

1 **STATE AND LOCAL TAXES, FEES, AND CHARGES**
2 **RELATED TO TELECOMMUNICATIONS**

3 2003 GENERAL SESSION

4 STATE OF UTAH

5 **This act modifies the Utah Municipal Code to enact the Municipal Telecommunications**
6 **License Tax Act and to make technical changes. As enacted, the Municipal**
7 **Telecommunications License Tax Act authorizes a municipality to levy and collect a**
8 **municipal telecommunications license tax by ordinance. The act provides for the**
9 **collection, administration, and enforcement of the tax through the State Tax Commission.**
10 **This act limits a municipality's authority to impose other telecommunications taxes or**
11 **fees. This act provides for reporting of tax rate related information. This act addresses**
12 **customer remedies. The act addresses how bundled transactions are taxed under the**
13 **Municipal Telecommunications License Tax Act. This act addresses rights-of-way**
14 **provisions. This act modifies provisions related the charge that may be imposed for**
15 **emergency telephone services. This act addresses how the location of a transaction for**
16 **telephone service and mobile telecommunications service is determined under the Sales**
17 **and Use Tax Act. This act provides an effective date.**

18 This act affects sections of Utah Code Annotated 1953 as follows:

19 AMENDS:

20 **10-1-203**, as last amended by Chapter 172, Laws of Utah 2000

21 **11-26-1**, as last amended by Chapter 9, Laws of Utah 2001

22 **59-1-403**, as last amended by Chapters 52 and 175, Laws of Utah 2002

23 **59-12-102**, as last amended by Chapters 77, 117, 192 and 320, Laws of Utah 2002

24 **59-12-207 (Effective 01/01/03)**, as last amended by Chapters 157 and 320, Laws of
25 Utah 2002

26 **69-2-5**, as last amended by Chapter 320, Laws of Utah 2002

27 **69-2-5.5**, as last amended by Chapter 320, Laws of Utah 2002

28 **72-7-102**, as last amended by Chapter 347, Laws of Utah 2000

29 **72-7-108**, as last amended by Chapter 347, Laws of Utah 2000

30 ENACTS:

31 **10-1-401**, Utah Code Annotated 1953

32 **10-1-402**, Utah Code Annotated 1953
 33 **10-1-403**, Utah Code Annotated 1953
 34 **10-1-404**, Utah Code Annotated 1953
 35 **10-1-405**, Utah Code Annotated 1953
 36 **10-1-406**, Utah Code Annotated 1953
 37 **10-1-407**, Utah Code Annotated 1953
 38 **10-1-408**, Utah Code Annotated 1953
 39 **10-1-409**, Utah Code Annotated 1953
 40 **10-1-410**, Utah Code Annotated 1953

41 REPEALS:

42 **11-26-3**, as last amended by Chapter 262, Laws of Utah 2000

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

44 Section 1. Section **10-1-203** is amended to read:

45 **10-1-203. License fees and taxes -- Application information to be transmitted to**
 46 **the county auditor.**

47 (1) For the purpose of this section[;]:

48 (a) "business" means any enterprise carried on for the purpose of gain or economic
 49 profit, except that the acts of employees rendering services to employers are not included in
 50 this definition[-];

51 (b) "telecommunications tax or fee" is as defined in Section 10-1-402; and

52 (c) "telecommunications provider" is as defined in Section 10-1-402.

53 (2) Except as provided in Subsections (3) through (5), the governing body of a
 54 municipality may license for the purpose of regulation and revenue any business within the
 55 limits of the municipality and may regulate that business by ordinance.

56 (3) (a) The governing body of a municipality may raise revenue by levying and
 57 collecting a municipal energy sales or use tax as provided in Part 3, Municipal Energy Sales
 58 and Use Tax Act, except a municipality may not levy or collect a franchise tax or fee [~~as~~
 59 ~~defined in Subsection 10-1-303(7)] on an energy supplier other than the municipal energy sales
 60 and use tax provided in Part 3, Municipal Energy Sales and Use Tax Act.~~

61 (b) (i) Subsection (3)(a) does not affect the validity of a franchise agreement as defined
 62 in Subsection 10-1-303(6), that is in effect on July 1, 1997, or a future franchise.

63 (ii) A franchise agreement as defined in Subsection 10-1-303(6) in effect on January 1,
64 1997, or a future franchise shall remain in full force and effect.

65 (c) A municipality that collects a contractual franchise fee pursuant to a franchise
66 agreement as defined in Subsection 10-1-303(6) with an energy supplier that is in effect on July
67 1, 1997, may continue to collect that fee as provided in Subsection 10-1-310(2).

68 (d) (i) Subject to the requirements of Subsection (3)(d)(ii), a franchise agreement as
69 defined in Subsection 10-1-303(6) between a municipality and an energy supplier may contain
70 a provision that:

71 (A) requires the energy supplier by agreement to pay a contractual franchise fee that is
72 otherwise prohibited under Part 3, Municipal Energy Sales and Use Tax Act; and

73 (B) imposes the contractual franchise fee on or after the day on which Part 3,
74 Municipal Energy Sales and Use Tax is:

75 (I) repealed, invalidated, or the maximum allowable rate provided in Section 10-1-305
76 is reduced; and

77 (II) is not superseded by a law imposing a substantially equivalent tax.

78 (ii) A municipality may not charge a contractual franchise fee under the provisions
79 permitted by Subsection (3)(b)(i) unless the municipality charges an equal contractual franchise
80 fee or a tax on all energy suppliers.

81 ~~[(4) Subject to the provisions of Title 11, Chapter 26, Local Taxation of Utilities~~
82 ~~Limitation, a municipality may impose upon, charge, or collect from a public utility engaged in~~
83 ~~the business of supplying telephone service or other person or entity engaged in the business of~~
84 ~~supplying telephone service any tax, license, fee, license fee, license tax, or similar charge, or~~
85 ~~any combination of any of these, based upon the gross revenues of the utility, person, or entity~~
86 ~~derived from sales or use or both sales and use of the telephone service within the~~
87 ~~municipality.]~~

88 (4) (a) Subject to Subsection (4)(b), beginning July 1, 2004, the governing body of a
89 municipality may raise revenue by levying and providing for the collection of a municipal
90 telecommunications license tax as provided in Part 4, Municipal Telecommunications License
91 Tax Act.

92 (b) A municipality may not levy or collect a telecommunications tax or fee on a
93 telecommunications provider except as provided in Part 4, Municipal Telecommunications

94 License Tax Act.

95 (5) (a) The governing body of a municipality may by ordinance raise revenue by
96 levying and collecting a license fee or tax on:

97 (i) a parking service business in an amount that is less than or equal to:

98 (A) \$1 per vehicle that parks at the parking service business; or

99 (B) 2% of the gross receipts of the parking service business;

100 (ii) a public assembly facility in an amount that is less than or equal to \$1 per ticket
101 purchased from the public assembly facility; and

102 (iii) subject to the limitations of Subsections (5)(c) and (d), a business that causes
103 disproportionate costs of municipal services or for which the municipality provides an
104 enhanced level of municipal services in an amount that is reasonably related to the costs of the
105 municipal services provided by the municipality.

106 (b) For purposes of this Subsection (5):

107 (i) "Municipal services" include:

108 (A) public utilities; or

109 (B) services for:

110 (I) police;

111 (II) fire;

112 (III) storm water runoff;

113 (IV) traffic control;

114 (V) parking;

115 (VI) transportation;

116 (VII) beautification; or

117 (VIII) snow removal.

118 (ii) "Parking service business" means a business:

119 (A) that primarily provides off-street parking services for a public facility that is
120 wholly or partially funded by public moneys;

121 (B) that provides parking for one or more vehicles; and

122 (C) that charges a fee for parking.

123 (iii) "Public assembly facility" means a business operating an assembly facility that:

124 (A) is wholly or partially funded by public moneys; and

125 (B) requires a person attending an event at the assembly facility to purchase a ticket.

126 (c) Before the governing body of a municipality imposes a license fee or tax on a
127 business that causes disproportionate costs of municipal services under Subsection (5)(a)(iii),
128 the governing body of the municipality shall adopt an ordinance defining for purposes of the
129 tax under Subsection (5)(a)(iii) what constitutes disproportionate costs and what amounts are
130 reasonably related to the costs of the municipal services provided by the municipality.

131 (d) Before the governing body of a municipality imposes a license fee or tax on a
132 business for which it provides an enhanced level of municipal services under Subsection
133 (5)(a)(iii), the governing body of the municipality shall adopt an ordinance defining for
134 purposes of the tax under Subsection (5)(a)(iii) what constitutes the basic level of municipal
135 services in the municipality and what amounts are reasonably related to the costs of providing
136 an enhanced level of municipal services in the municipality.

137 (6) All license fees and taxes shall be uniform in respect to the class upon which they
138 are imposed.

139 (7) The governing body shall transmit the information from each approved business
140 license application to the county assessor within 60 days following the approval of the
141 application.

142 (8) If challenged in court, an ordinance enacted by a municipality before January 1,
143 1994, imposing a business license fee or tax on rental dwellings under this section shall be
144 upheld unless the business license fee or tax is found to impose an unreasonable burden on the
145 fee or tax payer.

146 Section 2. Section **10-1-401** is enacted to read:

147 **Part 4. Municipal Telecommunications License Tax Act**

148 **10-1-401. Title.**

149 This part is known as the "Municipal Telecommunications License Tax Act."

150 Section 3. Section **10-1-402** is enacted to read:

151 **10-1-402. Definitions.**

152 As used in this part:

153 (1) "Commission" means the State Tax Commission.

154 (2) (a) Subject to Subsections (2)(b) and (c), "customer" means the person who is
155 obligated under a contract with a telecommunications provider to pay for telecommunications

156 service received under the contract.

157 (b) For purposes of this section and Section 10-1-407, "customer" means:

158 (i) the person who is obligated under a contract with a telecommunications provider to
159 pay for telecommunications service received under the contract; or

160 (ii) if the end user is not the person described in Subsection (2)(b)(i), the end user of
161 telecommunications service.

162 (c) "Customer" does not include a reseller:

163 (i) of telecommunications service; or

164 (ii) for mobile telecommunications service, of a serving carrier under an agreement to
165 serve the customer outside the telecommunications provider's licensed service area.

166 (3) (a) "End user" means the person who uses a telecommunications service.

167 (b) For purposes of telecommunications service provided to a person who is not an
168 individual, "end user" means the individual who uses the telecommunications service on behalf
169 of the person who is provided the telecommunications service.

170 (4) "Gross receipts from telecommunications service" means the revenue that a
171 telecommunications provider receives for telecommunications service rendered except for
172 amounts collected or paid as:

173 (a) a tax, fee, or charge:

174 (i) imposed by a governmental entity;

175 (ii) separately identified as a tax, fee, or charge in the transaction with the customer for
176 the telecommunications service; and

177 (iii) imposed only on a telecommunications provider; or

178 (b) sales and use taxes collected by the telecommunications provider from a customer
179 under Title 59, Chapter 12, Sales and Use Tax Act.

180 (5) "Mobile telecommunications service" is as defined in the Mobile
181 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

182 (6) "Municipality" means a city or town.

183 (7) "Place of primary use":

184 (a) for telecommunications service other than mobile telecommunications service,
185 means the street address representative of where the customer's use of the telecommunications
186 service primarily occurs, which shall be:

- 187 (i) the residential street address of the customer; or
188 (ii) the primary business street address of the customer; or
189 (b) for mobile telecommunications service, is as defined in the Mobile
190 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
- 191 (8) Notwithstanding where a call is billed or paid, "service address" means:
192 (a) if the location described in this Subsection (8)(a) is known, the location of the
193 telecommunications equipment:
194 (i) to which a call is charged; and
195 (ii) from which the call originates or terminates;
196 (b) if the location described in Subsection (8)(a) is not known but the location
197 described in this Subsection (8)(b) is known, the location of the origination point of the signal
198 of the telecommunications service first identified by:
199 (i) the telecommunications system of the telecommunications provider; or
200 (ii) if the system used to transport the signal is not a system of the telecommunications
201 provider, information received by the telecommunications provider from its service provider;
202 or
203 (c) if the locations described in Subsection (8)(a) or (b) are not known, the location of a
204 customer's place of primary use.
- 205 (9) (a) Subject to Subsections (9)(b) and (9)(c), "telecommunications provider" means
206 a person that:
207 (i) owns, controls, operates, or manages a telecommunications service; and
208 (ii) engages in an activity described in Subsection (9)(a)(i) for the shared use with or
209 resale to any person of the telecommunications service.
210 (b) A person described in Subsection (9)(a) is a telecommunications provider whether
211 or not the Public Service Commission of Utah regulates:
212 (i) that person; or
213 (ii) the telecommunications service that the person owns, controls, operates, or
214 manages.
215 (c) "Telecommunications provider" does not include an aggregator as defined in
216 Section 54-8b-2.
- 217 (10) "Telecommunications service" means:

218 (a) telephone service subject to a sales and use tax under Section 59-12-103; and
219 (b) mobile telecommunications service subject to a sales and use tax under Section
220 59-12-103.

221 (11) (a) Except as provided in Subsection (11)(b), "telecommunications tax or fee"
222 means any of the following imposed by a municipality on a telecommunications provider:

223 (i) a tax;

224 (ii) a license;

225 (iii) a fee;

226 (iv) a license fee;

227 (v) a license tax;

228 (vi) a franchise fee; or

229 (vii) a charge similar to a tax, license, or fee described in Subsections (11)(a)(i)
230 through (vi).

231 (b) "Telecommunications tax or fee" does not include:

232 (i) the municipal telecommunications license tax authorized by this part; or

233 (ii) a tax, fee, or charge, including a tax imposed under Title 59, Revenue and
234 Taxation, that is imposed:

235 (A) on telecommunications providers; and

236 (B) on persons who are not telecommunications providers.

237 Section 4. Section **10-1-403** is enacted to read:

238 **10-1-403. Municipality may levy municipal telecommunications license tax --**

239 **Recovery from customers -- Annexation.**

240 (1) (a) Subject to the provisions of this section, beginning July 1, 2004, a municipality
241 may levy on and provide that there is collected from a telecommunications provider a
242 municipal telecommunications license tax on the telecommunications provider's gross receipts
243 from telecommunications service that is attributed to the municipality in accordance with
244 Section 10-1-407.

245 (b) To levy and provide for the collection of a municipal telecommunications license
246 tax under this part, the municipality shall adopt an ordinance that complies with the
247 requirements of Section 10-1-404.

248 (c) A municipal telecommunications license tax imposed under this part shall be at a

249 rate of up to 4% of the telecommunications provider's gross receipts from telecommunications
250 service that is attributed to the municipality in accordance with Section 10-1-407.

251 (2) A telecommunications provider may recover the amounts paid in municipal
252 telecommunications license taxes from the customers of the telecommunications provider
253 through a charge that is separately identified in the statement of the transaction with the
254 customer as the recovery of a tax.

255 (3) (a) For purposes of this Subsection (3):

256 (i) "Annexation" means an annexation to a municipality under Title 10, Chapter 2, Part
257 4, Annexation.

258 (ii) "Annexing area" means an area that is annexed into a municipality.

259 (b) (i) If, on or after July 1, 2004, a municipality enacts or repeals a tax under this part
260 or changes the rate of the tax, the enactment, repeal, or change shall take effect:

261 (A) on the first day of a calendar quarter; and

262 (B) after a 75-day period beginning on the date the commission receives notice meeting
263 the requirements of Subsection (3)(b)(ii) from the municipality.

264 (ii) The notice described in Subsection (3)(b)(i)(B) shall state:

265 (A) that the municipality will enact or repeal a tax under this part or change the rate of
266 the tax;

267 (B) the statutory authority for the tax described in Subsection (3)(b)(ii)(A);

268 (C) the effective date of the tax described in Subsection (3)(b)(ii)(A); and

269 (D) if the municipality enacts the municipal telecommunications license tax or changes
270 the rate of the tax, the new rate of the tax.

271 (c) (i) If, for an annexation that occurs on or after July 1, 2004, the annexation will
272 result in a change in the rate of the tax under this part for an annexing area, the change shall
273 take effect:

274 (A) on the first day of a calendar quarter; and

275 (B) after a 75-day period beginning on the date the commission receives notice meeting
276 the requirements of Subsection (3)(c)(ii) from the municipality that annexes the annexing area.

277 (ii) The notice described in Subsection (3)(c)(i)(B) shall state:

278 (A) that the annexation described in Subsection (3)(c)(i) will result in a change in the
279 rate of a tax under this part for the annexing area;

280 (B) the statutory authority for the tax described in Subsection (3)(c)(ii)(A);

281 (C) the effective date of the tax described in Subsection (3)(c)(ii)(A); and

282 (D) the new rate of the tax described in Subsection (3)(c)(ii)(A).

283 Section 5. Section **10-1-404** is enacted to read:

284 **10-1-404. Municipal telecommunications license tax ordinance provisions.**

285 An ordinance required by Subsection 10-1-403(1) shall include a provision that:

286 (1) levies a municipal telecommunications license tax:

287 (a) on the gross receipts from telecommunications service attributed to the municipality
288 in accordance with Section 10-1-407;

289 (b) at a rate:

290 (i) not to exceed the rate specified in Subsection 10-1-403(1)(c); and

291 (ii) subject to the requirements of Section 10-1-407; and

292 (c) beginning on a date:

293 (i) on or after July 1, 2004; and

294 (ii) subject to the requirements of Section 10-1-403;

295 (2) on or before the effective date of the ordinance, the municipality shall enter into the
296 uniform interlocal agreement with the commission described in Section 10-1-405 under which
297 the commission collects, enforces, and administers the municipal telecommunications license
298 tax;

299 (3) exempts a municipality from the limitation on the rate that may be imposed under
300 Subsection (1)(b)(i) if the exemption from the limitation on the rate that may be imposed under
301 Subsection (1)(b)(i) is approved by a majority vote of the voters in the municipality that vote
302 in:

303 (a) a municipal general election;

304 (b) a regular general election; or

305 (c) a local special election; and

306 (4) incorporates the provisions of Section 10-1-408.

307 Section 6. Section **10-1-405** is enacted to read:

308 **10-1-405. Collection of taxes by commission -- Uniform interlocal agreement --**
309 **Charge for services.**

310 (1) Subject to the other provisions of this section, the commission shall collect,

311 enforce, and administer any municipal telecommunications license tax imposed under this part
312 pursuant to:

313 (a) the same procedures used in the administration, collection, and enforcement of the
314 state sales and use tax under:

315 (i) Title 59, Chapter 1, General Taxation Policies; and

316 (ii) Title 59, Chapter 12, Part 1, Tax Collection; and

317 (b) a uniform interlocal agreement:

318 (i) between:

319 (A) the municipality that imposes the municipal telecommunications license tax; and

320 (B) the commission;

321 (ii) that is executed under Title 11, Chapter 13, Interlocal Cooperation Act;

322 (iii) that complies with Subsection (2)(a); and

323 (iv) that is developed by rule in accordance with Subsection (2)(b).

324 (2) (a) The uniform interlocal agreement described in Subsection (1) shall provide that
325 the commission shall:

326 (i) transmit monies collected under this part:

327 (A) monthly; and

328 (B) by electronic funds transfer by the commission to the municipality;

329 (ii) conduct audits of the municipal telecommunications license tax;

330 (iii) charge the municipality for the commission's services under this section in an

331 amount:

332 (A) sufficient to reimburse the commission for the cost to the commission in rendering
333 the services; and

334 (B) that may not exceed an amount equal to 1.5% of the municipal telecommunications
335 license tax imposed by the ordinance of the municipality; and

336 (iv) collect, enforce, and administer the municipal telecommunications license tax

337 authorized under this part pursuant to the same procedures used in the administration,

338 collection, and enforcement of the state sales and use tax under:

339 (A) Title 59, Chapter 1, General Taxation Policies.

340 (B) Title 59, Chapter 12, Part 1, Tax Collection; and

341 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

342 commission shall develop a uniform interlocal agreement that meets the requirements of this
343 section.

344 (3) The administrative fee charged under Subsection (2)(a) shall be:
345 (a) deposited in the Sales and Use Tax Administrative Fees Account; and
346 (b) used for administration of municipal telecommunications license taxes under this
347 part.

348 Section 7. Section **10-1-406** is enacted to read:

349 **10-1-406. Limitation of other telecommunications taxes or fees.**

350 (1) Subject to the other provisions of this section, a municipality may not levy or
351 collect a telecommunications tax or fee on a person except for a telecommunications tax or fee
352 imposed by the municipality:

353 (a) on a telecommunications provider to recover the management costs of the
354 municipality caused by the activities of the telecommunications provider in the right-of-way of
355 a municipality if the telecommunications tax or fee:

356 (i) is imposed in accordance with Section 72-7-102; and

357 (ii) is not related to:

358 (A) a municipality's loss of use of a highway as a result of the activities of the
359 telecommunications provider in a right-of-way; or

360 (B) increased deterioration of a highway as a result of the activities of the
361 telecommunications provider in a right-of-way; or

362 (b) on a person that:

363 (i) is not subject to a municipal telecommunications license tax under this part; and

364 (ii) locates telecommunications facilities, as defined in Section 72-7-108, in the
365 municipality.

366 (2) Subsection (1)(a) may not be interpreted as exempting a telecommunications
367 provider from complying with any ordinance:

368 (a) related to excavation, construction, or installation of a telecommunications facility;
369 and

370 (b) that addresses the safety and quality standards of the municipality for excavation,
371 construction, or installation.

372 (3) A telecommunications tax or fee imposed under Subsection (1)(b) shall be

373 imposed:

374 (a) by ordinance; and

375 (b) on a competitively neutral basis.

376 Section 8. Section **10-1-407** is enacted to read:

377 **10-1-407. Attributing the gross receipts from telecommunications service to a**
378 **municipality -- Rate impact.**

379 (1) The gross receipts from a telecommunications service are attributed to a
380 municipality if the gross receipts are from a transaction for telecommunications service that is
381 located within the municipality:

382 (a) for purposes of sales and use taxes under Title 59, Chapter 12, Sales and Use Tax
383 Act; and

384 (b) determined in accordance with Section 59-12-207.

385 (2) (a) The rate imposed on the gross receipts for telecommunications service shall be
386 determined in accordance with Subsection (2)(b) if the location of a transaction for
387 telecommunications service is determined under Subsection (1) to be a municipality other than
388 the municipality in which is located:

389 (i) for telecommunications service other than mobile telecommunications service, the
390 customer's service address; or

391 (ii) for mobile telecommunications service, the customer's primary place of use.

392 (b) The rate imposed on the gross receipts for telecommunications service described in
393 Subsection (2)(a) shall be the lower of:

394 (i) the rate imposed by the taxing jurisdiction in which the transaction is located under
395 Subsection (1); or

396 (ii) the rate imposed by the municipality in which is located:

397 (A) for telecommunications service other than mobile telecommunications service, the
398 customer's service address; or

399 (B) for mobile telecommunications service, the customer's primary place of use.

400 Section 9. Section **10-1-408** is enacted to read:

401 **10-1-408. Procedure for taxes erroneously recovered from customers.**

402 A customer may not bring a cause of action against a telecommunications provider on
403 the basis that the telecommunications provider erroneously recovered from the customer

404 municipal telecommunications license taxes authorized by this part:

405 (1) unless the customer provides the telecommunications provider written notice that:

406 (a) the customer requests a refund of the amounts paid by the customer pursuant to

407 Subsection 10-1-403(2); and

408 (b) contains the information necessary to determine the validity of the request

409 described in Subsection (1)(a); and

410 (2) before 60 days from the day on which the telecommunications provider receives the

411 written notice required by Subsection (1).

412 Section 10. Section **10-1-409** is enacted to read:

413 **10-1-409. Report on rate information.**

414 (1) (a) In accordance with this section, the commission shall submit a report to the

415 Legislature on or before February 16, 2004, that specifies the percentage calculated under

416 Subsection (1)(b) for each municipality that as of July 1, 2003 has imposed a tax, fee, or charge

417 under:

418 (i) Section 10-1-203 in effect as of July 1, 2003; and

419 (ii) Title 11, Chapter 26, Local Taxation of Utilities Limitation, in effective as of July

420 1, 2003.

421 (b) The percentage for each municipality described in Subsection (1)(a) shall be

422 calculated by:

423 (i) determining, on the basis of the report required by Subsection (2)(a), the revenues

424 received by the municipality during the period beginning July 1, 2003 and ending December

425 31, 2003 under:

426 (A) Section 10-1-203 in effect as of July 1, 2003; and

427 (B) Title 11, Chapter 26, Local Taxation of Utilities Limitation, in effect as of July 1,

428 2003;

429 (ii) dividing the number calculated under Subsection (1)(b)(i) by the aggregate for all

430 telecommunications providers of the gross receipts from telecommunications service attributed

431 to the municipality:

432 (A) as if the municipal telecommunications license tax authorized by this part had been

433 imposed by the municipality;

434 (B) during the period beginning July 1, 2003 and ending December 31, 2003; and

435 (C) on the basis of the report required by Subsection (2)(b):
436 (iii) rounding the number calculated under Subsection (1)(b)(ii) up to the nearest .01%;
437 and
438 (iv) adding .01% to the number calculated under Subsection (1)(b)(iii).
439 (c) The report required by this Subsection (1) shall be submitted to:
440 (i) (A) the Revenue and Taxation Standing Committee of the:
441 (I) House of Representatives; and
442 (II) Senate; and
443 (B) the Office of Legislative Research and General Counsel; and
444 (ii) provide information to the Legislature for the Legislature to evaluate whether the
445 maximum rate authorized by this part for the municipal telecommunications license tax should
446 be modified.
447 (c) The commission shall provide a copy of the report submitted under this Subsection
448 (1) to the Utah League of Cities and Towns on February 16, 2004.
449 (2) By no later than January 31, 2004 each:
450 (a) municipality described in Subsection (1)(a) shall file a report with the commission
451 certifying:
452 (i) the revenues received by the municipality during the period beginning July 1, 2003
453 and ending December 31, 2003 under:
454 (A) Section 10-1-203 in effect as of July 1, 2003; and
455 (B) Title 11, Chapter 26, Local Taxation of Utilities Limitation, in effect as of July 1,
456 2003; and
457 (b) telecommunications provider providing telecommunications service in this state
458 shall file a report with the commission stating the gross receipts from telecommunications
459 service received by the telecommunications provider for each municipality described in
460 Subsection (1)(a):
461 (i) as if the municipal telecommunications license tax had been imposed by the
462 municipality;
463 (ii) for the period beginning July 1, 2003 and ending December 31, 2003; and
464 (iii) that are attributed to the municipality.
465 Section 11. Section **10-1-410** is enacted to read:

466 10-1-410. Transactions consisting of telecommunications service and
 467 nontelecommunications services.

468 (1) For purposes of this section, "nontelecommunications services" means services or
 469 tangible personal property that are:

470 (a) not telecommunications service; and

471 (b) provided by a telecommunications provider to a customer.

472 (2) Except to the extent prohibited by federal law, if a telecommunications provider
 473 provides nontelecommunications services to a customer as part of the same transaction in
 474 which the telecommunications provider provides telecommunications service, the gross
 475 receipts from the nontelecommunications services provided by the telecommunications
 476 provider are subject to a tax under this part unless:

477 (a) the charge for the nontelecommunications services is separately identified in the
 478 statement of the transaction with the customer of the telecommunications service; or

479 (b) from the books and records of the telecommunications provider that are kept in the
 480 regular course of business, the telecommunications provider can reasonably identify the portion
 481 of the total charge for the transaction that is attributable to:

482 (i) the nontelecommunications services; and

483 (ii) the telecommunications service.

484 Section 12. Section **11-26-1** is amended to read:

485 **11-26-1. Definitions -- Ceiling on local charges based on gross revenues of public**
 486 **service provider.**

487 (1) As used in this chapter:

488 ~~[(a) (i) "Exchange access services" means telephone exchange lines or channels, and~~
 489 ~~services provided in connection with them, which are necessary to provide access from the~~
 490 ~~premises of a subscriber to the local switched public telecommunications network of the public~~
 491 ~~utility to effect communication or the transfer of information.]~~

492 ~~[(ii) "Exchange access services" does not include:]~~

493 ~~[(A) private line services;]~~

494 ~~[(B) long distance toll services;]~~

495 ~~[(C) carrier access services;]~~

496 ~~[(D) telephonic services that are not regulated by the Utah Public Service Commission;~~

497 and]

498 [~~(E) services that emulate functions available in customer premises equipment.~~]

499 [~~(b)~~ (a) "Local charge" means one or more of the following charges paid by a public

500 service provider to a county or municipality:

501 (i) a tax;

502 (ii) a license;

503 (iii) a fee;

504 (iv) a license fee;

505 (v) a license tax; or

506 (vi) a charge similar to Subsections (1)[~~(b)~~](a)(i) through (v).

507 (b) "Municipality" means:

508 (i) a city; or

509 (ii) a town.

510 (c) "Public service provider" means[~~:(i) a public utility; or (ii)~~] a person [~~or entity~~]

511 engaged in the business of supplying[~~:(A) telephone service; or (B)~~] taxable energy as defined

512 in Section 10-1-303.

513 (2) A county or a municipality may not impose upon, charge, or collect from a public

514 service provider local charges:

515 (a) imposed on the basis of the gross revenues of the public service provider;

516 (b) derived from sales, use, or both sales and use of the service within the county or

517 municipality; and

518 (c) in a total amount that is greater than 6% of gross revenues.

519 (3) The determination of gross revenues under this section may not include:

520 (a) the sale of gas or electricity as special fuel for motor vehicles; or

521 [~~(b) the sale of telephone service provided by a public utility regulated by the Utah~~

522 ~~Public Service Commission other than:~~]

523 [~~(i) exchange access services;~~]

524 [~~(ii) extended area service;~~]

525 [~~(iii) customer access line charges; and~~]

526 [~~(iv) any services for which a tax or other charge was being paid pursuant to this~~

527 ~~section as of January 1, 1992; or~~]

528 ~~[(c)]~~ (b) a local charge.

529 (4) This section may not be construed to:

530 (a) affect or limit the power of counties or municipalities to impose sales and use taxes
531 under;

532 (i) Title 59, Chapter 12, [~~Part 2, Local~~] Sales and Use Tax Act~~[-]~~; or

533 (ii) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act; or

534 (b) grant any county or municipality the power to impose a local charge not otherwise
535 provided for by law.

536 (5) This section takes precedence over any conflicting provision of law.

537 Section 13. Section **59-1-403** is amended to read:

538 **59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

539 (1) (a) Except as provided in this section, any of the following may not divulge or make
540 known in any manner any information gained by that person from any return filed with the
541 commission:

542 (i) a tax commissioner;

543 (ii) an agent, clerk, or other officer or employee of the commission; or

544 (iii) a representative, agent, clerk, or other officer or employee of any county, city, or
545 town.

546 (b) Except as provided in Subsection (1)(c), an official charged with the custody of a
547 return filed with the commission is not required to produce the return or evidence of anything
548 contained in the return in any action or proceeding in any court, except:

549 (i) in accordance with judicial order;

550 (ii) on behalf of the commission in any action or proceeding under:

551 (A) this title; or

552 (B) other law under which persons are required to file returns with the commission;

553 (iii) on behalf of the commission in any action or proceeding to which the commission
554 is a party; or

555 (iv) on behalf of any party to any action or proceeding under this title if the report or
556 facts shown by the return are directly involved in the action or proceeding.

557 (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may
558 admit in evidence, any portion of a return or of the facts shown by the return, as are specifically

559 pertinent to the action or proceeding.

560 (2) This section does not prohibit:

561 (a) a person or that person's duly authorized representative from receiving a copy of
562 any return or report filed in connection with that person's own tax;

563 (b) the publication of statistics as long as the statistics are classified to prevent the
564 identification of particular reports or returns; and

565 (c) the inspection by the attorney general or other legal representative of the state of the
566 report or return of any taxpayer:

567 (i) who brings action to set aside or review a tax based on the report or return;

568 (ii) against whom an action or proceeding is contemplated or has been instituted under
569 this title; or

570 (iii) against whom the state has an unsatisfied money judgment.

571 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the
572 commission may by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative
573 Rulemaking Act, provide for a reciprocal exchange of information with:

574 (i) the United States Internal Revenue Service; or

575 (ii) the revenue service of any other state.

576 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and
577 corporate franchise tax, the commission may by rule, made in accordance with Title 63,
578 Chapter 46a, Utah Administrative Rulemaking Act, share information gathered from returns
579 and other written statements with the federal government, any other state, any of the political
580 subdivisions of another state, or any political subdivision of this state, except as limited by
581 Sections 59-12-209 and 59-12-210, if these political subdivisions or the federal government
582 grant substantially similar privileges to this state.

583 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and
584 corporate franchise tax, the commission may by rule, in accordance with Title 63, Chapter 46a,
585 Utah Administrative Rulemaking Act, provide for the issuance of information concerning the
586 identity and other information of taxpayers who have failed to file tax returns or to pay any tax
587 due.

588 (d) Notwithstanding Subsection (1), the commission shall provide to the Solid and
589 Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, as

590 requested by the executive secretary, any records, returns, or other information filed with the
591 commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5
592 regarding the environmental assurance program participation fee.

593 (e) Notwithstanding Subsection (1), at the request of any person the commission shall
594 provide that person sales and purchase volume data reported to the commission on a report,
595 return, or other information filed with the commission under:

596 (i) Chapter 13, Part 2, Motor Fuel; or

597 (ii) Chapter 13, Part 4, Aviation Fuel.

598 (f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer,
599 as defined in Section 59-22-202, the commission shall report to the manufacturer:

600 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
601 manufacturer and reported to the commission for the previous calendar year under Section
602 59-14-407; and

603 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
604 manufacturer for which a tax refund was granted during the previous calendar year under
605 Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

606 (g) Notwithstanding Subsection (1), the commission shall notify manufacturers,
607 distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited
608 from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

609 (h) Notwithstanding Subsection (1), the commission may:

610 (i) provide to the Division of Consumer Protection within the Department of
611 Commerce and the attorney general data:

612 (A) reported to the commission under Section 59-14-212; or

613 (B) related to a violation under Section 59-14-211; and

614 (ii) upon request provide to any person data reported to the commission under
615 Subsections 59-14-212(1)(a) through(c) and Subsection 59-14-212(1)(g).

616 (i) Notwithstanding Subsection (1), the commission shall, at the request of a committee
617 of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning
618 and Budget, provide to the committee or office the total amount of revenues collected by the
619 commission under Chapter 24, Radioactive Waste Tax Act, for the time period specified by the
620 committee or office.

621 (j) Notwithstanding Subsection (1), the commission shall at the request of the
622 Legislature provide to the Legislature the total amount of sales or uses exempt under
623 Subsection 59-12-104(52) reported to the commission in accordance with Section 59-12-105.

624 (k) Notwithstanding Subsection (1), the commission shall make the list required by
625 Subsection 59-14-408(3) available for public inspection.

626 (l) Notwithstanding Subsection (1), the commission shall comply with the reporting
627 requirements of Section 10-1-409.

628 (4) (a) Reports and returns shall be preserved for at least three years.

629 (b) After the three-year period provided in Subsection (4)(a) the commission may
630 destroy a report or return.

631 (5) (a) Any person who violates this section is guilty of a class A misdemeanor.

632 (b) If the person described in Subsection (5)(a) is an officer or employee of the state,
633 the person shall be dismissed from office and be disqualified from holding public office in this
634 state for a period of five years thereafter.

635 (6) This part does not apply to the property tax.

636 Section 14. Section **59-12-102** is amended to read:

637 **59-12-102. Definitions.**

638 As used in this chapter:

639 (1) (a) "Admission or user fees" includes season passes.

640 (b) "Admission or user fees" does not include annual membership dues to private
641 organizations.

642 (2) "Area agency on aging" is as defined in Section 62A-3-101.

643 (3) "Authorized carrier" means:

644 (a) in the case of vehicles operated over public highways, the holder of credentials
645 indicating that the vehicle is or will be operated pursuant to both the International Registration
646 Plan and the International Fuel Tax Agreement;

647 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating
648 certificate or air carrier's operating certificate; or

649 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling
650 stock, the holder of a certificate issued by the United States Surface Transportation Board.

651 (4) (a) For purposes of Subsection 59-12-104(43), "coin-operated amusement device"

652 means:

653 (i) a coin-operated amusement, skill, or ride device;

654 (ii) that is not controlled through vendor-assisted, over-the-counter, sales of tokens;

655 and

656 (iii) includes a music machine, pinball machine, billiard machine, video game machine,
657 arcade machine, and a mechanical or electronic skill game or ride.

658 (b) For purposes of Subsection 59-12-104(43), "coin-operated amusement device" does
659 not mean a coin-operated amusement device possessing a coinage mechanism that:

660 (i) accepts and registers multiple denominations of coins; and

661 (ii) allows the vendor to collect the sales and use tax at the time an amusement device
662 is activated and operated by a person inserting coins into the device.

663 (5) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
664 fuels that does not constitute industrial use under Subsection (13) or residential use under
665 Subsection [~~(23)~~] (24).

666 (6) (a) "Common carrier" means a person engaged in or transacting the business of
667 transporting passengers, freight, merchandise, or other property for hire within this state.

668 (b) (i) "Common carrier" does not include a person who, at the time the person is
669 traveling to or from that person's place of employment, transports a passenger to or from the
670 passenger's place of employment.

671 (ii) For purposes of Subsection (6)(b)(i), in accordance with Title 63, Chapter 46a,
672 Utah Administrative Rulemaking Act, the commission may make rules defining what
673 constitutes a person's place of employment.

674 (7) "Component part" includes:

675 (a) poultry, dairy, and other livestock feed, and their components;

676 (b) baling ties and twine used in the baling of hay and straw;

677 (c) fuel used for providing temperature control of orchards and commercial
678 greenhouses doing a majority of their business in wholesale sales, and for providing power for
679 off-highway type farm machinery; and

680 (d) feed, seeds, and seedlings.

681 (8) "Construction materials" means any tangible personal property that will be
682 converted into real property.

- 683 (9) (a) "Fundraising sales" means sales:
684 (i) (A) made by a school; or
685 (B) made by a school student;
686 (ii) that are for the purpose of raising funds for the school to purchase equipment,
687 materials, or provide transportation; and
688 (iii) that are part of an officially sanctioned school activity.
689 (b) For purposes of Subsection (9)(a)(iii), "officially sanctioned school activity" means
690 a school activity:
691 (i) that is conducted in accordance with a formal policy adopted by the school or school
692 district governing the authorization and supervision of fundraising activities;
693 (ii) that does not directly or indirectly compensate an individual teacher or other
694 educational personnel by direct payment, commissions, or payment in kind; and
695 (iii) the net or gross revenues from which are deposited in a dedicated account
696 controlled by the school or school district.
- 697 (10) (a) "Hearing aid" means:
698 (i) an instrument or device having an electronic component that is designed to:
699 (A) (I) improve impaired human hearing; or
700 (II) correct impaired human hearing; and
701 (B) (I) be worn in the human ear; or
702 (II) affixed behind the human ear;
703 (ii) an instrument or device that is surgically implanted into the cochlea; or
704 (iii) a telephone amplifying device.
705 (b) "Hearing aid" does not include:
706 (i) except as provided in Subsection (10)(a)(i)(B) or (10)(a)(ii), an instrument or device
707 having an electronic component that is designed to be worn on the body;
708 (ii) except as provided in Subsection (10)(a)(iii), an assistive listening device or system
709 designed to be used by one individual, including:
710 (A) a personal amplifying system;
711 (B) a personal FM system;
712 (C) a television listening system; or
713 (D) a device or system similar to a device or system described in Subsections

- 714 (10)(b)(ii)(A) through (C); or
- 715 (iii) an assistive listening device or system designed to be used by more than one
- 716 individual, including:
- 717 (A) a device or system installed in:
- 718 (I) an auditorium;
- 719 (II) a church;
- 720 (III) a conference room;
- 721 (IV) a synagogue; or
- 722 (V) a theater; or
- 723 (B) a device or system similar to a device or system described in Subsections
- 724 (10)(b)(iii)(A)(I) through (V).
- 725 (11) (a) "Hearing aid accessory" means a hearing aid:
- 726 (i) component;
- 727 (ii) attachment; or
- 728 (iii) accessory.
- 729 (b) "Hearing aid accessory" includes:
- 730 (i) a hearing aid neck loop;
- 731 (ii) a hearing aid cord;
- 732 (iii) a hearing aid ear mold;
- 733 (iv) hearing aid tubing;
- 734 (v) a hearing aid ear hook; or
- 735 (vi) a hearing aid remote control.
- 736 (c) "Hearing aid accessory" does not include:
- 737 (i) a component, attachment, or accessory designed to be used only with an:
- 738 (A) instrument or device described in Subsection (10)(b)(i); or
- 739 (B) assistive listening device or system described in Subsection (10)(b)(ii) or (iii); or
- 740 (ii) a hearing aid battery.
- 741 (12) (a) Except as provided in Subsection (12)(c), "home medical equipment or
- 742 supplies" means equipment or supplies that:
- 743 (i) a licensed physician prescribes or authorizes in writing as necessary:
- 744 (A) for the treatment of a medical illness or injury; or

- 745 (B) to mitigate an impairment resulting from illness or injury;
- 746 (ii) are used exclusively by the person for whom they are prescribed to serve a medical
747 purpose; and
- 748 (iii) are listed as eligible for payment under:
- 749 (A) Title XVIII [~~of the federal~~], Social Security Act; or
- 750 (B) the state plan for medical assistance under Title XIX [~~of the federal~~], Social
751 Security Act.
- 752 (b) "Home medical equipment or supplies" includes parts used in the repairs or
753 renovations of equipment or supplies described in Subsection (12)(a).
- 754 (c) Notwithstanding Subsection (12)(a), "home medical equipment or supplies" does
755 not include:
- 756 (i) equipment or supplies purchased by, for, or on behalf of any:
- 757 (A) health care facility, as defined in Subsection (12)(d); or
- 758 (B) one or more of the following for use in a professional practice:
- 759 (I) a doctor;
- 760 (II) a nurse; or
- 761 (III) another health care provider;
- 762 (ii) eyeglasses, contact lenses, or equipment to correct impaired vision; or
- 763 (iii) hearing aids or hearing aid accessories.
- 764 (d) For purposes of Subsection (12)(c)(i)(A), "health care facility" includes:
- 765 (i) a clinic;
- 766 (ii) a doctor's office; or
- 767 (iii) a health care facility as defined in Section 26-21-2.
- 768 (13) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
769 other fuels:
- 770 (a) in mining or extraction of minerals;
- 771 (b) in agricultural operations to produce an agricultural product up to the time of
772 harvest or placing the agricultural product into a storage facility, including:
- 773 (i) commercial greenhouses;
- 774 (ii) irrigation pumps;
- 775 (iii) farm machinery;

776 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
777 registered under Title 41, Chapter 1a, Part 2, Registration; and

778 (v) other farming activities;

779 (c) in manufacturing tangible personal property at an establishment described in SIC
780 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
781 Executive Office of the President, Office of Management and Budget; or

782 (d) by a scrap recycler if:

783 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
784 one or more of the following items into prepared grades of processed materials for use in new
785 products:

786 (A) iron;

787 (B) steel;

788 (C) nonferrous metal;

789 (D) paper;

790 (E) glass;

791 (F) plastic;

792 (G) textile; or

793 (H) rubber; and

794 (ii) the new products under Subsection (13)(d)(i) would otherwise be made with
795 nonrecycled materials.

796 (14) "Manufactured home" means any manufactured home or mobile home as defined
797 in Title 58, Chapter 56, Utah Uniform Building Standards Act.

798 (15) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:

799 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
800 Industrial Classification Manual of the federal Executive Office of the President, Office of
801 Management and Budget; or

802 (b) a scrap recycler if:

803 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
804 one or more of the following items into prepared grades of processed materials for use in new
805 products:

806 (A) iron;

- 807 (B) steel;
- 808 (C) nonferrous metal;
- 809 (D) paper;
- 810 (E) glass;
- 811 (F) plastic;
- 812 (G) textile; or
- 813 (H) rubber; and
- 814 (ii) the new products under Subsection (15)(b)(i) would otherwise be made with
- 815 nonrecycled materials.
- 816 (16) (a) "Medicine" means:
- 817 (i) insulin, syringes, and any medicine prescribed for the treatment of human ailments
- 818 by a person authorized to prescribe treatments and dispensed on prescription filled by a
- 819 registered pharmacist, or supplied to patients by a physician, surgeon, or podiatric physician;
- 820 (ii) any medicine dispensed to patients in a county or other licensed hospital if
- 821 prescribed for that patient and dispensed by a registered pharmacist or administered under the
- 822 direction of a physician; and
- 823 (iii) any oxygen or stoma supplies prescribed by a physician or administered under the
- 824 direction of a physician or paramedic.
- 825 (b) "Medicine" does not include:
- 826 (i) any auditory, prosthetic, ophthalmic, or ocular device or appliance; or
- 827 (ii) any alcoholic beverage.
- 828 (17) "Mobile telecommunications service" is as defined in the Mobile
- 829 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
- 830 (18) "Olympic merchandise" means tangible personal property bearing an Olympic
- 831 designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or
- 832 other copyrighted or protected material, including:
- 833 (a) one or more of the following terms:
- 834 (i) "Olympic";
- 835 (ii) "Olympiad"; or
- 836 (iii) "Citius Altius Fortius";
- 837 (b) the symbol of the International Olympic Committee, consisting of five interlocking

838 rings;

839 (c) the emblem of the International Olympic Committee Corporation;

840 (d) a United States Olympic Committee designation, emblem, insignia, mark, logo,
841 service mark, symbol, terminology, trademark, or other copyrighted or protected material;

842 (e) any emblem of the Olympic Winter Games of 2002 that is officially designated by
843 the Salt Lake Organizing Committee of the Olympic Winter Games of 2002; or

844 (f) the mascot of the Olympic Winter Games of 2002.

845 (19) (a) "Other fuels" means products that burn independently to produce heat or
846 energy.

847 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible
848 personal property.

849 (20) "Person" includes any individual, firm, partnership, joint venture, association,
850 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
851 municipality, district, or other local governmental entity of the state, or any group or
852 combination acting as a unit.

853 (21) "Place of primary use":

854 (a) for telephone service other than mobile telecommunications service, means the
855 street address representative of where the purchaser's use of the telephone service primarily
856 occurs, which shall be:

857 (i) the residential street address of the purchaser; or

858 (ii) the primary business street address of the purchaser; or

859 (b) for mobile telecommunications service, is as defined in the Mobile
860 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

861 ~~[(21)]~~ (22) "Purchase price" means the amount paid or charged for tangible personal
862 property or any other taxable transaction under Subsection 59-12-103(1), excluding only cash
863 discounts taken or any excise tax imposed on the purchase price by the federal government.

864 ~~[(22)]~~ (23) "Regularly rented" means:

865 (a) rented to a guest for value three or more times during a calendar year; or

866 (b) advertised or held out to the public as a place that is regularly rented to guests for
867 value.

868 ~~[(23)]~~ (24) "Residential use" means the use in or around a home, apartment building,

869 sleeping quarters, and similar facilities or accommodations.

870 ~~[(24)]~~ (25) (a) "Retail sale" means any sale within the state of tangible personal
871 property or any other taxable transaction under Subsection 59-12-103(1), other than resale of
872 such property, item, or service by a retailer or wholesaler to a user or consumer.

873 (b) "Retail sale" includes sales by any farmer or other agricultural producer of poultry,
874 eggs, or dairy products to consumers if the sales have an average monthly sales value of \$125
875 or more.

876 (c) "Retail sale" does not include, and no additional sales or use tax shall be assessed
877 against, those transactions where a purchaser of tangible personal property pays applicable
878 sales or use taxes on its initial nonexempt purchases of property and then enters into a
879 sale-leaseback transaction by which title to such property is transferred by the purchaser-lessee
880 to a lessor for consideration, provided:

881 (i) the transaction is intended as a form of financing for the property to the
882 purchaser-lessee; and

883 (ii) pursuant to generally accepted accounting principles, the purchaser-lessee is
884 required to capitalize the subject property for financial reporting purposes, and account for the
885 lease payments as payments made under a financing arrangement.

886 ~~[(25)]~~ (26) (a) "Retailer" means any person engaged in a regularly organized retail
887 business in tangible personal property or any other taxable transaction under Subsection
888 59-12-103(1), and who is selling to the user or consumer and not for resale.

889 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
890 engaged in the business of selling to users or consumers within the state.

891 (c) "Retailer" does not include farmers, gardeners, stockmen, poultrymen, or other
892 growers or agricultural producers producing and doing business on their own premises, except
893 those who are regularly engaged in the business of buying or selling for a profit.

894 (d) For purposes of this chapter the commission may regard as retailers the following if
895 they determine it is necessary for the efficient administration of this chapter: salesmen,
896 representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, or
897 employers under whom they operate or from whom they obtain the tangible personal property
898 sold by them, irrespective of whether they are making sales on their own behalf or on behalf of
899 these dealers, distributors, supervisors, or employers, except that:

900 (i) a printer's facility with which a retailer has contracted for printing shall not be
901 considered to be a salesman, representative, peddler, canvasser, or agent of the retailer; and

902 (ii) the ownership of property that is located at the premises of a printer's facility with
903 which the retailer has contracted for printing and that consists of the final printed product,
904 property that becomes a part of the final printed product, or copy from which the printed
905 product is produced, shall not result in the retailer being deemed to have or maintain an office,
906 distribution house, sales house, warehouse, service enterprise, or other place of business, or to
907 maintain a stock of goods, within this state.

908 [~~26~~] (27) "Sale" means any transfer of title, exchange, or barter, conditional or
909 otherwise, in any manner, of tangible personal property or any other taxable transaction under
910 Subsection 59-12-103(1), for consideration. It includes:

911 (a) installment and credit sales;

912 (b) any closed transaction constituting a sale;

913 (c) any sale of electrical energy, gas, services, or entertainment taxable under this
914 chapter;

915 (d) any transaction if the possession of property is transferred but the seller retains the
916 title as security for the payment of the price; and

917 (e) any transaction under which right to possession, operation, or use of any article of
918 tangible personal property is granted under a lease or contract and the transfer of possession
919 would be taxable if an outright sale were made.

920 [~~27~~] (28) (a) "Sales relating to schools" means the following sales by, amounts paid
921 to, or amounts charged by a school:

922 (i) sales that are directly related to the school's educational functions or activities
923 including:

924 (A) the sale of:

925 (I) textbooks;

926 (II) textbook fees;

927 (III) laboratory fees;

928 (IV) laboratory supplies; or

929 (V) safety equipment;

930 (B) the sale of clothing that:

931 (I) a student is specifically required to wear as a condition of participation in a
932 school-related event or school-related activity; and

933 (II) is not readily adaptable to general or continued usage to the extent that it takes the
934 place of ordinary clothing;

935 (C) sales of food if the net or gross revenues generated by the food sales are deposited
936 into a school district fund or school fund dedicated to school meals; or

937 (D) transportation charges for official school activities; or

938 (ii) amounts paid to or amounts charged by a school for admission to a school-related
939 event or school-related activity.

940 (b) "Sales relating to schools" does not include:

941 (i) bookstore sales of items that are not educational materials or supplies;

942 (ii) except as provided in Subsection [~~(27)~~] (28)(a)(i)(B), clothing; or

943 (iii) amounts paid to or amounts charged by a school for admission to a school-related
944 event or school-related activity if the amounts paid or charged are passed through to a person:

945 (A) other than a:

946 (I) school;

947 (II) nonprofit organization authorized by a school board or a governing body of a
948 private school to organize and direct a competitive secondary school activity; or

949 (III) nonprofit association authorized by a school board or a governing body of a
950 private school to organize and direct a competitive secondary school activity; and

951 (B) that is required to collect sales and use taxes under this chapter.

952 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
953 commission may make rules defining the term "passed through."

954 [~~(28)~~] (29) For purposes of this section and Section 59-12-104, "school" means:

955 (a) an elementary school or a secondary school that:

956 (i) is a:

957 (A) public school; or

958 (B) private school; and

959 (ii) provides instruction for one or more grades kindergarten through 12; or

960 (b) a public school district.

961 [~~(29)~~] (30) (a) "Semiconductor fabricating or processing materials" means tangible

- 962 personal property:
- 963 (i) used primarily in the process of:
- 964 (A) (I) manufacturing a semiconductor; or
- 965 (II) fabricating a semiconductor; or
- 966 (B) maintaining an environment suitable for a semiconductor; or
- 967 (ii) consumed primarily in the process of:
- 968 (A) (I) manufacturing a semiconductor; or
- 969 (II) fabricating a semiconductor; or
- 970 (B) maintaining an environment suitable for a semiconductor.
- 971 (b) "Semiconductor fabricating or processing materials" includes:
- 972 (i) parts used in the repairs or renovations of tangible personal property described in
- 973 Subsection [~~(29)~~] (30)(a); or
- 974 (ii) a chemical, catalyst, or other material used to:
- 975 (A) produce or induce in a semiconductor a:
- 976 (I) chemical change; or
- 977 (II) physical change;
- 978 (B) remove impurities from a semiconductor; or
- 979 (C) improve the marketable condition of a semiconductor.
- 980 [~~(30)~~] (31) "Senior citizen center" means a facility having the primary purpose of
- 981 providing services to the aged as defined in Section 62A-3-101.
- 982 [~~(31)~~] (32) "State" means the state of Utah, its departments, and agencies.
- 983 [~~(32)~~] (33) "Storage" means any keeping or retention of tangible personal property or
- 984 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose
- 985 except sale in the regular course of business.
- 986 [~~(33)~~] (34) (a) "Tangible personal property" means:
- 987 (i) all goods, wares, merchandise, produce, and commodities;
- 988 (ii) all tangible or corporeal things and substances which are dealt in or capable of
- 989 being possessed or exchanged;
- 990 (iii) water in bottles, tanks, or other containers; and
- 991 (iv) all other physically existing articles or things, including property severed from real
- 992 estate.

- 993 (b) "Tangible personal property" does not include:
- 994 (i) real estate or any interest or improvements in real estate;
- 995 (ii) bank accounts, stocks, bonds, mortgages, notes, and other evidence of debt;
- 996 (iii) insurance certificates or policies;
- 997 (iv) personal or governmental licenses;
- 998 (v) water in pipes, conduits, ditches, or reservoirs;
- 999 (vi) currency and coinage constituting legal tender of the United States or of a foreign
- 1000 nation; and
- 1001 (vii) all gold, silver, or platinum ingots, bars, medallions, or decorative coins, not
- 1002 constituting legal tender of any nation, with a gold, silver, or platinum content of not less than
- 1003 80%.
- 1004 ~~[(34)] (35)~~ (a) ~~[For purposes of Subsection (35) and Section 59-12-103, "telephone]~~
- 1005 "Telephone service" means a two-way transmission:
- 1006 (i) by:
- 1007 (A) wire;
- 1008 (B) radio;
- 1009 (C) lightwave; or
- 1010 (D) other electromagnetic means; and
- 1011 (ii) of one or more of the following:
- 1012 (A) a sign;
- 1013 (B) a signal;
- 1014 (C) writing;
- 1015 (D) an image;
- 1016 (E) sound;
- 1017 (F) a message;
- 1018 (G) data; or
- 1019 (H) other information of any nature.
- 1020 (b) "Telephone service" includes:
- 1021 (i) cellular telephone service;
- 1022 (ii) private communications service; or
- 1023 (iii) automated digital telephone answering service.

1024 (c) "Telephone service" does not include a service or a transaction that a state or a
1025 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet
1026 Tax Freedom Act, Pub. L. No. 105-277.

1027 (36) Notwithstanding where a call is billed or paid, "telephone service address" means:

1028 (a) if the location described in this Subsection (36)(a) is known, the location of the
1029 telephone service equipment:

1030 (i) to which a call is charged; and

1031 (ii) from which the call originates or terminates;

1032 (b) if the location described in Subsection (36)(a) is not known but the location
1033 described in this Subsection (36)(b) is known, the location of the origination point of the signal
1034 of the telephone service first identified by:

1035 (i) the telecommunications system of the seller; or

1036 (ii) if the system used to transport the signal is not that of the seller, information
1037 received by the seller from its service provider; or

1038 (c) if the locations described in Subsection (36)(a) or (b) are not known, the location of
1039 a purchaser's primary place of use.

1040 [~~35~~] (37) (a) "Telephone service provider" means a person that:

1041 (i) owns, controls, operates, or manages a telephone service; and

1042 (ii) engages in an activity described in Subsection [~~35~~] (37)(a)(i) for the shared use
1043 with or resale to any person of the telephone service.

1044 (b) A person described in Subsection [~~35~~] (37)(a) is a telephone service provider
1045 whether or not the Public Service Commission of Utah regulates:

1046 (i) that person; or

1047 (ii) the telephone service that the person owns, controls, operates, or manages.

1048 [~~36~~] (38) (a) "Use" means the exercise of any right or power over tangible personal
1049 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that
1050 property, item, or service.

1051 (b) "Use" does not include the sale, display, demonstration, or trial of that property in
1052 the regular course of business and held for resale.

1053 [~~37~~] (39) "Vehicle" means any aircraft, as defined in Section 72-10-102; any vehicle,
1054 as defined in Section 41-1a-102; any off-highway vehicle, as defined in Section 41-22-2; and

1055 any vessel, as defined in Section 41-1a-102; that is required to be titled, registered, or both.
1056 "Vehicle," for purposes of Subsection 59-12-104(36) only, also includes any locomotive,
1057 freight car, railroad work equipment, or other railroad rolling stock.

1058 ~~[(38)]~~ (40) "Vehicle dealer" means a person engaged in the business of buying, selling,
1059 or exchanging vehicles as defined in Subsection ~~[(37)]~~ (39).

1060 ~~[(39)]~~ (41) (a) "Vendor" means any person receiving any payment or consideration
1061 upon a sale of tangible personal property or any other taxable transaction under Subsection
1062 59-12-103(1), or to whom the payment or consideration is payable.

1063 (b) "Vendor" does not mean a printer's facility described in Subsection ~~[(25)]~~ (26)(d).
1064 Section 15. Section **59-12-207 (Effective 01/01/03)** is amended to read:

1065 **59-12-207 (Effective 01/01/03). Report of tax collections -- Point of sale when**
1066 **retailer has no permanent place of business or more than one place of business is**
1067 **determined by rule of commission -- Public utilities -- Telephone telecommunications**
1068 **service.**

1069 (1) Except as provided in Subsection (5), any sales and use taxes collected under this
1070 part shall be reported to the commission on forms that accurately identify the location where
1071 the transaction resulting in a tax under this chapter is consummated.

1072 (2) Except as provided in Subsection (5), for purposes of this part, the location of
1073 where a transaction is consummated:

1074 (a) is determined under rules of the commission if:

1075 (i) a retailer has no permanent place of business in the state; or

1076 (ii) has more than one place of business; and

1077 (b) is where a purchaser receives the following products or services sold by a public
1078 utility, as defined in Section 54-2-1, to that purchaser:

1079 (i) gas; or

1080 (ii) electricity[; ~~or~~].

1081 ~~[(iii) telephone services.]~~

1082 (3) The form required under Subsection (1) shall:

1083 (a) accompany the sales and use tax returns required under this chapter; and

1084 (b) identify the location of any transaction consummated during the return filing
1085 period.

1086 (4) Subject to Subsection (5) and in accordance with Title 63, Chapter 46a, Utah
1087 Administrative Rulemaking Act, the commission shall make rules regarding the determination
1088 of the location of where under Subsection (2)(a) a transaction is consummated.

1089 (5) Notwithstanding Subsections (1) and (2)~~[, mobile telecommunications service is~~
1090 ~~subject to the sourcing rules provided in the Mobile Telecommunications Sourcing Act, 4~~
1091 ~~U.S.C. Sec. 116 et seq.]~~ and except as provided in Subsection (6), the location of a transaction
1092 for telephone service taxed under this part shall be the county, city, or town within which is
1093 located the nine-digit zip code that is assigned by the United States Postal Service:

1094 (a) for telephone service other than mobile telecommunications service, to the
1095 telephone service address for the transaction; and

1096 (b) for mobile telecommunications service, to the place of primary use for the
1097 transaction.

1098 (6) (a) For purposes of this Subsection (6):

1099 (i) "Combined tax rate" means the sum of the tax rates imposed on a transaction
1100 described in Subsection 59-12-103(1) under:

1101 (A) Subsection 59-12-103(2)(a)(i);

1102 (B) Section 59-12-204;

1103 (C) Section 59-12-205;

1104 (D) Section 59-12-401;

1105 (E) Section 59-12-402;

1106 (F) Section 59-12-501;

1107 (G) Section 59-12-502;

1108 (H) Section 59-12-703;

1109 (I) Section 59-12-802;

1110 (J) Section 59-12-804;

1111 (K) Section 59-12-1001;

1112 (L) Section 59-12-1102;

1113 (M) Section 59-12-1302; and

1114 (N) Section 59-12-1402.

1115 (ii) "Lowest combined tax rate" for a shared zip code means the lowest combined tax
1116 rate of the counties, cities, or towns within which the shared zip code is located.

1117 (iii) "Shared zip code" means a nine-digit zip code assigned by the United States Postal
1118 Service that is located within two or more counties, cities, or towns.

1119 (b) Notwithstanding Subsection (5), if the nine-digit zip code that is assigned to a
1120 telephone service address or a place of primary use is a shared zip code, the location of a
1121 transaction for telephone service shall be:

1122 (i) if there is only one county, city, or town that imposes the lowest combined tax rate
1123 for the shared zip code, the county, city, or town that imposes the lowest combined tax rate; or

1124 (ii) if two or more counties, cities, or towns impose the lowest combined tax rate for
1125 the shared zip code, the county, city, or town that:

1126 (A) imposes the lowest combined tax rate for the shared zip code; and

1127 (B) of the counties, cities, or towns that impose the lowest combined tax rate, has
1128 located within the county, city, or town the largest number of street addresses within the shared
1129 zip code.

1130 (c) A telephone service provider shall collect sales and use taxes imposed under this
1131 chapter at the combined tax rate imposed within the county, city, or town in which the
1132 transaction for telephone service is located under Subsection (6)(b) notwithstanding the
1133 following:

1134 (i) Section 59-12-204;

1135 (ii) Section 59-12-205;

1136 (iii) Section 59-12-401;

1137 (iv) Section 59-12-402;

1138 (v) Section 59-12-501;

1139 (vi) Section 59-12-502;

1140 (vii) Section 59-12-703;

1141 (viii) Section 59-12-802;

1142 (ix) Section 59-12-804;

1143 (x) Section 59-12-1001;

1144 (xi) Section 59-12-1102;

1145 (xii) Section 59-12-1302; and

1146 (xiii) Section 59-12-1402.

1147 Section 16. Section **69-2-5** is amended to read:

1148 **69-2-5. Funding for 911 emergency telephone service.**

1149 (1) In providing funding of 911 emergency telephone service, any public agency
1150 establishing a 911 emergency telephone service may:

1151 (a) seek assistance from the federal or state government, to the extent constitutionally
1152 permissible, in the form of loans, advances, grants, subsidies, and otherwise, directly or
1153 indirectly;

1154 (b) seek funds appropriated by local governmental taxing authorities for the funding of
1155 public safety agencies; and

1156 (c) seek gifts, donations, or grants from individuals, corporations, or other private
1157 entities.

1158 (2) For purposes of providing funding of 911 emergency telephone service, special
1159 service districts may raise funds as provided in Section 17A-2-1322 and may borrow money
1160 and incur indebtedness as provided in Section 17A-2-1316.

1161 (3) (a) Except as provided in Subsection (3)(b)[;] and subject to [~~Subsection (3)(f), the~~
1162 ~~governing authority of any public agency providing~~] the other provisions of this Subsection (3)
1163 a county, city, or town within which 911 emergency telephone service is provided may levy
1164 monthly an emergency services telephone charge on

1165 (i) each local exchange service switched access line within the boundaries of the
1166 county, city, or town; and

1167 (ii) each revenue producing radio communications access line with a billing address
1168 within the boundaries of the [~~area served by the public agency~~] county, city, or town.

1169 (b) Notwithstanding Subsection (3)(a), an access [~~lines~~] line provided for public coin
1170 telephone service [~~are~~] is exempt from emergency telephone charges.

1171 (c) The amount of the charge levied under this section may not exceed:

1172 (i) 53 cents per month for each local exchange service switched access line; and

1173 (ii) 53 cents per month for each radio communications access line.

1174 (d) [~~Notification of intent to levy the charge shall be given to~~] A county, city, or town
1175 shall notify the Public Service Commission of the intent to levy the charge under this
1176 Subsection (3) at least 30 days prior to the effective date of the charge being levied.

1177 (e) Subject to Subsection (3)(f), an emergency services telephone charge levied under
1178 this section shall:

1179 (i) be billed and collected by the [~~corporation,~~] person[~~, or entity~~] that provides the:

1180 (A) local exchange service switched access line services; or

1181 (B) radio communications access line services; and

1182 (ii) remitted to the [~~public agency providing 911 emergency telephone service in the~~
1183 ~~billed customer location area as directed by the public agency~~] State Tax Commission.

1184 (f) An emergency services telephone charge on a mobile telecommunications service
1185 may be levied, billed, and collected only to the extent permitted by the Mobile

1186 Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

1187 (g) The State Tax Commission shall:

1188 (i) collect, enforce, and administer the charge imposed under this Subsection (3)
1189 pursuant to the same procedures used in the administration, collection, and enforcement of the
1190 state sales and use taxes under:

1191 (A) Title 59, Chapter 1, General Taxation Policies; and

1192 (B) Title 59, Chapter 12, Part 1, Tax Collection;

1193 (ii) transmit monies collected under this Subsection (3):

1194 (A) monthly; and

1195 (B) by electronic funds transfer by the commission to the county, city, or town that
1196 imposes the charge; and

1197 (iii) charge the county, city, or town for the State Tax Commission's services under this
1198 Subsection (3) in an amount:

1199 (A) sufficient to reimburse the State Tax Commission for the cost to the State Tax
1200 Commission in rendering the services; and

1201 (B) that may not exceed an amount equal to 1.5% of the charges imposed under this
1202 Subsection (3).

1203 (4) (a) Any money received by [~~the~~] a public agency for the provision of 911
1204 emergency telephone service shall be deposited in a special emergency telephone service fund.

1205 (b) (i) The money in the emergency telephone service fund described in Subsection
1206 (4)(a) shall be expended by the public agency to pay the costs of establishing, installing,
1207 maintaining, and operating a 911 emergency telephone system or integrating a 911 system into
1208 an established public safety dispatch center, including contracting with the providers of local
1209 exchange service, radio communications service, and vendors of appropriate terminal

1210 equipment as necessary to implement the 911 emergency telephone service.

1211 (ii) Revenues derived for the funding of 911 emergency telephone service may only be
1212 used for that portion of costs related to the operation of the 911 emergency telephone system
1213 when such a system is integrated with any public safety dispatch system.

1214 Section 17. Section **69-2-5.5** is amended to read:

1215 **69-2-5.5. Emergency services telephone charge to fund the Poison Control**
1216 **Center.**

1217 (1) Subject to Subsection (13), there is imposed an emergency services telephone
1218 charge of 7 cents per month on each local exchange service switched access line and each
1219 revenue producing radio communications access line that is subject to an emergency services
1220 telephone charge levied by a [~~public agency~~] county, city, or town under Section 69-2-5.

1221 (2) The emergency services telephone charge imposed under this section shall be:

1222 (a) subject to Subsection (13), billed and collected by the [~~corporation,~~] person[~~, or~~
1223 ~~entity~~] that provides:

1224 (i) local exchange service switched access line services; or

1225 (ii) radio communications access line services [~~and~~];

1226 (b) remitted [~~monthly~~] to the State Tax Commission at the same time as the person
1227 remits to the State Tax Commission monies collected by the person under Title 59, Chapter 12,
1228 Sales and Use Tax Act; and

1229 [~~(b)~~] (c) deposited into the General Fund as dedicated credits to pay for:

1230 (i) costs of establishing, installing, maintaining, and operating the University of Utah
1231 Poison Control Center; and

1232 (ii) expenses of the State Tax Commission to administer and enforce the collection of
1233 the emergency services telephone charges.

1234 (3) Funds for the University of Utah Poison Control Center program are nonlapsing.

1235 (4) Emergency services telephone charges remitted to the State Tax Commission
1236 pursuant to Subsection (2) shall be accompanied by the form prescribed by the commission.

1237 (5) The State Tax Commission may make rules to administer and enforce the collection
1238 of emergency services telephone charges imposed under this section.

1239 (6) A provider of local exchange service switched access line services or radio
1240 communications access line services who fails to comply with this section is subject to

1241 penalties and interest as provided in Sections 59-1-401 and 59-1-402.

1242 (7) (a) Except as provided in Subsections (8) through (11), and subject to Subsection
1243 (13), the State Tax Commission shall assess a charge imposed under this section within three
1244 years after a provider of local exchange service switched access line services or radio
1245 communications access line services files a return.

1246 (b) Except as provided in Subsections (8) through (11), if the commission does not
1247 assess a charge imposed under this section within the three-year period provided in Subsection
1248 (7)(a), the commission may not commence a proceeding to collect the charge.

1249 (8) Notwithstanding Subsection (7), and subject to Subsection (13), the State Tax
1250 Commission may assess a charge at any time if a provider of local exchange service switched
1251 access line services or radio communications access line services:

1252 (a) files a false or fraudulent return with intent to evade; or

1253 (b) does not file a return.

1254 (9) Notwithstanding Subsection (7), beginning on July 1, 1998, the State Tax
1255 Commission may extend the period to make an assessment or commence a proceeding to
1256 collect the charge imposed under this section if:

1257 (a) the three-year period under Subsection (7) has not expired; and

1258 (b) the commission and the provider of local exchange service switched access line
1259 services or radio communications access line services sign a written agreement:

1260 (i) authorizing the extension; and

1261 (ii) providing for the length of the extension.

1262 (10) If the State Tax Commission delays an audit at the request of a provider of local
1263 exchange service switched access line services or radio communications access line services,
1264 the commission may make an assessment as provided in Subsection (11) if:

1265 (a) the provider of local exchange service switched access line services or radio
1266 communications access line services subsequently refuses to agree to an extension request by
1267 the commission; and

1268 (b) the three-year period under Subsection (7) expires before the commission
1269 completes the audit.

1270 (11) An assessment under Subsection (10) shall be:

1271 (a) for the time period for which the State Tax Commission could not make an

1272 assessment because of the expiration of the three-year period; and

1273 (b) in an amount equal to the difference between:

1274 (i) the commission's estimate of the amount of the charge the provider of local
1275 exchange service switched access line services or radio communications access line services
1276 would have been assessed for the time period described in Subsection (11)(a); and

1277 (ii) the amount of the charge the provider of local exchange service switched access
1278 line services or radio communications access line services actually paid for the time period
1279 described in Subsection (11)(a).

1280 (12) (a) Except as provided in Subsection (12)(b), the State Tax Commission may not
1281 make a credit or refund unless the provider of local exchange service switched access line
1282 services or radio communications access line services files a claim with the commission within
1283 three years of the date of overpayment.

1284 (b) Notwithstanding Subsection (12)(a), beginning on July 1, 1998, the commission
1285 shall extend the period for a provider of local exchange service switched access line services or
1286 radio communications access line services to file a claim under Subsection (12)(a) if:

1287 (i) the three-year period under Subsection (12)(a) has not expired; and

1288 (ii) the commission and the provider of local exchange service switched access line
1289 services or radio communications access line services sign a written agreement:

1290 (A) authorizing the extension; and

1291 (B) providing for the length of the extension.

1292 (13) An emergency services telephone charge under this section on a mobile
1293 telecommunications service may be imposed, billed, and collected only to the extent permitted
1294 by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

1295 (14) (a) (i) For purposes of this Subsection (14) and except as provided in Subsection
1296 (14)(a)(ii), "bad debt" is as defined in Section 166, Internal Revenue Code.

1297 (ii) "Bad debt" does not include:

1298 (A) amounts not subject to the charge imposed under this section that are included in
1299 the purchase price for:

1300 (I) local exchange service switched access line service; or

1301 (II) radio communications access line service;

1302 (B) financing charges or interest;

- 1303 (C) the charge imposed under this section on:
1304 (I) a local exchange service switched access line; or
1305 (II) a radio communications access line;
1306 (D) uncollectible amounts on tangible personal property that remains in the possession
1307 of the vendor until the full purchase price is paid;
1308 (E) expenses incurred in attempting to collect any debt; and
1309 (F) amounts uncollected on repossessed property.
1310 (b) The State Tax Commission shall allow a credit for amounts remitted to the State
1311 Tax Commission under this section that constitute bad debt.

1312 Section 18. Section **72-7-102** is amended to read:

1313 **72-7-102. Excavations, structures, or objects prohibited within right-of-way**
1314 **except in accordance with law -- Permit and fee requirements -- Rulemaking -- Penalty**
1315 **for violation.**

1316 (1) As used in this section, "management costs" means the reasonable, direct, and
1317 actual costs a highway authority incurs in exercising authority over the highways under its
1318 jurisdiction.

1319 (2) Except as provided in Subsection (3) and Section 54-4-15, a person may not:

1320 (a) dig or excavate, within the right-of-way of any state highway, county road, or city
1321 street; or

1322 (b) place, construct, or maintain any approach road, driveway, pole, pipeline, conduit,
1323 sewer, ditch, culvert, billboard, advertising sign, or any other structure or object of any kind or
1324 character within the right-of-way.

1325 (3) (a) A highway authority having jurisdiction over the right-of-way may allow
1326 excavating, installation of utilities and other facilities or access under rules made by the
1327 highway authority and in compliance with federal, state, and local law as applicable.

1328 (b) (i) The rules may require a permit for any excavation or installation and may
1329 require a surety bond or other security.

1330 (ii) The application for a permit for excavation or installation on a state highway shall
1331 be accompanied by a fee established under Subsection (4)(f).

1332 (iii) The permit may be revoked and the surety bond or other security may be forfeited
1333 for cause.

1334 (4) (a) Except as provided in Section 72-7-108 with respect to the department
1335 concerning the interstate highway system, a highway authority may require compensation from
1336 a utility service provider for access to the right-of-way of a highway only as provided in this
1337 section.

1338 (b) A highway authority may recover from a utility service provider, only those
1339 management costs caused by the utility service provider's activities in the right-of-way of a
1340 highway under the jurisdiction of the highway authority.

1341 (c) (i) A fee or other compensation under this Subsection (4) shall be imposed on a
1342 competitively neutral basis.

1343 (ii) If a highway authority's management costs cannot be attributed to only one entity,
1344 the management costs shall be allocated among all privately owned and government agencies
1345 using the highway right-of-way for utility service purposes, including the highway authority
1346 itself. The allocation shall reflect proportionately the management costs incurred by the
1347 highway authority as a result of the various utility uses of the highway.

1348 (d) A highway authority may not use the compensation authority granted under this
1349 Subsection (4) as a basis for generating revenue for the highway authority that is in addition to
1350 its management costs.

1351 (e) (i) A utility service provider that is assessed management costs or a franchise fee by
1352 a highway authority is entitled to recover those management costs.

1353 (ii) If the highway authority that assesses the management costs or franchise fees is a
1354 political subdivision of the state and the utility service provider serves customers within the
1355 boundaries of that highway authority, the management costs may be recovered from those
1356 customers.

1357 (f) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1358 department shall adopt a schedule of fees to be assessed for management costs incurred in
1359 connection with issuing and administering a permit on a state highway under this section.

1360 (g) In addition to the requirements of this Subsection (4), a telecommunications tax or
1361 fee imposed by a municipality on a telecommunications provider, as defined in Section
1362 10-1-402, is subject to Section 10-1-406.

1363 (5) Permit fees collected by the department under this section shall be deposited with
1364 the state treasurer and credited to the Transportation Fund.

- 1365 (6) Nothing in this section shall affect the authority of a municipality under:
1366 (a) Section 11-26-1 [and];
1367 (b) Section 10-1-203;
1368 (c) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act[-]; or
1369 (d) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act.

1370 (7) A person who violates the provisions of Subsection (2) is guilty of a class B
1371 misdemeanor.

1372 Section 19. Section **72-7-108** is amended to read:

1373 **72-7-108. Longitudinal telecommunication access in the interstate highway**
1374 **system -- Definitions -- Agreements -- Compensation -- Restrictions -- Rulemaking.**

1375 (1) As used in this section:

1376 (a) "Longitudinal access" means access to or use of any part of a right-of-way of a
1377 highway on the interstate system that extends generally parallel to the right-of-way for a total of
1378 30 or more linear meters.

1379 (b) "Statewide telecommunications purposes" means the further development of the
1380 statewide network that meets the telecommunications needs of state agencies and enhances the
1381 learning purposes of higher and public education.

1382 (c) "Telecommunication facility" means any telecommunication cable, line, fiber, wire,
1383 conduit, innerduct, access manhole, handhole, tower, hut, pedestal, pole, box, transmitting
1384 equipment, receiving equipment, power equipment, or other equipment, system, and device
1385 used to transmit, receive, produce, or distribute via wireless, wireline, electronic, or optical
1386 signal for communication purposes.

1387 (2) (a) Except as provided in Subsection (4), the department may allow a
1388 telecommunication facility provider longitudinal access to the right-of-way of a highway on the
1389 interstate system for the installation, operation, and maintenance of a telecommunication
1390 facility.

1391 (b) The department shall enter into an agreement with a telecommunication facility
1392 provider and issue a permit before granting it any longitudinal access under this section.

1393 (i) Except as specifically provided by the agreement, a property interest in a
1394 right-of-way may not be granted under the provisions of this section.

1395 (ii) An agreement entered into by the department under this section shall:

- 1396 (A) specify the terms and conditions for the renegotiation of the agreement;
1397 (B) specify maintenance responsibilities for each telecommunication facility;
1398 (C) be nonexclusive; and
1399 (D) be limited to a maximum term of 30 years.
- 1400 (3) (a) The department shall require compensation from a telecommunication facility
1401 provider under this section for longitudinal access to the right-of-way of a highway on the
1402 interstate system.
- 1403 (b) The compensation charged shall be:
- 1404 (i) fair and reasonable;
1405 (ii) competitively neutral;
1406 (iii) nondiscriminatory;
1407 (iv) open to public inspection;
1408 (v) established to promote access by multiple telecommunication facility providers;
1409 (vi) established for zones of the state, with zones determined based upon factors that
1410 include population density, distance, numbers of telecommunication subscribers, and the
1411 impact upon private right-of-way users;
- 1412 (vii) established to encourage the deployment of digital infrastructure within the state;
1413 (viii) set after the department conducts a market analysis to determine the fair and
1414 reasonable values of the right-of-way based upon adjacent property values;
- 1415 (ix) a lump sum payment or annual installment, at the option of the
1416 telecommunications facility provider; and
- 1417 (x) set in accordance with Subsection (3)(f).
- 1418 (c) (i) The compensation charged may be cash, in-kind compensation, or a combination
1419 of cash and in-kind compensation.
- 1420 (ii) In-kind compensation requires the agreement of both the telecommunication
1421 facility provider and the department.
- 1422 (iii) The department shall, in consultation with the Telecommunications Advisory
1423 Council created in Section 72-7-109, determine the present value of any in-kind compensation
1424 based upon the incremental cost to the telecommunication facility provider.
- 1425 (iv) The value of in-kind compensation or a combination of cash and in-kind
1426 compensation shall be equal to or greater than the amount of cash compensation that would be

1427 charged if the compensation is cash only.

1428 (d) (i) The department shall provide for the proportionate sharing of costs among the
1429 department and telecommunications providers for joint trenching or trench sharing based on
1430 the amount of conduit innerduct space that is authorized in the agreement for the trench.

1431 (ii) If two or more telecommunications facility providers are required to share a single
1432 trench, each telecommunications facility provider in the trench shall share the cost and benefits
1433 of the trench in accordance with Subsection (3)(d)(i) on a fair, reasonable, competitively
1434 neutral, and nondiscriminatory basis.

1435 (e) The market analysis under Subsection (3)(b)(viii) shall be conducted at least every
1436 five years and any adjustments warranted shall apply only to agreements entered after the date
1437 of the new market analysis.

1438 (f) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1439 department shall establish a schedule of rates of compensation for any longitudinal access
1440 granted under this section.

1441 (4) The department may not grant any longitudinal access under this section that results
1442 in a significant compromise of the safe, efficient, and convenient use of the interstate system
1443 for the traveling public.

1444 (5) The department may not pay any cost of relocation of a telecommunication facility
1445 granted longitudinal access to the right-of-way of a highway on the interstate system under this
1446 section.

1447 (6) (a) Monetary compensation collected by the department in accordance with this
1448 section shall be deposited with the state treasurer and credited to the Transportation Fund.

1449 (b) Any telecommunications capacity acquired as in-kind compensation shall be used:

1450 (i) exclusively for statewide telecommunications purposes and may not be sold or
1451 leased in competition with telecommunication or Internet service providers; and

1452 (ii) as determined by the department after consultation with the Telecommunications
1453 Advisory Council created in Section 72-7-109.

1454 (7) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1455 department shall make rules:

1456 (a) governing the installation, operation, and maintenance of a telecommunication
1457 facility granted longitudinal access under this section;

1458 (b) specifying the procedures for establishing an agreement for longitudinal access for
1459 a telecommunication facility provider;

1460 (c) providing for the relocation or removal of a telecommunication facility for:

1461 (i) needed changes to a highway on the interstate system;

1462 (ii) expiration of an agreement; or

1463 (iii) a breach of an agreement; and

1464 (d) providing an opportunity for all interested providers to apply for access within open
1465 right-of-way segments.

1466 (8) (a) Except for a right-of-way of a highway on the interstate system, nothing in this
1467 section shall be construed to allow a highway authority to require compensation from a
1468 telecommunication facility provider for longitudinal access to the right-of-way of a highway
1469 under the highway authority's jurisdiction.

1470 (b) Nothing in this section shall affect the authority of a municipality under:

1471 (i) Section 11-26-1 [~~and~~];

1472 (ii) Section 10-1-203;

1473 (iii) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act[-]; or

1474 (iv) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act.

1475 (9) Compensation paid to the department under Subsection (3) may not be used by any
1476 person as evidence of the market or other value of the access for any other purpose, including
1477 condemnation proceedings, other litigation, or the application of rates of taxation or the
1478 establishment of franchise fees relating to longitudinal access rights.

1479 Section 20. **Repealer.**

1480 This act repeals:

1481 Section **11-26-3, Local charge on certain revenues of public utility or telephone**
1482 **service suppliers – Notice and hearing requirements.**

1483 Section 21. **Effective date.**

1484 This act takes effect on July 1, 2003 except the following take effect on July 1, 2004:

1485 (1) the amendments in this act to:

1486 (a) Section 10-1-203;

1487 (b) Section 11-26-1;

1488 (c) Section 72-7-102;

1489 _____ (d) Section 72-7-108; and

1490 _____ (2) the repeal of Section 11-26-3.

Legislative Review Note
as of 11-26-02 7:14 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel