

**TAXATION OF MULTI-CHANNEL VIDEO OR  
AUDIO SERVICE**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Michael G. Waddoups**

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**LONG TITLE**

**General Description:**

This bill modifies the Sales and Use Tax Act to modify the transactions that are subject to sales and use tax and enacts the Multi-Channel Video or Audio Service Tax Act.

**Highlighted Provisions:**

This bill:

- ▶ deletes certain definitions;
- ▶ defines terms;
- ▶ removes certain amounts paid or charged for multi-channel video or audio service from the sales and use tax base;
- ▶ imposes a state tax on amounts paid or charged for multi-channel video or audio service, including:
  - providing for the collection of the tax, assessments, audits, and imposition of penalties and interest by the State Tax Commission;
  - providing that the tax will be deposited into the General Fund;
  - enacting record keeping requirements for a multi-channel video or audio service provider; and
- ▶ granting rulemaking authority to the State Tax Commission;
- ▶ requires the Revenue and Taxation Interim Committee to conduct a study on amounts paid or charged for multi-channel video or audio service by a multi-channel video or audio service provider; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides an effective date.

**Utah Code Sections Affected:**

AMENDS:

**59-12-102 (Effective 07/01/04)**, as last amended by Chapter 312, Laws of Utah 2003

**59-12-103 (Superseded 07/01/04)**, as last amended by Chapter 318, Laws of Utah 2003

**59-12-103 (Effective 07/01/04)**, as last amended by Chapter 312, Laws of Utah 2003

ENACTS:

**59-26-101**, Utah Code Annotated 1953

**59-26-102**, Utah Code Annotated 1953

**59-26-103**, Utah Code Annotated 1953

**59-26-104**, Utah Code Annotated 1953

**59-26-105**, Utah Code Annotated 1953

**59-26-106**, Utah Code Annotated 1953

**59-26-107**, Utah Code Annotated 1953

**59-26-108**, Utah Code Annotated 1953

**59-26-109**, Utah Code Annotated 1953

**59-26-110**, Utah Code Annotated 1953

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

Section 1. Section **59-12-102 (Effective 07/01/04)** is amended to read:

**59-12-102 (Effective 07/01/04). Definitions.**

As used in this chapter:

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

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

(2) "Agreement" means the Streamlined Sales and Use Tax Agreement described in

Section 59-12-102.1.

(3) "Agreement combined tax rate" means the sum of the tax rates:

- (a) listed under Subsection (4); and
- (b) that are imposed within a local taxing jurisdiction.

(4) "Agreement sales and use tax" means a tax imposed under:

- (a) Subsection 59-12-103(2)(a)(i);
- (b) Section 59-12-204;
- (c) Section 59-12-401;
- (d) Section 59-12-402;
- (e) Section 59-12-501;
- (f) Section 59-12-502;
- (g) Section 59-12-703;
- (h) Section 59-12-802;
- (i) Section 59-12-804;
- (j) Section 59-12-1001;
- (k) Section 59-12-1102;
- (l) Section 59-12-1302; or
- (m) Section 59-12-1402.

(5) "Alcoholic beverage" means a beverage that:

- (a) is suitable for human consumption; and
- (b) contains .5% or more alcohol by volume.

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

(7) "Authorized carrier" means:

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

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

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

(8) "Certified automated system" means software certified by the governing board of the agreement in accordance with Section 59-12-102.1 that:

(a) calculates the agreement sales and use tax imposed within a local taxing jurisdiction:

(i) on a transaction; and

(ii) in the states that are members of the agreement;

(b) determines the amount of agreement sales and use tax to remit to a state that is a member of the agreement; and

(c) maintains a record of the transaction described in Subsection (8)(a)(i).

(9) "Certified service provider" means an agent certified:

(a) by the governing board of the agreement in accordance with Section 59-12-102.1; and

(b) to perform all of a seller's sales and use tax functions for an agreement sales and use tax.

(10) (a) Subject to Subsection (10)(b), "clothing" means all human wearing apparel suitable for general use.

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules:

(i) listing the items that constitute "clothing"; and

(ii) that are consistent with the list of items that constitute "clothing" under the agreement.

(11) (a) For purposes of Subsection 59-12-104(42), "coin-operated amusement device" means:

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

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

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

(b) For purposes of Subsection 59-12-104(42), "coin-operated amusement device" does

not mean a coin-operated amusement device possessing a coinage mechanism that:

- (i) accepts and registers multiple denominations of coins; and
- (ii) allows the seller to collect the sales and use tax at the time an amusement device is

activated and operated by a person inserting coins into the device.

(12) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels that does not constitute industrial use under Subsection (30) or residential use under Subsection [~~(54)~~] (53).

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

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

(ii) For purposes of Subsection (13)(b)(i), in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules defining what constitutes a person's place of employment.

(14) "Component part" includes:

- (a) poultry, dairy, and other livestock feed, and their components;
- (b) baling ties and twine used in the baling of hay and straw;
- (c) fuel used for providing temperature control of orchards and commercial greenhouses doing a majority of their business in wholesale sales, and for providing power for off-highway type farm machinery; and
- (d) feed, seeds, and seedlings.

(15) "Computer" means an electronic device that accepts information:

- (a) (i) in digital form; or
- (ii) in a form similar to digital form; and
- (b) manipulates that information for a result based on a sequence of instructions.

(16) "Computer software" means a set of coded instructions designed to cause:

- (a) a computer to perform a task; or

(b) automatic data processing equipment to perform a task.

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

(18) "Delivered electronically" means delivered to a purchaser by means other than tangible storage media.

(19) (a) "Delivery charge" means a charge:

(i) by a seller of:

(A) tangible personal property; or

(B) services; and

(ii) for preparation and delivery of the tangible personal property or services described in Subsection (19)(a)(i) to a location designated by the purchaser.

(b) "Delivery charge" includes a charge for the following:

(i) transportation;

(ii) shipping;

(iii) postage;

(iv) handling;

(v) crating; or

(vi) packing.

(20) "Dietary supplement" means a product, other than tobacco, that:

(a) is intended to supplement the diet;

(b) contains one or more of the following dietary ingredients:

(i) a vitamin;

(ii) a mineral;

(iii) an herb or other botanical;

(iv) an amino acid;

(v) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient

described in Subsections (20)(b)(i) through (v);

(c) (i) except as provided in Subsection (20)(c)(ii), is intended for ingestion in:

(A) tablet form;

(B) capsule form;

(C) powder form;

(D) softgel form;

(E) gelcap form; or

(F) liquid form; or

(ii) notwithstanding Subsection (20)(c)(i), if the product is not intended for ingestion in a form described in Subsections (20)(c)(i)(A) through (F), is not represented:

(A) as conventional food; and

(B) for use as a sole item of:

(I) a meal; or

(II) the diet; and

(d) is required to be labeled as a dietary supplement:

(i) identifiable by the "Supplemental Facts" box found on the label; and

(ii) as required by 21 C.F.R. Sec. 101.36.

(21) (a) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service:

(i) to:

(A) a mass audience; or

(B) addressees on a mailing list provided by a purchaser of the mailing list; and

(ii) if the cost of the printed material is not billed directly to the recipients.

(b) "Direct mail" includes tangible personal property supplied directly or indirectly by a purchaser to a seller of direct mail for inclusion in a package containing the printed material.

(c) "Direct mail" does not include multiple items of printed material delivered to a single address.

(22) (a) "Drug" means a compound, substance, or preparation, or a component of a

compound, substance, or preparation that is:

- (i) recognized in:
  - (A) the official United States Pharmacopoeia;
  - (B) the official Homeopathic Pharmacopoeia of the United States;
  - (C) the official National Formulary; or
  - (D) a supplement to a publication listed in Subsections (22)(a)(i)(A) through (C);
- (ii) intended for use in the:
  - (A) diagnosis of disease;
  - (B) cure of disease;
  - (C) mitigation of disease;
  - (D) treatment of disease; or
  - (E) prevention of disease; or
- (iii) intended to affect:
  - (A) the structure of the body; or
  - (B) any function of the body.
- (b) "Drug" does not include:
  - (i) food and food ingredients;
  - (ii) a dietary supplement;
  - (iii) an alcoholic beverage; or
  - (iv) a prosthetic device.

(23) (a) Except as provided in Subsection (23)(c), "durable medical equipment" means equipment that:

- (i) can withstand repeated use;
- (ii) is primarily and customarily used to serve a medical purpose;
- (iii) generally is not useful to a person in the absence of illness or injury;
- (iv) is not worn in or on the body; and
- (v) is listed as eligible for payment under:
  - (A) Title XVIII of the federal Social Security Act; or

(B) the state plan for medical assistance under Title XIX of the federal Social Security Act.

(b) "Durable medical equipment" includes parts used in the repair or replacement of the equipment described in Subsection (23)(a).

(c) Notwithstanding Subsection (23)(a), "durable medical equipment" does not include mobility enhancing equipment.

(24) "Electronic" means:

(a) relating to technology; and

(b) having:

(i) electrical capabilities;

(ii) digital capabilities;

(iii) magnetic capabilities;

(iv) wireless capabilities;

(v) optical capabilities;

(vi) electromagnetic capabilities; or

(vii) capabilities similar to Subsections (24)(b)(i) through (vi).

(25) (a) "Food and food ingredients" means substances:

(i) regardless of whether the substances are in:

(A) liquid form;

(B) concentrated form;

(C) solid form;

(D) frozen form;

(E) dried form; or

(F) dehydrated form; and

(ii) that are:

(A) sold for:

(I) ingestion by humans; or

(II) chewing by humans; and

(B) consumed for the substance's:

(I) taste; or

(II) nutritional value.

(b) "Food and food ingredients" does not include:

(i) an alcoholic beverage;

(ii) tobacco; or

(iii) prepared food.

(26) (a) "Fundraising sales" means sales:

(i) (A) made by a school; or

(B) made by a school student;

(ii) that are for the purpose of raising funds for the school to purchase equipment, materials, or provide transportation; and

(iii) that are part of an officially sanctioned school activity.

(b) For purposes of Subsection (26)(a)(iii), "officially sanctioned school activity" means a school activity:

(i) that is conducted in accordance with a formal policy adopted by the school or school district governing the authorization and supervision of fundraising activities;

(ii) that does not directly or indirectly compensate an individual teacher or other educational personnel by direct payment, commissions, or payment in kind; and

(iii) the net or gross revenues from which are deposited in a dedicated account controlled by the school or school district.

(27) "Governing board of the agreement" means the governing board of the agreement that is:

(a) authorized to administer the agreement; and

(b) established in accordance with the agreement.

(28) (a) "Hearing aid" means:

(i) an instrument or device having an electronic component that is designed to:

(A) (I) improve impaired human hearing; or

- (II) correct impaired human hearing; and
- (B) (I) be worn in the human ear; or
- (II) affixed behind the human ear;
- (ii) an instrument or device that is surgically implanted into the cochlea; or
- (iii) a telephone amplifying device.
- (b) "Hearing aid" does not include:
  - (i) except as provided in Subsection (28)(a)(i)(B) or (28)(a)(ii), an instrument or device having an electronic component that is designed to be worn on the body;
  - (ii) except as provided in Subsection (28)(a)(iii), an assistive listening device or system designed to be used by one individual, including:
    - (A) a personal amplifying system;
    - (B) a personal FM system;
    - (C) a television listening system; or
    - (D) a device or system similar to a device or system described in Subsections (28)(b)(ii)(A) through (C); or
    - (iii) an assistive listening device or system designed to be used by more than one individual, including:
      - (A) a device or system installed in:
        - (I) an auditorium;
        - (II) a church;
        - (III) a conference room;
        - (IV) a synagogue; or
        - (V) a theater; or
      - (B) a device or system similar to a device or system described in Subsections (28)(b)(iii)(A)(I) through (V).
- (29) (a) "Hearing aid accessory" means a hearing aid:
  - (i) component;
  - (ii) attachment; or

(iii) accessory.

(b) "Hearing aid accessory" includes:

(i) a hearing aid neck loop;

(ii) a hearing aid cord;

(iii) a hearing aid ear mold;

(iv) hearing aid tubing;

(v) a hearing aid ear hook; or

(vi) a hearing aid remote control.

(c) "Hearing aid accessory" does not include:

(i) a component, attachment, or accessory designed to be used only with an:

(A) instrument or device described in Subsection (28)(b)(i); or

(B) assistive listening device or system described in Subsection (28)(b)(ii) or (iii); or

(ii) a hearing aid battery.

(30) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or other fuels:

(a) in mining or extraction of minerals;

(b) in agricultural operations to produce an agricultural product up to the time of harvest or placing the agricultural product into a storage facility, including:

(i) commercial greenhouses;

(ii) irrigation pumps;

(iii) farm machinery;

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

(v) other farming activities;

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

(d) by a scrap recycler if:

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

- (A) iron;
- (B) steel;
- (C) nonferrous metal;
- (D) paper;
- (E) glass;
- (F) plastic;
- (G) textile; or
- (H) rubber; and

(ii) the new products under Subsection (30)(d)(i) would otherwise be made with nonrecycled materials.

(31) (a) "Lease" or "rental" means a transfer of possession or control of tangible personal property for:

- (i) (A) a fixed term; or
- (B) an indeterminate term; and
- (ii) consideration.

(b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue Code.

(c) "Lease" or "rental" does not include:

(i) a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) a transfer of possession or control of property under an agreement:

- (A) that requires the transfer of title upon completion of required payments; and
- (B) in which the payment of an option price does not exceed the greater of:
  - (I) \$100; or

(II) 1% of the total required payments; or  
(iii) providing tangible personal property along with an operator for a fixed period of time or an indeterminate period of time if the operator is necessary for equipment to perform as designed.

(d) For purposes of Subsection (31)(c)(iii), an operator is necessary for equipment to perform as designed if the operator's duties exceed the:

- (i) set-up of tangible personal property;
- (ii) maintenance of tangible personal property; or
- (iii) inspection of tangible personal property.

(32) "Local taxing jurisdiction" means a:

- (a) county that is authorized to impose an agreement sales and use tax;
- (b) city that is authorized to impose an agreement sales and use tax; or
- (c) town that is authorized to impose an agreement sales and use tax.

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

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

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

(b) a scrap recycler if:

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

- (A) iron;
- (B) steel;
- (C) nonferrous metal;
- (D) paper;
- (E) glass;

- (F) plastic;
- (G) textile; or
- (H) rubber; and

(ii) the new products under Subsection (34)(b)(i) would otherwise be made with nonrecycled materials.

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

(36) (a) Except as provided in Subsection (36)(c), "mobility enhancing equipment" means equipment that is:

(i) primarily and customarily used to provide or increase the ability to move from one place to another;

(ii) appropriate for use in a:

(A) home; or

(B) motor vehicle;

(iii) not generally used by persons with normal mobility; and

(iv) listed as eligible for payment under:

(A) Title XVIII of the federal Social Security Act; or

(B) the state plan for medical assistance under Title XIX of the federal Social Security Act.

(b) "Mobility enhancing equipment" includes parts used in the repair or replacement of the equipment described in Subsection (36)(a).

(c) Notwithstanding Subsection (36)(a), "mobility enhancing equipment" does not include:

(i) a motor vehicle;

(ii) equipment on a motor vehicle if that equipment is normally provided by the motor vehicle manufacturer;

(iii) durable medical equipment; or

(iv) a prosthetic device.

(37) "Model 1 seller" means a seller that has selected a certified service provider as the seller's agent to perform all of the seller's sales tax functions for agreement sales and use taxes.

(38) "Model 2 seller" means a seller that:

(a) except as provided in Subsection (38)(b), has selected a certified automated system to perform the seller's sales tax functions for agreement sales and use taxes; and

(b) notwithstanding Subsection (38)(a), retains responsibility for remitting all of the sales tax:

(i) collected by the seller; and

(ii) to the appropriate local taxing jurisdiction.

(39) (a) Subject to Subsection (39)(b), "model 3 seller" means a seller that has:

(i) sales in at least five states that are members of the agreement;

(ii) total annual sales revenues of at least \$500,000,000;

(iii) a proprietary system that calculates the amount of tax:

(A) for an agreement sales and use tax; and

(B) due to each local taxing jurisdiction; and

(iv) entered into a performance agreement with the governing board of the agreement.

(b) For purposes of Subsection (39)(a), "model 3 seller" includes an affiliated group of sellers using the same proprietary system.

~~[(40) (a) "Multi-channel video or audio service provider" means any person or group of persons that:]~~

~~[(i) provides multi-channel video or audio service and directly or indirectly owns a significant interest in the multi-channel video or audio service; or]~~

~~[(ii) otherwise controls or is responsible through any arrangement, the management and operation of the multi-channel video or audio service.]~~

~~[(b) "Multi-channel video or audio service provider" includes the following except as specifically exempted by state or federal law:]~~

~~[(i) a cable operator;]~~

~~[(ii) a CATV provider;]~~

~~[(iii) a multi-point distribution provider;]~~

~~[(iv) a MMDS provider;]~~

~~[(v) a SMATV operator;]~~

~~[(vi) a direct-to-home satellite service provider; or]~~

~~[(vii) a DBS provider.]~~

~~[(41)]~~ (40) "Olympic merchandise" means tangible personal property bearing an Olympic designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other copyrighted or protected material, including:

(a) one or more of the following terms:

(i) "Olympic";

(ii) "Olympiad"; or

(iii) "Citius Altius Fortius";

(b) the symbol of the International Olympic Committee, consisting of five interlocking rings;

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

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

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

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

~~[(42)]~~ (41) (a) "Other fuels" means products that burn independently to produce heat or energy.

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

~~[(43)]~~ (42) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, district, or other local governmental entity of the state, or any group or combination acting as a unit.

~~[(44)]~~ (43) "Place of primary use":

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

- (i) the residential street address of the purchaser; or
- (ii) the primary business street address of the purchaser; or
- (b) for mobile telecommunications service, is as defined in the Mobile

Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

~~[(45)]~~ (44) (a) "Prepared food" means:

- (i) food:
  - (A) sold in a heated state; or
  - (B) heated by a seller;
- (ii) two or more food ingredients mixed or combined by the seller for sale as a single item;

or

(iii) except as provided in Subsection ~~[(45)]~~ (44)(c), food sold with an eating utensil provided by the seller, including a:

- (A) plate;
- (B) knife;
- (C) fork;
- (D) spoon;
- (E) glass;
- (F) cup;
- (G) napkin; or
- (H) straw.

(b) "Prepared food" does not include:

- (i) food that a seller only:
  - (A) cuts;
  - (B) repackages; or

(C) pasteurizes; or  
(ii) (A) the following:  
(I) raw egg;  
(II) raw fish;  
(III) raw meat;  
(IV) raw poultry; or  
(V) a food containing an item described in Subsections [~~(45)~~] (44)(b)(ii)(A)(I) through (IV); and

(B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the Food and Drug Administration's Food Code that a consumer cook the items described in Subsection [~~(45)~~] (44)(b)(ii)(A) to prevent food borne illness.

(c) Notwithstanding Subsection [~~(45)~~] (44)(a)(iii), an eating utensil provided by the seller does not include the following used to transport the food:

- (i) a container; or
- (ii) packaging.

[~~(46)~~] (45) "Prescription" means an order, formula, or recipe that is issued:

- (a) (i) orally;
- (ii) in writing;
- (iii) electronically; or
- (iv) by any other manner of transmission; and
- (b) by a licensed practitioner authorized by the laws of a state.

[~~(47)~~] (46) (a) Except as provided in Subsection [~~(47)~~] (46)(b)(ii) or (iii), "prewritten computer software" means computer software that is not designed and developed:

- (i) by the author or other creator of the computer software; and
- (ii) to the specifications of a specific purchaser.
- (b) "Prewritten computer software" includes:

(i) a prewritten upgrade to computer software if the prewritten upgrade to the computer software is not designed and developed:

(A) by the author or other creator of the computer software; and  
(B) to the specifications of a specific purchaser;  
(ii) notwithstanding Subsection ~~[(47)]~~ (46)(a), computer software designed and developed by the author or other creator of the computer software to the specifications of a specific purchaser if the computer software is sold to a person other than the purchaser; or  
(iii) notwithstanding Subsection ~~[(47)]~~ (46)(a) and except as provided in Subsection ~~[(47)]~~ (46)(c), prewritten computer software or a prewritten portion of prewritten computer software:

(A) that is modified or enhanced to any degree; and  
(B) if the modification or enhancement described in Subsection ~~[(47)]~~ (46)(b)(iii)(A) is designed and developed to the specifications of a specific purchaser.

(c) Notwithstanding Subsection ~~[(47)]~~ (46)(b)(iii), "prewritten computer software" does not include a modification or enhancement described in Subsection ~~[(47)]~~ (46)(b)(iii) if the charges for the modification or enhancement are:

- (i) reasonable; and
- (ii) separately stated on the invoice or other statement of price provided to the purchaser.

~~[(48)]~~ (47) (a) "Prosthetic device" means a device that is:

- (i) worn on or in the body to:
  - (A) artificially replace a missing portion of the body;
  - (B) prevent or correct a physical deformity or physical malfunction; or
  - (C) support a weak or deformed portion of the body; and
- (ii) listed as eligible for payment under:

- (A) Title XVIII of the federal Social Security Act; or
- (B) the state plan for medical assistance under Title XIX of the federal Social Security

Act.

(b) "Prosthetic device" includes:

- (i) parts used in the repairs or renovation of a prosthetic device; or
- (ii) replacement parts for a prosthetic device.

(c) "Prosthetic device" does not include:

- (i) corrective eyeglasses;
- (ii) contact lenses;
- (iii) hearing aids; or
- (iv) dental prostheses.

~~[(49)]~~ (48) (a) "Protective equipment" means an item:

- (i) for human wear; and
- (ii) that is:
  - (A) designed as protection:
    - (I) to the wearer against injury or disease; or
    - (II) against damage or injury of other persons or property; and
  - (B) not suitable for general use.

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules:

- (i) listing the items that constitute "protective equipment"; and
- (ii) that are consistent with the list of items that constitute "protective equipment" under the agreement.

~~[(50)]~~ (49) (a) "Purchase price" and "sales price" mean the total amount of consideration:

- (i) valued in money; and
  - (ii) for which tangible personal property or services are:
    - (A) sold;
    - (B) leased; or
    - (C) rented.
- (b) "Purchase price" and "sales price" include:
- (i) the seller's cost of the tangible personal property or services sold;
  - (ii) expenses of the seller, including:
    - (A) the cost of materials used;
    - (B) a labor cost;

- (C) a service cost;
  - (D) interest;
  - (E) a loss;
  - (F) the cost of transportation to the seller; or
  - (G) a tax imposed on the seller;
  - (iii) a charge by the seller for any service necessary to complete the sale;
  - (iv) a delivery charge; or
  - (v) an installation charge.
  - (c) "Purchase price" and "sales price" do not include:
    - (i) a discount:
      - (A) in a form including:
        - (I) cash;
        - (II) term; or
        - (III) coupon;
      - (B) that is allowed by a seller;
      - (C) taken by a purchaser on a sale; and
      - (D) that is not reimbursed by a third party; or
    - (ii) the following if separately stated on an invoice, bill of sale, or similar document provided to the purchaser:
      - (A) the amount of a trade-in;
      - (B) the following from credit extended on the sale of tangible personal property or services:
        - (I) interest charges;
        - (II) financing charges; or
        - (III) carrying charges; or
      - (C) a tax or fee legally imposed directly on the consumer.
- [~~(51)~~] (50) "Purchaser" means a person to whom:
- (a) a sale of tangible personal property is made; or

(b) a service is furnished.

~~[(52)]~~ (51) "Regularly rented" means:

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

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

~~[(53)]~~ (52) "Rental" is as defined in Subsection (31).

~~[(54)]~~ (53) "Residential use" means the use in or around a home, apartment building, sleeping quarters, and similar facilities or accommodations.

~~[(55)]~~ (54) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other than:

(a) resale;

(b) sublease; or

(c) subrent.

~~[(56)]~~ (55) (a) "Retailer" means any person engaged in a regularly organized business in tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and who is selling to the user or consumer and not for resale.

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

~~[(57)]~~ (56) (a) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), for consideration.

(b) "Sale" includes:

(i) installment and credit sales;

(ii) any closed transaction constituting a sale;

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

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

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

~~[(58)]~~ (57) "Sale at retail" is as defined in Subsection ~~[(55)]~~ (54).

~~[(59)]~~ (58) "Sale-leaseback transaction" means a transaction by which title to tangible personal property that is subject to a tax under this chapter is transferred:

(a) by a purchaser-lessee;

(b) to a lessor;

(c) for consideration; and

(d) if:

(i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase of the tangible personal property;

(ii) the sale of the tangible personal property to the lessor is intended as a form of financing:

(A) for the property; and

(B) to the purchaser-lessee; and

(iii) in accordance with generally accepted accounting principles, the purchaser-lessee is required to:

(A) capitalize the property for financial reporting purposes; and

(B) account for the lease payments as payments made under a financing arrangement.

~~[(60)]~~ (59) "Sales price" is as defined in Subsection ~~[(50)]~~ (49).

~~[(61)]~~ (60) (a) "Sales relating to schools" means the following sales by, amounts paid to, or amounts charged by a school:

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

including:

(A) the sale of:

(I) textbooks;

(II) textbook fees;

- (III) laboratory fees;
- (IV) laboratory supplies; or
- (V) safety equipment;
- (B) the sale of a uniform, protective equipment, or sports or recreational equipment that:
  - (I) a student is specifically required to wear as a condition of participation in a school-related event or school-related activity; and
  - (II) is not readily adaptable to general or continued usage to the extent that it takes the place of ordinary clothing;
  - (C) sales of the following if the net or gross revenues generated by the sales are deposited into a school district fund or school fund dedicated to school meals:
    - (I) food and food ingredients; or
    - (II) prepared food; or
    - (D) transportation charges for official school activities; or
    - (ii) amounts paid to or amounts charged by a school for admission to a school-related event or school-related activity.
- (b) "Sales relating to schools" does not include:
  - (i) bookstore sales of items that are not educational materials or supplies;
  - (ii) except as provided in Subsection ~~[(61)]~~ (60)(a)(i)(B):
    - (A) clothing;
    - (B) clothing accessories or equipment;
    - (C) protective equipment; or
    - (D) sports or recreational equipment; or
    - (iii) amounts paid to or amounts charged by a school for admission to a school-related event or school-related activity if the amounts paid or charged are passed through to a person:
      - (A) other than a:
        - (I) school;
        - (II) nonprofit organization authorized by a school board or a governing body of a private school to organize and direct a competitive secondary school activity; or

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

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

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

~~[(62)]~~ (61) For purposes of this section and Section 59-12-104, "school" means:

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

(i) is a:

(A) public school; or

(B) private school; and

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

(b) a public school district.

~~[(63)]~~ (62) "Seller" means a person that makes a sale, lease, or rental of:

(a) tangible personal property; or

(b) a service.

~~[(64)]~~ (63) (a) "Semiconductor fabricating or processing materials" means tangible personal property:

(i) used primarily in the process of:

(A) (I) manufacturing a semiconductor; or

(II) fabricating a semiconductor; or

(B) maintaining an environment suitable for a semiconductor; or

(ii) consumed primarily in the process of:

(A) (I) manufacturing a semiconductor; or

(II) fabricating a semiconductor; or

(B) maintaining an environment suitable for a semiconductor.

(b) "Semiconductor fabricating or processing materials" includes:

(i) parts used in the repairs or renovations of tangible personal property described in

Subsection ~~[(64)]~~ (63)(a); or

- (ii) a chemical, catalyst, or other material used to:
  - (A) produce or induce in a semiconductor a:
    - (I) chemical change; or
    - (II) physical change;
  - (B) remove impurities from a semiconductor; or
  - (C) improve the marketable condition of a semiconductor.

~~[(65)]~~ (64) "Senior citizen center" means a facility having the primary purpose of providing services to the aged as defined in Section 62A-3-101.

~~[(66)]~~ (65) (a) "Sports or recreational equipment" means an item:

- (i) designed for human use; and
- (ii) that is:
  - (A) worn in conjunction with:
    - (I) an athletic activity; or
    - (II) a recreational activity; and
  - (B) not suitable for general use.

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules:

- (i) listing the items that constitute "sports or recreational equipment"; and
- (ii) that are consistent with the list of items that constitute "sports or recreational equipment" under the agreement.

~~[(67)]~~ (66) "State" means the state of Utah, its departments, and agencies.

~~[(68)]~~ (67) "Storage" means any keeping or retention of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except sale in the regular course of business.

~~[(69)]~~ (68) (a) "Tangible personal property" means personal property that:

- (i) may be:
  - (A) seen;
  - (B) weighed;

- (C) measured;
- (D) felt; or
- (E) touched; or
- (ii) is in any manner perceptible to the senses.

(b) "Tangible personal property" includes:

- (i) electricity;
- (ii) water;
- (iii) gas;
- (iv) steam; or
- (v) prewritten computer software.

~~[(70)]~~ (69) (a) "Telephone service" means a two-way transmission:

- (i) by:
  - (A) wire;
  - (B) radio;
  - (C) lightwave; or
  - (D) other electromagnetic means; and
- (ii) of one or more of the following:
  - (A) a sign;
  - (B) a signal;
  - (C) writing;
  - (D) an image;
  - (E) sound;
  - (F) a message;
  - (G) data; or
  - (H) other information of any nature.
- (b) "Telephone service" includes:
  - (i) mobile telecommunications service;
  - (ii) private communications service; or

(iii) automated digital telephone answering service.

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

~~[(71)]~~ (70) Notwithstanding where a call is billed or paid, "telephone service address" means:

(a) if the location described in this Subsection ~~[(71)]~~ (70)(a) is known, the location of the telephone service equipment:

- (i) to which a call is charged; and
- (ii) from which the call originates or terminates;

(b) if the location described in Subsection ~~[(71)]~~ (70)(a) is not known but the location described in this Subsection ~~[(71)]~~ (70)(b) is known, the location of the origination point of the signal of the telephone service first identified by:

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

(c) if the locations described in Subsection ~~[(71)]~~ (70)(a) or (b) are not known, the location of a purchaser's primary place of use.

~~[(72)]~~ (71) (a) "Telephone service provider" means a person that:

- (i) owns, controls, operates, or manages a telephone service; and
- (ii) engages in an activity described in Subsection ~~[(72)]~~ (71)(a)(i) for the shared use with or resale to any person of the telephone service.

(b) A person described in Subsection ~~[(72)]~~ (71)(a) is a telephone service provider whether or not the Public Service Commission of Utah regulates:

- (i) that person; or
- (ii) the telephone service that the person owns, controls, operates, or manages.

~~[(73)]~~ (72) "Tobacco" means:

- (a) a cigarette;

- (b) a cigar;
- (c) chewing tobacco;
- (d) pipe tobacco; or
- (e) any other item that contains tobacco.

~~[(74)]~~ (73) (a) "Use" means the exercise of any right or power over tangible personal property under Subsection 59-12-103(1), incident to the ownership or the leasing of that property, item, or service.

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

~~[(75)]~~ (74) "Vehicle" means any aircraft, as defined in Section 72-10-102; any vehicle, as defined in Section 41-1a-102; any off-highway vehicle, as defined in Section 41-22-2; and any vessel, as defined in Section 41-1a-102; that is required to be titled, registered, or both. "Vehicle," for purposes of Subsection 59-12-104(35) only, also includes any locomotive, freight car, railroad work equipment, or other railroad rolling stock.

~~[(76)]~~ (75) "Vehicle dealer" means a person engaged in the business of buying, selling, or exchanging vehicles as defined in Subsection ~~[(75)]~~ (74).

Section 2. Section **59-12-103 (Superseded 07/01/04)** is amended to read:

**59-12-103 (Superseded 07/01/04). Sales and use tax base -- Rate -- Use of sales and use tax revenues.**

(1) A tax is imposed on the purchaser as provided in this part for amounts paid or charged for the following transactions:

- (a) retail sales of tangible personal property made within the state;
- (b) amounts paid:
  - (i) (A) to a common carrier; or
  - (B) whether the following are municipally or privately owned, to a:
    - (I) telephone service provider; or
    - (II) telegraph corporation as defined in Section 54-2-1; and
  - (ii) for:

- (A) all transportation;
- (B) telephone service, other than mobile telecommunications service, that originates and terminates within the boundaries of this state;
- (C) mobile telecommunications service that originates and terminates within the boundaries of one state only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or
- (D) telegraph service;
- (c) sales of the following for commercial use:
  - (i) gas;
  - (ii) electricity;
  - (iii) heat;
  - (iv) coal;
  - (v) fuel oil; or
  - (vi) other fuels;
- (d) sales of the following for residential use:
  - (i) gas;
  - (ii) electricity;
  - (iii) heat;
  - (iv) coal;
  - (v) fuel oil; or
  - (vi) other fuels;
- (e) sales of meals;
- (f) except as provided in Section 59-12-104, amounts paid or charged as admission or user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis

courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, horseback rides, sports activities, or any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity;

(g) amounts paid or charged for services:

(i) for repairs or renovations of tangible personal property, unless Section 59-12-104 provides for an exemption from sales and use tax for:

(A) the tangible personal property; and

(B) parts used in the repairs or renovations of the tangible personal property described in Subsection (1)(g)(i)(A), whether or not any parts are actually used in the repairs or renovations of that tangible personal property; or

(ii) to install tangible personal property in connection with other tangible personal property, unless the tangible personal property being installed is exempt from sales and use tax under Section 59-12-104;

(h) except as provided in Subsection 59-12-104(7), amounts paid or charged for cleaning or washing of tangible personal property;

(i) amounts paid or charged for tourist home, hotel, motel, or trailer court accommodations and services that are regularly rented for less than 30 consecutive days;

(j) amounts paid or charged for laundry or dry cleaning services;

(k) amounts paid or charged for leases or rentals of tangible personal property if:

(i) the tangible personal property's situs is in this state;

(ii) the lessee took possession of the tangible personal property in this state; or

(iii) within this state the tangible personal property is:

(A) stored;

(B) used; or

(C) otherwise consumed;

(l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:

(i) stored;

(ii) used; or

(iii) consumed;

(m) amounts paid or charged for prepaid telephone calling cards; and

(n) through June 30, 2004, amounts paid or charged for multi-channel video or audio service provided by a multi-channel video or audio service provider:

(i) within the state; and

(ii) to the extent permitted by federal law.

(2) (a) Except as provided in Subsections (2)(b) and (c), beginning on July 1, 2001, a state tax and a local tax is imposed on a transaction described in Subsection (1) equal to the sum of:

(i) a state tax imposed on the transaction at a rate of 4.75%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(b) Notwithstanding Subsection (2)(a), beginning on July 1, 2001, a state tax and a local tax is imposed on a transaction described in Subsection (1)(d) equal to the sum of:

(i) a state tax imposed on the transaction at a rate of 2%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(c) Notwithstanding Subsections (2)(a) and (b), beginning on July 1, 2001, if a vendor collects a tax under Subsection 59-12-107(1)(b) on a transaction described in Subsection (1), a state tax and a local tax is imposed on the transaction equal to the sum of:

(i) a state tax imposed on the transaction at a rate of:

(A) 4.75% for a transaction other than a transaction described in Subsection (1)(d); or

(B) 2% for a transaction described in Subsection (1)(d); and

(ii) except as provided in Subsection (2)(d), a local tax imposed on the transaction at a rate equal to the sum of the following tax rates:

(A) (I) the lowest tax rate imposed by a county, city, or town under Section 59-12-204, but only if all of the counties, cities, and towns in the state impose the tax under Section

59-12-204; or

(II) the lowest tax rate imposed by a county, city, or town under Section 59-12-205, but only if all of the counties, cities, and towns in the state impose the tax under Section 59-12-205; and

(B) the tax rate authorized by Section 59-12-1102, but only if all of the counties in the state impose the tax under Section 59-12-1102.

(d) Tax rates authorized under the following do not apply to Subsection (2)(c)(ii):

- (i) Subsection (2)(a)(i);
- (ii) Subsection (2)(b)(i);
- (iii) Subsection (2)(c)(i);
- (iv) Section 59-12-301;
- (v) Section 59-12-352;
- (vi) Section 59-12-353;
- (vii) Section 59-12-401;
- (viii) Section 59-12-402;
- (ix) Section 59-12-501;
- (x) Section 59-12-502;
- (xi) Section 59-12-603;
- (xii) Section 59-12-703;
- (xiii) Section 59-12-802;
- (xiv) Section 59-12-804;
- (xv) Section 59-12-1001;
- (xvi) Section 59-12-1201; or
- (xvii) Section 59-12-1302.

(3) (a) Except as provided in Subsections (4) through (9), the following state taxes shall be deposited into the General Fund:

- (i) the tax imposed by Subsection (2)(a)(i);
- (ii) the tax imposed by Subsection (2)(b)(i); and

(iii) the tax imposed by Subsection (2)(c)(i).

(b) The local taxes described in Subsections (2)(a)(ii) and (2)(b)(ii) shall be distributed to a county, city, or town as provided in this chapter.

(c) (i) Notwithstanding any provision of this chapter, each county, city, or town in the state shall receive the county's, city's, or town's proportionate share of the revenues generated by the local tax described in Subsection (2)(c)(ii) as provided in Subsection (3)(c)(ii).

(ii) The commission shall determine a county's, city's, or town's proportionate share of the revenues under Subsection (3)(c)(i) by:

(A) calculating an amount equal to:

(I) the population of the county, city, or town; divided by

(II) the total population of the state; and

(B) multiplying the amount determined under Subsection (3)(c)(ii)(A) by the total amount of revenues generated by the local tax under Subsection (2)(c)(ii) for all counties, cities, and towns.

(iii) (A) Except as provided in Subsection (3)(c)(iii)(B), population figures for purposes of this section shall be derived from the most recent official census or census estimate of the United States Census Bureau.

(B) Notwithstanding Subsection (3)(c)(iii)(A), if a needed population estimate is not available from the United States Census Bureau, population figures shall be derived from the estimate from the Utah Population Estimates Committee created by executive order of the governor.

(C) For purposes of this section, the population of a county may only include the population of the unincorporated areas of the county.

(4) (a) Notwithstanding Subsection (3)(a), there shall be deposited in an Olympics special revenue fund or funds as determined by the Division of Finance under Section 51-5-4, for the use of the Utah Sports Authority created under Title 63A, Chapter 7, Utah Sports Authority Act:

(i) from January 1, 1990, through December 31, 1999, the amount of sales and use tax generated by a 1/64% tax rate on the taxable transactions under Subsection (1);

(ii) from January 1, 1990, through June 30, 1999, the amount of revenue generated by a 1/64% tax rate under Section 59-12-204 or Section 59-12-205 on the taxable transactions under Subsection (1); and

(iii) interest earned on the amounts under Subsections (4)(a)(i) and (ii).

(b) These funds shall be used:

(i) by the Utah Sports Authority as follows:

(A) to the extent funds are available, to transfer directly to a debt service fund or to otherwise reimburse to the state any amount expended on debt service or any other cost of any bonds issued by the state to construct any public sports facility as defined in Section 63A-7-103;

(B) to pay for the actual and necessary operating, administrative, legal, and other expenses of the Utah Sports Authority, but not including protocol expenses for seeking and obtaining the right to host the Winter Olympic Games;

(C) as otherwise appropriated by the Legislature; and

(D) unless the Legislature appropriates additional funds from the Olympics Special Revenue Fund to the Utah Sports Authority, the Utah Sports Authority may not expend, loan, or pledge in the aggregate more than:

(I) \$59,000,000 of sales and use tax deposited into the Olympics Special Revenue Fund under Subsection (4)(a);

(II) the interest earned on the amount described in Subsection (4)(b)(i)(D)(I); and

(III) the revenues deposited into the Olympics Special Revenue Fund that are not sales and use taxes deposited under Subsection (4)(a) or interest on the sales and use taxes; and

(ii) to pay salary, benefits, or administrative costs associated with the State Olympic Officer under Subsection 63A-10-103(3), except that the salary, benefits, or administrative costs may not be paid from the sales and use tax revenues generated by municipalities or counties and deposited under Subsection (4)(a)(ii).

(c) A payment of salary, benefits, or administrative costs under Subsection 63A-10-103(3) is not considered an expenditure of the Utah Sports Authority.

(d) If the Legislature appropriates additional funds under Subsection (4)(b)(i)(D), the

authority may not expend, loan, pledge, or enter into any agreement to expend, loan, or pledge the appropriated funds unless the authority:

(i) contracts in writing for the full reimbursement of the monies to the Olympics Special Revenue Fund by a public sports entity or other person benefitting from the expenditure; and

(ii) obtains a security interest that secures payment or performance of the obligation to reimburse.

(e) A contract or agreement entered into in violation of Subsection (4)(d) is void.

(5) (a) (i) Notwithstanding Subsection (3)(a) and except as provided in Subsection (11), for fiscal year 2002-03 only, the lesser of the following amounts shall be transferred or deposited as provided in Subsections (5)(a)(ii) through (vii):

(A) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

(I) by a 1/16% tax rate on the transactions described in Subsection (1); and

(II) for fiscal year 2002-03; or

(B) \$18,743,000.

(ii) (A) For fiscal year 2002-03 only, \$2,300,000 of the amount described in Subsection (5)(a)(i) shall be transferred as dedicated credits to the Department of Natural Resources to:

(I) implement the measures described in Subsections 63-34-14(4)(a) through (d) to protect sensitive plant and animal species; or

(II) award grants, up to the amount authorized by the Legislature in an appropriations act, to political subdivisions of the state to implement the measures described in Subsections 63-34-14(4)(a) through (d) to protect sensitive plant and animal species.

(B) Money transferred to the Department of Natural Resources under Subsection (5)(a)(ii)(A) may not be used to assist the United States Fish and Wildlife Service or any other person to list or attempt to have listed a species as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

(C) At the end of fiscal year 2002-03:

(I) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(II) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5; and

(III) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program Subaccount created in Section 73-10c-5.

(iii) For fiscal year 2002-03 only, \$500,000 of the amount described in Subsection (5)(a)(i) shall be deposited in the Agriculture Resource Development Fund created in Section 4-18-6.

(iv) (A) For fiscal year 2002-03 only, \$100,000 of the amount described in Subsection (5)(a)(i) shall be transferred as dedicated credits to the Division of Water Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of water rights.

(B) At the end of fiscal year 2002-03:

(I) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(II) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5; and

(III) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program Subaccount created in Section 73-10c-5.

(v) (A) For fiscal year 2002-03 only, 50% of the amount described in Subsection (5)(a)(i) that remains after making the transfers and deposits required by Subsections (5)(a)(ii) through (iv) shall be deposited in the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources.

(B) In addition to the uses allowed of the Water Resources Conservation and Development Fund under Section 73-10-24, the Water Resources Conservation and Development Fund may also be used to:

(I) provide a portion of the local cost share, not to exceed in fiscal year 2002-03 50% of the funds made available to the Division of Water Resources under this section, of potential project features of the Central Utah Project;

(II) conduct hydrologic and geotechnical investigations by the Department of Natural

Resources in a cooperative effort with other state, federal, or local entities, for the purpose of quantifying surface and ground water resources and describing the hydrologic systems of an area in sufficient detail so as to enable local and state resource managers to plan for and accommodate growth in water use without jeopardizing the resource;

(III) fund state required dam safety improvements; and

(IV) protect the state's interest in interstate water compact allocations, including the hiring of technical and legal staff.

(vi) For fiscal year 2002-03 only, 25% of the amount described in Subsection (5)(a)(i) that remains after making the transfers and deposits required by Subsections (5)(a)(ii) through (iv) shall be deposited in the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

(vii) For fiscal year 2002-03 only, 25% of the amount described in Subsection (5)(a)(i) that remains after making the transfers and deposits required by Subsections (5)(a)(ii) through (iv) shall be deposited in the Drinking Water Loan Program Subaccount created in Section 73-10c-5 for use by the Division of Drinking Water to:

(A) provide for the installation and repair of collection, treatment, storage, and distribution facilities for any public water system, as defined in Section 19-4-102;

(B) develop underground sources of water, including springs and wells; and

(C) develop surface water sources.

(b) (i) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2003, the lesser of the following amounts shall be used as provided in Subsections (5)(b)(ii) through (vii):

(A) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

(I) by a 1/16% tax rate on the transactions described in Subsection (1); and

(II) for the fiscal year; or

(B) \$17,500,000.

(ii) (A) For a fiscal year beginning on or after July 1, 2003, 14% of the amount described in Subsection (5)(b)(i) shall be transferred each year as dedicated credits to the Department of

Natural Resources to:

(I) implement the measures described in Subsections 63-34-14(4)(a) through (d) to protect sensitive plant and animal species; or

(II) award grants, up to the amount authorized by the Legislature in an appropriations act, to political subdivisions of the state to implement the measures described in Subsections 63-34-14(4)(a) through (d) to protect sensitive plant and animal species.

(B) Money transferred to the Department of Natural Resources under Subsection (5)(b)(ii)(A) may not be used to assist the United States Fish and Wildlife Service or any other person to list or attempt to have listed a species as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

(C) At the end of each fiscal year:

(I) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(II) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5; and

(III) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program Subaccount created in Section 73-10c-5.

(iii) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in Subsection (5)(b)(i) shall be deposited each year in the Agriculture Resource Development Fund created in Section 4-18-6.

(iv) (A) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described in Subsection (5)(b)(i) shall be transferred each year as dedicated credits to the Division of Water Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of water rights.

(B) At the end of each fiscal year:

(I) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(II) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan

Program Subaccount created in Section 73-10c-5; and

(III) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program Subaccount created in Section 73-10c-5.

(v) (A) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described in Subsection (5)(b)(i) shall be deposited in the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources.

(B) In addition to the uses allowed of the Water Resources Conservation and Development Fund under Section 73-10-24, the Water Resources Conservation and Development Fund may also be used to:

(I) provide a portion of the local cost share, not to exceed in any fiscal year 50% of the funds made available to the Division of Water Resources under this section, of potential project features of the Central Utah Project;

(II) conduct hydrologic and geotechnical investigations by the Department of Natural Resources in a cooperative effort with other state, federal, or local entities, for the purpose of quantifying surface and ground water resources and describing the hydrologic systems of an area in sufficient detail so as to enable local and state resource managers to plan for and accommodate growth in water use without jeopardizing the resource;

(III) fund state required dam safety improvements; and

(IV) protect the state's interest in interstate water compact allocations, including the hiring of technical and legal staff.

(vi) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described in Subsection (5)(b)(i) shall be deposited in the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

(vii) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described in Subsection (5)(b)(i) shall be deposited in the Drinking Water Loan Program Subaccount created in Section 73-10c-5 for use by the Division of Drinking Water to:

(A) provide for the installation and repair of collection, treatment, storage, and distribution facilities for any public water system, as defined in Section 19-4-102;

- (B) develop underground sources of water, including springs and wells; and
- (C) develop surface water sources.

(6) (a) (i) Notwithstanding Subsection (3)(a), for fiscal year 2002-03 only, the lesser of the following amounts shall be transferred or deposited as provided in Subsections (6)(a)(ii) through (iv):

(A) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

- (I) by a 1/16% tax rate on the transactions described in Subsection (1); and
- (II) for the fiscal year; or

(B) \$18,743,000.

(ii) (A) For fiscal year 2002-03 only, \$500,000 of the amount described in Subsection (6)(a)(i) shall be deposited in the Transportation Corridor Preservation Revolving Loan Fund created in Section 72-2-117.

(B) At least 50% of the money deposited in the Transportation Corridor Preservation Revolving Loan Fund under Subsection (6)(a)(ii)(A) shall be used to fund loan applications made by the Department of Transportation at the request of local governments.

(iii) For fiscal year 2002-03 only, \$500,000 of the amount described in Subsection (6)(a)(i) shall be transferred as nonlapsing dedicated credits to the Department of Transportation for the State Park Access Highways Improvement Program created in Section 72-3-207.

(iv) For fiscal year 2002-03 only, the amount described in Subsection (6)(a)(i) that remains after making the transfers and deposits required by Subsections (6)(a)(ii) and (iii) shall be deposited in the class B and class C roads account to be expended as provided in Title 72, Chapter 2, Transportation Finances Act, for the use of class B and C roads.

(b) (i) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2003, the lesser of the following amounts shall be used as provided in Subsections (6)(b)(ii) through (iv):

(A) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

- (I) by a 1/16% tax rate on the transactions described in Subsection (1); and
- (II) for the fiscal year; or

(B) \$18,743,000.

(ii) (A) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in Subsection (6)(b)(i) shall be deposited each year in the Transportation Corridor Preservation Revolving Loan Fund created in Section 72-2-117.

(B) At least 50% of the money deposited in the Transportation Corridor Preservation Revolving Loan Fund under Subsection (6)(b)(ii)(A) shall be used to fund loan applications made by the Department of Transportation at the request of local governments.

(iii) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in Subsection (6)(b)(i) shall be transferred each year as nonlapsing dedicated credits to the Department of Transportation for the State Park Access Highways Improvement Program created in Section 72-3-207.

(iv) For a fiscal year beginning on or after July 1, 2003, 94% of the amount described in Subsection (6)(b)(i) shall be deposited in the class B and class C roads account to be expended as provided in Title 72, Chapter 2, Transportation Finances Act, for the use of class B and C roads.

(7) (a) Notwithstanding Subsection (3)(a), beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial Highway Fund created in Section 72-2-118 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate on the taxable transactions under Subsection (1).

(b) Except for sales and use taxes deposited under Subsection (8), beginning on July 1, 1999, the revenues generated by the 1/64% tax rate:

(i) retained under Subsection 59-12-204(7)(a) shall be retained by the counties, cities, or towns as provided in Section 59-12-204; and

(ii) retained under Subsection 59-12-205(4)(a) shall be distributed to each county, city, and town as provided in Section 59-12-205.

(8) Notwithstanding Subsection (3)(a), beginning on July 1, 1999, the commission shall deposit into the Airport to University of Utah Light Rail Restricted Account created in Section 17A-2-1064 the portion of the sales and use tax under Sections 59-12-204 and 59-12-205 that is:

(a) generated by a city or town that will have constructed within its boundaries the

Airport to University of Utah Light Rail described in the Transportation Equity Act for the 21st Century, Pub. L. No. 105-178, Sec. 3030(c)(2)(B)(i)(II), 112 Stat. 107; and

(b) equal to the revenues generated by a 1/64% tax rate on the taxable items and services under Subsection (1).

(9) (a) Notwithstanding Subsection (3)(a), for fiscal years beginning on or after fiscal year 2002-03, the commission shall on or before September 30 of each year deposit the difference described in Subsection (9)(b) into the Remote Sales Restricted Account created in Section 59-12-103.2 if that difference is greater than \$0.

(b) The difference described in Subsection (9)(a) is equal to the difference between:

(i) the total amount of revenues under Subsection (2)(c)(i) the commission received from vendors collecting a tax under Subsection 59-12-107(1)(b) for the fiscal year immediately preceding the September 30 described in Subsection (9)(a); and

(ii) the total amount of revenues under Subsection (2)(c)(i) the commission estimates that the commission received from vendors described in Subsection 59-12-107(1)(b) for fiscal year 2000-01.

(10) (a) For purposes of amounts paid or charged as admission or user fees relating to the Olympic Winter Games of 2002, the amounts are considered to be paid or charged on the day on which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 or a person designated by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 sends a purchaser confirmation of the purchase of an admission or user fee described in Subsection (1)(f).

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules defining what constitutes sending a purchaser confirmation under Subsection (10)(a).

(11) (a) For fiscal year 2002-03 only, the following amounts shall be subtracted from the total amount required to be deposited or transferred in accordance with Subsection (5):

(i) \$25,000 shall be subtracted from the total amount required to be transferred to the Division of Water Rights in accordance with Subsection (5)(a)(iv);

(ii) \$385,000 shall be subtracted from the total amount required to be deposited into the Agriculture Resource Development Fund in accordance with Subsection (5)(a)(iii);

(iii) \$350,000 shall be subtracted from the total amount required to be transferred to the Department of Natural Resources in accordance with Subsection (5)(a)(ii);

(iv) \$3,012,500 shall be subtracted from the total amount required to be deposited into the Drinking Water Loan Program Subaccount in accordance with Subsection (5)(a)(vii);

(v) \$3,012,500 shall be subtracted from the total amount required to be deposited into the Utah Wastewater Loan Program Subaccount in accordance with Subsection (5)(a)(vi); and

(vi) \$5,715,000 shall be subtracted from the total amount required to be deposited into the Water Resources Conservation and Development Fund in accordance with Subsection (5)(a)(v).

(b) The amounts subtracted under Subsection (11)(a) shall be deposited into the General Fund.

Section 3. Section **59-12-103 (Effective 07/01/04)** is amended to read:

**59-12-103 (Effective 07/01/04). Sales and use tax base -- Rates -- Effective dates --**

**Use of sales and use tax revenues.**

(1) A tax is imposed on the purchaser as provided in this part for amounts paid or charged for the following transactions:

(a) retail sales of tangible personal property made within the state;

(b) amounts paid:

(i) (A) to a common carrier; or

(B) whether the following are municipally or privately owned, to a:

(I) telephone service provider; or

(II) telegraph corporation as defined in Section 54-2-1; and

(ii) for:

(A) all transportation;

(B) telephone service, other than mobile telecommunications service, that originates and terminates within the boundaries of this state;

(C) mobile telecommunications service that originates and terminates within the boundaries of one state only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or

(D) telegraph service;

(c) sales of the following for commercial use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(d) sales of the following for residential use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(e) sales of prepared food;

(f) except as provided in Section 59-12-104, amounts paid or charged as admission or user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, horseback rides, sports activities, or any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity;

(g) amounts paid or charged for services:

(i) for repairs or renovations of tangible personal property, unless Section 59-12-104 provides for an exemption from sales and use tax for:

(A) the tangible personal property; and

(B) parts used in the repairs or renovations of the tangible personal property described in Subsection (1)(g)(i)(A), whether or not any parts are actually used in the repairs or renovations of that tangible personal property; or

(ii) to install tangible personal property in connection with other tangible personal property, unless the tangible personal property being installed is exempt from sales and use tax under Section 59-12-104;

(h) except as provided in Subsection 59-12-104(7), amounts paid or charged for cleaning or washing of tangible personal property;

(i) amounts paid or charged for tourist home, hotel, motel, or trailer court accommodations and services that are regularly rented for less than 30 consecutive days;

(j) amounts paid or charged for laundry or dry cleaning services;

(k) amounts paid or charged for leases or rentals of tangible personal property if:

(i) the tangible personal property's situs is in this state;

(ii) the lessee took possession of the tangible personal property in this state; or

(iii) within this state the tangible personal property is:

(A) stored;

(B) used; or

(C) otherwise consumed;

(l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:

(i) stored;

(ii) used; or

(iii) consumed; and

(m) amounts paid or charged for prepaid telephone calling cards[?].

~~[(n) amounts paid or charged for multi-channel video or audio service provided by a multi-channel video or audio service provider:]~~

~~[(i) within the state; and]~~

~~[(ii) to the extent permitted by federal law:]~~

(2) (a) Except as provided in Subsection (2)(b), beginning on July 1, 2001, a state tax and a local tax is imposed on a transaction described in Subsection (1) equal to the sum of:

(i) a state tax imposed on the transaction at a rate of 4.75%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(b) Notwithstanding Subsection (2)(a), beginning on July 1, 2001, a state tax and a local tax is imposed on a transaction described in Subsection (1)(d) equal to the sum of:

(i) a state tax imposed on the transaction at a rate of 2%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(c) Subject to Subsections (2)(d) and (e), a tax rate change for a tax rate imposed under the following shall take effect on the first day of a calendar quarter:

(i) Subsection (2)(a)(i); or

(ii) Subsection (2)(b)(i).

(d) (i) For a transaction described in Subsection (2)(d)(iii), a tax rate increase shall take effect on the first day of the first billing period:

(A) that begins after the effective date of the tax rate increase; and

(B) if the billing period for the transaction begins before the effective date of a tax rate increase imposed under:

(I) Subsection (2)(a)(i); or

(II) Subsection (2)(b)(i).

(ii) For a transaction described in Subsection (2)(d)(iii), a tax rate decrease shall take effect on the first day of the last billing period:

(A) that began before the effective date of the tax rate decrease; and

(B) if the billing period for the transaction begins before the effective date of a tax rate decrease imposed under:

(I) Subsection (2)(a)(i); or

(II) Subsection (2)(b)(i).

(iii) Subsections (2)(d)(i) and (ii) apply to transactions subject to a tax under:

(A) Subsection (1)(b);

(B) Subsection (1)(c);

(C) Subsection (1)(d);

(D) Subsection (1)(e);

(E) Subsection (1)(f);

(F) Subsection (1)(g);

(G) Subsection (1)(h);

(H) Subsection (1)(i);

(I) Subsection (1)(j); or

(J) Subsection (1)(k).

(e) (i) If a tax due under Subsection (2)(a)(i) on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, a change in a tax rate imposed under Subsection (2)(a)(i) takes effect:

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

(B) beginning 60 days after the effective date of the tax rate change under Subsection (2)(a)(i).

(ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

(3) (a) Except as provided in Subsections (4) through (7) and (9), the following state taxes shall be deposited into the General Fund:

(i) the tax imposed by Subsection (2)(a)(i); or

(ii) the tax imposed by Subsection (2)(b)(i).

(b) The local taxes described in Subsections (2)(a)(ii) and (2)(b)(ii) shall be distributed to

a county, city, or town as provided in this chapter.

(4) (a) (i) Notwithstanding Subsection (3)(a) and except as provided in Subsection (9), for fiscal year 2002-03 only, the lesser of the following amounts shall be transferred or deposited as provided in Subsections (4)(a)(ii) through (vii):

(A) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

(I) by a 1/16% tax rate on the transactions described in Subsection (1); and

(II) for fiscal year 2002-03; or

(B) \$18,743,000.

(ii) (A) For fiscal year 2002-03 only, \$2,300,000 of the amount described in Subsection (4)(a)(i) shall be transferred as dedicated credits to the Department of Natural Resources to:

(I) implement the measures described in Subsections 63-34-14(4)(a) through (d) to protect sensitive plant and animal species; or

(II) award grants, up to the amount authorized by the Legislature in an appropriations act, to political subdivisions of the state to implement the measures described in Subsections 63-34-14(4)(a) through (d) to protect sensitive plant and animal species.

(B) Money transferred to the Department of Natural Resources under Subsection (4)(a)(ii)(A) may not be used to assist the United States Fish and Wildlife Service or any other person to list or attempt to have listed a species as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

(C) At the end of fiscal year 2002-03:

(I) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(II) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5; and

(III) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program Subaccount created in Section 73-10c-5.

(iii) For fiscal year 2002-03 only, \$500,000 of the amount described in Subsection (4)(a)(i) shall be deposited in the Agriculture Resource Development Fund created in Section

4-18-6.

(iv) (A) For fiscal year 2002-03 only, \$100,000 of the amount described in Subsection (4)(a)(i) shall be transferred as dedicated credits to the Division of Water Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of water rights.

(B) At the end of fiscal year 2002-03:

(I) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(II) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5; and

(III) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program Subaccount created in Section 73-10c-5.

(v) (A) For fiscal year 2002-03 only, 50% of the amount described in Subsection (4)(a)(i) that remains after making the transfers and deposits required by Subsections (4)(a)(ii) through (iv) shall be deposited in the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources.

(B) In addition to the uses allowed of the Water Resources Conservation and Development Fund under Section 73-10-24, the Water Resources Conservation and Development Fund may also be used to:

(I) provide a portion of the local cost share, not to exceed in fiscal year 2002-03 50% of the funds made available to the Division of Water Resources under this section, of potential project features of the Central Utah Project;

(II) conduct hydrologic and geotechnical investigations by the Department of Natural Resources in a cooperative effort with other state, federal, or local entities, for the purpose of quantifying surface and ground water resources and describing the hydrologic systems of an area in sufficient detail so as to enable local and state resource managers to plan for and accommodate growth in water use without jeopardizing the resource;

(III) fund state required dam safety improvements; and

(IV) protect the state's interest in interstate water compact allocations, including the

hiring of technical and legal staff.

(vi) For fiscal year 2002-03 only, 25% of the amount described in Subsection (4)(a)(i) that remains after making the transfers and deposits required by Subsections (4)(a)(ii) through (iv) shall be deposited in the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

(vii) For fiscal year 2002-03 only, 25% of the amount described in Subsection (4)(a)(i) that remains after making the transfers and deposits required by Subsections (4)(a)(ii) through (iv) shall be deposited in the Drinking Water Loan Program Subaccount created in Section 73-10c-5 for use by the Division of Drinking Water to:

(A) provide for the installation and repair of collection, treatment, storage, and distribution facilities for any public water system, as defined in Section 19-4-102;

(B) develop underground sources of water, including springs and wells; and

(C) develop surface water sources.

(b) (i) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2003, the lesser of the following amounts shall be used as provided in Subsections (4)(b)(ii) through (vii):

(A) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

(I) by a 1/16% tax rate on the transactions described in Subsection (1); and

(II) for the fiscal year; or

(B) \$17,500,000.

(ii) (A) For a fiscal year beginning on or after July 1, 2003, 14% of the amount described in Subsection (4)(b)(i) shall be transferred each year as dedicated credits to the Department of Natural Resources to:

(I) implement the measures described in Subsections 63-34-14(4)(a) through (d) to protect sensitive plant and animal species; or

(II) award grants, up to the amount authorized by the Legislature in an appropriations act, to political subdivisions of the state to implement the measures described in Subsections 63-34-14(4)(a) through (d) to protect sensitive plant and animal species.

(B) Money transferred to the Department of Natural Resources under Subsection (4)(b)(ii)(A) may not be used to assist the United States Fish and Wildlife Service or any other person to list or attempt to have listed a species as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

(C) At the end of each fiscal year:

(I) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(II) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5; and

(III) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program Subaccount created in Section 73-10c-5.

(iii) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in Subsection (4)(b)(i) shall be deposited each year in the Agriculture Resource Development Fund created in Section 4-18-6.

(iv) (A) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described in Subsection (4)(b)(i) shall be transferred each year as dedicated credits to the Division of Water Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of water rights.

(B) At the end of each fiscal year:

(I) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(II) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5; and

(III) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program Subaccount created in Section 73-10c-5.

(v) (A) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described in Subsection (4)(b)(i) shall be deposited in the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources.

(B) In addition to the uses allowed of the Water Resources Conservation and Development Fund under Section 73-10-24, the Water Resources Conservation and Development Fund may also be used to:

(I) provide a portion of the local cost share, not to exceed in any fiscal year 50% of the funds made available to the Division of Water Resources under this section, of potential project features of the Central Utah Project;

(II) conduct hydrologic and geotechnical investigations by the Department of Natural Resources in a cooperative effort with other state, federal, or local entities, for the purpose of quantifying surface and ground water resources and describing the hydrologic systems of an area in sufficient detail so as to enable local and state resource managers to plan for and accommodate growth in water use without jeopardizing the resource;

(III) fund state required dam safety improvements; and

(IV) protect the state's interest in interstate water compact allocations, including the hiring of technical and legal staff.

(vi) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described in Subsection (4)(b)(i) shall be deposited in the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

(vii) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described in Subsection (4)(b)(i) shall be deposited in the Drinking Water Loan Program Subaccount created in Section 73-10c-5 for use by the Division of Drinking Water to:

(A) provide for the installation and repair of collection, treatment, storage, and distribution facilities for any public water system, as defined in Section 19-4-102;

(B) develop underground sources of water, including springs and wells; and

(C) develop surface water sources.

(5) (a) (i) Notwithstanding Subsection (3)(a), for fiscal year 2002-03 only, the lesser of the following amounts shall be transferred or deposited as provided in Subsections (5)(a)(ii) through (iv):

(A) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

(I) by a 1/16% tax rate on the transactions described in Subsection (1); and

(II) for the fiscal year; or

(B) \$18,743,000.

(ii) (A) For fiscal year 2002-03 only, \$500,000 of the amount described in Subsection (5)(a)(i) shall be deposited in the Transportation Corridor Preservation Revolving Loan Fund created in Section 72-2-117.

(B) At least 50% of the money deposited in the Transportation Corridor Preservation Revolving Loan Fund under Subsection (5)(a)(ii)(A) shall be used to fund loan applications made by the Department of Transportation at the request of local governments.

(iii) For fiscal year 2002-03 only, \$500,000 of the amount described in Subsection (5)(a)(i) shall be transferred as nonlapsing dedicated credits to the Department of Transportation for the State Park Access Highways Improvement Program created in Section 72-3-207.

(iv) For fiscal year 2002-03 only, the amount described in Subsection (5)(a)(i) that remains after making the transfers and deposits required by Subsections (5)(a)(ii) and (iii) shall be deposited in the class B and class C roads account to be expended as provided in Title 72, Chapter 2, Transportation Finances Act, for the use of class B and C roads.

(b) (i) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2003, the lesser of the following amounts shall be used as provided in Subsections (5)(b)(ii) through (iv):

(A) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

(I) by a 1/16% tax rate on the transactions described in Subsection (1); and

(II) for the fiscal year; or

(B) \$18,743,000.

(ii) (A) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in Subsection (5)(b)(i) shall be deposited each year in the Transportation Corridor Preservation Revolving Loan Fund created in Section 72-2-117.

(B) At least 50% of the money deposited in the Transportation Corridor Preservation Revolving Loan Fund under Subsection (5)(b)(ii)(A) shall be used to fund loan applications made

by the Department of Transportation at the request of local governments.

(iii) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in Subsection (5)(b)(i) shall be transferred each year as nonlapsing dedicated credits to the Department of Transportation for the State Park Access Highways Improvement Program created in Section 72-3-207.

(iv) For a fiscal year beginning on or after July 1, 2003, 94% of the amount described in Subsection (5)(b)(i) shall be deposited in the class B and class C roads account to be expended as provided in Title 72, Chapter 2, Transportation Finances Act, for the use of class B and C roads.

(6) Notwithstanding Subsection (3)(a), beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial Highway Fund created in Section 72-2-118 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate on the taxable transactions under Subsection (1).

(7) Notwithstanding Subsection (3)(a), beginning on July 1, 1999, the commission shall deposit into the Airport to University of Utah Light Rail Restricted Account created in Section 17A-2-1064 the portion of the sales and use tax under Section 59-12-204 that is:

(a) generated by a city or town that will have constructed within its boundaries the Airport to University of Utah Light Rail described in the Transportation Equity Act for the 21st Century, Pub. L. No. 105-178, Sec. 3030(c)(2)(B)(i)(II), 112 Stat. 107; and

(b) equal to the revenues generated by a 1/64% tax rate on the taxable items and services under Subsection (1).

(8) (a) For purposes of amounts paid or charged as admission or user fees relating to the Olympic Winter Games of 2002, the amounts are considered to be paid or charged on the day on which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 or a person designated by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 sends a purchaser confirmation of the purchase of an admission or user fee described in Subsection (1)(f).

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules defining what constitutes sending a purchaser confirmation under

Subsection (8)(a).

(9) (a) For fiscal year 2002-03 only, the following amounts shall be subtracted from the total amount required to be deposited or transferred in accordance with Subsection (4):

(i) \$25,000 shall be subtracted from the total amount required to be transferred to the Division of Water Rights in accordance with Subsection (4)(a)(iv);

(ii) \$385,000 shall be subtracted from the total amount required to be deposited into the Agriculture Resource Development Fund in accordance with Subsection (4)(a)(iii);

(iii) \$350,000 shall be subtracted from the total amount required to be transferred to the Department of Natural Resources in accordance with Subsection (4)(a)(ii);

(iv) \$3,012,500 shall be subtracted from the total amount required to be deposited into the Drinking Water Loan Program Subaccount in accordance with Subsection (4)(a)(vii);

(v) \$3,012,500 shall be subtracted from the total amount required to be deposited into the Utah Wastewater Loan Program Subaccount in accordance with Subsection (4)(a)(vi); and

(vi) \$5,715,000 shall be subtracted from the total amount required to be deposited into the Water Resources Conservation and Development Fund in accordance with Subsection (4)(a)(v).

(b) The amounts subtracted under Subsection (9)(a) shall be deposited into the General Fund.

Section 4. Section **59-26-101** is enacted to read:

**CHAPTER 26. MULTI-CHANNEL VIDEO OR AUDIO**

**SERVICE TAX ACT**

**59-26-101. Title.**

This chapter is known as the "Multi-Channel Video or Audio Service Tax Act."

Section 5. Section **59-26-102** is enacted to read:

**59-26-102. Definitions.**

As used in this chapter:

(1) "multi-channel video or audio service provider" means any person or group of persons that:

(a) provides multi-channel video or audio service and directly or indirectly owns a significant interest in the multi-channel video or audio service; or

(b) otherwise controls or is responsible through any arrangement, the management and operation of the multi-channel video or audio service; and

(2) "multi-channel video or audio service provider" includes the following except as specifically exempted by state or federal law:

(a) a cable operator;

(b) a CATV provider;

(c) a multi-point distribution provider;

(d) a MMDS provider;

(e) a SMATV operator;

(f) a direct-to-home satellite service provider; or

(g) a DBS provider.

Section 6. Section **59-26-103** is enacted to read:

**59-26-103. Imposition of tax -- Rate.**

Beginning on July 1, 2004, there is imposed as provided in this part a tax on the purchaser equal to 6.25% of amounts paid or charged for multi-channel video or audio service provided by a multi-channel video or audio service provider:

(1) within the state; and

(2) to the extent permitted by federal law.

Section 7. Section **59-26-104** is enacted to read:

**59-26-104. Collection of tax.**

A multi-channel video or audio service provider shall:

(1) collect the tax imposed by Section 59-26-103 from the purchaser; and

(2) remit the tax collected under Subsection (1) to the commission:

(a) quarterly on or before the last day of the month immediately following the last day of each calendar quarter; and

(b) on a return prescribed by the commission.

Section 8. Section **59-26-105** is enacted to read:

**59-26-105. Deposit of tax revenue.**

The commission shall deposit revenues generated by the tax imposed by this chapter into the General Fund.

Section 9. Section **59-26-106** is enacted to read:

**59-26-106. Records.**

(1) A multi-channel video or audio service provider shall maintain records, statements, books, or accounts necessary to determine the amount of tax that the multi-channel video or audio service provider is required to remit to the commission under this chapter.

(2) The commission may require a multi-channel video or audio service provider to make or keep the records, statements, books, or accounts the commission considers sufficient to show the amount of tax for which the multi-channel video or audio service provider is required to remit to the commission under this chapter:

(a) by notice served upon that multi-channel video or audio service provider; or

(b) by administrative rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(3) After notice by the commission, a multi-channel video or audio service provider shall open the records, statements, books, or accounts specified in Subsection (2) for examination by the commission or a duly authorized agent of the commission.

Section 10. Section **59-26-107** is enacted to read:

**59-26-107. Action for collection of tax -- Action for refund or credit of tax.**

(1) Except as provided in Subsections (2) through (5):

(a) the commission shall assess a tax under this chapter within three years after a multi-channel video or audio service provider files a return; and

(b) if the commission does not assess a tax under this chapter within the three-year period provided in Subsection (1)(a), the commission may not commence a proceeding to collect the tax.

(2) The commission may assess a tax at any time if a multi-channel video or audio service provider:

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

(b) does not file a return.

(3) The commission may extend the period to make an assessment or to commence a proceeding to collect the tax under this chapter if:

(a) the three-year period under Subsection (1) has not expired; and

(b) the commission and the multi-channel video or audio service provider sign a written agreement:

(i) authorizing the extension; and

(ii) providing for the length of the extension.

(4) If the commission delays an audit at the request of a multi-channel video or audio service provider, the commission may make an assessment as provided in Subsection (5) if:

(a) the multi-channel video or audio service provider subsequently refuses to agree to an extension request by the commission; and

(b) the three-year period under Subsection (1) expires before the commission completes the audit.

(5) An assessment under Subsection (3) shall be:

(a) for the time period for which the commission could not make an assessment because of the expiration of the three-year period; and

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

(i) the commission's estimate of the amount of tax the multi-channel video or audio service provider would have been assessed for the time period described in Subsection (5)(a); and

(ii) the amount of tax the multi-channel video or audio service provider actually paid for the time period described in Subsection (5)(a).

(6) (a) Except as provided in Subsection (6)(b), the commission may not make a credit or refund unless the multi-channel video or audio service provider files a claim with the commission within three years of the date of overpayment.

(b) The commission shall extend the period for a multi-channel video or audio service provider to file a claim under Subsection (6)(a) if:

(i) the three-year period under Subsection (6)(a) has not expired; and  
(ii) the commission and the multi-channel video or audio service provider sign a written agreement:

- (A) authorizing the extension; and
- (B) providing for the length of the extension.

Section 11. Section **59-26-108** is enacted to read:

**59-26-108. Rulemaking authority.**

The commission may make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to implement and enforce this chapter.

Section 12. Section **59-26-109** is enacted to read:

**59-26-109. Penalties and interest.**

A multi-channel video or audio service provider that fails to comply with any provision of this chapter is subject to penalties and interest as provided in Sections 59-1-401 and 59-1-402.

Section 13. Section **59-26-110** is enacted to read:

**59-26-110. Revenue and Taxation Interim Committee study.**

The Revenue and Taxation Interim Committee shall during the 2004 interim:

- (1) study the tax imposed by this chapter;
- (2) recommend whether legislation should be drafted to modify any provision of this chapter; and

(3) prepare any legislation that the Revenue and Taxation Interim Committee recommends in accordance with Subsection (2) for consideration by the Legislature during the 2005 General Session.

Section 14. **Effective date.**

This bill takes effect on May 3, 2004, except that the amendments to Sections 59-12-102 (Effective 07/01/04) and 59-12-103 (Effective 07/01/04) take effect on July 1, 2004.