

1 **TAX, FEE, OR CHARGE AMENDMENTS**

2 2005 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Lyle W. Hillyard**

5

LONG TITLE

6 **General Description:**

7 This bill modifies the Municipal Telecommunications License Tax Act and the Sales
8 and Use Tax Act relating to taxes, fees, or charges.

9 **Highlighted Provisions:**

10 This bill:

11 ▶ addresses the procedures for the State Tax Commission to administer, collect, and
12 enforce certain taxes;

13 ▶ provides and modifies definitions;

14 ▶ modifies the transactions that are subject to sales and use taxes;

15 ▶ provides sales and use tax exemptions for:

16 • amounts paid to a purchaser as a rebate from the manufacturer of a new vehicle
17 for purchasing the new vehicle; and

18 • sales of certain tangible personal property to persons within the state if that
19 tangible personal property is subsequently shipped outside the state and

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

22a **→** ▶ **provides a credit for sales and use taxes relating to certain repossessions of a motor**
22b **vehicle;** **←**

23 ▶ grants rulemaking authority to the State Tax Commission;

24 ▶ addresses criminal acts relating to refusing to make a return, making a false or
25 fraudulent return or false statement on a return, evading the payment of a tax, or
26 aiding or abetting an attempt to evade the payment of a tax;

27 ▶ addresses amnesty relating to a tax, fee, or charge;



- 28 ▶ addresses the payment of a monetary allowance to a seller that is registered under
- 29 the Streamlined Sales and Use Tax Agreement or a certified service provider that is
- 30 designated to be a seller's agent;
- 31 ▶ addresses the distribution of certain sales and use tax revenues to counties, cities,
- 32 and towns; and
- 33 ▶ makes technical changes.

34 **Monies Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 This bill takes effect on July 1, 2005.

38 **Utah Code Sections Affected:**

39 AMENDS:

- 40 **10-1-405**, as last amended by Chapter 255, Laws of Utah 2004
- 41 **59-12-102**, as last amended by Chapters 1, 156, 255, 298 and 300, Laws of Utah 2004
- 42 **59-12-103 (Effective 07/01/05)**, as last amended by Chapter 1, Laws of Utah 2004,
- 43 Third Special Session
- 44 **59-12-104**, as last amended by Chapters 1, 156, 255, 298 and 320, Laws of Utah 2004
- 45 **59-12-117**, as last amended by Chapter 312, Laws of Utah 2003
- 46 **59-12-121**, as last amended by Chapter 1, Laws of Utah 2004, Third Special Session
- 47 **59-12-122**, as enacted by Chapter 255, Laws of Utah 2004
- 48 **59-12-205 (Effective 07/01/05)**, as last amended by Chapter 255, Laws of Utah 2004
- 49 **59-12-1201**, as last amended by Chapters 156 and 255, Laws of Utah 2004

49a **§→ ENACTS:**

49b **59-12-104.3, Utah Code Annotated 1953 ←§**



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

52 Section 1. Section **10-1-405** is amended to read:

53 **10-1-405. Collection of taxes by commission -- Uniform interlocal agreement --**
54 **Charge for services.**

55 (1) Subject to the other provisions of this section, the commission shall collect,
56 enforce, and administer any municipal telecommunications license tax imposed under this part
57 pursuant to:

58 (a) the same procedures used in the administration, collection, and enforcement of the

59 state sales and use tax under:

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

61 (ii) Title 59, Chapter 12, Part 1, Tax Collection:

62 (A) except for:

63 [~~(I)~~ Subsection 59-12-103(2)(d);]

64 [~~(II)~~ (I) Subsection 59-12-103(2)(e);

65 [~~(III)~~ (II) Section 59-12-104;

66 [~~(IV)~~ (III) Section 59-12-104.1;

67 [~~(V)~~ (IV) Section 59-12-104.2; and

68 [~~(VI)~~ (V) Sections 59-12-107.1 through 59-12-107.3; and

69 (B) except that for purposes of Section 59-12-110, the term "taxpayer" may include a
70 customer from whom a municipal telecommunications license tax is recovered in accordance
71 with Subsection 10-1-403(2); and

72 (b) a uniform interlocal agreement:

73 (i) between:

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

75 (B) the commission;

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

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

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

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

81 (i) transmit monies collected under this part:

82 (A) monthly; and

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

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

85 (iii) charge the municipality for the commission's services under this section in an
86 amount:

87 (A) sufficient to reimburse the commission for the cost to the commission in rendering
88 the services; and

89 (B) that may not exceed an amount equal to 1.5% of the municipal telecommunications

90 license tax imposed by the ordinance of the municipality; and

91 (iv) collect, enforce, and administer the municipal telecommunications license tax
92 authorized under this part pursuant to the same procedures used in the administration,
93 collection, and enforcement of the state sales and use tax as provided in Subsection (1)(a).

94 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
95 commission shall develop a uniform interlocal agreement that meets the requirements of this
96 section.

97 (3) The administrative fee charged under Subsection (2)(a) shall be:

98 (a) deposited in the Sales and Use Tax Administrative Fees Account; and

99 (b) used for administration of municipal telecommunications license taxes under this
100 part.

101 Section 2. Section **59-12-102** is amended to read:

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

103 As used in this chapter:

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

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

107 (2) "Agreement" means the Streamlined Sales and Use Tax Agreement described in
108 Section 59-12-102.1.

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

110 (a) listed under Subsection (4); and

111 (b) that are imposed within a local taxing jurisdiction.

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

113 (a) Subsection 59-12-103(2)(a)(i);

114 (b) Section 59-12-204;

115 (c) Section 59-12-401;

116 (d) Section 59-12-402;

117 (e) Section 59-12-501;

118 (f) Section 59-12-502;

119 (g) Section 59-12-703;

120 (h) Section 59-12-802;

- 121 (i) Section 59-12-804;
- 122 (j) Section 59-12-1001;
- 123 (k) Section 59-12-1102;
- 124 (l) Section 59-12-1302;
- 125 (m) Section 59-12-1402; or
- 126 (n) Section 59-12-1503.
- 127 (5) "Aircraft" is as defined in Section 72-10-102.
- 128 (6) "Alcoholic beverage" means a beverage that:
 - 129 (a) is suitable for human consumption; and
 - 130 (b) contains .5% or more alcohol by volume.
- 131 (7) "Area agency on aging" is as defined in Section 62A-3-101.
- 132 (8) "Authorized carrier" means:
 - 133 (a) in the case of vehicles operated over public highways, the holder of credentials
 - 134 indicating that the vehicle is or will be operated pursuant to both the International Registration
 - 135 Plan and the International Fuel Tax Agreement;
 - 136 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating
 - 137 certificate or air carrier's operating certificate; or
 - 138 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling
 - 139 stock, the holder of a certificate issued by the United States Surface Transportation Board.
- 140 (9) (a) Except as provided in Subsection (9)(b), "biomass energy" means any of the
- 141 following that is used as the primary source of energy to produce fuel or electricity:
 - 142 (i) material from a plant or tree; or
 - 143 (ii) other organic matter that is available on a renewable basis, including:
 - 144 (A) slash and brush from forests and woodlands;
 - 145 (B) animal waste;
 - 146 (C) methane produced:
 - 147 (I) at landfills; or
 - 148 (II) as a byproduct of the treatment of wastewater residuals;
 - 149 (D) aquatic plants; and
 - 150 (E) agricultural products.
 - 151 (b) "Biomass energy" does not include:

- 152 (i) black liquor;
- 153 (ii) treated woods; or
- 154 (iii) biomass from municipal solid waste other than methane produced:
- 155 (A) at landfills; or
- 156 (B) as a byproduct of the treatment of wastewater residuals.

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

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

- 161 (i) on a transaction; and
- 162 (ii) in the states that are members of the agreement;
- 163 (b) determines the amount of agreement sales and use tax to remit to a state that is a
164 member of the agreement; and
- 165 (c) maintains a record of the transaction described in Subsection (10)(a)(i).

166 (11) "Certified service provider" means an agent certified:

- 167 (a) by the governing board of the agreement in accordance with Section 59-12-102.1;
- 168 and
- 169 (b) to perform all of a seller's sales and use tax functions for an agreement sales and
170 use tax other than the seller's obligation under Section 59-12-107.4 to remit a tax on the seller's
171 own purchases.

172 (12) (a) Subject to Subsection (12)(b), "clothing" means all human wearing apparel
173 suitable for general use.

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

- 176 (i) listing the items that constitute "clothing"; and
- 177 (ii) that are consistent with the list of items that constitute "clothing" under the
178 agreement.

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

- 181 (i) a coin-operated amusement, skill, or ride device;
- 182 (ii) that is not controlled through seller-assisted, over-the-counter, sales of tokens; and

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

185 (b) For purposes of Subsection 59-12-104(42), "coin-operated amusement device" does
186 not mean a coin-operated amusement device possessing a coinage mechanism that:

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

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

190 (14) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
191 fuels that does not constitute industrial use under Subsection (34) or residential use under
192 Subsection [~~(63)~~] (66).

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

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

198 (ii) For purposes of Subsection (15)(b)(i), in accordance with Title 63, Chapter 46a,
199 Utah Administrative Rulemaking Act, the commission may make rules defining what
200 constitutes a person's place of employment.

201 (16) "Component part" includes:

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

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

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

207 (d) feed, seeds, and seedlings.

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

209 (a) (i) in digital form; or

210 (ii) in a form similar to digital form; and

211 (b) manipulates that information for a result based on a sequence of instructions.

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

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

- 214 (b) automatic data processing equipment to perform a task.
- 215 (19) "Construction materials" means any tangible personal property that will be
- 216 converted into real property.
- 217 (20) "Delivered electronically" means delivered to a purchaser by means other than
- 218 tangible storage media.
- 219 (21) (a) "Delivery charge" means a charge:
- 220 (i) by a seller of:
- 221 (A) tangible personal property; or
- 222 (B) services; and
- 223 (ii) for preparation and delivery of the tangible personal property or services described
- 224 in Subsection (21)(a)(i) to a location designated by the purchaser.
- 225 (b) "Delivery charge" includes a charge for the following:
- 226 (i) transportation;
- 227 (ii) shipping;
- 228 (iii) postage;
- 229 (iv) handling;
- 230 (v) crating; or
- 231 (vi) packing.
- 232 (22) "Dietary supplement" means a product, other than tobacco, that:
- 233 (a) is intended to supplement the diet;
- 234 (b) contains one or more of the following dietary ingredients:
- 235 (i) a vitamin;
- 236 (ii) a mineral;
- 237 (iii) an herb or other botanical;
- 238 (iv) an amino acid;
- 239 (v) a dietary substance for use by humans to supplement the diet by increasing the total
- 240 dietary intake; or
- 241 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
- 242 described in Subsections (22)(b)(i) through (v);
- 243 (c) (i) except as provided in Subsection (22)(c)(ii), is intended for ingestion in:
- 244 (A) tablet form;

- 245 (B) capsule form;
- 246 (C) powder form;
- 247 (D) softgel form;
- 248 (E) gelcap form; or
- 249 (F) liquid form; or
- 250 (ii) notwithstanding Subsection (22)(c)(i), if the product is not intended for ingestion in
- 251 a form described in Subsections (22)(c)(i)(A) through (F), is not represented:
 - 252 (A) as conventional food; and
 - 253 (B) for use as a sole item of:
 - 254 (I) a meal; or
 - 255 (II) the diet; and
 - 256 (d) is required to be labeled as a dietary supplement:
 - 257 (i) identifiable by the "Supplemental Facts" box found on the label; and
 - 258 (ii) as required by 21 C.F.R. Sec. 101.36.
- 259 (23) (a) "Direct mail" means printed material delivered or distributed by United States
- 260 mail or other delivery service:
 - 261 (i) to:
 - 262 (A) a mass audience; or
 - 263 (B) addressees on a mailing list provided by a purchaser of the mailing list; and
 - 264 (ii) if the cost of the printed material is not billed directly to the recipients.
 - 265 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
 - 266 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
 - 267 (c) "Direct mail" does not include multiple items of printed material delivered to a
 - 268 single address.
- 269 (24) (a) "Drug" means a compound, substance, or preparation, or a component of a
- 270 compound, substance, or preparation that is:
 - 271 (i) recognized in:
 - 272 (A) the official United States Pharmacopoeia;
 - 273 (B) the official Homeopathic Pharmacopoeia of the United States;
 - 274 (C) the official National Formulary; or
 - 275 (D) a supplement to a publication listed in Subsections (24)(a)(i)(A) through (C);

- 276 (ii) intended for use in the:
- 277 (A) diagnosis of disease;
- 278 (B) cure of disease;
- 279 (C) mitigation of disease;
- 280 (D) treatment of disease; or
- 281 (E) prevention of disease; or
- 282 (iii) intended to affect:
- 283 (A) the structure of the body; or
- 284 (B) any function of the body.
- 285 (b) "Drug" does not include:
- 286 (i) food and food ingredients;
- 287 (ii) a dietary supplement;
- 288 (iii) an alcoholic beverage; or
- 289 (iv) a prosthetic device.
- 290 (25) (a) Except as provided in Subsection (25)(c), "durable medical equipment" means
- 291 equipment that:
- 292 (i) can withstand repeated use;
- 293 (ii) is primarily and customarily used to serve a medical purpose;
- 294 (iii) generally is not useful to a person in the absence of illness or injury; and
- 295 (iv) is not worn in or on the body[;].
- 296 [~~(v) is listed as eligible for payment under:~~]
- 297 [~~(A) Title XVIII of the federal Social Security Act; or~~]
- 298 [~~(B) the state plan for medical assistance under Title XIX of the federal Social Security~~
- 299 ~~Act; and]~~
- 300 [~~(vi) is used for home use only.~~]
- 301 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 302 equipment described in Subsection (25)(a).
- 303 (c) Notwithstanding Subsection (25)(a), "durable medical equipment" does not include
- 304 mobility enhancing equipment.
- 305 (26) "Electronic" means:
- 306 (a) relating to technology; and

- 307 (b) having:
- 308 (i) electrical capabilities;
- 309 (ii) digital capabilities;
- 310 (iii) magnetic capabilities;
- 311 (iv) wireless capabilities;
- 312 (v) optical capabilities;
- 313 (vi) electromagnetic capabilities; or
- 314 (vii) capabilities similar to Subsections (26)(b)(i) through (vi).
- 315 (27) (a) "Food and food ingredients" means substances:
- 316 (i) regardless of whether the substances are in:
- 317 (A) liquid form;
- 318 (B) concentrated form;
- 319 (C) solid form;
- 320 (D) frozen form;
- 321 (E) dried form; or
- 322 (F) dehydrated form; and
- 323 (ii) that are:
- 324 (A) sold for:
- 325 (I) ingestion by humans; or
- 326 (II) chewing by humans; and
- 327 (B) consumed for the substance's:
- 328 (I) taste; or
- 329 (II) nutritional value.
- 330 (b) "Food and food ingredients" does not include:
- 331 (i) an alcoholic beverage;
- 332 (ii) tobacco; or
- 333 (iii) prepared food.
- 334 (28) (a) "Fundraising sales" means sales:
- 335 (i) (A) made by a school; or
- 336 (B) made by a school student;
- 337 (ii) that are for the purpose of raising funds for the school to purchase equipment,

338 materials, or provide transportation; and

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

340 (b) For purposes of Subsection (28)(a)(iii), "officially sanctioned school activity"

341 means a school activity:

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

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

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

348 (29) "Geothermal energy" means energy contained in heat that continuously flows
349 outward from the earth that is used as the sole source of energy to produce electricity.

350 (30) "Governing board of the agreement" means the governing board of the agreement
351 that is:

352 (a) authorized to administer the agreement; and

353 (b) established in accordance with the agreement.

354 (31) (a) "Hearing aid" means:

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

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

357 (II) correct impaired human hearing; and

358 (B) (I) be worn in the human ear; or

359 (II) affixed behind the human ear;

360 (ii) an instrument or device that is surgically implanted into the cochlea; or

361 (iii) a telephone amplifying device.

362 (b) "Hearing aid" does not include:

363 (i) except as provided in Subsection (31)(a)(i)(B) or (31)(a)(ii), an instrument or device
364 having an electronic component that is designed to be worn on the body;

365 (ii) except as provided in Subsection (31)(a)(iii), an assistive listening device or system
366 designed to be used by one individual, including:

367 (A) a personal amplifying system;

368 (B) a personal FM system;

- 369 (C) a television listening system; or
- 370 (D) a device or system similar to a device or system described in Subsections
- 371 (31)(b)(ii)(A) through (C); or
- 372 (iii) an assistive listening device or system designed to be used by more than one
- 373 individual, including:
 - 374 (A) a device or system installed in:
 - 375 (I) an auditorium;
 - 376 (II) a church;
 - 377 (III) a conference room;
 - 378 (IV) a synagogue; or
 - 379 (V) a theater; or
 - 380 (B) a device or system similar to a device or system described in Subsections
 - 381 (31)(b)(iii)(A)(I) through (V).
- 382 (32) (a) "Hearing aid accessory" means a hearing aid:
 - 383 (i) component;
 - 384 (ii) attachment; or
 - 385 (iii) accessory.
- 386 (b) "Hearing aid accessory" includes:
 - 387 (i) a hearing aid neck loop;
 - 388 (ii) a hearing aid cord;
 - 389 (iii) a hearing aid ear mold;
 - 390 (iv) hearing aid tubing;
 - 391 (v) a hearing aid ear hook; or
 - 392 (vi) a hearing aid remote control.
- 393 (c) "Hearing aid accessory" does not include:
 - 394 (i) a component, attachment, or accessory designed to be used only with an:
 - 395 (A) instrument or device described in Subsection (31)(b)(i); or
 - 396 (B) assistive listening device or system described in Subsection (31)(b)(ii) or (iii); or
 - 397 (ii) a hearing aid battery.
- 398 (33) "Hydroelectric energy" means water used as the sole source of energy to produce
- 399 electricity.

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

402 (a) in mining or extraction of minerals;

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

405 (i) commercial greenhouses;

406 (ii) irrigation pumps;

407 (iii) farm machinery;

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

410 (v) other farming activities;

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

414 (d) by a scrap recycler if:

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

418 (A) iron;

419 (B) steel;

420 (C) nonferrous metal;

421 (D) paper;

422 (E) glass;

423 (F) plastic;

424 (G) textile; or

425 (H) rubber; and

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

428 (35) (a) Except as provided in Subsection (35)(b), "installation charge" means a charge
429 for installing tangible personal property.

430 (b) Notwithstanding Subsection (35)(a), "installation charge" does not include a charge

431 for repairs or renovations of tangible personal property.

432 [~~(35)~~] (36) (a) "Lease" or "rental" means a transfer of possession or control of tangible
433 personal property for:

434 (i) (A) a fixed term; or

435 (B) an indeterminate term; and

436 (ii) consideration.

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

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

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

445 (ii) a transfer of possession or control of property under an agreement[~~-(A)~~] that
446 requires the transfer of title;

447 (A) upon completion of required payments; and

448 (B) [~~in which~~] if the payment of an option price does not exceed the greater of:

449 (I) \$100; or

450 (II) 1% of the total required payments; or

451 (iii) providing tangible personal property along with an operator for a fixed period of
452 time or an indeterminate period of time if the operator is necessary for equipment to perform as
453 designed.

454 (d) For purposes of Subsection [~~(35)~~] (36)(c)(iii), an operator is necessary for
455 equipment to perform as designed if the operator's duties exceed the:

456 (i) set-up of tangible personal property;

457 (ii) maintenance of tangible personal property; or

458 (iii) inspection of tangible personal property.

459 [~~(36)~~] (37) "Load and leave" means delivery to a purchaser by use of a tangible storage
460 media if the tangible storage media is not physically transferred to the purchaser.

461 [~~(37)~~] (38) "Local taxing jurisdiction" means a:

- 462 (a) county that is authorized to impose an agreement sales and use tax;
- 463 (b) city that is authorized to impose an agreement sales and use tax; or
- 464 (c) town that is authorized to impose an agreement sales and use tax.
- 465 [~~(38)~~] (39) "Manufactured home" is as defined in Section 58-56-3.
- 466 [~~(39)~~] (40) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:
- 467 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
- 468 Industrial Classification Manual of the federal Executive Office of the President, Office of
- 469 Management and Budget; or
- 470 (b) a scrap recycler if:
- 471 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 472 one or more of the following items into prepared grades of processed materials for use in new
- 473 products:
- 474 (A) iron;
- 475 (B) steel;
- 476 (C) nonferrous metal;
- 477 (D) paper;
- 478 (E) glass;
- 479 (F) plastic;
- 480 (G) textile; or
- 481 (H) rubber; and
- 482 (ii) the new products under Subsection [~~(39)~~] (40)(b)(i) would otherwise be made with
- 483 nonrecycled materials.
- 484 [~~(40)~~] (41) "Mobile home" is as defined in Section 58-56-3.
- 485 [~~(41)~~] (42) "Mobile telecommunications service" is as defined in the Mobile
- 486 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
- 487 [~~(42)~~] (43) (a) Except as provided in Subsection [~~(42)~~] (43)(c), "mobility enhancing
- 488 equipment" means equipment that is:
- 489 (i) primarily and customarily used to provide or increase the ability to move from one
- 490 place to another;
- 491 (ii) appropriate for use in a:
- 492 (A) home; or

493 (B) motor vehicle; and
494 (iii) not generally used by persons with normal mobility[~~;~~ and].
495 [~~(iv) listed as eligible for payment under:~~]
496 [~~(A) Title XVIII of the federal Social Security Act; or~~]
497 [~~(B) the state plan for medical assistance under Title XIX of the federal Social Security~~
498 ~~Act~~].

499 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
500 the equipment described in Subsection [~~(42)~~] (43)(a).

501 (c) Notwithstanding Subsection [~~(42)~~] (43)(a), "mobility enhancing equipment" does
502 not include:

503 (i) a motor vehicle;

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

506 (iii) durable medical equipment; or

507 (iv) a prosthetic device.

508 [~~(43)~~] (44) "Model 1 seller" means a seller that has selected a certified service provider
509 as the seller's agent to perform all of the seller's sales and use tax functions for agreement sales
510 and use taxes other than the seller's obligation under Section 59-12-107.4 to remit a tax on the
511 seller's own purchases.

512 [~~(44)~~] (45) "Model 2 seller" means a seller that:

513 (a) except as provided in Subsection [~~(44)~~] (45)(b), has selected a certified automated
514 system to perform the seller's sales tax functions for agreement sales and use taxes; and

515 (b) notwithstanding Subsection [~~(44)~~] (45)(a), retains responsibility for remitting all of
516 the sales tax:

517 (i) collected by the seller; and

518 (ii) to the appropriate local taxing jurisdiction.

519 [~~(45)~~] (46) (a) Subject to Subsection [~~(45)~~] (46)(b), "model 3 seller" means a seller that
520 has:

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

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

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

- 524 (A) for an agreement sales and use tax; and
- 525 (B) due to each local taxing jurisdiction; and
- 526 (iv) entered into a performance agreement with the governing board of the agreement.
- 527 (b) For purposes of Subsection [~~(45)~~] (46)(a), "model 3 seller" includes an affiliated
- 528 group of sellers using the same proprietary system.
- 529 [~~(46)~~] (47) "Modular home" means a modular unit as defined in Section 58-56-3.
- 530 [~~(47)~~] (48) "Motor vehicle" is as defined in Section 41-1a-102.
- 531 [~~(48)~~] (49) (a) "Other fuels" means products that burn independently to produce heat or
- 532 energy.
- 533 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible
- 534 personal property.
- 535 (50) (a) "Permanently attached to real property" means that for tangible personal
- 536 property attached to real property:
- 537 (i) the attachment of the tangible personal property to the real property:
- 538 (A) is essential to the use of the tangible personal property; and
- 539 (B) suggests that the tangible personal property will remain attached to the real
- 540 property in the same place over the useful life of the tangible personal property; or
- 541 (ii) if the tangible personal property is detached from the real property, the detachment
- 542 would:
- 543 (A) cause substantial damage to the tangible personal property; or
- 544 (B) require substantial alteration or repair of the real property to which the tangible
- 545 personal property is attached.
- 546 (b) "Permanently attached to real property" includes:
- 547 (i) the attachment of an accessory to the tangible personal property if the accessory is:
- 548 (A) essential to the operation of the tangible personal property; and
- 549 (B) attached only to facilitate the operation of the tangible personal property; or
- 550 (ii) a temporary detachment of tangible personal property from real property for a
- 551 repair or renovation if the repair or renovation is performed where the tangible personal
- 552 property and real property are located.
- 553 (c) "Permanently attached to real property" does not include:
- 554 (i) the attachment of portable or movable tangible personal property to real property if

555 that portable or movable tangible personal property is attached to real property only for:

556 (A) convenience;

557 (B) stability; or

558 (C) for an obvious temporary purpose; or

559 (ii) the detachment of tangible personal property from real property other than the
560 detachment described in Subsection (50)(b)(ii).

561 [~~(49)~~] (51) "Person" includes any individual, firm, partnership, joint venture,
562 association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county,
563 city, municipality, district, or other local governmental entity of the state, or any group or
564 combination acting as a unit.

565 [~~(50)~~] (52) "Place of primary use":

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

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

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

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

573 [~~(51)~~] (53) "Postproduction" means an activity related to the finishing or duplication of
574 a medium described in Subsection 59-12-104(60)(a).

575 [~~(52)~~] (54) (a) "Prepared food" means:

576 (i) food:

577 (A) sold in a heated state; or

578 (B) heated by a seller;

579 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
580 item; or

581 (iii) except as provided in Subsection [~~(52)~~] (54)(c), food sold with an eating utensil
582 provided by the seller, including a:

583 (A) plate;

584 (B) knife;

585 (C) fork;

- 586 (D) spoon;
- 587 (E) glass;
- 588 (F) cup;
- 589 (G) napkin; or
- 590 (H) straw.
- 591 (b) "Prepared food" does not include:
- 592 (i) food that a seller only:
- 593 (A) cuts;
- 594 (B) repackages; or
- 595 (C) pasteurizes; or
- 596 (ii) (A) the following:
- 597 (I) raw egg;
- 598 (II) raw fish;
- 599 (III) raw meat;
- 600 (IV) raw poultry; or
- 601 (V) a food containing an item described in Subsections [~~52~~] 54(b)(ii)(A)(I) through
- 602 (IV); and
- 603 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 604 Food and Drug Administration's Food Code that a consumer cook the items described in
- 605 Subsection [~~52~~] 54(b)(ii)(A) to prevent food borne illness.
- 606 (c) Notwithstanding Subsection [~~52~~] 54(a)(iii), an eating utensil provided by the
- 607 seller does not include the following used to transport the food:
- 608 (i) a container; or
- 609 (ii) packaging.
- 610 [~~53~~] 55 "Prescription" means an order, formula, or recipe that is issued:
- 611 (a) (i) orally;
- 612 (ii) in writing;
- 613 (iii) electronically; or
- 614 (iv) by any other manner of transmission; and
- 615 (b) by a licensed practitioner authorized by the laws of a state.
- 616 [~~54~~] 56 (a) Except as provided in Subsection [~~54~~] 56(b)(ii) or (iii), "prewritten

617 computer software" means computer software that is not designed and developed:

618 (i) by the author or other creator of the computer software; and

619 (ii) to the specifications of a specific purchaser.

620 (b) "Prewritten computer software" includes:

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

623 (A) by the author or other creator of the computer software; and

624 (B) to the specifications of a specific purchaser;

625 (ii) notwithstanding Subsection ~~[(54)]~~ (56)(a), computer software designed and
626 developed by the author or other creator of the computer software to the specifications of a
627 specific purchaser if the computer software is sold to a person other than the purchaser; or

628 (iii) notwithstanding Subsection ~~[(54)]~~ (56)(a) and except as provided in Subsection
629 ~~[(54)]~~ (56)(c), prewritten computer software or a prewritten portion of prewritten computer
630 software:

631 (A) that is modified or enhanced to any degree; and

632 (B) if the modification or enhancement described in Subsection ~~[(54)]~~ (56)(b)(iii)(A) is
633 designed and developed to the specifications of a specific purchaser.

634 (c) Notwithstanding Subsection ~~[(54)]~~ (56)(b)(iii), "prewritten computer software"
635 does not include a modification or enhancement described in Subsection ~~[(54)]~~ (56)(b)(iii) if
636 the charges for the modification or enhancement are:

637 (i) reasonable; and

638 (ii) separately stated on the invoice or other statement of price provided to the
639 purchaser.

640 ~~[(55)]~~ (57) (a) "Prosthetic device" means a device that is ~~[:-(t)]~~ worn on or in the body
641 to:

642 ~~[(A)]~~ (i) artificially replace a missing portion of the body;

643 ~~[(B)]~~ (ii) prevent or correct a physical deformity or physical malfunction; or

644 ~~[(C)]~~ (iii) support a weak or deformed portion of the body ~~[-and]~~.

645 ~~[(ii) listed as eligible for payment under:]~~

646 ~~[(A) Title XVIII of the federal Social Security Act; or]~~

647 ~~[(B) the state plan for medical assistance under Title XIX of the federal Social Security~~

648 Act.]

649 (b) "Prosthetic device" includes:

650 (i) parts used in the repairs or renovation of a prosthetic device; or

651 (ii) replacement parts for a prosthetic device.

652 (c) "Prosthetic device" does not include:

653 (i) corrective eyeglasses;

654 (ii) contact lenses;

655 (iii) hearing aids; or

656 (iv) dental prostheses.

657 [~~56~~] (58) (a) "Protective equipment" means an item:

658 (i) for human wear; and

659 (ii) that is:

660 (A) designed as protection:

661 (I) to the wearer against injury or disease; or

662 (II) against damage or injury of other persons or property; and

663 (B) not suitable for general use.

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

666 (i) listing the items that constitute "protective equipment"; and

667 (ii) that are consistent with the list of items that constitute "protective equipment"

668 under the agreement.

669 [~~57~~] (59) (a) "Purchase price" and "sales price" mean the total amount of
670 consideration:

671 (i) valued in money; and

672 (ii) for which tangible personal property or services are:

673 (A) sold;

674 (B) leased; or

675 (C) rented.

676 (b) "Purchase price" and "sales price" include:

677 (i) the seller's cost of the tangible personal property or services sold;

678 (ii) expenses of the seller, including:

- 679 (A) the cost of materials used;
- 680 (B) a labor cost;
- 681 (C) a service cost;
- 682 (D) interest;
- 683 (E) a loss;
- 684 (F) the cost of transportation to the seller; or
- 685 (G) a tax imposed on the seller; or
- 686 (iii) a charge by the seller for any service necessary to complete the sale[;].
- 687 [~~(iv) a delivery charge; or~~]
- 688 [~~(v) an installation charge.~~]
- 689 (c) "Purchase price" and "sales price" do not include:
- 690 (i) a discount:
- 691 (A) in a form including:
- 692 (I) cash;
- 693 (II) term; or
- 694 (III) coupon;
- 695 (B) that is allowed by a seller;
- 696 (C) taken by a purchaser on a sale; and
- 697 (D) that is not reimbursed by a third party; or
- 698 (ii) the following if separately stated on an invoice, bill of sale, or similar document
- 699 provided to the purchaser:
- 700 (A) the amount of a trade-in;
- 701 (B) the following from credit extended on the sale of tangible personal property or
- 702 services:
- 703 (I) interest charges;
- 704 (II) financing charges; or
- 705 (III) carrying charges; [~~or~~]
- 706 (C) a tax or fee legally imposed directly on the consumer[-];
- 707 (D) a delivery charge; or
- 708 (E) an installation charge.
- 709 [~~(58)~~] (60) "Purchaser" means a person to whom:

710 (a) a sale of tangible personal property is made; or

711 (b) a service is furnished.

712 [~~59~~] (61) "Regularly rented" means:

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

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

716 [~~60~~] (62) "Renewable energy" means:

717 (a) biomass energy;

718 (b) hydroelectric energy;

719 (c) geothermal energy;

720 (d) solar energy; or

721 (e) wind energy.

722 [~~61~~] (63) (a) "Renewable energy production facility" means a facility that:

723 (i) uses renewable energy to produce electricity; and

724 (ii) has a production capacity of 20 kilowatts or greater.

725 (b) A facility is a renewable energy production facility regardless of whether the
726 facility is:

727 (i) connected to an electric grid; or

728 (ii) located on the premises of an electricity consumer.

729 [~~62~~] (64) "Rental" is as defined in Subsection [~~35~~] (36).

730 (65) "Repairs or renovations of tangible personal property" means:

731 (a) a repair or renovation of tangible personal property that is not permanently attached
732 to real property; or

733 (b) attaching tangible personal property to other tangible personal property if the other
734 tangible personal property to which the tangible personal property is attached is not
735 permanently attached to real property.

736 [~~63~~] (66) "Residential use" means the use in or around a home, apartment building,
737 sleeping quarters, and similar facilities or accommodations.

738 [~~64~~] (67) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose
739 other than:

740 (a) resale;

741 (b) sublease; or

742 (c) subrent.

743 ~~[(65)]~~ (68) (a) "Retailer" means any person engaged in a regularly organized business
744 in tangible personal property or any other taxable transaction under Subsection 59-12-103(1),
745 and who is selling to the user or consumer and not for resale.

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

748 ~~[(66)]~~ (69) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
749 otherwise, in any manner, of tangible personal property or any other taxable transaction under
750 Subsection 59-12-103(1), for consideration.

751 (b) "Sale" includes:

752 (i) installment and credit sales;

753 (ii) any closed transaction constituting a sale;

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

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

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

761 ~~[(67)]~~ (70) "Sale at retail" is as defined in Subsection ~~[(64)]~~ (67).

762 ~~[(68)]~~ (71) "Sale-leaseback transaction" means a transaction by which title to tangible
763 personal property that is subject to a tax under this chapter is transferred:

764 (a) by a purchaser-lessee;

765 (b) to a lessor;

766 (c) for consideration; and

767 (d) if:

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

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

772 (A) for the property; and
773 (B) to the purchaser-lessee; and
774 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
775 is required to:

776 (A) capitalize the property for financial reporting purposes; and
777 (B) account for the lease payments as payments made under a financing arrangement.
778 [~~(69)~~] (72) "Sales price" is as defined in Subsection [~~(57)~~] (59).

779 [~~(70)~~] (73) (a) "Sales relating to schools" means the following sales by, amounts paid
780 to, or amounts charged by a school:

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

783 (A) the sale of:

- 784 (I) textbooks;
- 785 (II) textbook fees;
- 786 (III) laboratory fees;
- 787 (IV) laboratory supplies; or
- 788 (V) safety equipment;

789 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
790 that:

- 791 (I) a student is specifically required to wear as a condition of participation in a
792 school-related event or school-related activity; and
- 793 (II) is not readily adaptable to general or continued usage to the extent that it takes the
794 place of ordinary clothing;

795 (C) sales of the following if the net or gross revenues generated by the sales are
796 deposited into a school district fund or school fund dedicated to school meals:

- 797 (I) food and food ingredients; or
- 798 (II) prepared food; or
- 799 (D) transportation charges for official school activities; or

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

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

- 803 (i) bookstore sales of items that are not educational materials or supplies;
- 804 (ii) except as provided in Subsection [~~(70)~~] (73)(a)(i)(B):
- 805 (A) clothing;
- 806 (B) clothing accessories or equipment;
- 807 (C) protective equipment; or
- 808 (D) sports or recreational equipment; or
- 809 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 810 event or school-related activity if the amounts paid or charged are passed through to a person:
- 811 (A) other than a:
- 812 (I) school;
- 813 (II) nonprofit organization authorized by a school board or a governing body of a
- 814 private school to organize and direct a competitive secondary school activity; or
- 815 (III) nonprofit association authorized by a school board or a governing body of a
- 816 private school to organize and direct a competitive secondary school activity; and
- 817 (B) that is required to collect sales and use taxes under this chapter.
- 818 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 819 commission may make rules defining the term "passed through."
- 820 [~~(71)~~] (74) For purposes of this section and Section 59-12-104, "school" means:
- 821 (a) an elementary school or a secondary school that:
- 822 (i) is a:
- 823 (A) public school; or
- 824 (B) private school; and
- 825 (ii) provides instruction for one or more grades kindergarten through 12; or
- 826 (b) a public school district.
- 827 [~~(72)~~] (75) "Seller" means a person that makes a sale, lease, or rental of:
- 828 (a) tangible personal property; or
- 829 (b) a service.
- 830 [~~(73)~~] (76) (a) "Semiconductor fabricating or processing materials" means tangible
- 831 personal property:
- 832 (i) used primarily in the process of:
- 833 (A) (I) manufacturing a semiconductor; or

- 834 (II) fabricating a semiconductor; or
- 835 (B) maintaining an environment suitable for a semiconductor; or
- 836 (ii) consumed primarily in the process of:
- 837 (A) (I) manufacturing a semiconductor; or
- 838 (II) fabricating a semiconductor; or
- 839 (B) maintaining an environment suitable for a semiconductor.
- 840 (b) "Semiconductor fabricating or processing materials" includes:
- 841 (i) parts used in the repairs or renovations of tangible personal property described in
- 842 Subsection [~~(73)~~] (76)(a); or
- 843 (ii) a chemical, catalyst, or other material used to:
- 844 (A) produce or induce in a semiconductor a:
- 845 (I) chemical change; or
- 846 (II) physical change;
- 847 (B) remove impurities from a semiconductor; or
- 848 (C) improve the marketable condition of a semiconductor.
- 849 [~~(74)~~] (77) "Senior citizen center" means a facility having the primary purpose of
- 850 providing services to the aged as defined in Section 62A-3-101.
- 851 [~~(75)~~] (78) "Simplified electronic return" means the electronic return:
- 852 (a) described in Section 318(C) of the agreement; and
- 853 (b) approved by the governing board of the agreement.
- 854 [~~(76)~~] (79) "Solar energy" means the sun used as the sole source of energy for
- 855 producing electricity.
- 856 [~~(77)~~] (80) (a) "Sports or recreational equipment" means an item:
- 857 (i) designed for human use; and
- 858 (ii) that is:
- 859 (A) worn in conjunction with:
- 860 (I) an athletic activity; or
- 861 (II) a recreational activity; and
- 862 (B) not suitable for general use.
- 863 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 864 commission shall make rules:

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

868 [~~(78)~~] (81) "State" means the state of Utah, its departments, and agencies.

869 [~~(79)~~] (82) "Storage" means any keeping or retention of tangible personal property or
870 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose
871 except sale in the regular course of business.

872 [~~(80)~~] (83) (a) "Tangible personal property" means personal property that:

873 (i) may be:

874 (A) seen;

875 (B) weighed;

876 (C) measured;

877 (D) felt; or

878 (E) touched; or

879 (ii) is in any manner perceptible to the senses.

880 (b) "Tangible personal property" includes:

881 (i) electricity;

882 (ii) water;

883 (iii) gas;

884 (iv) steam; or

885 (v) prewritten computer software.

886 [~~(81)~~] (84) (a) "Telephone service" means a two-way transmission:

887 (i) by:

888 (A) wire;

889 (B) radio;

890 (C) lightwave; or

891 (D) other electromagnetic means; and

892 (ii) of one or more of the following:

893 (A) a sign;

894 (B) a signal;

895 (C) writing;

- 896 (D) an image;
- 897 (E) sound;
- 898 (F) a message;
- 899 (G) data; or
- 900 (H) other information of any nature.
- 901 (b) "Telephone service" includes:
- 902 (i) mobile telecommunications service;
- 903 (ii) private communications service; or
- 904 (iii) automated digital telephone answering service.
- 905 (c) "Telephone service" does not include a service or a transaction that a state or a
- 906 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet
- 907 Tax Freedom Act, Pub. L. No. 105-277.
- 908 ~~[(82)]~~ (85) Notwithstanding where a call is billed or paid, "telephone service address"
- 909 means:
- 910 (a) if the location described in this Subsection ~~[(82)]~~ (85)(a) is known, the location of
- 911 the telephone service equipment:
- 912 (i) to which a call is charged; and
- 913 (ii) from which the call originates or terminates;
- 914 (b) if the location described in Subsection ~~[(82)]~~ (85)(a) is not known but the location
- 915 described in this Subsection ~~[(82)]~~ (85)(b) is known, the location of the origination point of the
- 916 signal of the telephone service first identified by:
- 917 (i) the telecommunications system of the seller; or
- 918 (ii) if the system used to transport the signal is not that of the seller, information
- 919 received by the seller from its service provider; or
- 920 (c) if the locations described in Subsection ~~[(82)]~~ (85)(a) or (b) are not known, the
- 921 location of a purchaser's primary place of use.
- 922 ~~[(83)]~~ (86) (a) "Telephone service provider" means a person that:
- 923 (i) owns, controls, operates, or manages a telephone service; and
- 924 (ii) engages in an activity described in Subsection ~~[(83)]~~ (86)(a)(i) for the shared use
- 925 with or resale to any person of the telephone service.
- 926 (b) A person described in Subsection ~~[(83)]~~ (86)(a) is a telephone service provider

927 whether or not the Public Service Commission of Utah regulates:

928 (i) that person; or

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

930 [~~(84)~~] (87) "Tobacco" means:

931 (a) a cigarette;

932 (b) a cigar;

933 (c) chewing tobacco;

934 (d) pipe tobacco; or

935 (e) any other item that contains tobacco.

936 [~~(85)~~] (88) (a) "Use" means the exercise of any right or power over tangible personal
937 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that
938 property, item, or service.

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

941 [~~(86)~~] (89) (a) Subject to Subsection [~~(86)~~] (89)(b), "vehicle" means the following that
942 are required to be titled, registered, or titled and registered:

943 (i) an aircraft as defined in Section 72-10-102;

944 (ii) a vehicle as defined in Section 41-1a-102;

945 (iii) an off-highway vehicle as defined in Section 41-22-2; or

946 (iv) a vessel as defined in Section 41-1a-102.

947 (b) For purposes of Subsection 59-12-104(35) only, "vehicle" includes:

948 (i) a vehicle described in Subsection [~~(86)~~] (89)(a); or

949 (ii) (A) a locomotive;

950 (B) a freight car;

951 (C) railroad work equipment; or

952 (D) other railroad rolling stock.

953 [~~(87)~~] (90) "Vehicle dealer" means a person engaged in the business of buying, selling,
954 or exchanging a vehicle as defined in Subsection [~~(86)~~] (89).

955 [~~(88)~~] (91) (a) Except as provided in Subsection [~~(88)~~] (91)(b), "waste energy facility"
956 means a facility that generates electricity:

957 (i) using as the primary source of energy waste materials that would be placed in a

958 landfill or refuse pit if it were not used to generate electricity, including:

959 (A) tires;

960 (B) waste coal; or

961 (C) oil shale; and

962 (ii) in amounts greater than actually required for the operation of the facility.

963 (b) "Waste energy facility" does not include a facility that incinerates:

964 (i) municipal solid waste;

965 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or

966 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

967 [~~89~~] (92) "Watercraft" means a vessel as defined in Section 73-18-2.

968 [~~90~~] (93) "Wind energy" means wind used as the sole source of energy to produce
969 electricity.

970 [~~91~~] (94) "ZIP Code" means a Zoning Improvement Plan Code assigned to a
971 geographic location by the United States Postal Service.

972 Section 3. Section **59-12-103 (Effective 07/01/05)** is amended to read:

973 **59-12-103 (Effective 07/01/05). Sales and use tax base -- Rates -- Effective dates --**

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

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

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

978 (b) amounts paid:

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

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

981 (I) telephone service provider; or

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

983 (ii) for:

984 (A) all transportation;

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

987 (C) mobile telecommunications service that originates and terminates within the
988 boundaries of one state only to the extent permitted by the Mobile Telecommunications

989 Sourcing Act, 4 U.S.C. Sec.116 et seq.; or
990 (D) telegraph service;
991 (c) sales of the following for commercial use:
992 (i) gas;
993 (ii) electricity;
994 (iii) heat;
995 (iv) coal;
996 (v) fuel oil; or
997 (vi) other fuels;
998 (d) sales of the following for residential use:
999 (i) gas;
1000 (ii) electricity;
1001 (iii) heat;
1002 (iv) coal;
1003 (v) fuel oil; or
1004 (vi) other fuels;
1005 (e) sales of prepared food;
1006 (f) except as provided in Section 59-12-104, amounts paid or charged as admission or
1007 user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,
1008 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,
1009 fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit
1010 television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf
1011 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,
1012 tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises,
1013 horseback rides, sports activities, or any other amusement, entertainment, recreation,
1014 exhibition, cultural, or athletic activity;
1015 (g) amounts paid or charged for services[~~:(f)~~] for repairs or renovations of tangible
1016 personal property, unless Section 59-12-104 provides for an exemption from sales and use tax
1017 for:
1018 [~~(A)~~] (i) the tangible personal property; and
1019 [~~(B)~~] (ii) parts used in the repairs or renovations of the tangible personal property

1020 described in Subsection (1)(g)(i)~~[(A)]~~, whether or not any parts are actually used in the repairs
1021 or renovations of that tangible personal property; ~~[or]~~

1022 ~~[(ii) to install tangible personal property in connection with other tangible personal~~
1023 ~~property, unless the tangible personal property being installed is exempt from sales and use tax~~
1024 ~~under Section 59-12-104;]~~

1025 (h) except as provided in Subsection 59-12-104(7), amounts paid or charged for
1026 cleaning or washing of tangible personal property;

1027 (i) amounts paid or charged for tourist home, hotel, motel, or trailer court
1028 accommodations and services that are regularly rented for less than 30 consecutive days;

1029 (j) amounts paid or charged for laundry or dry cleaning services;

1030 (k) amounts paid or charged for leases or rentals of tangible personal property if~~[(i)~~
1031 ~~the tangible personal property's situs is in this state; (ii) the lessee took possession of the~~
1032 ~~tangible personal property in this state; or (iii)]~~ within this state the tangible personal property
1033 is:

1034 ~~[(A)]~~ (i) stored;

1035 ~~[(B)]~~ (ii) used; or

1036 ~~[(C)]~~ (iii) otherwise consumed;

1037 (l) amounts paid or charged for tangible personal property if within this state the
1038 tangible personal property is:

1039 (i) stored;

1040 (ii) used; or

1041 (iii) consumed; and

1042 (m) amounts paid or charged for prepaid telephone calling cards.

1043 (2) (a) Except as provided in Subsection (2)(b), beginning on July 1, 2001, a state tax
1044 and a local tax is imposed on a transaction described in Subsection (1) equal to the sum of:

1045 (i) a state tax imposed on the transaction at a rate of 4.75%; and

1046 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
1047 transaction under this chapter other than this part.

1048 (b) Notwithstanding Subsection (2)(a), beginning on July 1, 2001, a state tax and a
1049 local tax is imposed on a transaction described in Subsection (1)(d) equal to the sum of:

1050 (i) a state tax imposed on the transaction at a rate of 2%; and

1051 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
1052 transaction under this chapter other than this part.

1053 (c) Subject to Subsections (2)(d) and (e), a tax rate repeal or tax rate change for a tax
1054 rate imposed under the following shall take effect on the first day of a calendar quarter:

1055 (i) Subsection (2)(a)(i); or

1056 (ii) Subsection (2)(b)(i).

1057 (d) (i) For a transaction described in Subsection (2)(d)(iii), a tax rate increase shall take
1058 effect on the first day of the first billing period:

1059 (A) that begins after the effective date of the tax rate increase; and

1060 (B) if the billing period for the transaction begins before the effective date of a tax rate
1061 increase imposed under:

1062 (I) Subsection (2)(a)(i); or

1063 (II) Subsection (2)(b)(i).

1064 (ii) For a transaction described in Subsection (2)(d)(iii), the repeal of a tax or a tax rate
1065 decrease shall take effect on the first day of the last billing period:

1066 (A) that began before the effective date of the repeal of the tax or the tax rate decrease;
1067 and

1068 (B) if the billing period for the transaction begins before the effective date of the repeal
1069 of the tax or the tax rate decrease imposed under:

1070 (I) Subsection (2)(a)(i); or

1071 (II) Subsection (2)(b)(i).

1072 (iii) Subsections (2)(d)(i) and (ii) apply to transactions subject to a tax under:

1073 (A) Subsection (1)(b);

1074 (B) Subsection (1)(c);

1075 (C) Subsection (1)(d);

1076 (D) Subsection (1)(e);

1077 (E) Subsection (1)(f);

1078 (F) Subsection (1)(g);

1079 (G) Subsection (1)(h);

1080 (H) Subsection (1)(i);

1081 (I) Subsection (1)(j); or

- 1082 (J) Subsection (1)(k).
- 1083 (e) (i) If a tax due under Subsection (2)(a)(i) on a catalogue sale is computed on the
1084 basis of sales and use tax rates published in the catalogue, a tax rate repeal or change in a tax
1085 rate imposed under Subsection (2)(a)(i) takes effect:
- 1086 (A) on the first day of a calendar quarter; and
- 1087 (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change
1088 under Subsection (2)(a)(i).
- 1089 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
1090 the commission may by rule define the term "catalogue sale."
- 1091 (3) (a) Except as provided in Subsections (4) through (7), the following state taxes
1092 shall be deposited into the General Fund:
- 1093 (i) the tax imposed by Subsection (2)(a)(i); or
- 1094 (ii) the tax imposed by Subsection (2)(b)(i).
- 1095 (b) The local taxes described in Subsections (2)(a)(ii) and (2)(b)(ii) shall be distributed
1096 to a county, city, or town as provided in this chapter.
- 1097 (4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
1098 2003, the lesser of the following amounts shall be used as provided in Subsections (4)(b)
1099 through (g):
- 1100 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:
- 1101 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and
- 1102 (B) for the fiscal year; or
- 1103 (ii) \$17,500,000.
- 1104 (b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount
1105 described in Subsection (4)(a) shall be transferred each year as dedicated credits to the
1106 Department of Natural Resources to:
- 1107 (A) implement the measures described in Subsections 63-34-14(4)(a) through (d) to
1108 protect sensitive plant and animal species; or
- 1109 (B) award grants, up to the amount authorized by the Legislature in an appropriations
1110 act, to political subdivisions of the state to implement the measures described in Subsections
1111 63-34-14(4)(a) through (d) to protect sensitive plant and animal species.
- 1112 (ii) Money transferred to the Department of Natural Resources under Subsection

1113 (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other
1114 person to list or attempt to have listed a species as threatened or endangered under the
1115 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

1116 (iii) At the end of each fiscal year:

1117 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
1118 Conservation and Development Fund created in Section 73-10-24;

1119 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
1120 Program Subaccount created in Section 73-10c-5; and

1121 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
1122 Program Subaccount created in Section 73-10c-5.

1123 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in
1124 Subsection (4)(b)(i) shall be deposited each year in the Agriculture Resource Development
1125 Fund created in Section 4-18-6.

1126 (d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described
1127 in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water
1128 Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of
1129 water rights.

1130 (ii) At the end of each fiscal year:

1131 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
1132 Conservation and Development Fund created in Section 73-10-24;

1133 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
1134 Program Subaccount created in Section 73-10c-5; and

1135 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
1136 Program Subaccount created in Section 73-10c-5.

1137 (e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described
1138 in Subsection (4)(a) shall be deposited in the Water Resources Conservation and Development
1139 Fund created in Section 73-10-24 for use by the Division of Water Resources.

1140 (ii) In addition to the uses allowed of the Water Resources Conservation and
1141 Development Fund under Section 73-10-24, the Water Resources Conservation and
1142 Development Fund may also be used to:

1143 (A) provide a portion of the local cost share, not to exceed in any fiscal year 50% of the

1144 funds made available to the Division of Water Resources under this section, of potential project
1145 features of the Central Utah Project;

1146 (B) conduct hydrologic and geotechnical investigations by the Department of Natural
1147 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of
1148 quantifying surface and ground water resources and describing the hydrologic systems of an
1149 area in sufficient detail so as to enable local and state resource managers to plan for and
1150 accommodate growth in water use without jeopardizing the resource;

1151 (C) fund state required dam safety improvements; and

1152 (D) protect the state's interest in interstate water compact allocations, including the
1153 hiring of technical and legal staff.

1154 (f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
1155 in Subsection (4)(a) shall be deposited in the Utah Wastewater Loan Program Subaccount
1156 created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

1157 (g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
1158 in Subsection (4)(a) shall be deposited in the Drinking Water Loan Program Subaccount
1159 created in Section 73-10c-5 for use by the Division of Drinking Water to:

1160 (i) provide for the installation and repair of collection, treatment, storage, and
1161 distribution facilities for any public water system, as defined in Section 19-4-102;

1162 (ii) develop underground sources of water, including springs and wells; and

1163 (iii) develop surface water sources.

1164 (5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
1165 2003, the lesser of the following amounts shall be used as provided in Subsections (5)(b)
1166 through (d):

1167 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

1168 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and

1169 (B) for the fiscal year; or

1170 (ii) \$18,743,000.

1171 (b) (i) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described
1172 in Subsection (5)(a) shall be deposited each year in the Transportation Corridor Preservation
1173 Revolving Loan Fund created in Section 72-2-117.

1174 (ii) At least 50% of the money deposited in the Transportation Corridor Preservation

1175 Revolving Loan Fund under Subsection (5)(b)(i) shall be used to fund loan applications made
1176 by the Department of Transportation at the request of local governments.

1177 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in
1178 Subsection (5)(a) shall be transferred each year as nonlapsing dedicated credits to the
1179 Department of Transportation for the State Park Access Highways Improvement Program
1180 created in Section 72-3-207.

1181 (d) For a fiscal year beginning on or after July 1, 2003, 94% of the amount described in
1182 Subsection (5)(a) shall be deposited in the class B and class C roads account to be expended as
1183 provided in Title 72, Chapter 2, Transportation Finances Act, for the use of class B and C
1184 roads.

1185 (6) Notwithstanding Subsection (3)(a), beginning on January 1, 2000, the Division of
1186 Finance shall deposit into the Centennial Highway Fund created in Section 72-2-118 a portion
1187 of the taxes listed under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate
1188 on the taxable transactions under Subsection (1).

1189 (7) (a) Notwithstanding Subsection (3)(a), for fiscal years beginning on or after fiscal
1190 year 2004-05, the commission shall each year on or before the September 30 immediately
1191 following the last day of the fiscal year deposit the difference described in Subsection (7)(b)
1192 into the Remote Sales Restricted Account created in Section 59-12-103.2 if that difference is
1193 greater than \$0.

1194 (b) The difference described in Subsection (7)(a) is equal to the difference between:

1195 (i) the total amount of the following revenues the commission received from sellers
1196 collecting a tax in accordance with Subsection 59-12-107(1)(b) for the fiscal year immediately
1197 preceding the September 30 described in Subsection (7)(a):

1198 (A) revenues under Subsection (2)(a)(i); and

1199 (B) revenues under Subsection (2)(b)(i); and

1200 (ii) \$7,279,673.

1201 Section 4. Section **59-12-104** is amended to read:

1202 **59-12-104. Exemptions.**

1203 The following sales and uses are exempt from the taxes imposed by this chapter:

1204 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
1205 under Chapter 13, Motor and Special Fuel Tax Act;

1206 (2) sales to the state, its institutions, and its political subdivisions; however, this
1207 exemption does not apply to sales of:
1208 (a) construction materials except:
1209 (i) construction materials purchased by or on behalf of institutions of the public
1210 education system as defined in Utah Constitution Article X, Section 2, provided the
1211 construction materials are clearly identified and segregated and installed or converted to real
1212 property which is owned by institutions of the public education system; and
1213 (ii) construction materials purchased by the state, its institutions, or its political
1214 subdivisions which are installed or converted to real property by employees of the state, its
1215 institutions, or its political subdivisions; or
1216 (b) tangible personal property in connection with the construction, operation,
1217 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities
1218 providing additional project capacity, as defined in Section 11-13-103;
1219 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:
1220 (i) the proceeds of each sale do not exceed \$1; and
1221 (ii) the seller or operator of the vending machine reports an amount equal to 150% of
1222 the cost of the item described in Subsection (3)~~(a)~~(b) as goods consumed; and
1223 (b) Subsection (3)(a) applies to:
1224 (i) food and food ingredients; or
1225 (ii) prepared food;
1226 (4) sales of the following to a commercial airline carrier for in-flight consumption:
1227 (a) food and food ingredients;
1228 (b) prepared food; or
1229 (c) services related to Subsection (4)(a) or (b);
1230 (5) sales of parts and equipment for installation in aircraft operated by common carriers
1231 in interstate or foreign commerce;
1232 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
1233 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
1234 exhibitor, distributor, or commercial television or radio broadcaster;
1235 (7) sales of cleaning or washing of tangible personal property by a coin-operated
1236 laundry or dry cleaning machine;

1237 (8) sales made to or by religious or charitable institutions in the conduct of their regular
 1238 religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are
 1239 fulfilled;

1240 (9) sales of vehicles of a type required to be registered under the motor vehicle laws of
 1241 this state which are made to bona fide nonresidents of this state and are not afterwards
 1242 registered or used in this state except as necessary to transport them to the borders of this state;

1243 (10) (a) amounts paid for an item described in Subsection (10)(b) if:

1244 (i) the item is intended for human use; and

1245 (ii) (A) a prescription was issued for the item; or

1246 (B) the item was purchased by a hospital or other medical facility; and

1247 (b) (i) Subsection (10)(a) applies to:

1248 (A) a drug;

1249 (B) a syringe; or

1250 (C) a stoma supply; and

1251 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
 1252 commission may by rule define the terms:

1253 (A) "syringe"; or

1254 (B) "stoma supply";

1255 (11) sales or use of property, materials, or services used in the construction of or
 1256 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

1257 (12) (a) sales of an item described in Subsection (12)(c) served by:

1258 (i) the following if the item described in Subsection (12)(c) is not available to the
 1259 general public:

1260 (A) a church; or

1261 (B) a charitable institution;

1262 (ii) an institution of higher education if:

1263 (A) the item described in Subsection (12)(c) is not available to the general public; or

1264 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
 1265 offered by the institution of higher education; or

1266 (b) sales of an item described in Subsection (12)(c) provided for a patient ~~by~~ **→** **[at]** **by** ~~←~~ **→** :

1267 (i) a medical facility; or

- 1268 (ii) a nursing facility; and
- 1269 (c) Subsections (12)(a) and (b) apply to:
 - 1270 (i) food and food ingredients;
 - 1271 (ii) prepared food; or
 - 1272 (iii) alcoholic beverages;
 - 1273 (13) isolated or occasional sales by persons not regularly engaged in business, except
 - 1274 the sale of vehicles or vessels required to be titled or registered under the laws of this state in
 - 1275 which case the tax is based upon:
 - 1276 (a) the bill of sale or other written evidence of value of the vehicle or vessel being sold;
 - 1277 or
 - 1278 (b) in the absence of a bill of sale or other written evidence of value, the then existing
 - 1279 fair market value of the vehicle or vessel being sold as determined by the commission;
 - 1280 (14) (a) the following purchases or leases by a manufacturer on or after July 1, 1995:
 - 1281 (i) machinery and equipment:
 - 1282 (A) used in the manufacturing process;
 - 1283 (B) having an economic life of three or more years; and
 - 1284 (C) used:
 - 1285 (I) to manufacture an item sold as tangible personal property; and
 - 1286 (II) in new or expanding operations in a manufacturing facility in the state; and
 - 1287 (ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:
 - 1288 (A) have an economic life of three or more years;
 - 1289 (B) are used in the manufacturing process in a manufacturing facility in the state;
 - 1290 (C) are used to replace or adapt an existing machine to extend the normal estimated
 - 1291 useful life of the machine; and
 - 1292 (D) do not include repairs and maintenance;
 - 1293 (b) the rates for the exemption under Subsection (14)(a)(ii) are as follows:
 - 1294 (i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in
 - 1295 Subsection (14)(a)(ii) is exempt;
 - 1296 (ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described
 - 1297 in Subsection (14)(a)(ii) is exempt; and
 - 1298 (iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection

1299 (14)(a)(ii) is exempt;

1300 (c) for purposes of this Subsection (14), the commission shall by rule define the terms

1301 "new or expanding operations" and "establishment"; and

1302 (d) on or before October 1, 1991, and every five years after October 1, 1991, the

1303 commission shall:

1304 (i) review the exemptions described in Subsection (14)(a) and make recommendations

1305 to the Revenue and Taxation Interim Committee concerning whether the exemptions should be

1306 continued, modified, or repealed; and

1307 (ii) include in its report:

1308 (A) the cost of the exemptions;

1309 (B) the purpose and effectiveness of the exemptions; and

1310 (C) the benefits of the exemptions to the state;

1311 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:

1312 (i) tooling;

1313 (ii) special tooling;

1314 (iii) support equipment;

1315 (iv) special test equipment; or

1316 (v) parts used in the repairs or renovations of tooling or equipment described in

1317 Subsections (15)(a)(i) through (iv); and

1318 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:

1319 (i) the tooling, equipment, or parts are used or consumed exclusively in the

1320 performance of any aerospace or electronics industry contract with the United States

1321 government or any subcontract under that contract; and

1322 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),

1323 title to the tooling, equipment, or parts is vested in the United States government as evidenced

1324 by:

1325 (A) a government identification tag placed on the tooling, equipment, or parts; or

1326 (B) listing on a government-approved property record if placing a government

1327 identification tag on the tooling, equipment, or parts is impractical;

1328 (16) intrastate movements of:

1329 (a) freight by common carriers; or

- 1330 (b) passengers:
- 1331 (i) by taxicabs as described in SIC Code 4121 of the 1987 Standard Industrial
- 1332 Classification Manual of the federal Executive Office of the President, Office of Management
- 1333 and Budget;
- 1334 (ii) transported by an establishment described in SIC Code 4111 of the 1987 Standard
- 1335 Industrial Classification Manual of the federal Executive Office of the President, Office of
- 1336 Management and Budget, if the transportation originates and terminates within a county of the
- 1337 first, second, or third class; or
- 1338 (iii) transported by the following described in SIC Code 4789 of the 1987 Standard
- 1339 Industrial Classification Manual of the federal Executive Office of the President, Office of
- 1340 Management and Budget:
- 1341 (A) a horse-drawn cab; or
- 1342 (B) a horse-drawn carriage;
- 1343 (17) sales of newspapers or newspaper subscriptions;
- 1344 (18) (a) except as provided in Subsection (18)(b), tangible personal property traded in
- 1345 as full or part payment of the purchase price, except that for purposes of calculating sales or use
- 1346 tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and
- 1347 the tax is based upon:
- 1348 (i) the bill of sale or other written evidence of value of the vehicle being sold and the
- 1349 vehicle being traded in; or
- 1350 (ii) in the absence of a bill of sale or other written evidence of value, the then existing
- 1351 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
- 1352 commission; and
- 1353 (b) notwithstanding Subsection (18)(a), Subsection (18)(a) does not apply to the
- 1354 following items of tangible personal property traded in as full or part payment of the purchase
- 1355 price:
- 1356 (i) money;
- 1357 (ii) electricity;
- 1358 (iii) water;
- 1359 (iv) gas; or
- 1360 (v) steam;

1361 (19) sprays and insecticides used to control insects, diseases, and weeds for
1362 commercial production of fruits, vegetables, feeds, seeds, and animal products, but not those
1363 sprays and insecticides used in the processing of the products;

1364 (20) (a) (i) sales of tangible personal property used or consumed primarily and directly
1365 in farming operations, including sales of irrigation equipment and supplies used for agricultural
1366 production purposes, whether or not they become part of real estate and whether or not
1367 installed by farmer, contractor, or subcontractor, but not sales of:

1368 (A) machinery, equipment, materials, and supplies used in a manner that is incidental
1369 to farming, such as hand tools and maintenance and janitorial equipment and supplies;

1370 (B) tangible personal property used in any activities other than farming, such as office
1371 equipment and supplies, equipment and supplies used in sales or distribution of farm products,
1372 in research, or in transportation; or

1373 (C) any vehicle required to be registered by the laws of this state, without regard to the
1374 use to which the vehicle is put; or

1375 (ii) sales of parts used in the repairs or renovations of tangible personal property if the
1376 tangible personal property is exempt under Subsection (20)(a); or

1377 (b) sales of hay;

1378 (21) exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or
1379 other agricultural produce if sold by a producer during the harvest season;

1380 (22) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
1381 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

1382 (23) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
1383 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
1384 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
1385 manufacturer, processor, wholesaler, or retailer;

1386 (24) property stored in the state for resale;

1387 (25) property brought into the state by a nonresident for his or her own personal use or
1388 enjoyment while within the state, except property purchased for use in Utah by a nonresident
1389 living and working in Utah at the time of purchase;

1390 (26) property purchased for resale in this state, in the regular course of business, either
1391 in its original form or as an ingredient or component part of a manufactured or compounded

1392 product;

1393 (27) property upon which a sales or use tax was paid to some other state, or one of its
1394 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
1395 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if
1396 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax
1397 Act;

1398 (28) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a
1399 person for use in compounding a service taxable under the subsections;

1400 (29) purchases made in accordance with the special supplemental nutrition program for
1401 women, infants, and children established in 42 U.S.C. Sec. 1786;

1402 (30) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers,
1403 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens
1404 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification
1405 Manual of the federal Executive Office of the President, Office of Management and Budget;

1406 (31) sales of boats of a type required to be registered under Title 73, Chapter 18, State
1407 Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of
1408 this state and are not thereafter registered or used in this state except as necessary to transport
1409 them to the borders of this state;

1410 (32) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah
1411 where a sales or use tax is not imposed, even if the title is passed in Utah;

1412 (33) amounts paid for the purchase of telephone service for purposes of providing
1413 telephone service;

1414 (34) fares charged to persons transported directly by a public transit district created
1415 under the authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;

1416 (35) sales or leases of vehicles to, or use of vehicles by an authorized carrier;

1417 (36) (a) 45% of the sales price of any new manufactured home; and

1418 (b) 100% of the sales price of any used manufactured home;

1419 (37) sales relating to schools and fundraising sales;

1420 (38) sales or rentals of durable medical equipment if:

1421 (a) a person presents a prescription for the durable medical equipment; and

1422 (b) the durable medical equipment is used for home use only;

- 1423 (39) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
- 1424 Section 72-11-102; and
- 1425 (b) the commission shall by rule determine the method for calculating sales exempt
- 1426 under Subsection (39)(a) that are not separately metered and accounted for in utility billings;
- 1427 (40) sales to a ski resort of:
- 1428 (a) snowmaking equipment;
- 1429 (b) ski slope grooming equipment;
- 1430 (c) passenger ropeways as defined in Section 72-11-102; or
- 1431 (d) parts used in the repairs or renovations of equipment or passenger ropeways
- 1432 described in Subsections (40)(a) through (c);
- 1433 (41) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
- 1434 (42) sales or rentals of the right to use or operate for amusement, entertainment, or
- 1435 recreation a coin-operated amusement device as defined in Section 59-12-102;
- 1436 (43) sales of cleaning or washing of tangible personal property by a coin-operated car
- 1437 wash machine;
- 1438 (44) sales by the state or a political subdivision of the state, except state institutions of
- 1439 higher education as defined in Section 53B-3-102, of:
- 1440 (a) photocopies; or
- 1441 (b) other copies of records held or maintained by the state or a political subdivision of
- 1442 the state;
- 1443 (45) (a) amounts paid:
- 1444 (i) to a person providing intrastate transportation to an employer's employee to or from
- 1445 the employee's primary place of employment;
- 1446 (ii) by an:
- 1447 (A) employee; or
- 1448 (B) employer; and
- 1449 (iii) pursuant to a written contract between:
- 1450 (A) the employer; and
- 1451 (B) (I) the employee; or
- 1452 (II) a person providing transportation to the employer's employee; and
- 1453 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

1454 commission may for purposes of Subsection (45)(a) make rules defining what constitutes an
1455 employee's primary place of employment;

1456 (46) amounts paid for admission to an athletic event at an institution of higher
1457 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
1458 20 U.S.C. Sec. 1681 et seq.;

1459 (47) sales of telephone service charged to a prepaid telephone calling card;

1460 (48) (a) sales of:

1461 (i) hearing aids;

1462 (ii) hearing aid accessories; or

1463 (iii) except as provided in Subsection (48)(b), parts used in the repairs or renovations
1464 of hearing aids or hearing aid accessories; and

1465 (b) for purposes of this Subsection (48), notwithstanding Subsection (48)(a)(iii),
1466 "parts" does not include batteries;

1467 (49) (a) sales made to or by:

1468 (i) an area agency on aging; or

1469 (ii) a senior citizen center owned by a county, city, or town; or

1470 (b) sales made by a senior citizen center that contracts with an area agency on aging;

1471 (50) (a) beginning on July 1, 2001, through June 30, 2007, and subject to Subsection
1472 (50)(b), a sale or lease of semiconductor fabricating or processing materials regardless of
1473 whether the semiconductor fabricating or processing materials:

1474 (i) actually come into contact with a semiconductor; or

1475 (ii) ultimately become incorporated into real property;

1476 (b) (i) beginning on July 1, 2001, through June 30, 2002, 10% of the sale or lease
1477 described in Subsection (50)(a) is exempt;

1478 (ii) beginning on July 1, 2002, through June 30, 2003, 50% of the sale or lease
1479 described in Subsection (50)(a) is exempt; and

1480 (iii) beginning on July 1, 2003, through June 30, 2007, the entire amount of the sale or
1481 lease described in Subsection (50)(a) is exempt; and

1482 (c) each year on or before the November interim meeting, the Revenue and Taxation
1483 Interim Committee shall:

1484 (i) review the exemption described in this Subsection (50) and make recommendations

1485 concerning whether the exemption should be continued, modified, or repealed; and
1486 (ii) include in the review under this Subsection (50)(c):
1487 (A) the cost of the exemption;
1488 (B) the purpose and effectiveness of the exemption; and
1489 (C) the benefits of the exemption to the state;
1490 (51) an amount paid by or charged to a purchaser for accommodations and services
1491 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
1492 59-12-104.2;
1493 (52) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary
1494 sports event registration certificate in accordance with Section 41-3-306 for the event period
1495 specified on the temporary sports event registration certificate;
1496 (53) sales or uses of electricity, if the sales or uses are:
1497 (a) made under a tariff adopted by the Public Service Commission of Utah only for
1498 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy
1499 source, as designated in the tariff by the Public Service Commission of Utah; and
1500 (b) for an amount of electricity that is:
1501 (i) unrelated to the amount of electricity used by the person purchasing the electricity
1502 under the tariff described in Subsection (53)(a); and
1503 (ii) equivalent to the number of kilowatthours specified in the tariff described in
1504 Subsection (53)(a) that may be purchased under the tariff described in Subsection (53)(a);
1505 (54) sales or rentals of mobility enhancing equipment if a person presents a
1506 prescription for the mobility enhancing equipment;
1507 (55) sales of water in a:
1508 (a) pipe;
1509 (b) conduit;
1510 (c) ditch; or
1511 (d) reservoir;
1512 (56) sales of currency or coinage that constitute legal tender of the United States or of a
1513 foreign nation;
1514 (57) (a) sales of an item described in Subsection (57)(b) if the item:
1515 (i) does not constitute legal tender of any nation; and

- 1516 (ii) has a gold, silver, or platinum content of 80% or more; and
- 1517 (b) Subsection (57)(a) applies to a gold, silver, or platinum:
- 1518 (i) ingot;
- 1519 (ii) bar;
- 1520 (iii) medallion; or
- 1521 (iv) decorative coin;
- 1522 (58) amounts paid on a sale-leaseback transaction;
- 1523 (59) sales of a prosthetic device:
- 1524 (a) for use on or in a human;
- 1525 (b) for which a prescription is issued; and
- 1526 (c) to a person that presents a prescription for the prosthetic device;
- 1527 (60) (a) except as provided in Subsection (60)(b), purchases, leases, or rentals of
- 1528 machinery or equipment by an establishment described in Subsection (60)(c) if the machinery
- 1529 or equipment is primarily used in the production or postproduction of the following media for
- 1530 commercial distribution:
- 1531 (i) a motion picture;
- 1532 (ii) a television program;
- 1533 (iii) a movie made for television;
- 1534 (iv) a music video;
- 1535 (v) a commercial;
- 1536 (vi) a documentary; or
- 1537 (vii) a medium similar to Subsections (60)(a)(i) through (vi) as determined by the
- 1538 commission by administrative rule made in accordance with Subsection (60)(d); or
- 1539 (b) notwithstanding Subsection (60)(a), purchases, leases, or rentals of machinery or
- 1540 equipment by an establishment described in Subsection (60)(c) that is used for the production
- 1541 or postproduction of the following are subject to the taxes imposed by this chapter:
- 1542 (i) a live musical performance;
- 1543 (ii) a live news program; or
- 1544 (iii) a live sporting event;
- 1545 (c) the following establishments listed in the 1997 North American Industry
- 1546 Classification System of the federal Executive Office of the President, Office of Management

1547 and Budget, apply to Subsections (60)(a) and (b):
1548 (i) NAICS Code 512110; or
1549 (ii) NAICS Code 51219; and
1550 (d) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1551 commission may by rule:
1552 (i) prescribe what constitutes a medium similar to Subsections (60)(a)(i) through (vi);
1553 or
1554 (ii) define:
1555 (A) "commercial distribution";
1556 (B) "live musical performance";
1557 (C) "live news program"; or
1558 (D) "live sporting event";
1559 (61) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on
1560 or before June 30, 2009, of machinery or equipment that:
1561 (i) is leased or purchased for or by a facility that:
1562 (A) is a renewable energy production facility;
1563 (B) is located in the state; and
1564 (C) (I) becomes operational on or after July 1, 2004; or
1565 (II) has its generation capacity increased by one or more megawatts on or after July 1,
1566 2004 as a result of the use of the machinery or equipment;
1567 (ii) has an economic life of five or more years; and
1568 (iii) is used to make the facility or the increase in capacity of the facility described in
1569 Subsection (61)(a)(i) operational up to the point of interconnection with an existing
1570 transmission grid including:
1571 (A) a wind turbine;
1572 (B) generating equipment;
1573 (C) a control and monitoring system;
1574 (D) a power line;
1575 (E) substation equipment;
1576 (F) lighting;
1577 (G) fencing;

- 1578 (H) pipes; or
- 1579 (I) other equipment used for locating a power line or pole; and
- 1580 (b) this Subsection (61) does not apply to:
- 1581 (i) machinery or equipment used in construction of:
- 1582 (A) a new renewable energy production facility; or
- 1583 (B) the increase in the capacity of a renewable energy production facility;
- 1584 (ii) contracted services required for construction and routine maintenance activities;
- 1585 and
- 1586 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
- 1587 of the facility described in Subsection (61)(a)(i)(C)(II), machinery or equipment used or
- 1588 acquired after:
- 1589 (A) the renewable energy production facility described in Subsection (61)(a)(i) is
- 1590 operational as described in Subsection (61)(a)(iii); or
- 1591 (B) the increased capacity described in Subsection (61)(a)(i) is operational as described
- 1592 in Subsection (61)(a)(iii);
- 1593 (62) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on
- 1594 or before June 30, 2009, of machinery or equipment that:
- 1595 (i) is leased or purchased for or by a facility that:
- 1596 (A) is a waste energy production facility;
- 1597 (B) is located in the state; and
- 1598 (C) (I) becomes operational on or after July 1, 2004; or
- 1599 (II) has its generation capacity increased by one or more megawatts on or after July 1,
- 1600 2004 as a result of the use of the machinery or equipment;
- 1601 (ii) has an economic life of five or more years; and
- 1602 (iii) is used to make the facility or the increase in capacity of the facility described in
- 1603 Subsection (62)(a)(i) operational up to the point of interconnection with an existing
- 1604 transmission grid including:
- 1605 (A) generating equipment;
- 1606 (B) a control and monitoring system;
- 1607 (C) a power line;
- 1608 (D) substation equipment;

- 1609 (E) lighting;
- 1610 (F) fencing;
- 1611 (G) pipes; or
- 1612 (H) other equipment used for locating a power line or pole; and
- 1613 (b) this Subsection (62) does not apply to:
- 1614 (i) machinery or equipment used in construction of:
- 1615 (A) a new waste energy facility; or
- 1616 (B) the increase in the capacity of a waste energy facility;
- 1617 (ii) contracted services required for construction and routine maintenance activities;
- 1618 and
- 1619 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
- 1620 described in Subsection (62)(a)(i)(C)(II), machinery or equipment used or acquired after:
- 1621 (A) the waste energy facility described in Subsection (62)(a)(i) is operational as
- 1622 described in Subsection (62)(a)(iii); or
- 1623 (B) the increased capacity described in Subsection (62)(a)(i) is operational as described
- 1624 in Subsection (62)(a)(iii); [~~and~~]
- 1625 (63) (a) leases of five or more years or purchases made on or after July 1, 2004 but on
- 1626 or before June 30, 2009, of machinery or equipment that:
- 1627 (i) is leased or purchased for or by a facility that:
- 1628 (A) is located in the state;
- 1629 (B) produces fuel from biomass energy including:
- 1630 (I) methanol; or
- 1631 (II) ethanol; and
- 1632 (C) (I) becomes operational on or after July 1, 2004; or
- 1633 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004 as
- 1634 a result of the installation of the machinery or equipment;
- 1635 (ii) has an economic life of five or more years; and
- 1636 (iii) is installed on the facility described in Subsection (63)(a)(i);
- 1637 (b) this Subsection (63) does not apply to:
- 1638 (i) machinery or equipment used in construction of:
- 1639 (A) a new facility described in Subsection (63)(a)(i); or

1640 (B) the increase in capacity of the facility described in Subsection (63)(a)(i); or
 1641 (ii) contracted services required for construction and routine maintenance activities;
 1642 and

1643 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
 1644 described in Subsection (63)(a)(i)(C)(II), machinery or equipment used or acquired after:

1645 (A) the facility described in Subsection (63)(a)(i) is operational; or

1646 (B) the increased capacity described in Subsection (63)(a)(i) is operational[-];

1647 (64) amounts paid to a purchaser as a rebate from the manufacturer of a new vehicle
 1648 for purchasing the new vehicle; and

1649 (65) (a) subject to Subsection (65)(b), sales of tangible personal property to persons
 1650 within this state that is subsequently shipped outside the state and incorporated pursuant to
 1651 contract into and becomes a part of real property located outside of this state, except to the
 1652 extent that the other state or political entity imposes a sales, use, gross receipts, or other similar
 1653 transaction excise tax on it against which the other state or political entity allows a credit for
 1654 taxes imposed by this chapter; and

1655 (b) the exemption provided for in Subsection (65)(a):

1656 (i) is allowed only if the exemption is applied:

1657 (A) in calculating the purchase price of the tangible personal property; and

1658 (B) to a written contract that is in effect on July 1, 2004; and

1659 (ii) (A) does not apply beginning on the day on which the contract described in
 1660 Subsection (65)(b)(i):

1661 (I) is substantially modified; or

1662 (II) terminates; and

1663 (B) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
 1664 the commission may by rule prescribe the circumstances under which a contract is substantially
 1665 modified.

1665a **§→ Section 5. Section 59-12-104.3 is enacted to read:**

1665b **59-12-104.3. Credit for certain repossessions of a motor vehicle.**

1665c **(1) Subject to Subsection (2), a seller of a motor vehicle may claim a credit for a tax**
under

1665d **this chapter:**

1665e **(a) that the seller collected; and**

1665f **(b) on a motor vehicle that:**

1665g **(i) has been repossessed; and**

1665h **(ii) that the seller resells. ←§**

1665i **§→(2) The amount of the credit allowed by Subsection (1) is equal to the product of:**
1665j **(a) the portion of the motor vehicle's purchase price that:**
1665k **(i) was subject to a tax under this chapter; and**
1665l **(ii) remains unpaid at the time of the repossession of the motor vehicle; and**
1665m **(b) the tax rate imposed by Subsection 59-12-103(2)(a):**
1665n **(i) on the motor vehicle's purchase price; and**
1665o **(ii) on the date the motor vehicle was purchased by the person that owns the motor**
1665p **vehicle at the time of the repossession. ←§**

1666 Section **§→ [5] 6←§** . Section 59-12-117 is amended to read:

1667 **59-12-117. Refusal to make or falsifying returns -- Evasion of payment of a tax --**
1668 **Aiding or abetting an attempt to evade the payment of a tax -- Penalties -- Criminal**
1669 **violations.**

1670 (1) It is unlawful for any seller to [refuse to]:

1671 (a) refuse to make any return required to be made under this chapter;
1672 (b) make any false or fraudulent return or false statement on any return;
1673 (c) evade the payment of a tax, or any part of a tax imposed by this chapter; or
1674 (d) aid or abet another in any attempt to evade the payment of the tax or any part
1675 imposed by this chapter.

1676 (2) Any person violating any of the provisions of this chapter, except as provided in
1677 Section 59-12-107, is guilty of a criminal violation as provided in Section 59-1-401.

1678 (3) In addition to the penalties described in Subsection (2), any person who knowingly
1679 swears to or verifies any false or fraudulent return, or any return containing any false or
1680 fraudulent statement is guilty of the offense of perjury and on conviction of perjury shall be
1681 punished in the manner provided by law.

1682 (4) Any company making a false return or a return containing a false statement is guilty
1683 of a criminal violation as provided in Section 59-1-401.

1684 (5) Any person failing or refusing to furnish any return required to be made, failing or
1685 refusing to furnish a supplemental return or other data required by the commission, or
1686 rendering a false or fraudulent return is guilty of a criminal violation as provided in Section
1687 59-1-401 for each offense.

1688 (6) Any person required to make, render, sign, or verify any report under this chapter,
1689 who makes any false or fraudulent return with intent to defeat or evade the assessment or
1690 determination of amount due required by law to be made is guilty of a criminal violation as
1691 provided in Section 59-1-401 for each offense.

1692 (7) Any violation of the provisions of this chapter, except as otherwise provided, shall
1693 be a criminal violation as provided in Section 59-1-401.

1694 Section 6. Section **59-12-121** is amended to read:

1695 **59-12-121. Amnesty.**

1696 (1) As used in this section, "amnesty" means that a seller is not required to pay the
1697 following amounts that the seller would otherwise be required to pay:

1698 (a) a tax, fee, or charge under:

1699 (i) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

1700 (ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

1701 [~~(iii)~~] (iii) Section 19-6-714;

- 1702 [~~(iii)~~] (iv) Section 19-6-805;
- 1703 (v) this chapter;
- 1704 [~~(iv)~~] (vi) Section 69-2-5.5; or
- 1705 [~~(v) this chapter;~~]
- 1706 (vii) Section 69-2-5.6;
- 1707 (b) a penalty on a tax, fee, or charge described in Subsection (1)(a); or
- 1708 (c) interest on a tax, fee, or charge described in Subsection (1)(a).
- 1709 (2) The commission shall grant a seller amnesty under this section if:
- 1710 (a) (i) (A) the seller was not licensed under Section 59-12-106 at any time during the
- 1711 12-month period prior to July 1, 2005; and
- 1712 [~~(b)~~] (B) the seller obtains a license under Section 59-12-106 within a 12-month period
- 1713 beginning on July 1, 2005; [~~and~~] or
- 1714 (ii) the seller has been granted amnesty in:
- 1715 (A) accordance with the agreement; and
- 1716 (B) a state other than this state that is a member of the agreement; and
- 1717 [~~(c)~~] (b) the seller is registered under the agreement within a 12-month period
- 1718 beginning on July 1, 2005.
- 1719 (3) A seller may not receive amnesty under this section for a tax, fee, or charge:
- 1720 (a) collected by the seller;
- 1721 (b) remitted to the commission by the seller;
- 1722 (c) that the seller is required to remit to the commission on the seller's purchases; or
- 1723 (d) arising from a transaction that occurred within a time period that is under audit by
- 1724 the commission if:
- 1725 (i) the seller has received notice of the commencement of an audit prior to obtaining a
- 1726 license under Section 59-12-106; and
- 1727 (ii) (A) the audit described in Subsection (3)(d)(i) has not been completed; or
- 1728 (B) the seller has not exhausted all administrative and judicial remedies in connection
- 1729 with the audit described in Subsection (3)(d)(i).
- 1730 (4) (a) Except as provided in Subsection (4)(b), amnesty granted to a seller by the
- 1731 commission under this section:
- 1732 (i) applies to the time period during which a seller was not licensed under Section

1733 59-12-106; and
1734 (ii) remains in effect if, for a period of three years, the seller:
1735 (A) remains registered under the agreement;
1736 (B) collects a tax, fee, or charge on a transaction subject to a tax, fee, or charge
1737 described in Subsection (1)(a); and
1738 (C) remits to the commission all taxes, fees, or charges described in Subsection
1739 (4)(a)(ii).
1740 (b) Notwithstanding Subsection (4)(a), a seller may not be granted amnesty under this
1741 section if with respect to a tax, fee, or charge for which the seller would otherwise be granted
1742 amnesty under this section, the seller commits:
1743 (i) fraud; or
1744 (ii) an intentional misrepresentation of a material fact.
1745 (5) (a) If a seller does not meet the requirements of Subsection (4)(a)(ii), the
1746 commission shall require the seller to pay the amounts described in Subsection (1) that the
1747 seller would have otherwise been required to pay.
1748 (b) Notwithstanding Section 59-12-110, and for purposes of requiring a seller to pay an
1749 amount described in Subsection (5)(a), the time period for the commission to make an
1750 assessment under Section 59-12-110 shall be extended for an additional three years.
1751 Section 7. Section **59-12-122** is amended to read:
1752 **59-12-122. Monetary allowance for a seller registered under the agreement.**
1753 (1) A ~~[seller that is registered under the agreement]~~ person described in Subsection (2)
1754 shall receive the monetary allowance determined:
1755 ~~[(1)]~~ (a) by the governing board of the agreement; and
1756 ~~[(2)]~~ (b) in accordance with Article VI, Monetary Allowances for New Technological
1757 Models for Sales Tax Collection, of the agreement.
1758 (2) For purposes of Subsection (1), the person that shall receive the monetary
1759 allowance described in Subsection (1) is:
1760 (a) if a seller that is registered under the agreement has not designated a certified
1761 service provider to be the seller's agent, the seller; or
1762 (b) if a seller that is registered under the agreement has designated a certified service
1763 provider to be the seller's agent, the certified service provider.

1764 Section 8. Section **59-12-205 (Effective 07/01/05)** is amended to read:
1765 **59-12-205 (Effective 07/01/05). Ordinances to conform with statutory**
1766 **amendments -- Distribution of tax revenues -- Rulemaking authority -- Determination of**
1767 **population.**

1768 (1) Each county, city, and town, in order to maintain in effect sales and use tax
1769 ordinances adopted pursuant to Section 59-12-204, shall, within 30 days of any amendment of
1770 any applicable provisions of Part 1, Tax Collection, adopt amendments of their respective sales
1771 and use tax ordinances to conform with the amendments to Part 1, Tax Collection, insofar as
1772 they relate to sales and use taxes.

1773 (2) Except as provided in Subsection (7):

1774 (a) 50% of each dollar collected from the sales and use tax authorized by this part shall
1775 be paid to each county, city, and town on the basis of the percentage that the population of the
1776 county, city, or town bears to the total population of all counties, cities, and towns in the state;
1777 and

1778 (b) notwithstanding Sections 59-12-207.1 through ~~59-12-207.4~~ 59-12-207.3, 50% of
1779 each dollar collected from the sales and use tax authorized by this part shall be paid to each
1780 county, city, and town on the basis of the location where the transaction is consummated as
1781 determined under this section.

1782 (3) For purposes of Subsection (2)(b), the location where a transaction is consummated
1783 is determined in accordance with Subsections (4) through (6).

1784 (4) (a) For a transaction that is reported to the commission on a return other than a
1785 simplified electronic return, the location where the transaction is consummated is determined
1786 in accordance with Subsections (4)(b) through (h).

1787 (b) (i) Except as provided in Subsections (4)(c) through (h), for a transaction described
1788 in Subsection (4)(b)(ii), the location where the transaction is consummated is the place of
1789 business of the seller.

1790 (ii) Subsection (4)(b)(i) applies to a transaction other than a transaction described in:

1791 (A) Subsection (4)(c)(ii);

1792 (B) Subsection (4)(d)(ii);

1793 (C) Subsection (4)(e)(ii);

1794 (D) Subsection (4)(f)(ii);

1795 (E) Subsection (4)(g)(ii); or
1796 (F) Subsection (4)(h).
1797 (c) (i) Notwithstanding Subsection (4)(b), for a transaction described in Subsection
1798 (4)(c)(ii), the location where the transaction is consummated is determined by allocating the
1799 total revenues remitted to the commission each month that are generated by the tax imposed
1800 under this section on the transactions described in Subsection (4)(c)(ii):
1801 (A) to each local taxing jurisdiction; and
1802 (B) on the basis of the population of each local taxing jurisdiction as compared to the
1803 population of the state.
1804 (ii) Subsection (4)(c)(i) applies to a transaction:
1805 (A) made by a seller described in Subsection 59-12-107(1)(b); and
1806 (B) involving tangible personal property that is shipped from outside the state.
1807 (d) (i) Notwithstanding Subsection (4)(b), for a transaction described in Subsection
1808 (4)(d)(ii), the location where the transaction is consummated is determined by allocating the
1809 total revenues reported to the commission each month that are generated by the tax imposed
1810 under this section on the transactions described in Subsection (4)(d)(ii):
1811 (A) to local taxing jurisdictions within a county; and
1812 (B) on the basis of the proportion of total revenues generated by the transactions
1813 described in Subsection (4)(b)(ii) that are reported to the commission for that month within a
1814 local taxing jurisdiction within that county as compared to the total revenues generated by the
1815 transactions described in Subsection (4)(b)(ii) that are reported to the commission for that
1816 month within all local taxing jurisdictions within that county.
1817 (ii) Subsection (4)(d)(i) applies to a transaction:
1818 (A) made from a location in the state other than a fixed place of business in the state;
1819 or
1820 (B) (I) made by a seller described in Subsection 59-12-107(1)(a); and
1821 (II) involving tangible personal property that is shipped from outside the state.
1822 (e) (i) Notwithstanding Subsection (4)(b), for a transaction described in Subsection
1823 (4)(e)(ii), the location where the transaction is consummated is determined by allocating the
1824 total revenues reported to the commission each month that are generated by the tax imposed
1825 under this section on the transactions described in Subsection (4)(e)(ii):

- 1826 (A) to local taxing jurisdictions; and
- 1827 (B) on the basis of the proportion of the total revenues generated by the transactions
- 1828 described in Subsection (4)(b)(ii) that are reported to the commission for that month within
- 1829 each local taxing jurisdiction as compared to the total revenues generated by the transactions
- 1830 described in Subsection (4)(b)(ii) that are reported to the commission for that month within the
- 1831 state.
- 1832 (ii) Subsection (4)(e)(i) applies to a transaction involving tangible personal property
- 1833 purchased with a direct payment permit in accordance with Section 59-12-107.1.
- 1834 (f) (i) Notwithstanding Subsection (4)(b), for a transaction described in Subsection
- 1835 (4)(f)(ii), the location where the transaction is consummated is each location where the good or
- 1836 service described in Subsection 59-12-107.2(1)(b) is used.
- 1837 (ii) Subsection (4)(f)(i) applies to a transaction involving a good or service:
- 1838 (A) described in Subsection 59-12-107.2(1)(b);
- 1839 (B) that is concurrently available for use in more than one location; and
- 1840 (C) is purchased using the form described in Section 59-12-107.2.
- 1841 (g) (i) Notwithstanding Subsection (4)(b), for a transaction described in Subsection
- 1842 (4)(g)(ii), the location where the transaction is consummated is determined by allocating the
- 1843 total revenues reported to the commission each month that are generated by the tax imposed
- 1844 under this section on the transactions described in Subsection (4)(g)(ii):
- 1845 (A) to local taxing jurisdictions; and
- 1846 (B) on the basis of the proportion of the total revenues generated by the transactions
- 1847 described in Subsection (4)(b)(ii) that are reported to the commission for that month within
- 1848 each local taxing jurisdiction as compared to the total revenues generated by the transactions
- 1849 described in Subsection (4)(b)(ii) that are reported to the commission for that month within the
- 1850 state.
- 1851 (ii) Subsection (4)(g)(i) applies to a transaction involving a purchase of direct mail if
- 1852 the purchaser of the direct mail provides to the seller the form described in Subsection
- 1853 59-12-107.3(1)(a) at the time of the purchase of the direct mail.
- 1854 (h) Notwithstanding Subsection (4)(b), for a transaction involving the sale of a
- 1855 [~~telephone~~] service described in Section 59-12-207.4, the location where the transaction is
- 1856 consummated is the same as the location of the transaction determined under Section

1857 59-12-207.4.

1858 (5) (a) For a transaction that is reported to the commission on a simplified electronic
1859 return, the location where the transaction is consummated is determined in accordance with
1860 Subsections (5)(b) through (e).

1861 (b) (i) Except as provided in Subsections (5)(c) through (e), the location where a
1862 transaction is consummated is determined by allocating the total revenues reported to the
1863 commission each month on the simplified electronic return:

1864 (A) to local taxing jurisdictions; and

1865 (B) on the basis of the proportion of the total revenues generated by the transactions
1866 described in Subsection (4)(b)(ii) that are reported to the commission in accordance with
1867 Subsection (5)(b)(ii) for that month within each local taxing jurisdiction as compared to the
1868 total revenues generated by the transactions described in Subsection (4)(b)(ii) that are reported
1869 to the commission in accordance with Subsection (5)(b)(ii) for that month within the state.

1870 (ii) In making the allocations required by Subsection (5)(b)(i), the commission shall
1871 use the total revenues generated by the transactions described in Subsection (4)(b)(ii) reported
1872 to the commission:

1873 (A) in the report required by Subsection 59-12-105(2); and

1874 (B) if a local taxing jurisdiction reports revenues to the commission in accordance with
1875 Subsection (5)(b)(iii), in the report made in accordance with Subsection (5)(b)(iii).

1876 (iii) (A) For purposes of this Subsection (5)(b), a local taxing jurisdiction may report to
1877 the commission the revenues generated by a tax imposed by this chapter within the local taxing
1878 jurisdiction if a seller:

1879 (I) opens an additional place of business within the local taxing jurisdiction after the
1880 seller makes an initial application for a license under Section 59-12-106; and

1881 (II) estimates that the additional place of business will increase by 5% or more the
1882 revenues generated by a tax imposed by this chapter within the local taxing jurisdiction.

1883 (B) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
1884 the commission may make rules providing procedures and requirements for making the report
1885 described in this Subsection (5)(b).

1886 (c) (i) Notwithstanding Subsection (5)(b), for a transaction described in Subsection
1887 (5)(c)(ii), the location where the transaction is consummated is determined by allocating the

1888 total revenues reported to the commission each month that are generated by the tax imposed
1889 under this section on the transactions described in Subsection (5)(c)(ii):

1890 (A) to local taxing jurisdictions within a county; and

1891 (B) on the basis of the proportion of the total revenues generated by the transactions
1892 described in Subsection (4)(b)(ii) that are reported to the commission for that month within a
1893 local taxing jurisdiction within that county as compared to the total revenues generated by the
1894 transactions described in Subsection (4)(b)(ii) that are reported to the commission for that
1895 month within all local taxing jurisdictions within that county.

1896 (ii) Subsection (5)(c)(i) applies to a transaction:

1897 (A) made from a location in the state other than a fixed place of business in the state;

1898 or

1899 (B) (I) made by a seller described in Subsection 59-12-107(1)(a); and

1900 (II) involving tangible personal property that is shipped from outside the state.

1901 (d) Notwithstanding Subsection (5)(b), for a transaction made by a seller described in
1902 Subsection 59-12-107(1)(b), the location where the transaction is consummated is determined
1903 by allocating the total revenues remitted to the commission each month that are generated by
1904 the tax imposed under this section on the transactions made by a seller described in Subsection
1905 59-12-107(1)(b):

1906 (i) to each local taxing jurisdiction; and

1907 (ii) on the basis of the population of each local taxing jurisdiction as compared to the
1908 population of the state.

1909 (e) (i) Notwithstanding Subsection (5)(b), for a transaction described in Subsection
1910 (5)(e)(ii), the location where the transaction is consummated is determined by allocating the
1911 total revenues reported to the commission each month that are generated by the tax imposed
1912 under this section on the transactions described in Subsection (5)(e)(ii):

1913 (A) to local taxing jurisdictions; and

1914 (B) on the basis of the proportion of the total revenues generated by the transactions
1915 described in Subsection (4)(b)(ii) that are reported to the commission for that month within
1916 each local taxing jurisdiction as compared to the total revenues generated by the transactions
1917 described in Subsection (4)(b)(ii) that are reported to the commission for that month within the
1918 state.

1919 (ii) Subsection (5)(e)(i) applies to a transaction involving tangible personal property
1920 purchased with a direct payment permit in accordance with Section 59-12-107.1.

1921 (6) For purposes of Subsections (4) and (5) and in accordance with Title 63, Chapter
1922 46a, Utah Administrative Rulemaking Act, the commission may make rules defining what
1923 constitutes a fixed place of business in the state.

1924 (7) (a) Notwithstanding Subsection (2), a county, city, or town may not receive a tax
1925 revenue distribution less than .75% of the taxable sales within the boundaries of the county,
1926 city, or town.

1927 (b) The commission shall proportionally reduce quarterly distributions to any county,
1928 city, or town that, but for the reduction, would receive a distribution in excess of 1% of the
1929 sales and use tax revenue collected within the boundaries of the county, city, or town.

1930 (8) (a) Population figures for purposes of this section shall be based on the most recent
1931 official census or census estimate of the United States Census Bureau.

1932 (b) If a needed population estimate is not available from the United States Census
1933 Bureau, population figures shall be derived from the estimate from the Utah Population
1934 Estimates Committee created by executive order of the governor.

1935 (9) The population of a county for purposes of this section shall be determined solely
1936 from the unincorporated area of the county.

1937 Section 9. Section **59-12-1201** is amended to read:

1938 **59-12-1201. Motor vehicle rental tax -- Rate -- Exemptions -- Administration,**
1939 **collection, and enforcement of tax -- Deposits -- Effective dates.**

1940 (1) (a) Except as provided in Subsection (3), there is imposed a tax of 2.5% on all
1941 short-term leases and rentals of motor vehicles not exceeding 30 days.

1942 (b) The tax imposed in this section is in addition to all other state, county, or municipal
1943 fees and taxes imposed on rentals of motor vehicles.

1944 (2) (a) Subject to Subsection (2)(b), a tax rate repeal or tax rate change for the tax
1945 imposed under Subsection (1) shall take effect on the first day of a calendar quarter.

1946 (b) (i) For a transaction subject to a tax under Subsection (1), a tax rate increase shall
1947 take effect on the first day of the first billing period:

1948 (A) that begins after the effective date of the tax rate increase; and

1949 (B) if the billing period for the transaction begins before the effective date of a tax rate

1950 increase imposed under Subsection (1).

1951 (ii) For a transaction subject to a tax under Subsection (1), the repeal of a tax or a tax
1952 rate decrease shall take effect on the first day of the last billing period:

1953 (A) that began before the effective date of the repeal of the tax or the tax rate decrease;
1954 and

1955 (B) if the billing period for the transaction begins before the effective date of the repeal
1956 of the tax or the tax rate decrease imposed under Subsection (1).

1957 (3) A motor vehicle is exempt from the tax imposed under Subsection (1) if:

1958 (a) the motor vehicle is registered for a gross laden weight of 12,001 or more pounds;

1959 (b) the motor vehicle is rented as a personal household goods moving van; or

1960 (c) the lease or rental of the motor vehicle is made for the purpose of temporarily
1961 replacing a person's motor vehicle that is being repaired pursuant to a repair agreement or an
1962 insurance agreement.

1963 (4) (a) (i) Except as provided in Subsection (4)(a)(ii), the tax authorized under this
1964 section shall be administered, collected, and enforced in accordance with:

1965 (A) the same procedures used to administer, collect, and enforce the tax under~~[-(F)]~~

1966 Part 1, Tax Collection; ~~[or]~~ and

1967 ~~[(H) Part 2, Local Sales and Use Tax Act; and]~~

1968 (B) Chapter 1, General Taxation Policies.

1969 (ii) Notwithstanding Subsection (4)(a)(i), a tax under this part is not subject to:

1970 (A) Subsections 59-12-103(4) through (7); or

1971 (B) Sections 59-12-107.1 through 59-12-107.3[;].

1972 ~~[(C) Subsections 59-12-205(2) through (9); or]~~

1973 ~~[(D) Sections 59-12-207.1 through 59-12-207.4.]~~

1974 (b) The commission may retain a maximum of 1-1/2% of the tax collected under this
1975 section for the costs of rendering its services under this section.

1976 (c) Except as provided under Subsection (4)(b), all revenue received by the
1977 commission under this section shall be deposited daily with the state treasurer and credited
1978 monthly to the Transportation Corridor Preservation Revolving Loan Fund under Section
1979 72-2-117.

1980 Section 10. **Effective date.**

1981

This bill takes effect on July 1, 2005.

**Legislative Review Note
as of 1-18-05 3:00 PM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

State Impact

Passage of this bill could result in a loss to the General Fund of \$1,350,000 annually.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
General Fund	\$0	\$0	(\$1,350,000)	(\$1,350,000)
TOTAL	\$0	\$0	(\$1,350,000)	(\$1,350,000)

Individual and Business Impact

Individual impacts will vary. There will be some increase and some decreases in tax liability based on definitional changes.

Office of the Legislative Fiscal Analyst