who has represented Utah on the Streamlined Sales Tax Project for 19 years together with others including then Tax Commission Chair Bruce Johnson who also chaired the Project for several years. "Every transaction, every customer, every business, should be treated the same," Harper said in an interview on [Red Meat Radio on July 29, 2018](#). "The state should have a blindfold on and not prefer one person or business over another. If the transaction and the product is the same: tax it the same, treat it the same."

Harper sponsored legislation putting Utah on the path to collecting remote sales taxes if and when the Supreme

Court or Congress acted to allow it. Harper's 2013 legislation and 2016's [SB 68](#) legislation canonized the legislature's agreement that when the new revenues flow from collecting from remote sellers, Utah would not use the estimated \$200 million to grow government but would instead reduce taxes correspondingly. It was clear that the Utah Legislature would not have passed the legislation without the promise that it would not result in a net tax increase.

Senator Harper said that in the special session the Legislature cut taxes by \$85 million through family income tax reductions and elimination of the three-year life sales tax penalty on manufacturing and mining. "We're part way there," he said, "we still have a cut of \$115 million to make in the next General Session."

Some legislators claim that the commitment to cut taxes is no longer valid because voluntary compliance prior to the Wayfair decision was not anticipated and estimated \$140 million in remote sales taxes has been collected. Senator Harper says the spirit of the statute requires tax cuts equal to the whole amount collected from remote sellers whether voluntary or not.

Sen. Harper also deserves recognition for his efforts on this issue. He has worked for years to bring fairness in state tax code in this area and I applaud him for continuing to fight for taxpayers to prevent government growth with this new revenue.

In its July meeting, the Revenue and Taxation Interim Committee passed a motion to examine best options for cutting taxes that will ensure that the Legislature keep its promise. Your Taxpayers Association has made fulfillment of the legislative promise as one of its top priorities for the upcoming General Session of the Utah Legislature.

## **July Special Session Ensures Manufacturing Sales Tax Exemption, Collection of Remote Sales Taxes (continued)**

to trigger the sales tax exemption based on when the state collects \$55 million in online sales taxes (our hope was the Supreme Court would rule the way it did to allow states to collect the taxes). Thanks to the work of President Niederhauser and Sen. Stephenson, that trigger was amended and passed in the special session. Now starting January 1, 2019, the manufacturing sales tax exemption will go into full effect. Because of this amendment we will not have to wait for the \$55 million

to be collected, it simply will just be an available exemption next year.

There was a point in the negotiations on this bill when we thought this exemption might be in jeopardy as lawmakers were hunting for money to pay for the next item discussed in this article. However, President Niederhauser was able to convince Republican leaders to protect this exemption and to begin it next year instead.

You can read the bill by clicking [here](#).

**HB 2003:** This legislation modified Utah's taxpayer tax credit to create a Utah personal exemption for individuals. When federal reform passed last December it eliminated the federal personal exemption. That change resulted in a potential tax increase on Utah families with multiple dependents in middle income ranges for their state income taxes. To fully offset the impact of the federal change Utah would have needed somewhere between \$70 million to \$80 million. Lawmakers did not find that much money to offset the increase but they did appropriate \$30 million to give these families some relief from the impact that the federal changes would cause on state income taxes. It is expected that when combining state and federal income taxes together these families will still see a net tax cut overall despite a potential increase in state taxes.

To pay for the tax cut, lawmakers amended Utah's Net Operating Loss (NOL) rules to align it with the federal standard (eliminates any NOL look backs but allows for a taxpayer to carry forward 80% of taxable income). They also coupled state tax code with federal tax code to collect taxes on interest deductibility of corporations (limiting the write offs for that interest at 30%) and eliminated the ability for major banks to write off their FDIC fees on their taxes. These three changes, and an additional \$6 million left over in the budget from the general session, gave legislators the \$30 million needed to create the Utah personal exemption. You can read HB 2003 [here](#).

**HB 2002:** The final tax bill considered dealt with repatriated income. This bill is one the Association had been working with the Interim Revenue and Taxation

Interim Committee on. In the committee's special meeting on Thursday, July 12<sup>th</sup>, the committee voted to draft legislation that would decouple Utah from the federal code so Utah would not collect taxes on any repatriated income.

The bill that passed in the special session does the opposite of that.

Rep. Steve Eliason, R-Sandy, proposed and passed legislation that couples Utah's tax code with the federal tax code for repatriated income. This means companies that bring back income that they earned in other countries to invest in the United States will now pay a tax in Utah on that income.

To add full context, the legislature passed legislation during the 2018 General Session to collect taxes on this money but the effective date was incorrect in the bill. The bill passed in the special session fixed that date.

However, since the end of the session lawmakers and the business community learned more about the impact of federal taxes on state taxes and identified this repatriated income as an issue to address. We had been working with our allies in the business community to find a way to allow Utah to decouple from this portion of the federal tax code but were dealt a blow in that effort by the passage of this legislation. We will look towards the 2019 session now as the place to make up ground on this issue.

You can read HB 2002 [here](#).

Overall the special session was a major success for Utah taxpayers. Families received crucial tax relief and Utah's businesses will benefit from the manufacturing and mining sales tax exemption and online sales tax collections.

## How to Appeal the County's Valuation of Your Property

Utah's 29 counties recently mailed property tax notices to every Utah property owner. These notices indicate the parcel's market value, the taxable value, the property tax rate each taxing entity with jurisdiction over the parcel intends to levy, the anticipated total property tax due on the property, and any Truth-in-Taxation hearings being held in the area. If you believe the county assessor set your property higher than what it would sell for, state law allows you to appeal the valuation.

To begin the appeal process, property owners must notify the county's Board of Equalization that they intend to appeal their valuation. Each county accepts

notification in different ways. For information on how to notify the Board of Equalization in your county, see instructions included with your mailed property tax notice or call your county assessor's office.

After notifying the county that you plan to appeal the valuation of your property, the next step is to gather comparable sales data justifying your belief that the county assessor overvalued your property.

If you purchased the property within the past year from an unrelated party, the closing or settlement statement for that sale suffices. If you choose to share it, that sales price will determine your property's fair market value.

You can also identify at least 3 properties similar in style, quality, size, age, location, land area, etc, and then determine the assessed value or sales price of those 3 properties. The least expensive way to obtain comparable sales data is to contact a real estate agent. Most agents will provide comparable sales data at no charge.

You will need to describe your property's location, physical characteristics (number of bedrooms and bathrooms), size (acreage, finished and unfinished square feet in the home), age, etc. With that information, a Realtor can usually identify several comparable sales within a few days.

Another option is to hire a professional to conduct an appraisal of your property. Other useful resources include The Appraisal Institute and the American Society of Appraisers. In Utah, a typical residential appraisal costs about \$350, and takes about one week to complete. If you recently refinanced your property, the bank appraisal can be used in your appeal. Regardless of how you collect comparable sales data, it's important to collect documents supporting your

comparable sales data. These documents may include listings for your comparable sales, county assessments for those properties, or the appraisal you paid for. These documents will make your appeal run smoother and give you a better chance of winning your appeal.

Please be aware of one cautionary note: If your comparable sales data, including your property's closing documents, show the value of your property to be higher than what the assessment notice states, then the county may increase your assessed valuation even higher. You may be frustrated that your assessed valuation went up 30% in one year, but that frustration will fall on deaf ears if you bought your property for even more than what the county assessed.

Armed with the best comparable sales data, you will be well prepared to have your property value lowered in your appeals hearing with the Board of Equalization.

## Utah's Sales Taxes on Soda, Candy, & Groceries Are Complicated

From time to time you may find yourself craving a sweet treat from the store. When you give in to the urge and head to the candy or soda aisle you'll likely pick out your favorite indulgence and head to the cashier.

On the way to the cashier you may remember you need to pick up bread, so you grab a loaf and continue to the checkout stand. What you may not realize is that you might be paying two different sales tax rates at checkout: one rate on the bread and, potentially, a different rate on the candy bar.

If this sounds confusing, it is. This illustrates the problem that exists when policy makers try to exempt food, candy and soda from the sales tax base.

Currently in Utah the overall sales tax on food is 3%. The state charges a 1.75% sales tax rate on food while counties charge .25% and cities charge 1%.

For non-food items (general sales tax), the state rate is 4.7%, the county rate is .25% and cities levy a rate of 1%. Additional items that are added to the sales tax rate also include local options sales taxes for transit and transportation, sales taxes that fund recreation, zoo, museum and art projects in a city or county and some cities may add a "resort tax" or a rural hospital tax.

Even though this is the tax that most people interact with on a daily basis, it can be one of the more confusing

taxes due to the varying rates that a person may pay based on where they are making the purchase. Lawmakers make it even more confusing when they change the rate depending on the product purchased, like food.

It may be well intentioned to want to eliminate the sales tax on food, but details can complicate the issue. Questions such as: How do we define food? Should all food be exempt, meaning we pay no sales tax at a restaurant and the grocery store? Does it only mean food at the grocery store? If so, why? What is the difference between picking up dinner at a fast food restaurant versus picking up a rotisserie chicken at the grocery store?

For food to qualify for the lower rate, it must be "unprepared" food. That means if you purchase a premade sandwich from the deli, you will pay the full tax rate. However, if you purchase the ingredients to make a deli sandwich, you pay the lower tax rate on those items. This has proven to still be a confusing litmus test for what qualifies for the lower rate and what doesn't. Currently a bag of crushed ice qualifies for the lower sales tax rate while a bag with a block of ice in it does not.

Another example would be fruit. Purchased in a plastic or mesh bag with twist ties, it would be charged the lower tax rate but, fruit purchased on a fruit tray would pay the higher rate.

Candy is an even more difficult scenario to imagine. The key for candy, under Utah law, is if it contains flour or not. If you purchase a 3 Musketeers Bar or a Reese's Peanut Butter Cup you will pay the full sales tax rate. If you purchase a Kit Kat or Twix you pay the lower rate because they contain flour. Enjoy reading the full ingredient list to find out what your candy is considered!

According to the Washington D.C. based Tax Foundation, 32 states exempt groceries from sales tax. Of those, 22 of them treat candy or soda differently than groceries. In these states, candy or soda are taxed at a higher rate. Utah is one of six states that charges a lower rate for food. Of those six states, four include candy and soda in the lower rate.

Policymakers have various reasons for wanting to create different sales tax rates on food, candy and soda. What they are forgetting is anytime you take items out of the tax base, you are increasing the pressure to raise tax rates to maintain revenue. Taking these items out flies in the face of broadening the tax base in order to lower the rate.

Idaho has opted to treat food, soda and candy the same as all other taxable items and does not lower the rate. To decrease the tax burden that is placed on food,

our neighbors to the north offer a grocery credit which can be claimed on the state's income tax return. The credit is \$100 per individual under the age of 65 (including dependents) and \$120 per individual for residents age 65 and older. The credit is offered to all Idaho residents regardless of income level. It also applies to residents who pay no state income taxes (income is below the threshold at which a state income tax return must be filed), they only need to submit a form to the Idaho State Tax Commission. Idaho does limit the credit as it does not allow for SNAP benefit (food stamps) recipients to participate in the tax credit.

This issue has been discussed for a number of years in the Legislature since Utah split the sales tax rate to lower the tax on food in the mid 2000's. During the 2018 session, legislation was considered to eliminate the state's portion of tax on food but increase the overall state sales tax. The bill also increased the tax on candy that does qualify as food to the full taxable rate. The bill passed the House but failed in a Senate committee.

Your Taxpayers Association believes the best policy is to broaden the base and lower the rate and defends that belief on the Hill. Taxes should always be simple to understand and administer. Any effort to further complicate Utah's sales tax law is bad for the retailers that must collect and remit the tax and bad for taxpayers as they are left uncertain what tax or how many different taxes they may be paying at the cash register.

### Association Accomplishments During July:

- ❖ Participated in Revenue and Taxation Interim Committee meetings
- ❖ Lobbied on behalf of taxpayers during the July Special Session
- ❖ Helped pass legislation that puts the manufacturers' tax exemption into effect January 1, 2019
- ❖ Compiled budget information from cities and school districts

#### In the News

- ❖ Property Tax Increases
  - [Did Utah's Truth-In-Taxation Law Backfire?](#) : Salt Lake Tribune
- ❖ Online Sales Tax
  - [Wayfair vs. South Dakota: Utah's Manufacturers' Tax Exemption](#): Bloomberg
  - [Utah Mining Association Newsletter](#)