

CURRENCY AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad J. Galvez

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to currency.

Highlighted Provisions:

This bill:

- ▶ exempts specie legal tender from the Pawnshop and Secondhand Merchandise Transaction Information Act;
- ▶ addresses provisions related to specie legal tender, including:
 - renaming the Legal Tender Act to the Specie Legal Tender Act;
 - defining "specie legal tender" to mean gold or silver coin issued by the United States or certain other gold or silver coin if authorized by a court of competent jurisdiction or congress;
 - providing that specie legal tender is legal tender in the state;
 - providing that a person may not compel another person to tender or accept specie legal tender except as expressly provided by contract;
 - repealing obsolete language;
 - requiring the attorney general to enforce the Specie Legal Tender Act; and
 - providing a severability clause;
- ▶ addresses an income tax credit for certain capital gains on a transaction involving legal tender;
- ▶ addresses a sales and use tax exemption for certain currency or coins;



- 28 ▶ addresses the remittance of sales and use taxes on certain transactions involving
- 29 specie legal tender;
- 30 ▶ addresses the construction of a statute or administrative rule involving legal tender;
- 31 and
- 32 ▶ makes technical and conforming changes.

33 Money Appropriated in this Bill:

34 None

35 Other Special Clauses:

36 This bill provides an effective date.

37 This bill provides for retrospective operation.

38 Utah Code Sections Affected:

39 AMENDS:

- 40 **13-32a-103.5**, as enacted by Laws of Utah 2009, Chapter 272
- 41 **59-1-1501**, as enacted by Laws of Utah 2011, Chapter 302
- 42 **59-1-1502**, as enacted by Laws of Utah 2011, Chapter 302
- 43 **59-1-1503**, as enacted by Laws of Utah 2011, Chapter 302
- 44 **59-10-1028**, as enacted by Laws of Utah 2011, Chapter 302
- 45 **59-12-104**, as last amended by Laws of Utah 2011, Chapters 288, 314, 370, and 391
- 46 **59-12-107**, as last amended by Laws of Utah 2009, Chapter 212

47 ENACTS:

- 48 **59-1-1501.1**, Utah Code Annotated 1953
- 49 **59-1-1505**, Utah Code Annotated 1953
- 50 **59-1-1506**, Utah Code Annotated 1953
- 51 **63G-3-801**, Utah Code Annotated 1953
- 52 **63G-3-802**, Utah Code Annotated 1953
- 53 **68-3-15**, Utah Code Annotated 1953

54 REPEALS:

- 55 **59-1-1504**, as enacted by Laws of Utah 2011, Chapter 302



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

58 Section 1. Section **13-32a-103.5** is amended to read:

90 coin that is issued by the United States, is legal tender in the state; or

91 (ii) expressly allows the state to recognize the gold or silver coin or bullion, other than
92 gold or silver coin that is issued by the United States, as legal tender in the state.

93 Section 5. Section **59-1-1503** is amended to read:

94 **59-1-1503. Nonrefundable credit -- Sales and use tax exemption -- Sales and use**
95 **tax remittance.**

96 ~~[(1) There is a nonrefundable credit established for any capital gains incurred from the~~
97 ~~exchange of gold and silver coin issued by the federal government for another form of legal~~
98 ~~tender as provided in Section 59-10-1028.]~~

99 (1) A nonrefundable individual income tax credit is allowed as provided in Section
100 59-10-1028 related to a capital gain on a transaction involving the exchange of one form of
101 legal tender for another form of legal tender.

102 ~~(2) [The exchange of gold and silver coin issued by the federal government for another~~
103 ~~form of legal tender is] Sales of currency or coin are exempt from sales and use taxes as~~
104 ~~provided in Subsection 59-12-104(50).~~

105 (3) The remittance of a sales and use tax on a transaction involving specie legal tender
106 is as provided in Section 59-12-107.

107 Section 6. Section **59-1-1505** is enacted to read:

108 **59-1-1505. Attorney general to enforce part.**

109 The attorney general shall enforce this part.

110 Section 7. Section **59-1-1506** is enacted to read:

111 **59-1-1506. Severability clause.**

112 If any provision of this part or the application of any provision to any person or
113 circumstance is held invalid by a final decision of a court of competent jurisdiction, the
114 remainder of this part shall be given effect without the invalid provision or application. The
115 provisions of this part are severable.

116 Section 8. Section **59-10-1028** is amended to read:

117 **59-10-1028. Nonrefundable tax credit for capital gain transactions on the**
118 **exchange of one form of legal tender for another form of legal tender.**

119 (1) As used in this section:

120 (a) "Capital gain transaction" means a transaction that results in a:

121 (i) short-term capital gain; or

122 (ii) long-term capital gain.

123 (b) "Long-term capital gain" is as defined in Section 1222, Internal Revenue Code.

124 (c) "Long-term capital loss" is as defined in Section 1222, Internal Revenue Code.

125 (d) "Net capital gain" means the amount by which the sum of long-term capital gains

126 and short-term capital gains on a claimant's, estate's, or trust's transactions from exchanges

127 made for a taxable year of one form of legal tender for another form of legal tender exceeds the

128 sum of long-term capital losses and short-term capital losses on those transactions for that

129 taxable year.

130 (e) "Short-term capital loss" is as defined in Section 1222, Internal Revenue Code.

131 [(e)] (f) "Short-term capital gain" is as defined in Section 1222, Internal Revenue Code.

132 (2) Except as provided in Section 59-10-1002.2, for taxable years beginning on or after

133 January 1, 2012, a claimant, estate, or trust may claim a nonrefundable tax credit equal to the

134 product of:

135 (a) [~~to the extent a capital gain is not offset by a capital loss under Chapter 1,~~

136 ~~Subchapter P, Capital Gains and Losses, Internal Revenue Code, the total]~~ to the extent a net

137 capital gain is included in taxable income, the amount of the claimant's, estate's, or trust's

138 [~~short-term capital gain or long-term]~~ net capital gain on [a] capital gain [transaction]

139 transactions from [an exchange] exchanges made on or after January 1, 2012, [of gold or silver

140 coin issued by the federal government] for a taxable year, of one form of legal tender for

141 another form of legal tender; and

142 (b) 5%.

143 (3) A claimant, estate, or trust may not carry forward or carry back a tax credit under

144 this section.

145 (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

146 commission may make rules to implement this section.

147 Section 9. Section **59-12-104** is amended to read:

148 **59-12-104. Exemptions.**

149 The following sales and uses are exempt from the taxes imposed by this chapter:

150 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax

151 under Chapter 13, Motor and Special Fuel Tax Act;

152 (2) subject to Section 59-12-104.6, sales to the state, its institutions, and its political
153 subdivisions; however, this exemption does not apply to sales of:

154 (a) construction materials except:

155 (i) construction materials purchased by or on behalf of institutions of the public
156 education system as defined in Utah Constitution Article X, Section 2, provided the
157 construction materials are clearly identified and segregated and installed or converted to real
158 property which is owned by institutions of the public education system; and

159 (ii) construction materials purchased by the state, its institutions, or its political
160 subdivisions which are installed or converted to real property by employees of the state, its
161 institutions, or its political subdivisions; or

162 (b) tangible personal property in connection with the construction, operation,
163 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities
164 providing additional project capacity, as defined in Section 11-13-103;

165 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:

166 (i) the proceeds of each sale do not exceed \$1; and

167 (ii) the seller or operator of the vending machine reports an amount equal to 150% of
168 the cost of the item described in Subsection (3)(b) as goods consumed; and

169 (b) Subsection (3)(a) applies to:

170 (i) food and food ingredients; or

171 (ii) prepared food;

172 (4) (a) sales of the following to a commercial airline carrier for in-flight consumption:

173 (i) alcoholic beverages;

174 (ii) food and food ingredients; or

175 (iii) prepared food;

176 (b) sales of tangible personal property or a product transferred electronically:

177 (i) to a passenger;

178 (ii) by a commercial airline carrier; and

179 (iii) during a flight for in-flight consumption or in-flight use by the passenger; or

180 (c) services related to Subsection (4)(a) or (b);

181 (5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts
182 and equipment:

183 (A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002
184 North American Industry Classification System of the federal Executive Office of the
185 President, Office of Management and Budget; and

186 (II) for:

187 (Aa) installation in an aircraft, including services relating to the installation of parts or
188 equipment in the aircraft;

189 (Bb) renovation of an aircraft; or

190 (Cc) repair of an aircraft; or

191 (B) for installation in an aircraft operated by a common carrier in interstate or foreign
192 commerce; or

193 (ii) beginning on October 1, 2008, sales of parts and equipment for installation in an
194 aircraft operated by a common carrier in interstate or foreign commerce; and

195 (b) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,
196 a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a
197 refund:

198 (i) if the sale is made on or after July 1, 2008, but on or before September 30, 2008;

199 (ii) as if Subsection (5)(a)(i)(B) were in effect on the day on which the sale is made;

200 (iii) if the person did not claim the exemption allowed by Subsection (5)(a)(i)(B) for
201 the sale prior to filing for the refund;

202 (iv) for sales and use taxes paid under this chapter on the sale;

203 (v) in accordance with Section 59-1-1410; and

204 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if
205 the person files for the refund on or before September 30, 2011;

206 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
207 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
208 exhibitor, distributor, or commercial television or radio broadcaster;

209 (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal
210 property if the cleaning or washing of the tangible personal property is not assisted cleaning or
211 washing of tangible personal property;

212 (b) if a seller that sells at the same business location assisted cleaning or washing of
213 tangible personal property and cleaning or washing of tangible personal property that is not

214 assisted cleaning or washing of tangible personal property, the exemption described in
215 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning
216 or washing of the tangible personal property; and

217 (c) for purposes of Subsection (7)(b) and in accordance with Title 63G, Chapter 3,
218 Utah Administrative Rulemaking Act, the commission may make rules:

219 (i) governing the circumstances under which sales are at the same business location;
220 and

221 (ii) establishing the procedures and requirements for a seller to separately account for
222 sales of assisted cleaning or washing of tangible personal property;

223 (8) sales made to or by religious or charitable institutions in the conduct of their regular
224 religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are
225 fulfilled;

226 (9) sales of a vehicle of a type required to be registered under the motor vehicle laws of
227 this state if the vehicle is:

228 (a) not registered in this state; and

229 (b) (i) not used in this state; or

230 (ii) used in this state:

231 (A) if the vehicle is not used to conduct business, for a time period that does not
232 exceed the longer of:

233 (I) 30 days in any calendar year; or

234 (II) the time period necessary to transport the vehicle to the borders of this state; or

235 (B) if the vehicle is used to conduct business, for the time period necessary to transport
236 the vehicle to the borders of this state;

237 (10) (a) amounts paid for an item described in Subsection (10)(b) if:

238 (i) the item is intended for human use; and

239 (ii) (A) a prescription was issued for the item; or

240 (B) the item was purchased by a hospital or other medical facility; and

241 (b) (i) Subsection (10)(a) applies to:

242 (A) a drug;

243 (B) a syringe; or

244 (C) a stoma supply; and

245 (ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
246 commission may by rule define the terms:

247 (A) "syringe"; or

248 (B) "stoma supply";

249 (11) sales or use of property, materials, or services used in the construction of or
250 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

251 (12) (a) sales of an item described in Subsection (12)(c) served by:

252 (i) the following if the item described in Subsection (12)(c) is not available to the
253 general public:

254 (A) a church; or

255 (B) a charitable institution;

256 (ii) an institution of higher education if:

257 (A) the item described in Subsection (12)(c) is not available to the general public; or

258 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
259 offered by the institution of higher education; or

260 (b) sales of an item described in Subsection (12)(c) provided for a patient by:

261 (i) a medical facility; or

262 (ii) a nursing facility; and

263 (c) Subsections (12)(a) and (b) apply to:

264 (i) food and food ingredients;

265 (ii) prepared food; or

266 (iii) alcoholic beverages;

267 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property
268 or a product transferred electronically by a person:

269 (i) regardless of the number of transactions involving the sale of that tangible personal
270 property or product transferred electronically by that person; and

271 (ii) not regularly engaged in the business of selling that type of tangible personal
272 property or product transferred electronically;

273 (b) this Subsection (13) does not apply if:

274 (i) the sale is one of a series of sales of a character to indicate that the person is
275 regularly engaged in the business of selling that type of tangible personal property or product

276 transferred electronically;

277 (ii) the person holds that person out as regularly engaged in the business of selling that
278 type of tangible personal property or product transferred electronically;

279 (iii) the person sells an item of tangible personal property or product transferred
280 electronically that the person purchased as a sale that is exempt under Subsection (25); or

281 (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of
282 this state in which case the tax is based upon:

283 (A) the bill of sale or other written evidence of value of the vehicle or vessel being
284 sold; or

285 (B) in the absence of a bill of sale or other written evidence of value, the fair market
286 value of the vehicle or vessel being sold at the time of the sale as determined by the
287 commission; and

288 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
289 commission shall make rules establishing the circumstances under which:

290 (i) a person is regularly engaged in the business of selling a type of tangible personal
291 property or product transferred electronically;

292 (ii) a sale of tangible personal property or a product transferred electronically is one of
293 a series of sales of a character to indicate that a person is regularly engaged in the business of
294 selling that type of tangible personal property or product transferred electronically; or

295 (iii) a person holds that person out as regularly engaged in the business of selling a type
296 of tangible personal property or product transferred electronically;

297 (14) (a) except as provided in Subsection (14)(b), amounts paid or charged on or after
298 July 1, 2006, for a purchase or lease by a manufacturing facility except for a cogeneration
299 facility, of the following:

300 (i) machinery and equipment that:

301 (A) are used:

302 (I) for a manufacturing facility except for a manufacturing facility that is a scrap
303 recycler described in Subsection 59-12-102(55)(b):

304 (Aa) in the manufacturing process;

305 (Bb) to manufacture an item sold as tangible personal property; and

306 (Cc) beginning on July 1, 2009, in a manufacturing facility described in this Subsection

307 (14)(a)(i)(A)(I) in the state; or
308 (II) for a manufacturing facility that is a scrap recycler described in Subsection
309 59-12-102(55)(b):
310 (Aa) to process an item sold as tangible personal property; and
311 (Bb) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
312 (14)(a)(i)(A)(II) in the state; and
313 (B) have an economic life of three or more years; and
314 (ii) normal operating repair or replacement parts that:
315 (A) have an economic life of three or more years; and
316 (B) are used:
317 (I) for a manufacturing facility except for a manufacturing facility that is a scrap
318 recycler described in Subsection 59-12-102(55)(b):
319 (Aa) in the manufacturing process; and
320 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(I) in the
321 state; or
322 (II) for a manufacturing facility that is a scrap recycler described in Subsection
323 59-12-102(55)(b):
324 (Aa) to process an item sold as tangible personal property; and
325 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(II) in the
326 state;
327 (b) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a
328 manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006,
329 of the following:
330 (i) machinery and equipment that:
331 (A) are used:
332 (I) in the manufacturing process;
333 (II) to manufacture an item sold as tangible personal property; and
334 (III) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
335 (14)(b) in the state; and
336 (B) have an economic life of three or more years; and
337 (ii) normal operating repair or replacement parts that:

338 (A) are used:
339 (I) in the manufacturing process; and
340 (II) in a manufacturing facility described in this Subsection (14)(b) in the state; and
341 (B) have an economic life of three or more years;
342 (c) amounts paid or charged for a purchase or lease made on or after January 1, 2008,
343 by an establishment described in NAICS Subsector 212, Mining (except Oil and Gas), or
344 NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for
345 Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining,
346 of the 2002 North American Industry Classification System of the federal Executive Office of
347 the President, Office of Management and Budget, of the following:
348 (i) machinery and equipment that:
349 (A) are used:
350 (I) (Aa) in the production process, other than the production of real property; or
351 (Bb) in research and development; and
352 (II) beginning on July 1, 2009, in an establishment described in this Subsection (14)(c)
353 in the state; and
354 (B) have an economic life of three or more years; and
355 (ii) normal operating repair or replacement parts that:
356 (A) have an economic life of three or more years; and
357 (B) are used in:
358 (I) (Aa) the production process, except for the production of real property; and
359 (Bb) an establishment described in this Subsection (14)(c) in the state; or
360 (II) (Aa) research and development; and
361 (Bb) in an establishment described in this Subsection (14)(c) in the state;
362 (d) (i) amounts paid or charged for a purchase or lease made on or after July 1, 2010,
363 but on or before June 30, 2014, by an establishment described in NAICS Code 518112, Web
364 Search Portals, of the 2002 North American Industry Classification System of the federal
365 Executive Office of the President, Office of Management and Budget, of the following:
366 (A) machinery and equipment that:
367 (I) are used in the operation of the web search portal;
368 (II) have an economic life of three or more years; and

369 (III) are used in a new or expanding establishment described in this Subsection (14)(d)
370 in the state; and

371 (B) normal operating repair or replacement parts that:

372 (I) are used in the operation of the web search portal;

373 (II) have an economic life of three or more years; and

374 (III) are used in a new or expanding establishment described in this Subsection (14)(d)
375 in the state; or

376 (ii) amounts paid or charged for a purchase or lease made on or after July 1, 2014, by
377 an establishment described in NAICS Code 518112, Web Search Portals, of the 2002 North
378 American Industry Classification System of the federal Executive Office of the President,
379 Office of Management and Budget, of the following:

380 (A) machinery and equipment that:

381 (I) are used in the operation of the web search portal; and

382 (II) have an economic life of three or more years; and

383 (B) normal operating repair or replacement parts that:

384 (I) are used in the operation of the web search portal; and

385 (II) have an economic life of three or more years;

386 (e) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter 3,
387 Utah Administrative Rulemaking Act, the commission:

388 (i) shall by rule define the term "establishment"; and

389 (ii) may by rule define what constitutes:

390 (A) processing an item sold as tangible personal property;

391 (B) the production process, except for the production of real property;

392 (C) research and development; or

393 (D) a new or expanding establishment described in Subsection (14)(d) in the state; and

394 (f) on or before October 1, 2011, and every five years after October 1, 2011, the

395 commission shall:

396 (i) review the exemptions described in this Subsection (14) and make
397 recommendations to the Revenue and Taxation Interim Committee concerning whether the
398 exemptions should be continued, modified, or repealed; and

399 (ii) include in its report:

- 400 (A) an estimate of the cost of the exemptions;
- 401 (B) the purpose and effectiveness of the exemptions; and
- 402 (C) the benefits of the exemptions to the state;
- 403 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:
- 404 (i) tooling;
- 405 (ii) special tooling;
- 406 (iii) support equipment;
- 407 (iv) special test equipment; or
- 408 (v) parts used in the repairs or renovations of tooling or equipment described in
- 409 Subsections (15)(a)(i) through (iv); and
- 410 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:
- 411 (i) the tooling, equipment, or parts are used or consumed exclusively in the
- 412 performance of any aerospace or electronics industry contract with the United States
- 413 government or any subcontract under that contract; and
- 414 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
- 415 title to the tooling, equipment, or parts is vested in the United States government as evidenced
- 416 by:
- 417 (A) a government identification tag placed on the tooling, equipment, or parts; or
- 418 (B) listing on a government-approved property record if placing a government
- 419 identification tag on the tooling, equipment, or parts is impractical;
- 420 (16) sales of newspapers or newspaper subscriptions;
- 421 (17) (a) except as provided in Subsection (17)(b), tangible personal property or a
- 422 product transferred electronically traded in as full or part payment of the purchase price, except
- 423 that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer,
- 424 trade-ins are limited to other vehicles only, and the tax is based upon:
- 425 (i) the bill of sale or other written evidence of value of the vehicle being sold and the
- 426 vehicle being traded in; or
- 427 (ii) in the absence of a bill of sale or other written evidence of value, the then existing
- 428 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
- 429 commission; and
- 430 (b) notwithstanding Subsection (17)(a), Subsection (17)(a) does not apply to the

431 following items of tangible personal property or products transferred electronically traded in as
432 full or part payment of the purchase price:

433 (i) money;

434 (ii) electricity;

435 (iii) water;

436 (iv) gas; or

437 (v) steam;

438 (18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property
439 or a product transferred electronically used or consumed primarily and directly in farming
440 operations, regardless of whether the tangible personal property or product transferred
441 electronically:

442 (A) becomes part of real estate; or

443 (B) is installed by a:

444 (I) farmer;

445 (II) contractor; or

446 (III) subcontractor; or

447 (ii) sales of parts used in the repairs or renovations of tangible personal property or a
448 product transferred electronically if the tangible personal property or product transferred
449 electronically is exempt under Subsection (18)(a)(i); and

450 (b) notwithstanding Subsection (18)(a), amounts paid or charged for the following are
451 subject to the taxes imposed by this chapter:

452 (i) (A) subject to Subsection (18)(b)(i)(B), the following if used in a manner that is
453 incidental to farming:

454 (I) machinery;

455 (II) equipment;

456 (III) materials; or

457 (IV) supplies; and

458 (B) tangible personal property that is considered to be used in a manner that is
459 incidental to farming includes:

460 (I) hand tools; or

461 (II) maintenance and janitorial equipment and supplies;

462 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product
463 transferred electronically if the tangible personal property or product transferred electronically
464 is used in an activity other than farming; and

465 (B) tangible personal property or a product transferred electronically that is considered
466 to be used in an activity other than farming includes:

467 (I) office equipment and supplies; or

468 (II) equipment and supplies used in:

469 (Aa) the sale or distribution of farm products;

470 (Bb) research; or

471 (Cc) transportation; or

472 (iii) a vehicle required to be registered by the laws of this state during the period
473 ending two years after the date of the vehicle's purchase;

474 (19) sales of hay;

475 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or
476 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or
477 garden, farm, or other agricultural produce is sold by:

478 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other
479 agricultural produce;

480 (b) an employee of the producer described in Subsection (20)(a); or

481 (c) a member of the immediate family of the producer described in Subsection (20)(a);

482 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
483 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

484 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
485 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
486 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
487 manufacturer, processor, wholesaler, or retailer;

488 (23) a product stored in the state for resale;

489 (24) (a) purchases of a product if:

490 (i) the product is:

491 (A) purchased outside of this state;

492 (B) brought into this state:

- 493 (I) at any time after the purchase described in Subsection (24)(a)(i)(A); and
494 (II) by a nonresident person who is not living or working in this state at the time of the
495 purchase;
- 496 (C) used for the personal use or enjoyment of the nonresident person described in
497 Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and
498 (D) not used in conducting business in this state; and
499 (ii) for:
- 500 (A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of
501 the product for a purpose for which the product is designed occurs outside of this state;
502 (B) a boat, the boat is registered outside of this state; or
503 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
504 outside of this state;
- 505 (b) the exemption provided for in Subsection (24)(a) does not apply to:
506 (i) a lease or rental of a product; or
507 (ii) a sale of a vehicle exempt under Subsection (33); and
508 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
509 purposes of Subsection (24)(a), the commission may by rule define what constitutes the
510 following:
- 511 (i) conducting business in this state if that phrase has the same meaning in this
512 Subsection (24) as in Subsection (63);
513 (ii) the first use of a product if that phrase has the same meaning in this Subsection (24)
514 as in Subsection (63); or
515 (iii) a purpose for which a product is designed if that phrase has the same meaning in
516 this Subsection (24) as in Subsection (63);
517 (25) a product purchased for resale in this state, in the regular course of business, either
518 in its original form or as an ingredient or component part of a manufactured or compounded
519 product;
520 (26) a product upon which a sales or use tax was paid to some other state, or one of its
521 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
522 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if
523 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax

524 Act;

525 (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a
526 person for use in compounding a service taxable under the subsections;

527 (28) purchases made in accordance with the special supplemental nutrition program for
528 women, infants, and children established in 42 U.S.C. Sec. 1786;

529 (29) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers,
530 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens
531 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification

532 Manual of the federal Executive Office of the President, Office of Management and Budget;

533 (30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State
534 Boating Act, a boat trailer, or an outboard motor if the boat, boat trailer, or outboard motor is:

535 (a) not registered in this state; and

536 (b) (i) not used in this state; or

537 (ii) used in this state:

538 (A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a
539 time period that does not exceed the longer of:

540 (I) 30 days in any calendar year; or

541 (II) the time period necessary to transport the boat, boat trailer, or outboard motor to
542 the borders of this state; or

543 (B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time
544 period necessary to transport the boat, boat trailer, or outboard motor to the borders of this
545 state;

546 (31) sales of aircraft manufactured in Utah;

547 (32) amounts paid for the purchase of telecommunications service for purposes of
548 providing telecommunications service;

549 (33) sales, leases, or uses of the following:

550 (a) a vehicle by an authorized carrier; or

551 (b) tangible personal property that is installed on a vehicle:

552 (i) sold or leased to or used by an authorized carrier; and

553 (ii) before the vehicle is placed in service for the first time;

554 (34) (a) 45% of the sales price of any new manufactured home; and

555 (b) 100% of the sales price of any used manufactured home;
556 (35) sales relating to schools and fundraising sales;
557 (36) sales or rentals of durable medical equipment if:
558 (a) a person presents a prescription for the durable medical equipment; and
559 (b) the durable medical equipment is used for home use only;
560 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
561 Section 72-11-102; and
562 (b) the commission shall by rule determine the method for calculating sales exempt
563 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;
564 (38) sales to a ski resort of:
565 (a) snowmaking equipment;
566 (b) ski slope grooming equipment;
567 (c) passenger ropeways as defined in Section 72-11-102; or
568 (d) parts used in the repairs or renovations of equipment or passenger ropeways
569 described in Subsections (38)(a) through (c);
570 (39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
571 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for
572 amusement, entertainment, or recreation an unassisted amusement device as defined in Section
573 59-12-102;
574 (b) if a seller that sells or rents at the same business location the right to use or operate
575 for amusement, entertainment, or recreation one or more unassisted amusement devices and
576 one or more assisted amusement devices, the exemption described in Subsection (40)(a)
577 applies if the seller separately accounts for the sales or rentals of the right to use or operate for
578 amusement, entertainment, or recreation for the assisted amusement devices; and
579 (c) for purposes of Subsection (40)(b) and in accordance with Title 63G, Chapter 3,
580 Utah Administrative Rulemaking Act, the commission may make rules:
581 (i) governing the circumstances under which sales are at the same business location;
582 and
583 (ii) establishing the procedures and requirements for a seller to separately account for
584 the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for
585 assisted amusement devices;

586 (41) (a) sales of photocopies by:
587 (i) a governmental entity; or
588 (ii) an entity within the state system of public education, including:
589 (A) a school; or
590 (B) the State Board of Education; or
591 (b) sales of publications by a governmental entity;
592 (42) amounts paid for admission to an athletic event at an institution of higher
593 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
594 20 U.S.C. Sec. 1681 et seq.;

595 (43) (a) sales made to or by:
596 (i) an area agency on aging; or
597 (ii) a senior citizen center owned by a county, city, or town; or
598 (b) sales made by a senior citizen center that contracts with an area agency on aging;

599 (44) sales or leases of semiconductor fabricating, processing, research, or development
600 materials regardless of whether the semiconductor fabricating, processing, research, or
601 development materials:
602 (a) actually come into contact with a semiconductor; or
603 (b) ultimately become incorporated into real property;

604 (45) an amount paid by or charged to a purchaser for accommodations and services
605 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
606 59-12-104.2;

607 (46) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary
608 sports event registration certificate in accordance with Section 41-3-306 for the event period
609 specified on the temporary sports event registration certificate;

610 (47) sales or uses of electricity, if the sales or uses are:
611 (a) made under a tariff adopted by the Public Service Commission of Utah only for
612 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy
613 source, as designated in the tariff by the Public Service Commission of Utah; and
614 (b) for an amount of electricity that is:
615 (i) unrelated to the amount of electricity used by the person purchasing the electricity
616 under the tariff described in Subsection (47)(a); and

- 617 (ii) equivalent to the number of kilowatthours specified in the tariff described in
618 Subsection (47)(a) that may be purchased under the tariff described in Subsection (47)(a);
619 (48) sales or rentals of mobility enhancing equipment if a person presents a
620 prescription for the mobility enhancing equipment;
- 621 (49) sales of water in a:
622 (a) pipe;
623 (b) conduit;
624 (c) ditch; or
625 (d) reservoir;
- 626 (50) sales of currency or ~~[coinage]~~ coins that constitute legal tender of a state, the
627 United States, or ~~[of]~~ a foreign nation;
- 628 (51) (a) sales of an item described in Subsection (51)(b) if the item:
629 (i) does not constitute legal tender of ~~[any nation]~~ a state, the United States, or a
630 foreign nation; and
- 631 (ii) has a gold, silver, or platinum content of ~~[80%]~~ 50% or more; and
632 (b) Subsection (51)(a) applies to a gold, silver, or platinum:
633 (i) ingot;
634 (ii) bar;
635 (iii) medallion; or
636 (iv) decorative coin;
- 637 (52) amounts paid on a sale-leaseback transaction;
638 (53) sales of a prosthetic device:
639 (a) for use on or in a human; and
640 (b) (i) for which a prescription is required; or
641 (ii) if the prosthetic device is purchased by a hospital or other medical facility;
- 642 (54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of
643 machinery or equipment by an establishment described in Subsection (54)(c) if the machinery
644 or equipment is primarily used in the production or postproduction of the following media for
645 commercial distribution:
646 (i) a motion picture;
647 (ii) a television program;

648 (iii) a movie made for television;
649 (iv) a music video;
650 (v) a commercial;
651 (vi) a documentary; or
652 (vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the
653 commission by administrative rule made in accordance with Subsection (54)(d); or
654 (b) notwithstanding Subsection (54)(a), purchases, leases, or rentals of machinery or
655 equipment by an establishment described in Subsection (54)(c) that is used for the production
656 or postproduction of the following are subject to the taxes imposed by this chapter:
657 (i) a live musical performance;
658 (ii) a live news program; or
659 (iii) a live sporting event;
660 (c) the following establishments listed in the 1997 North American Industry
661 Classification System of the federal Executive Office of the President, Office of Management
662 and Budget, apply to Subsections (54)(a) and (b):
663 (i) NAICS Code 512110; or
664 (ii) NAICS Code 51219; and
665 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
666 commission may by rule:
667 (i) prescribe what constitutes a medium similar to Subsections (54)(a)(i) through (vi);
668 or
669 (ii) define:
670 (A) "commercial distribution";
671 (B) "live musical performance";
672 (C) "live news program"; or
673 (D) "live sporting event";
674 (55) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
675 on or before June 30, 2019, of machinery or equipment that:
676 (i) is leased or purchased for or by a facility that:
677 (A) is a renewable energy production facility;
678 (B) is located in the state; and

679 (C) (I) becomes operational on or after July 1, 2004; or
680 (II) has its generation capacity increased by one or more megawatts on or after July 1,
681 2004, as a result of the use of the machinery or equipment;

682 (ii) has an economic life of five or more years; and
683 (iii) is used to make the facility or the increase in capacity of the facility described in
684 Subsection (55)(a)(i) operational up to the point of interconnection with an existing
685 transmission grid including:

- 686 (A) a wind turbine;
- 687 (B) generating equipment;
- 688 (C) a control and monitoring system;
- 689 (D) a power line;
- 690 (E) substation equipment;
- 691 (F) lighting;
- 692 (G) fencing;
- 693 (H) pipes; or
- 694 (I) other equipment used for locating a power line or pole; and

695 (b) this Subsection (55) does not apply to:
696 (i) machinery or equipment used in construction of:
697 (A) a new renewable energy production facility; or
698 (B) the increase in the capacity of a renewable energy production facility;
699 (ii) contracted services required for construction and routine maintenance activities;

700 and
701 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
702 of the facility described in Subsection (55)(a)(i)(C)(II), machinery or equipment used or
703 acquired after:

- 704 (A) the renewable energy production facility described in Subsection (55)(a)(i) is
705 operational as described in Subsection (55)(a)(iii); or
- 706 (B) the increased capacity described in Subsection (55)(a)(i) is operational as described
707 in Subsection (55)(a)(iii);

708 (56) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
709 on or before June 30, 2019, of machinery or equipment that:

710 (i) is leased or purchased for or by a facility that:
711 (A) is a waste energy production facility;
712 (B) is located in the state; and
713 (C) (I) becomes operational on or after July 1, 2004; or
714 (II) has its generation capacity increased by one or more megawatts on or after July 1,
715 2004, as a result of the use of the machinery or equipment;

716 (ii) has an economic life of five or more years; and
717 (iii) is used to make the facility or the increase in capacity of the facility described in
718 Subsection (56)(a)(i) operational up to the point of interconnection with an existing
719 transmission grid including:

- 720 (A) generating equipment;
- 721 (B) a control and monitoring system;
- 722 (C) a power line;
- 723 (D) substation equipment;
- 724 (E) lighting;
- 725 (F) fencing;
- 726 (G) pipes; or
- 727 (H) other equipment used for locating a power line or pole; and

728 (b) this Subsection (56) does not apply to:

- 729 (i) machinery or equipment used in construction of:
 - 730 (A) a new waste energy facility; or
 - 731 (B) the increase in the capacity of a waste energy facility;
- 732 (ii) contracted services required for construction and routine maintenance activities;

733 and

734 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
735 described in Subsection (56)(a)(i)(C)(II), machinery or equipment used or acquired after:

736 (A) the waste energy facility described in Subsection (56)(a)(i) is operational as
737 described in Subsection (56)(a)(iii); or

738 (B) the increased capacity described in Subsection (56)(a)(i) is operational as described
739 in Subsection (56)(a)(iii);

740 (57) (a) leases of five or more years or purchases made on or after July 1, 2004 but on

741 or before June 30, 2019, of machinery or equipment that:

742 (i) is leased or purchased for or by a facility that:

743 (A) is located in the state;

744 (B) produces fuel from biomass energy including:

745 (I) methanol; or

746 (II) ethanol; and

747 (C) (I) becomes operational on or after July 1, 2004; or

748 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004, as

749 a result of the installation of the machinery or equipment;

750 (ii) has an economic life of five or more years; and

751 (iii) is installed on the facility described in Subsection (57)(a)(i);

752 (b) this Subsection (57) does not apply to:

753 (i) machinery or equipment used in construction of:

754 (A) a new facility described in Subsection (57)(a)(i); or

755 (B) the increase in capacity of the facility described in Subsection (57)(a)(i); or

756 (ii) contracted services required for construction and routine maintenance activities;

757 and

758 (iii) unless the machinery or equipment is used or acquired for an increase in capacity

759 described in Subsection (57)(a)(i)(C)(II), machinery or equipment used or acquired after:

760 (A) the facility described in Subsection (57)(a)(i) is operational; or

761 (B) the increased capacity described in Subsection (57)(a)(i) is operational;

762 (58) (a) subject to Subsection (58)(b) or (c), sales of tangible personal property or a

763 product transferred electronically to a person within this state if that tangible personal property

764 or product transferred electronically is subsequently shipped outside the state and incorporated

765 pursuant to contract into and becomes a part of real property located outside of this state;

766 (b) the exemption under Subsection (58)(a) is not allowed to the extent that the other

767 state or political entity to which the tangible personal property is shipped imposes a sales, use,

768 gross receipts, or other similar transaction excise tax on the transaction against which the other

769 state or political entity allows a credit for sales and use taxes imposed by this chapter; and

770 (c) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,

771 a person may claim the exemption allowed by this Subsection (58) for a sale by filing for a

772 refund:

773 (i) if the sale is made on or after July 1, 2004, but on or before June 30, 2008;

774 (ii) as if this Subsection (58) as in effect on July 1, 2008, were in effect on the day on
775 which the sale is made;

776 (iii) if the person did not claim the exemption allowed by this Subsection (58) for the
777 sale prior to filing for the refund;

778 (iv) for sales and use taxes paid under this chapter on the sale;

779 (v) in accordance with Section 59-1-1410; and

780 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if
781 the person files for the refund on or before June 30, 2011;

782 (59) purchases:

783 (a) of one or more of the following items in printed or electronic format:

784 (i) a list containing information that includes one or more:

785 (A) names; or

786 (B) addresses; or

787 (ii) a database containing information that includes one or more:

788 (A) names; or

789 (B) addresses; and

790 (b) used to send direct mail;

791 (60) redemptions or repurchases of a product by a person if that product was:

792 (a) delivered to a pawnbroker as part of a pawn transaction; and

793 (b) redeemed or repurchased within the time period established in a written agreement
794 between the person and the pawnbroker for redeeming or repurchasing the product;

795 (61) (a) purchases or leases of an item described in Subsection (61)(b) if the item:

796 (i) is purchased or leased by, or on behalf of, a telecommunications service provider;

797 and

798 (ii) has a useful economic life of one or more years; and

799 (b) the following apply to Subsection (61)(a):

800 (i) telecommunications enabling or facilitating equipment, machinery, or software;

801 (ii) telecommunications equipment, machinery, or software required for 911 service;

802 (iii) telecommunications maintenance or repair equipment, machinery, or software;

803 (iv) telecommunications switching or routing equipment, machinery, or software; or

804 (v) telecommunications transmission equipment, machinery, or software;

805 (62) (a) beginning on July 1, 2006, and ending on June 30, 2016, purchases of tangible

806 personal property or a product transferred electronically that are used in the research and

807 development of coal-to-liquids, oil shale, or tar sands technology; and

808 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

809 commission may, for purposes of Subsection (62)(a), make rules defining what constitutes

810 purchases of tangible personal property or a product transferred electronically that are used in

811 the research and development of coal-to-liquids, oil shale, and tar sands technology;

812 (63) (a) purchases of tangible personal property or a product transferred electronically

813 if:

814 (i) the tangible personal property or product transferred electronically is:

815 (A) purchased outside of this state;

816 (B) brought into this state at any time after the purchase described in Subsection

817 (63)(a)(i)(A); and

818 (C) used in conducting business in this state; and

819 (ii) for:

820 (A) tangible personal property or a product transferred electronically other than the

821 tangible personal property described in Subsection (63)(a)(ii)(B), the first use of the property

822 for a purpose for which the property is designed occurs outside of this state; or

823 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered

824 outside of this state;

825 (b) the exemption provided for in Subsection (63)(a) does not apply to:

826 (i) a lease or rental of tangible personal property or a product transferred electronically;

827 or

828 (ii) a sale of a vehicle exempt under Subsection (33); and

829 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for

830 purposes of Subsection (63)(a), the commission may by rule define what constitutes the

831 following:

832 (i) conducting business in this state if that phrase has the same meaning in this

833 Subsection (63) as in Subsection (24);

834 (ii) the first use of tangible personal property or a product transferred electronically if
835 that phrase has the same meaning in this Subsection (63) as in Subsection (24); or

836 (iii) a purpose for which tangible personal property or a product transferred
837 electronically is designed if that phrase has the same meaning in this Subsection (63) as in
838 Subsection (24);

839 (64) sales of disposable home medical equipment or supplies if:

840 (a) a person presents a prescription for the disposable home medical equipment or
841 supplies;

842 (b) the disposable home medical equipment or supplies are used exclusively by the
843 person to whom the prescription described in Subsection (64)(a) is issued; and

844 (c) the disposable home medical equipment and supplies are listed as eligible for
845 payment under:

846 (i) Title XVIII, federal Social Security Act; or

847 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;

848 (65) sales:

849 (a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit
850 District Act; or

851 (b) of tangible personal property to a subcontractor of a public transit district, if the
852 tangible personal property is:

853 (i) clearly identified; and

854 (ii) installed or converted to real property owned by the public transit district;

855 (66) sales of construction materials:

856 (a) purchased on or after July 1, 2010;

857 (b) purchased by, on behalf of, or for the benefit of an international airport:

858 (i) located within a county of the first class; and

859 (ii) that has a United States customs office on its premises; and

860 (c) if the construction materials are:

861 (i) clearly identified;

862 (ii) segregated; and

863 (iii) installed or converted to real property:

864 (A) owned or operated by the international airport described in Subsection (66)(b); and

865 (B) located at the international airport described in Subsection (66)(b);
866 (67) sales of construction materials:
867 (a) purchased on or after July 1, 2008;
868 (b) purchased by, on behalf of, or for the benefit of a new airport:
869 (i) located within a county of the second class; and
870 (ii) that is owned or operated by a city in which an airline as defined in Section
871 59-2-102 is headquartered; and
872 (c) if the construction materials are:
873 (i) clearly identified;
874 (ii) segregated; and
875 (iii) installed or converted to real property:
876 (A) owned or operated by the new airport described in Subsection (67)(b);
877 (B) located at the new airport described in Subsection (67)(b); and
878 (C) as part of the construction of the new airport described in Subsection (67)(b);
879 (68) sales of fuel to a common carrier that is a railroad for use in a locomotive engine;
880 (69) purchases and sales described in Section 63H-4-111;
881 (70) (a) sales of tangible personal property to an aircraft maintenance, repair, and
882 overhaul provider for use in the maintenance, repair, overhaul, or refurbishment in this state of
883 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
884 lists a state or country other than this state as the location of registry of the fixed wing turbine
885 powered aircraft; or
886 (b) sales of tangible personal property by an aircraft maintenance, repair, and overhaul
887 provider in connection with the maintenance, repair, overhaul, or refurbishment in this state of
888 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
889 lists a state or country other than this state as the location of registry of the fixed wing turbine
890 powered aircraft;
891 (71) subject to Section 59-12-104.4, sales of a textbook for a higher education course:
892 (a) to a person admitted to an institution of higher education; and
893 (b) by a seller, other than a bookstore owned by an institution of higher education, if
894 51% or more of that seller's sales revenue for the previous calendar quarter are sales of a
895 textbook for a higher education course; and

896 (72) a license fee or tax a municipality imposes in accordance with Subsection
897 10-1-203(5) on a purchaser from a business for which the municipality provides an enhanced
898 level of municipal services.

899 Section 10. Section **59-12-107** is amended to read:

900 **59-12-107. Collection, remittance, and payment of tax by sellers or other persons**
901 **-- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other liability for**
902 **collection -- Rulemaking authority -- Credits -- Treatment of bad debt -- Penalties.**

903 (1) (a) Except as provided in Subsection (1)(d) or Section 59-12-107.1 or 59-12-123
904 and subject to Subsection (1)(e), each seller shall pay or collect and remit the sales and use
905 taxes imposed by this chapter if within this state the seller:

906 (i) has or utilizes:

907 (A) an office;

908 (B) a distribution house;

909 (C) a sales house;

910 (D) a warehouse;

911 (E) a service enterprise; or

912 (F) a place of business similar to Subsections (1)(a)(i)(A) through (E);

913 (ii) maintains a stock of goods;

914 (iii) regularly solicits orders, regardless of whether or not the orders are accepted in the
915 state, unless the seller's only activity in the state is:

916 (A) advertising; or

917 (B) solicitation by:

918 (I) direct mail;

919 (II) electronic mail;

920 (III) the Internet;

921 (IV) telecommunications service; or

922 (V) a means similar to Subsection (1)(a)(iii)(A) or (B);

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

924 (A) common carrier; or

925 (B) United States mail; or

926 (v) regularly engages in an activity directly related to the leasing or servicing of

927 property located within the state.

928 (b) A seller that does not meet one or more of the criteria provided for in Subsection

929 (1)(a):

930 (i) except as provided in Subsection (1)(b)(ii), may voluntarily:

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

932 (B) remit the tax to the commission as provided in this part; or

933 (ii) notwithstanding Subsection (1)(b)(i), shall collect a tax on a transaction described

934 in Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to collect the tax.

935 (c) The collection and remittance of a tax under this chapter by a seller that is

936 registered under the agreement may not be used as a factor in determining whether that seller is

937 required by Subsection (1)(a) to:

938 (i) pay a tax, fee, or charge under:

939 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

940 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

941 (C) Section 19-6-714;

942 (D) Section 19-6-805;

943 (E) Section 69-2-5;

944 (F) Section 69-2-5.5;

945 (G) Section 69-2-5.6; or

946 (H) this title; or

947 (ii) collect and remit a tax, fee, or charge under:

948 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

949 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

950 (C) Section 19-6-714;

951 (D) Section 19-6-805;

952 (E) Section 69-2-5;

953 (F) Section 69-2-5.5;

954 (G) Section 69-2-5.6; or

955 (H) this title.

956 (d) A person shall pay a use tax imposed by this chapter on a transaction described in

957 Subsection 59-12-103(1) if:

958 (i) the seller did not collect a tax imposed by this chapter on the transaction; and
959 (ii) the person:
960 (A) stores the tangible personal property or product transferred electronically in the
961 state;
962 (B) uses the tangible personal property or product transferred electronically in the state;
963 or
964 (C) consumes the tangible personal property or product transferred electronically in the
965 state.
966 (e) The ownership of property that is located at the premises of a printer's facility with
967 which the retailer has contracted for printing and that consists of the final printed product,
968 property that becomes a part of the final printed product, or copy from which the printed
969 product is produced, shall not result in the retailer being considered to have or maintain an
970 office, distribution house, sales house, warehouse, service enterprise, or other place of
971 business, or to maintain a stock of goods, within this state.
972 (f) (i) As used in this Subsection (1)(f):
973 (A) "Affiliated group" is as defined in Section 59-7-101, except that "affiliated group"
974 includes a corporation that is qualified to do business but is not otherwise doing business in
975 this state.
976 (B) "Common ownership" is as defined in Section 59-7-101.
977 (C) "Related seller" means a seller that:
978 (I) is not required to pay or collect and remit sales and use taxes under Subsection
979 (1)(a) or Section 59-12-103.1;
980 (II) is:
981 (Aa) related to a seller that is required to pay or collect and remit sales and use taxes
982 under Subsection (1)(a) as part of an affiliated group or because of common ownership; or
983 (Bb) a limited liability company owned by the parent corporation of an affiliated group
984 if that parent corporation of the affiliated group is required to pay or collect and remit sales and
985 use taxes under Subsection (1)(a); and
986 (III) does not voluntarily collect and remit a tax under Subsection (1)(b)(i).
987 (ii) A seller is not required to pay or collect and remit sales and use taxes under
988 Subsection (1)(a):

989 (A) if the seller is a related seller;

990 (B) if the seller to which the related seller is related does not engage in any of the

991 following activities on behalf of the related seller:

992 (I) advertising;

993 (II) marketing;

994 (III) sales; or

995 (IV) other services; and

996 (C) if the seller to which the related seller is related accepts the return of an item sold

997 by the related seller, the seller to which the related seller is related accepts the return of that

998 item:

999 (I) sold by a seller that is not a related seller; and

1000 (II) on the same terms as the return of an item sold by that seller to which the related

1001 seller is related.

1002 (2) (a) Except as provided in Section 59-12-107.1, a tax under this chapter shall be

1003 collected from a purchaser.

1004 (b) A seller may not collect as tax an amount, without regard to fractional parts of one

1005 cent, in excess of the tax computed at the rates prescribed by this chapter.

1006 (c) (i) Each seller shall:

1007 (A) give the purchaser a receipt for the tax collected; or

1008 (B) bill the tax as a separate item and declare the name of this state and the seller's

1009 sales and use tax license number on the invoice for the sale.

1010 (ii) The receipt or invoice is prima facie evidence that the seller has collected the tax

1011 and relieves the purchaser of the liability for reporting the tax to the commission as a

1012 consumer.

1013 (d) A seller is not required to maintain a separate account for the tax collected, but is

1014 considered to be a person charged with receipt, safekeeping, and transfer of public money.

1015 (e) Taxes collected by a seller pursuant to this chapter shall be held in trust for the

1016 benefit of the state and for payment to the commission in the manner and at the time provided

1017 for in this chapter.

1018 (f) If any seller, during any reporting period, collects as a tax an amount in excess of

1019 the lawful state and local percentage of total taxable sales allowed under this chapter, the seller

1020 shall remit to the commission the full amount of the tax imposed under this chapter, plus any
1021 excess.

1022 (g) If the accounting methods regularly employed by the seller in the transaction of the
1023 seller's business are such that reports of sales made during a calendar month or quarterly period
1024 will impose unnecessary hardships, the commission may accept reports at intervals that will, in
1025 the commission's opinion, better suit the convenience of the taxpayer or seller and will not
1026 jeopardize collection of the tax.

1027 (h) (i) For a purchase paid with specie legal tender as defined in Section 59-1-1501.1,
1028 if the commission requires a seller to remit a tax under this chapter in legal tender other than
1029 specie legal tender, the seller shall state on the seller's books and records and on an invoice, bill
1030 of sale, or similar document provided to the purchaser:

1031 (A) the purchase price in specie legal tender and in the legal tender the seller is
1032 required to remit to the commission;

1033 (B) subject to Subsection (2)(h)(ii), the amount of tax due under this chapter in specie
1034 legal tender and in the legal tender the seller is required to remit to the commission;

1035 (C) the tax rate under this chapter applicable to the purchase; and

1036 (D) the date of the purchase.

1037 (ii) (A) Subject to Subsection (2)(h)(ii)(B), for purposes of determining the amount of
1038 tax due under Subsection (2)(h)(i), a seller shall use the most recent London fixing price for the
1039 specie legal tender the purchaser paid.

1040 (B) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1041 commission may make rules for determining the amount of tax due under Subsection (2)(h)(i)
1042 if the London fixing price is not available for a particular day.

1043 (3) (a) Except as provided in Subsections (4) through (6) and Section 59-12-108, the
1044 sales or use tax imposed by this chapter is due and payable to the commission quarterly on or
1045 before the last day of the month next succeeding each calendar quarterly period.

1046 (b) (i) Each seller shall, on or before the last day of the month next succeeding each
1047 calendar quarterly period, file with the commission a return for the preceding quarterly period.

1048 (ii) The seller shall remit with the return under Subsection (3)(b)(i) the amount of the
1049 tax required under this chapter to be collected or paid for the period covered by the return.

1050 (c) Except as provided in Subsection (4)(c), a return shall contain information and be in

1051 a form the commission prescribes by rule.

1052 (d) The sales tax as computed in the return shall be based upon the total nonexempt
1053 sales made during the period, including both cash and charge sales.

1054 (e) The use tax as computed in the return shall be based upon the total amount of
1055 purchases for storage, use, or other consumption in this state made during the period, including
1056 both by cash and by charge.

1057 (f) (i) Subject to Subsection (3)(f)(ii) and in accordance with Title 63G, Chapter 3,
1058 Utah Administrative Rulemaking Act, the commission may by rule extend the time for making
1059 returns and paying the taxes.

1060 (ii) An extension under Subsection (3)(f)(i) may not be for more than 90 days.

1061 (g) The commission may require returns and payment of the tax to be made for other
1062 than quarterly periods if the commission considers it necessary in order to ensure the payment
1063 of the tax imposed by this chapter.

1064 (h) (i) The commission may require a seller that files a simplified electronic return with
1065 the commission to file an additional electronic report with the commission.

1066 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1067 commission may make rules providing:

1068 (A) the information required to be included in the additional electronic report described
1069 in Subsection (3)(h)(i); and

1070 (B) one or more due dates for filing the additional electronic report described in
1071 Subsection (3)(h)(i).

1072 (4) (a) As used in this Subsection (4) and Subsection (5)(b), "remote seller" means a
1073 seller that is:

1074 (i) registered under the agreement;

1075 (ii) described in Subsection (1)(b); and

1076 (iii) not a:

1077 (A) model 1 seller;

1078 (B) model 2 seller; or

1079 (C) model 3 seller.

1080 (b) (i) Except as provided in Subsection (4)(b)(ii), a tax a remote seller collects in
1081 accordance with Subsection (1)(b) is due and payable:

1082 (A) to the commission;
1083 (B) annually; and
1084 (C) on or before the last day of the month immediately following the last day of each
1085 calendar year.

1086 (ii) The commission may require that a tax a remote seller collects in accordance with
1087 Subsection (1)(b) be due and payable:

1088 (A) to the commission; and
1089 (B) on the last day of the month immediately following any month in which the seller
1090 accumulates a total of at least \$1,000 in agreement sales and use tax.

1091 (c) (i) If a remote seller remits a tax to the commission in accordance with Subsection
1092 (4)(b), the remote seller shall file a return:

1093 (A) with the commission;
1094 (B) with respect to the tax;
1095 (C) containing information prescribed by the commission; and
1096 (D) on a form prescribed by the commission.

1097 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1098 commission shall make rules prescribing:

1099 (A) the information required to be contained in a return described in Subsection
1100 (4)(a)(i); and
1101 (B) the form described in Subsection (4)(c)(i)(D).

1102 (d) A tax a remote seller collects in accordance with this Subsection (4) shall be
1103 calculated on the basis of the total amount of taxable transactions under Subsection
1104 59-12-103(1) the remote seller completes, including:

1105 (i) a cash transaction; and
1106 (ii) a charge transaction.

1107 (5) (a) Except as provided in Subsection (5)(b), a tax a seller that files a simplified
1108 electronic return collects in accordance with this chapter is due and payable:

1109 (i) monthly on or before the last day of the month immediately following the month for
1110 which the seller collects a tax under this chapter; and
1111 (ii) for the month for which the seller collects a tax under this chapter.

1112 (b) A tax a remote seller that files a simplified electronic return collects in accordance

1113 with this chapter is due and payable as provided in Subsection (4).

1114 (6) (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the
1115 purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to
1116 titling or registration under the laws of this state.

1117 (b) The commission shall collect the tax described in Subsection (6)(a) when the
1118 vehicle is titled or registered.

1119 (7) If any sale of tangible personal property or any other taxable transaction under
1120 Subsection 59-12-103(1), is made by a wholesaler to a retailer, the wholesaler is not
1121 responsible for the collection or payment of the tax imposed on the sale and the retailer is
1122 responsible for the collection or payment of the tax imposed on the sale if:

1123 (a) the retailer represents that the personal property is purchased by the retailer for
1124 resale; and

1125 (b) the personal property is not subsequently resold.

1126 (8) If any sale of property or service subject to the tax is made to a person prepaying
1127 sales or use tax in accordance with Title 63M, Chapter 5, Resource Development Act, or to a
1128 contractor or subcontractor of that person, the person to whom such payment or consideration
1129 is payable is not responsible for the collection or payment of the sales or use tax and the person
1130 prepaying the sales or use tax is responsible for the collection or payment of the sales or use tax
1131 if the person prepaying the sales or use tax represents that the amount prepaid as sales or use
1132 tax has not been fully credited against sales or use tax due and payable under the rules
1133 promulgated by the commission.

1134 (9) (a) For purposes of this Subsection (9):

1135 (i) Except as provided in Subsection (9)(a)(ii), "bad debt" is as defined in Section 166,
1136 Internal Revenue Code.

1137 (ii) Notwithstanding Subsection (9)(a)(i), "bad debt" does not include:

1138 (A) an amount included in the purchase price of tangible personal property, a product
1139 transferred electronically, or a service that is:

1140 (I) not a transaction described in Subsection 59-12-103(1); or

1141 (II) exempt under Section 59-12-104;

1142 (B) a financing charge;

1143 (C) interest;

- 1144 (D) a tax imposed under this chapter on the purchase price of tangible personal
1145 property, a product transferred electronically, or a service;
- 1146 (E) an uncollectible amount on tangible personal property or a product transferred
1147 electronically that:
- 1148 (I) is subject to a tax under this chapter; and
1149 (II) remains in the possession of a seller until the full purchase price is paid;
- 1150 (F) an expense incurred in attempting to collect any debt; or
1151 (G) an amount that a seller does not collect on repossessed property.
- 1152 (b) A seller may deduct bad debt from the total amount from which a tax under this
1153 chapter is calculated on a return.
- 1154 (c) A seller may file a refund claim with the commission if:
- 1155 (i) the amount of bad debt for the time period described in Subsection (9)(e) exceeds
1156 the amount of the seller's sales that are subject to a tax under this chapter for that same time
1157 period; and
- 1158 (ii) as provided in Section 59-1-1410.
- 1159 (d) A bad debt deduction under this section may not include interest.
- 1160 (e) A bad debt may be deducted under this Subsection (9) on a return for the time
1161 period during which the bad debt:
- 1162 (i) is written off as uncollectible in the seller's books and records; and
1163 (ii) would be eligible for a bad debt deduction:
- 1164 (A) for federal income tax purposes; and
1165 (B) if the seller were required to file a federal income tax return.
- 1166 (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or
1167 claims a refund under this Subsection (9), the seller shall report and remit a tax under this
1168 chapter:
- 1169 (i) on the portion of the bad debt the seller recovers; and
1170 (ii) on a return filed for the time period for which the portion of the bad debt is
1171 recovered.
- 1172 (g) For purposes of reporting a recovery of a portion of bad debt under Subsection
1173 (9)(f), a seller shall apply amounts received on the bad debt in the following order:
- 1174 (i) in a proportional amount:

1175 (A) to the purchase price of the tangible personal property, product transferred
1176 electronically, or service; and

1177 (B) to the tax due under this chapter on the tangible personal property, product
1178 transferred electronically, or service; and

1179 (ii) to:

1180 (A) interest charges;

1181 (B) service charges; and

1182 (C) other charges.

1183 (h) A seller's certified service provider may make a deduction or claim a refund for bad
1184 debt on behalf of the seller:

1185 (i) in accordance with this Subsection (9); and

1186 (ii) if the certified service provider credits or refunds the entire amount of the bad debt
1187 deduction or refund to the seller.

1188 (i) A seller may allocate bad debt among the states that are members of the agreement
1189 if the seller's books and records support that allocation.

1190 (10) (a) A seller may not, with intent to evade any tax, fail to timely remit the full
1191 amount of tax required by this chapter.

1192 (b) A violation of this section is punishable as provided in Section 59-1-401.

1193 (c) Each person who fails to pay any tax to the state or any amount of tax required to be
1194 paid to the state, except amounts determined to be due by the commission under Chapter 1,
1195 Part 14, Assessment, Collections, and Refunds Act, or Section 59-12-111, within the time
1196 required by this chapter, or who fails to file any return as required by this chapter, shall pay, in
1197 addition to the tax, penalties and interest as provided in Section 59-1-401.

1198 (d) For purposes of prosecution under this section, each quarterly tax period in which a
1199 seller, with intent to evade any tax, collects a tax and fails to timely remit the full amount of the
1200 tax required to be remitted, constitutes a separate offense.

1201 Section 11. Section **63G-3-801** is enacted to read:

Part 8. Construction of Rules Act

63G-3-801. Title.

1204 This part is known as the "Construction of Rules Act."

1205 Section 12. Section **63G-3-802** is enacted to read:

1206 **63G-3-802.** Construction of certain rules related to legal tender.
1207 A rule may not be construed so as to create a significant impediment to the use of one
1208 form of legal tender over another form of legal tender in a private transaction.
1209 Section 13. Section **68-3-15** is enacted to read:
1210 **68-3-15.** Construction of certain statutes related to legal tender.
1211 A statute may not be construed so as to create a significant impediment to the use of
1212 one form of legal tender over another form of legal tender in a private transaction.
1213 Section 14. **Repealer.**
1214 This bill repeals:
1215 Section **59-1-1504, Revenue and Taxation Interim Committee study.**
1216 Section 15. **Effective date -- Retrospective operation.**
1217 (1) Except as provided in Subsections (2) and (3), this bill takes effect on May 8, 2012.
1218 (2) The amendments to Sections 59-12-104 and 59-12-107 take effect on July 1, 2012.
1219 (3) The amendments to Section 59-10-1028 have retrospective operation for a taxable
1220 year beginning on or after January 1, 2012.

Legislative Review Note
as of 2-10-12 4:16 PM

Office of Legislative Research and General Counsel