

NATURAL RESOURCES DEVELOPMENT

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Dmitrich

House Sponsor: Brad King

LONG TITLE

General Description:

This bill addresses natural gas contracts and taxes on the development of coal-to-liquid, oil shale, and tar sands technology.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ allows the Public Service Commission to approve long-term contracts for sales of natural gas derived from coal-to-liquid, oil shale, and tar sands technology;
- ▶ exempts sales of some property used in the research and development of coal-to-liquid, oil shale, and tar sands technology from sales and use tax;
- ▶ exempts from the oil and gas severance tax oil or gas that is produced, saved, sold, or transported and derived from:
 - coal-to-liquids technology;
 - oil shale; or
 - tar sands; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

30 **59-5-101**, as last amended by Chapter 244, Laws of Utah 2004

31 **59-5-102**, as last amended by Chapter 244, Laws of Utah 2004

32 **59-12-102**, as last amended by Chapters 158 and 246, Laws of Utah 2005

33 **59-12-104**, as last amended by Chapters 158, 203, 209, 240 and 246, Laws of Utah

34 2005

35 **59-12-104.5**, as last amended by Chapter 303, Laws of Utah 2001

36 ENACTS:

37 **54-4-38**, Utah Code Annotated 1953

38 **59-5-120**, Utah Code Annotated 1953

39

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

41 Section 1. Section **54-4-38** is enacted to read:

42 **54-4-38. Natural gas derived from new technologies -- Long-term contracts.**

43 (1) As used in this section:

44 (a) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.

45 (b) "Long-term contract" means a contract greater than five years in duration, but no
46 greater than ten years in duration.

47 (c) "Oil shale" means a group of fine black to dark brown shales containing bituminous
48 material that yields petroleum upon distillation.

49 (d) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon and
50 require further processing other than mechanical blending before becoming finished petroleum
51 products.

52 (2) The commission shall approve a long-term contract for the sale of natural gas
53 derived from coal-to-liquid, oil shale, or tar sands technology to a utility if the commission
54 considers the contract prudent.

55 Section 2. Section **59-5-101** is amended to read:

56 **59-5-101. Definitions.**

57 As used in this part:

58 (1) "Board" means the Board of Oil, Gas and Mining created in Section 40-6-4.

59 (2) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.

60 [~~2~~] (3) "Condensate" means those hydrocarbons, regardless of gravity, that occur
61 naturally in the gaseous phase in the reservoir that are separated from the natural gas as liquids
62 through the process of condensation either in the reservoir, in the wellbore, or at the surface in
63 field separators.

64 [~~3~~] (4) "Crude oil" means those hydrocarbons, regardless of gravity, that occur
65 naturally in the liquid phase in the reservoir and are produced and recovered at the wellhead in
66 liquid form.

67 [~~4~~] (5) "Development well" means any oil and gas producing well other than a
68 wildcat well.

69 [~~5~~] (6) "Division" means the Division of Oil, Gas and Mining established under Title
70 40, Chapter 6.

71 [~~6~~] (7) "Enhanced recovery project" means:

72 (a) the injection of liquids or hydrocarbon or nonhydrocarbon gases directly into a
73 reservoir for the purpose of:

74 (i) augmenting reservoir energy;

75 (ii) modifying the properties of the fluids or gases in a reservoir; or

76 (iii) changing the reservoir conditions to increase the recoverable oil, gas, or oil and
77 gas through the joint use of two or more well bores; and

78 (b) a project initially approved by the board as a new or expanded enhanced recovery
79 project on or after January 1, 1996.

80 [~~7~~] (8) (a) "Gas" means:

81 (i) natural gas;

82 (ii) natural gas liquids; or

83 (iii) any mixture of natural gas and natural gas liquids.

84 (b) "Gas" does not include solid hydrocarbons.

85 [~~8~~] (9) "Incremental production" means that part of production, certified by the

86 Division of Oil, Gas and Mining, which is achieved from an enhanced recovery project that
87 would not have economically occurred under the reservoir conditions existing before the
88 project and that has been approved by the division as incremental production.

89 ~~[(9)]~~ (10) "Natural gas" means those hydrocarbons, other than oil and other than
90 natural gas liquids separated from natural gas, that occur naturally in the gaseous phase in the
91 reservoir and are produced and recovered at the wellhead in gaseous form.

92 ~~[(10)]~~ (11) "Natural gas liquids" means those hydrocarbons initially in reservoir natural
93 gas, regardless of gravity, that are separated in gas processing plants from the natural gas as
94 liquids at the surface through the process of condensation, absorption, adsorption, or other
95 methods.

96 ~~[(11)]~~ (12) (a) "Oil" means:

- 97 (i) crude oil;
- 98 (ii) condensate; or
- 99 (iii) any mixture of crude oil and condensate.

100 (b) "Oil" does not include solid hydrocarbons.

101 ~~[(12)]~~ (13) "Oil or gas field" means a geographical area overlying oil or gas structures.
102 The boundaries of oil or gas fields shall conform with the boundaries as fixed by the Board and
103 Division of Oil, Gas and Mining under Title 40, Chapter 6, Board and Division of Oil, Gas and
104 Mining.

105 (14) "Oil shale" means a group of fine black to dark brown shales containing
106 bituminous material that yields petroleum upon distillation.

107 ~~[(13)]~~ (15) "Operator" means any person engaged in the business of operating an oil or
108 gas well, regardless of whether the person is:

- 109 (a) a working interest owner;
- 110 (b) an independent contractor; or
- 111 (c) acting in a capacity similar to Subsection ~~[(13)]~~ (15)(a) or (b) as determined by the

112 commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative
113 Rulemaking Act.

114 ~~[(14)]~~ (16) "Owner" means any person having a working interest, royalty interest,
115 payment out of production, or any other interest in the oil or gas produced or extracted from an
116 oil or gas well in the state, or in the proceeds of this production.

117 ~~[(15)]~~ (17) (a) Subject to Subsections ~~[(15)]~~ (17)(b) and (c), "processing costs" means
118 the reasonable actual costs of processing oil or gas to remove:

119 (i) natural gas liquids; or

120 (ii) contaminants.

121 (b) If processing costs are determined on the basis of an arm's-length contract,
122 processing costs are the actual costs.

123 (c) (i) If processing costs are determined on a basis other than an arm's-length contract,
124 processing costs are those reasonable costs associated with:

125 (A) actual operating and maintenance expenses, including oil or gas used or consumed
126 in processing;

127 (B) overhead directly attributable and allocable to the operation and maintenance; and

128 (C) (I) depreciation and a return on undepreciated capital investment; or

129 (II) a cost equal to a return on the investment in the processing facilities as determined
130 by the commission.

131 (ii) Subsection ~~[(15)]~~ (17)(c)(i) includes situations where the producer performs the
132 processing for the producer's product.

133 ~~[(16)]~~ (18) "Producer" means any working interest owner in any lands in any oil or gas
134 field from which gas or oil is produced.

135 ~~[(17)]~~ (19) "Recompletion" means any downhole operation that is:

136 (a) conducted to reestablish the producibility or serviceability of a well in any geologic
137 interval; and

138 (b) approved by the division as a recompletion.

139 (20) "Research and development" means the process of inquiry or experimentation
140 aimed at the discovery of facts, devices, technologies, or applications and the process of
141 preparing those devices, technologies, or applications for marketing.

142 [~~(18)~~] (21) "Royalty interest owner" means the owner of an interest in oil or gas, or in
143 the proceeds of production from the oil or gas who does not have the obligation to share in the
144 expenses of developing and operating the property.

145 [~~(19)~~] (22) "Solid hydrocarbons" means:

- 146 (a) coal;
- 147 (b) gilsonite;
- 148 (c) ozocerite;
- 149 (d) elaterite;
- 150 (e) oil shale;
- 151 (f) tar sands; and
- 152 (g) all other hydrocarbon substances that occur naturally in solid form.

153 [~~(20)~~] (23) "Stripper well" means:

- 154 (a) an oil well whose average daily production for the days the well has produced has
155 been 20 barrels or less of crude oil a day during any consecutive 12-month period; or
- 156 (b) a gas well whose average daily production for the days the well has produced has
157 been 60 MCF or less of natural gas a day during any consecutive 90-day period.

158 (24) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon
159 and require further processing other than mechanical blending before becoming finished
160 petroleum products.

161 [~~(21)~~] (25) (a) Subject to Subsections [~~(21)~~] (25)(b) and (c), "transportation costs"
162 means the reasonable actual costs of transporting oil or gas products from the well to the point
163 of sale.

164 (b) If transportation costs are determined on the basis of an arm's-length contract,
165 transportation costs are the actual costs.

166 (c) (i) If transportation costs are determined on a basis other than an arm's-length
167 contract, transportation costs are those reasonable costs associated with:

168 (A) actual operating and maintenance expenses, including fuel used or consumed in
169 transporting the oil or gas;

170 (B) overhead costs directly attributable and allocable to the operation and maintenance;
171 and

172 (C) depreciation and a return on undepreciated capital investment.

173 (ii) Subsection [~~21~~] (25)(c)(i) includes situations where the producer performs the
174 transportation for the producer's product.

175 (d) Regardless of whether transportation costs are determined on the basis of an
176 arm's-length contract or a basis other than an arm's-length contract, transportation costs
177 include:

178 (i) carbon dioxide removal;

179 (ii) compression;

180 (iii) dehydration;

181 (iv) gathering;

182 (v) separating;

183 (vi) treating; or

184 (vii) a process similar to Subsections [~~21~~] (25)(d)(i) through (vi), as determined by
185 the commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative
186 Rulemaking Act.

187 [~~22~~] (26) "Tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

188 [~~23~~] (27) "Well or wells" means any extractive means from which oil or gas is
189 produced or extracted, located within an oil or gas field, and operated by one person.

190 [~~24~~] (28) "Wildcat well" means an oil and gas producing well which is drilled and
191 completed in a pool, as defined under Section 40-6-2, in which a well has not been previously
192 completed as a well capable of producing in commercial quantities.

193 [~~25~~] (29) "Working interest owner" means the owner of an interest in oil or gas
194 burdened with a share of the expenses of developing and operating the property.

195 [~~26~~] (30) (a) "Workover" means any downhole operation that is:

196 (i) conducted to sustain, restore, or increase the producibility or serviceability of a well
197 in the geologic intervals in which the well is currently completed; and

198 (ii) approved by the division as a workover.

199 (b) "Workover" does not include operations that are conducted primarily as routine
200 maintenance or to replace worn or damaged equipment.

201 Section 3. Section **59-5-102** is amended to read:

202 **59-5-102. Severance tax -- Rate -- Computation -- Annual exemption -- Tax credit**
203 **-- Tax rate reduction -- Study by Tax Review Commission -- Study by commission.**

204 (1) Each person owning an interest, working interest, royalty interest, payments out of
205 production, or any other interest, in oil or gas produced from a well in the state, or in the
206 proceeds of the production, shall pay to the state a severance tax on the basis of the value
207 determined under Section 59-5-103.1 of the oil or gas:

208 (a) produced; and

209 (b) (i) saved;

210 (ii) sold; or

211 (iii) transported from the field where the substance was produced.

212 (2) (a) Subject to Subsection (2)(d), the severance tax rate for oil is as follows:

213 (i) 3% of the value of the oil up to and including the first \$13 per barrel for oil; and

214 (ii) 5% of the value of the oil from \$13.01 and above per barrel for oil.

215 (b) Subject to Subsection (2)(d), the severance tax rate for natural gas is as follows:

216 (i) 3% of the value of the natural gas up to and including the first \$1.50 per MCF for
217 gas; and

218 (ii) 5% of the value of the natural gas from \$1.51 and above per MCF for gas.

219 (c) Subject to Subsection (2)(d), the severance tax rate for natural gas liquids is 4% of
220 the value of the natural gas liquids.

221 (d) (i) On or before December 15, 2004, the Office of the Legislative Fiscal Analyst
222 and the Governor's Office of Planning and Budget shall prepare a revenue forecast estimating
223 the amount of revenues that:

224 (A) would be generated by the taxes imposed by this part for the calendar year
225 beginning on January 1, 2004 had 2004 General Session S.B. 191 not taken effect; and

226 (B) will be generated by the taxes imposed by this part for the calendar year beginning
227 on January 1, 2004.

228 (ii) Effective on January 1, 2005, the tax rates described in Subsections (2)(a) through
229 (c) shall be:

230 (A) increased as provided in Subsection (2)(d)(iii) if the amount of revenues estimated
231 under Subsection (2)(d)(i)(B) is less than the amount of revenues estimated under Subsection
232 (2)(d)(i)(A); or

233 (B) decreased as provided in Subsection (2)(d)(iii) if the amount of revenues estimated
234 under Subsection (2)(d)(i)(B) is greater than the amount of revenues estimated under
235 Subsection (2)(d)(i)(A).

236 (iii) For purposes of Subsection (2)(d)(ii):

237 (A) subject to Subsection (2)(d)(iv)(B):

238 (I) if an increase is required under Subsection (2)(d)(ii)(A), the total increase in the tax
239 rates shall be by the amount necessary to generate for the calendar year beginning on January 1,
240 2005 revenues equal to the amount by which the revenues estimated under Subsection
241 (2)(d)(i)(A) exceed the revenues estimated under Subsection (2)(d)(i)(B); or

242 (II) if a decrease is required under Subsection (2)(d)(ii)(B), the total decrease in the tax
243 rates shall be by the amount necessary to reduce for the calendar year beginning on January 1,
244 2005 revenues equal to the amount by which the revenues estimated under Subsection
245 (2)(d)(i)(B) exceed the revenues estimated under Subsection (2)(d)(i)(A); and

246 (B) an increase or decrease in each tax rate under Subsection (2)(d)(ii) shall be in
247 proportion to the amount of revenues generated by each tax rate under this part for the calendar
248 year beginning on January 1, 2003.

249 (iv) (A) The commission shall calculate any tax rate increase or decrease required by
250 Subsection (2)(d)(ii) using the best information available to the commission.

251 (B) If the tax rates described in Subsections (2)(a) through (c) are increased or
252 decreased as provided in this Subsection (2)(d), the commission shall mail a notice to each
253 person required to file a return under this part stating the tax rate in effect on January 1, 2005

254 as a result of the increase or decrease.

255 (v) The Office of the Legislative Fiscal Analyst and the Governor's Office of Planning
256 and Budget shall report the estimates prepared in the revenue forecast required by Subsection
257 (2)(d)(i) to the:

258 (A) commission on or before December 15, 2004; and

259 (B) Executive Appropriations Committee on or before January 31, 2005.

260 (3) If oil or gas is shipped outside the state:

261 (a) the shipment constitutes a sale; and

262 (b) the oil or gas is subject to the tax imposed by this section.

263 (4) (a) Except as provided in Subsection (4)(b), if the oil or gas is stockpiled, the tax is
264 not imposed until the oil or gas is:

265 (i) sold;

266 (ii) transported; or

267 (iii) delivered.

268 (b) Notwithstanding Subsection (4)(a), if oil or gas is stockpiled for more than two
269 years, the oil or gas is subject to the tax imposed by this section.

270 (5) A tax is not imposed under this section upon:

271 (a) the first \$50,000 annually in gross value of each well or wells as defined in this
272 part, to be prorated among the owners in proportion to their respective interests in the
273 production or in the proceeds of the production;

274 (b) stripper wells, unless the exemption prevents the severance tax from being treated
275 as a deduction for federal tax purposes;

276 (c) the first 12 months of production for wildcat wells started after January 1, 1990; or

277 (d) the first six months of production for development wells started after January 1,
278 1990.

279 (6) (a) Subject to Subsections (6)(b) and (c), a working interest owner who pays for all
280 or part of the expenses of a recompletion or workover may claim a nonrefundable tax credit
281 equal to 20% of the amount paid.

282 (b) The tax credit under Subsection (6)(a) for each recompletion or workover may not
283 exceed \$30,000 per well during each calendar year.

284 (c) If any amount of tax credit a taxpayer is allowed under this Subsection (6) exceeds
285 the taxpayer's tax liability under this part for the calendar year for which the taxpayer claims
286 the tax credit, the amount of tax credit exceeding the taxpayer's tax liability for the calendar
287 year may be carried forward for the next three calendar years.

288 (7) A 50% reduction in the tax rate is imposed upon the incremental production
289 achieved from an enhanced recovery project.

290 (8) The taxes imposed by this section are:

291 (a) in addition to all other taxes provided by law; and

292 (b) delinquent, unless otherwise deferred, on June 1 next succeeding the calendar year
293 when the oil or gas is:

294 (i) produced; and

295 (ii) (A) saved;

296 (B) sold; or

297 (C) transported from the field.

298 (9) With respect to the tax imposed by this section on each owner of oil or gas or in the
299 proceeds of the production of those substances produced in the state, each owner is liable for
300 the tax in proportion to the owner's interest in the production or in the proceeds of the
301 production.

302 (10) The tax imposed by this section shall be reported and paid by each producer that
303 takes oil or gas in kind pursuant to agreement on behalf of the producer and on behalf of each
304 owner entitled to participate in the oil or gas sold by the producer or transported by the
305 producer from the field where the oil or gas is produced.

306 (11) Each producer shall deduct the tax imposed by this section from the amounts due
307 to other owners for the production or the proceeds of the production.

308 (12) (a) The Tax Review Commission shall review the tax provided for in this part on
309 or before the October 2008 interim meeting.

310 (b) The Tax Review Commission shall address in its review the following statutory
311 provisions:

- 312 (i) the severance tax rate structure provided for in this section;
- 313 (ii) the exemptions provided for in Subsection (5);
- 314 (iii) the tax credit provided for in Subsection (6), including:
 - 315 (A) the cost of the tax credit;
 - 316 (B) the purpose and effectiveness of the tax credit; and
 - 317 (C) whether the tax credit benefits the state;
- 318 (iv) the tax rate reduction provided for in Subsection (7);
- 319 (v) other statutory provisions or issues as determined by the Tax Review Commission;

320 and

- 321 (vi) whether the statutory provisions the Tax Review Commission reviews under this
322 Subsection (12) should be:
 - 323 (A) continued;
 - 324 (B) modified; or
 - 325 (C) repealed.
- 326 (c) The Tax Review Commission shall report its findings and recommendations
327 regarding the tax provided for in this part to the Revenue and Taxation Interim Committee on
328 or before the November 2008 interim meeting.

329 (d) (i) The Tax Review Commission shall review the applicability of the tax provided
330 for in this chapter to coal-to-liquids, oil shale, and tar sands technology on or before the
331 October 2011 interim meeting.

332 (ii) The Tax Review Commission shall address in its review the cost and benefit of not
333 applying the tax provided for in this chapter to coal-to-liquids, oil shale, and tar sands
334 technology.

335 (iii) The Tax Review Commission shall report its findings and recommendations under
336 Subsections (12)(d)(i) and (ii) to the Revenue and Taxation Interim Committee on or before the
337 November 2011 interim meeting.

- 338 (13) (a) The commission shall during the 2004 interim:
- 339 (i) subject to Subsection (13)(b), conduct a study of the effective tax burden for the
- 340 taxes imposed by this part per barrel of oil or MCF of gas for the time period beginning on
- 341 January 1, 1984 and ending on September 30, 2004;
- 342 (ii) study whether the effective tax burden studied under Subsection (13)(a)(i) has
- 343 increased or decreased;
- 344 (iii) receive input from the oil and gas industry in conducting the study required by
- 345 Subsections (13)(a)(i) and (ii);
- 346 (iv) make findings and recommendations regarding whether any provision of this part
- 347 should be amended, including:
- 348 (A) whether any tax rate under this part should be amended;
- 349 (B) whether a minimum value of oil or gas should be established by statute;
- 350 (C) whether a limit should be established by statute on the amount of processing costs
- 351 that may be deducted under Section 59-5-103.1; and
- 352 (D) whether a limit other than the limit established in Section 59-5-103.1 should be
- 353 established by statute on the amount of transportation costs that may be deducted under Section
- 354 59-5-103.1; and
- 355 (v) report the findings and recommendations required by Subsection (13)(a)(iv) on or
- 356 before the October 2004 interim meeting to:
- 357 (A) the Revenue and Taxation Interim Committee; and
- 358 (B) the Utah Tax Review Commission.
- 359 (b) In conducting the study required by Subsections (13)(a)(i) and (ii), the commission
- 360 shall take into account factors including:
- 361 (i) the production volume of oil and gas;
- 362 (ii) the sales price of oil and gas; and
- 363 (iii) the revenues raised by the taxes imposed by this part for the time period described
- 364 in Subsection (13)(a)(i).
- 365 Section 4. Section **59-5-120** is enacted to read:

366 **59-5-120. Exemption.**

367 Beginning on January 1, 2006 and ending on June 30, 2016, no severance tax required
368 by this chapter is imposed on oil and gas produced, saved, sold, or transported if the oil or gas
369 produced, saved, sold, or transported is derived from:

370 (1) coal-to-liquids technology;

371 (2) oil shale; or

372 (3) tar sands.

373 Section 5. Section **59-12-102** is amended to read:

374 **59-12-102. Definitions.**

375 As used in this chapter:

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

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

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

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

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

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

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

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

386 (b) Section 59-12-204;

387 (c) Section 59-12-401;

388 (d) Section 59-12-402;

389 (e) Section 59-12-501;

390 (f) Section 59-12-502;

391 (g) Section 59-12-703;

392 (h) Section 59-12-802;

393 (i) Section 59-12-804;

- 394 (j) Section 59-12-1001;
- 395 (k) Section 59-12-1102;
- 396 (l) Section 59-12-1302;
- 397 (m) Section 59-12-1402; or
- 398 (n) Section 59-12-1503.
- 399 (5) "Aircraft" is as defined in Section 72-10-102.
- 400 (6) "Alcoholic beverage" means a beverage that:
- 401 (a) is suitable for human consumption; and
- 402 (b) contains .5% or more alcohol by volume.
- 403 (7) "Area agency on aging" is as defined in Section 62A-3-101.
- 404 (8) "Authorized carrier" means:
- 405 (a) in the case of vehicles operated over public highways, the holder of credentials
- 406 indicating that the vehicle is or will be operated pursuant to both the International Registration
- 407 Plan and the International Fuel Tax Agreement;
- 408 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating
- 409 certificate or air carrier's operating certificate; or
- 410 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling
- 411 stock, the holder of a certificate issued by the United States Surface Transportation Board.
- 412 (9) (a) Except as provided in Subsection (9)(b), "biomass energy" means any of the
- 413 following that is used as the primary source of energy to produce fuel or electricity:
- 414 (i) material from a plant or tree; or
- 415 (ii) other organic matter that is available on a renewable basis, including:
- 416 (A) slash and brush from forests and woodlands;
- 417 (B) animal waste;
- 418 (C) methane produced:
- 419 (I) at landfills; or
- 420 (II) as a byproduct of the treatment of wastewater residuals;
- 421 (D) aquatic plants; and

- 422 (E) agricultural products.
- 423 (b) "Biomass energy" does not include:
- 424 (i) black liquor;
- 425 (ii) treated woods; or
- 426 (iii) biomass from municipal solid waste other than methane produced:
- 427 (A) at landfills; or
- 428 (B) as a byproduct of the treatment of wastewater residuals.
- 429 (10) "Certified automated system" means software certified by the governing board of
- 430 the agreement in accordance with Section 59-12-102.1 that:
- 431 (a) calculates the agreement sales and use tax imposed within a local taxing
- 432 jurisdiction:
- 433 (i) on a transaction; and
- 434 (ii) in the states that are members of the agreement;
- 435 (b) determines the amount of agreement sales and use tax to remit to a state that is a
- 436 member of the agreement; and
- 437 (c) maintains a record of the transaction described in Subsection (10)(a)(i).
- 438 (11) "Certified service provider" means an agent certified:
- 439 (a) by the governing board of the agreement in accordance with Section 59-12-102.1;
- 440 and
- 441 (b) to perform all of a seller's sales and use tax functions for an agreement sales and
- 442 use tax other than the seller's obligation under Section 59-12-107.4 to remit a tax on the seller's
- 443 own purchases.
- 444 (12) (a) Subject to Subsection (12)(b), "clothing" means all human wearing apparel
- 445 suitable for general use.
- 446 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 447 commission shall make rules:
- 448 (i) listing the items that constitute "clothing"; and
- 449 (ii) that are consistent with the list of items that constitute "clothing" under the

450 agreement.

451 (13) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.

452 ~~[(13)]~~ (14) (a) For purposes of Subsection 59-12-104(42), "coin-operated amusement
453 device" means:

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

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

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

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

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

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

463 ~~[(14)]~~ (15) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or
464 other fuels that does not constitute industrial use under Subsection ~~[(34)]~~ (35) or residential use
465 under Subsection ~~[(68)]~~ (71).

466 ~~[(15)]~~ (16) (a) "Common carrier" means a person engaged in or transacting the
467 business of transporting passengers, freight, merchandise, or other property for hire within this
468 state.

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

472 (ii) For purposes of Subsection ~~[(15)]~~ (16)(b)(i), in accordance with Title 63, Chapter
473 46a, Utah Administrative Rulemaking Act, the commission may make rules defining what
474 constitutes a person's place of employment.

475 ~~[(16)]~~ (17) "Component part" includes:

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

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

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

481 (d) feed, seeds, and seedlings.

482 [~~17~~] (18) "Computer" means an electronic device that accepts information:

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

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

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

486 [~~18~~] (19) "Computer software" means a set of coded instructions designed to cause:

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

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

489 [~~19~~] (20) "Construction materials" means any tangible personal property that will be
490 converted into real property.

491 [~~20~~] (21) "Delivered electronically" means delivered to a purchaser by means other
492 than tangible storage media.

493 [~~21~~] (22) (a) "Delivery charge" means a charge:

494 (i) by a seller of:

495 (A) tangible personal property; or

496 (B) services; and

497 (ii) for preparation and delivery of the tangible personal property or services described
498 in Subsection [~~21~~] (22)(a)(i) to a location designated by the purchaser.

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

500 (i) transportation;

501 (ii) shipping;

502 (iii) postage;

503 (iv) handling;

504 (v) crating; or

505 (vi) packing.

506 [~~(22)~~] (23) "Dietary supplement" means a product, other than tobacco, that:

507 (a) is intended to supplement the diet;

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

509 (i) a vitamin;

510 (ii) a mineral;

511 (iii) an herb or other botanical;

512 (iv) an amino acid;

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

514 dietary intake; or

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

516 described in Subsections [~~(22)~~] (23)(b)(i) through (v);

517 (c) (i) except as provided in Subsection [~~(22)~~] (23)(c)(ii), is intended for ingestion in:

518 (A) tablet form;

519 (B) capsule form;

520 (C) powder form;

521 (D) softgel form;

522 (E) gelcap form; or

523 (F) liquid form; or

524 (ii) notwithstanding Subsection [~~(22)~~] (23)(c)(i), if the product is not intended for

525 ingestion in a form described in Subsections [~~(22)~~] (23)(c)(i)(A) through (F), is not

526 represented:

527 (A) as conventional food; and

528 (B) for use as a sole item of:

529 (I) a meal; or

530 (II) the diet; and

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

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

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

534 [~~(23)~~] (24) (a) "Direct mail" means printed material delivered or distributed by United
535 States mail or other delivery service:

536 (i) to:

537 (A) a mass audience; or

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

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

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

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

544 [~~(24)~~] (25) (a) "Drug" means a compound, substance, or preparation, or a component of
545 a compound, substance, or preparation that is:

546 (i) recognized in:

547 (A) the official United States Pharmacopoeia;

548 (B) the official Homeopathic Pharmacopoeia of the United States;

549 (C) the official National Formulary; or

550 (D) a supplement to a publication listed in Subsections [~~(24)~~] (25)(a)(i)(A) through
551 (C);

552 (ii) intended for use in the:

553 (A) diagnosis of disease;

554 (B) cure of disease;

555 (C) mitigation of disease;

556 (D) treatment of disease; or

557 (E) prevention of disease; or

558 (iii) intended to affect:

559 (A) the structure of the body; or

560 (B) any function of the body.

561 (b) "Drug" does not include:

- 562 (i) food and food ingredients;
- 563 (ii) a dietary supplement;
- 564 (iii) an alcoholic beverage; or
- 565 (iv) a prosthetic device.
- 566 [~~(25)~~] (26) (a) Except as provided in Subsection [~~(25)~~] (26)(c), "durable medical
- 567 equipment" means equipment that:
 - 568 (i) can withstand repeated use;
 - 569 (ii) is primarily and customarily used to serve a medical purpose;
 - 570 (iii) generally is not useful to a person in the absence of illness or injury; and
 - 571 (iv) is not worn in or on the body.
- 572 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 573 equipment described in Subsection [~~(25)~~] (26)(a).
- 574 (c) Notwithstanding Subsection [~~(25)~~] (26)(a), "durable medical equipment" does not
- 575 include mobility enhancing equipment.
- 576 [~~(26)~~] (27) "Electronic" means:
 - 577 (a) relating to technology; and
 - 578 (b) having:
 - 579 (i) electrical capabilities;
 - 580 (ii) digital capabilities;
 - 581 (iii) magnetic capabilities;
 - 582 (iv) wireless capabilities;
 - 583 (v) optical capabilities;
 - 584 (vi) electromagnetic capabilities; or
 - 585 (vii) capabilities similar to Subsections [~~(26)~~] (27)(b)(i) through (vi).
- 586 [~~(27)~~] (28) (a) "Food and food ingredients" means substances:
 - 587 (i) regardless of whether the substances are in:
 - 588 (A) liquid form;
 - 589 (B) concentrated form;

- 590 (C) solid form;
- 591 (D) frozen form;
- 592 (E) dried form; or
- 593 (F) dehydrated form; and
- 594 (ii) that are:
- 595 (A) sold for:
- 596 (I) ingestion by humans; or
- 597 (II) chewing by humans; and
- 598 (B) consumed for the substance's:
- 599 (I) taste; or
- 600 (II) nutritional value.
- 601 (b) "Food and food ingredients" does not include:
- 602 (i) an alcoholic beverage;
- 603 (ii) tobacco; or
- 604 (iii) prepared food.
- 605 ~~[(28)]~~ (29) (a) "Fundraising sales" means sales:
- 606 (i) (A) made by a school; or
- 607 (B) made by a school student;
- 608 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 609 materials, or provide transportation; and
- 610 (iii) that are part of an officially sanctioned school activity.
- 611 (b) For purposes of Subsection ~~[(28)]~~ (29)(a)(iii), "officially sanctioned school activity"
- 612 means a school activity:
- 613 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 614 district governing the authorization and supervision of fundraising activities;
- 615 (ii) that does not directly or indirectly compensate an individual teacher or other
- 616 educational personnel by direct payment, commissions, or payment in kind; and
- 617 (iii) the net or gross revenues from which are deposited in a dedicated account

618 controlled by the school or school district.

619 ~~[(29)]~~ (30) "Geothermal energy" means energy contained in heat that continuously
620 flows outward from the earth that is used as the sole source of energy to produce electricity.

621 ~~[(30)]~~ (31) "Governing board of the agreement" means the governing board of the
622 agreement that is:

623 (a) authorized to administer the agreement; and

624 (b) established in accordance with the agreement.

625 ~~[(31)]~~ (32) (a) "Hearing aid" means:

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

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

628 (II) correct impaired human hearing; and

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

630 (II) affixed behind the human ear;

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

632 (iii) a telephone amplifying device.

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

634 (i) except as provided in Subsection ~~[(31)]~~ (32)(a)(i)(B) or ~~[(31)]~~ (32)(a)(ii), an
635 instrument or device having an electronic component that is designed to be worn on the body;

636 (ii) except as provided in Subsection ~~[(31)]~~ (32)(a)(iii), an assistive listening device or
637 system designed to be used by one individual, including:

638 (A) a personal amplifying system;

639 (B) a personal FM system;

640 (C) a television listening system; or

641 (D) a device or system similar to a device or system described in Subsections ~~[(31)]~~

642 ~~(32)~~(b)(ii)(A) through (C); or

643 (iii) an assistive listening device or system designed to be used by more than one
644 individual, including:

645 (A) a device or system installed in:

- 646 (I) an auditorium;
- 647 (II) a church;
- 648 (III) a conference room;
- 649 (IV) a synagogue; or
- 650 (V) a theater; or
- 651 (B) a device or system similar to a device or system described in Subsections [~~31~~]
- 652 (32)(b)(iii)(A)(I) through (V).

653 [~~32~~] (33) (a) "Hearing aid accessory" means a hearing aid:

- 654 (i) component;
- 655 (ii) attachment; or
- 656 (iii) accessory.
- 657 (b) "Hearing aid accessory" includes:

- 658 (i) a hearing aid neck loop;
- 659 (ii) a hearing aid cord;
- 660 (iii) a hearing aid ear mold;
- 661 (iv) hearing aid tubing;
- 662 (v) a hearing aid ear hook; or
- 663 (vi) a hearing aid remote control.

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

- 665 (i) a component, attachment, or accessory designed to be used only with an:
- 666 (A) instrument or device described in Subsection [~~31~~] (32)(b)(i); or
- 667 (B) assistive listening device or system described in Subsection [~~31~~] (32)(b)(ii) or
- 668 (iii); or
- 669 (ii) a hearing aid battery.

670 [~~33~~] (34) "Hydroelectric energy" means water used as the sole source of energy to

671 produce electricity.

672 [~~34~~] (35) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil,

673 or other fuels:

674 (a) in mining or extraction of minerals;

675 (b) in agricultural operations to produce an agricultural product up to the time of

676 harvest or placing the agricultural product into a storage facility, including:

677 (i) commercial greenhouses;

678 (ii) irrigation pumps;

679 (iii) farm machinery;

680 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not

681 registered under Title 41, Chapter 1a, Part 2, Registration; and

682 (v) other farming activities;

683 (c) in manufacturing tangible personal property at an establishment described in SIC

684 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal

685 Executive Office of the President, Office of Management and Budget; or

686 (d) by a scrap recycler if:

687 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process

688 one or more of the following items into prepared grades of processed materials for use in new

689 products:

690 (A) iron;

691 (B) steel;

692 (C) nonferrous metal;

693 (D) paper;

694 (E) glass;

695 (F) plastic;

696 (G) textile; or

697 (H) rubber; and

698 (ii) the new products under Subsection [~~(34)~~] (35)(d)(i) would otherwise be made with

699 nonrecycled materials.

700 [~~(35)~~] (36) (a) Except as provided in Subsection [~~(35)~~] (36)(b), "installation charge"

701 means a charge for installing tangible personal property.

702 (b) Notwithstanding Subsection [~~(35)~~] (36)(a), "installation charge" does not include a
703 charge for repairs or renovations of tangible personal property.

704 [~~(36)~~] (37) (a) "Lease" or "rental" means a transfer of possession or control of tangible
705 personal property for:

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

707 (B) an indeterminate term; and

708 (ii) consideration.

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

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

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

717 (ii) a transfer of possession or control of property under an agreement that requires the
718 transfer of title:

719 (A) upon completion of required payments; and

720 (B) if the payment of an option price does not exceed the greater of:

721 (I) \$100; or

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

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

726 (d) For purposes of Subsection [~~(36)~~] (37)(c)(iii), an operator is necessary for
727 equipment to perform as designed if the operator's duties exceed the:

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

729 (ii) maintenance of tangible personal property; or

730 (iii) inspection of tangible personal property.

731 [~~37~~] (38) "Load and leave" means delivery to a purchaser by use of a tangible storage
732 media if the tangible storage media is not physically transferred to the purchaser.

733 [~~38~~] (39) "Local taxing jurisdiction" means a:

734 (a) county that is authorized to impose an agreement sales and use tax;

735 (b) city that is authorized to impose an agreement sales and use tax; or

736 (c) town that is authorized to impose an agreement sales and use tax.

737 [~~39~~] (40) "Manufactured home" is as defined in Section 58-56-3.

738 [~~40~~] (41) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:

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

742 (b) a scrap recycler if:

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

746 (A) iron;

747 (B) steel;

748 (C) nonferrous metal;

749 (D) paper;

750 (E) glass;

751 (F) plastic;

752 (G) textile; or

753 (H) rubber; and

754 (ii) the new products under Subsection [~~40~~] (41)(b)(i) would otherwise be made with
755 nonrecycled materials.

756 [~~41~~] (42) "Mobile home" is as defined in Section 58-56-3.

757 [~~42~~] (43) "Mobile telecommunications service" is as defined in the Mobile

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

759 ~~[(43)]~~ (44) (a) Except as provided in Subsection ~~[(43)]~~ (44)(c), "mobility enhancing
760 equipment" means equipment that is:

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

763 (ii) appropriate for use in a:

764 (A) home; or

765 (B) motor vehicle; and

766 (iii) not generally used by persons with normal mobility.

767 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
768 the equipment described in Subsection ~~[(43)]~~ (44)(a).

769 (c) Notwithstanding Subsection ~~[(43)]~~ (44)(a), "mobility enhancing equipment" does
770 not include:

771 (i) a motor vehicle;

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

774 (iii) durable medical equipment; or

775 (iv) a prosthetic device.

776 ~~[(44)]~~ (45) "Model 1 seller" means a seller that has selected a certified service provider
777 as the seller's agent to perform all of the seller's sales and use tax functions for agreement sales
778 and use taxes other than the seller's obligation under Section 59-12-107.4 to remit a tax on the
779 seller's own purchases.

780 ~~[(45)]~~ (46) "Model 2 seller" means a seller that:

781 (a) except as provided in Subsection ~~[(45)]~~ (46)(b), has selected a certified automated
782 system to perform the seller's sales tax functions for agreement sales and use taxes; and

783 (b) notwithstanding Subsection ~~[(45)]~~ (46)(a), retains responsibility for remitting all of
784 the sales tax:

785 (i) collected by the seller; and

786 (ii) to the appropriate local taxing jurisdiction.

787 [~~(46)~~] (47) (a) Subject to Subsection [~~(46)~~] (47)(b), "model 3 seller" means a seller that

788 has:

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

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

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

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

793 (B) due to each local taxing jurisdiction; and

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

795 (b) For purposes of Subsection [~~(46)~~] (47)(a), "model 3 seller" includes an affiliated

796 group of sellers using the same proprietary system.

797 [~~(47)~~] (48) "Modular home" means a modular unit as defined in Section 58-56-3.

798 [~~(48)~~] (49) "Motor vehicle" is as defined in Section 41-1a-102.

799 (50) "Oil shale" means a group of fine black to dark brown shales containing

800 bituminous material that yields petroleum upon distillation.

801 [~~(49)~~] (51) (a) "Other fuels" means products that burn independently to produce heat or

802 energy.

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

804 personal property.

805 [~~(50)~~] (52) "Pawnbroker" is as defined in Section 13-32a-102.

806 [~~(51)~~] (53) "Pawn transaction" is as defined in Section 13-32a-102.

807 [~~(52)~~] (54) (a) "Permanently attached to real property" means that for tangible personal

808 property attached to real property:

809 (i) the attachment of the tangible personal property to the real property:

810 (A) is essential to the use of the tangible personal property; and

811 (B) suggests that the tangible personal property will remain attached to the real

812 property in the same place over the useful life of the tangible personal property; or

813 (ii) if the tangible personal property is detached from the real property, the detachment

814 would:

815 (A) cause substantial damage to the tangible personal property; or

816 (B) require substantial alteration or repair of the real property to which the tangible
817 personal property is attached.

818 (b) "Permanently attached to real property" includes:

819 (i) the attachment of an accessory to the tangible personal property if the accessory is:

820 (A) essential to the operation of the tangible personal property; and

821 (B) attached only to facilitate the operation of the tangible personal property; or

822 (ii) a temporary detachment of tangible personal property from real property for a
823 repair or renovation if the repair or renovation is performed where the tangible personal
824 property and real property are located.

825 (c) "Permanently attached to real property" does not include:

826 (i) the attachment of portable or movable tangible personal property to real property if
827 that portable or movable tangible personal property is attached to real property only for:

828 (A) convenience;

829 (B) stability; or

830 (C) for an obvious temporary purpose; or

831 (ii) the detachment of tangible personal property from real property other than the
832 detachment described in Subsection [~~52~~] 54(b)(ii).

833 [~~53~~] 55 "Person" includes any individual, firm, partnership, joint venture,
834 association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county,
835 city, municipality, district, or other local governmental entity of the state, or any group or
836 combination acting as a unit.

837 [~~54~~] 56 "Place of primary use":

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

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

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

843 (b) for mobile telecommunications service, is as defined in the Mobile

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

845 [~~55~~] (57) "Postproduction" means an activity related to the finishing or duplication of
846 a medium described in Subsection 59-12-104(60)(a).

847 [~~56~~] (58) (a) "Prepared food" means:

848 (i) food:

849 (A) sold in a heated state; or

850 (B) heated by a seller;

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

853 (iii) except as provided in Subsection [~~56~~] (58)(c), food sold with an eating utensil
854 provided by the seller, including a:

855 (A) plate;

856 (B) knife;

857 (C) fork;

858 (D) spoon;

859 (E) glass;

860 (F) cup;

861 (G) napkin; or

862 (H) straw.

863 (b) "Prepared food" does not include:

864 (i) food that a seller only:

865 (A) cuts;

866 (B) repackages; or

867 (C) pasteurizes; or

868 (ii) (A) the following:

869 (I) raw egg;

- 870 (II) raw fish;
- 871 (III) raw meat;
- 872 (IV) raw poultry; or
- 873 (V) a food containing an item described in Subsections [~~56~~] 58(b)(ii)(A)(I) through
- 874 (IV); and

875 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the

876 Food and Drug Administration's Food Code that a consumer cook the items described in

877 Subsection [~~56~~] 58(b)(ii)(A) to prevent food borne illness.

878 (c) Notwithstanding Subsection [~~56~~] 58(a)(iii), an eating utensil provided by the

879 seller does not include the following used to transport the food:

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

882 [~~57~~] 59 "Prescription" means an order, formula, or recipe that is issued:

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

888 [~~58~~] 60 (a) Except as provided in Subsection [~~58~~] 60(b)(ii) or (iii), "prewritten

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

- 890 (i) by the author or other creator of the computer software; and
- 891 (ii) to the specifications of a specific purchaser.

892 (b) "Prewritten computer software" includes:

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

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

- 896 (B) to the specifications of a specific purchaser;

- 897 (ii) notwithstanding Subsection [~~58~~] 60(a), computer software designed and

898 developed by the author or other creator of the computer software to the specifications of a
899 specific purchaser if the computer software is sold to a person other than the purchaser; or

900 (iii) notwithstanding Subsection [~~58~~] (60)(a) and except as provided in Subsection
901 [~~58~~] (60)(c), prewritten computer software or a prewritten portion of prewritten computer
902 software:

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

904 (B) if the modification or enhancement described in Subsection [~~58~~] (60)(b)(iii)(A) is
905 designed and developed to the specifications of a specific purchaser.

906 (c) Notwithstanding Subsection [~~58~~] (60)(b)(iii), "prewritten computer software"
907 does not include a modification or enhancement described in Subsection [~~58~~] (60)(b)(iii) if
908 the charges for the modification or enhancement are:

909 (i) reasonable; and

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

912 [~~59~~] (61) (a) "Prosthetic device" means a device that is worn on or in the body to:

913 (i) artificially replace a missing portion of the body;

914 (ii) prevent or correct a physical deformity or physical malfunction; or

915 (iii) support a weak or deformed portion of the body.

916 (b) "Prosthetic device" includes:

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

918 (ii) replacement parts for a prosthetic device.

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

920 (i) corrective eyeglasses;

921 (ii) contact lenses;

922 (iii) hearing aids; or

923 (iv) dental prostheses.

924 [~~60~~] (62) (a) "Protective equipment" means an item:

925 (i) for human wear; and

- 926 (ii) that is:
- 927 (A) designed as protection:
- 928 (I) to the wearer against injury or disease; or
- 929 (II) against damage or injury of other persons or property; and
- 930 (B) not suitable for general use.
- 931 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 932 commission shall make rules:
- 933 (i) listing the items that constitute "protective equipment"; and
- 934 (ii) that are consistent with the list of items that constitute "protective equipment"
- 935 under the agreement.
- 936 ~~[(61)]~~ (63) (a) "Purchase price" and "sales price" mean the total amount of
- 937 consideration:
- 938 (i) valued in money; and
- 939 (ii) for which tangible personal property or services are:
- 940 (A) sold;
- 941 (B) leased; or
- 942 (C) rented.
- 943 (b) "Purchase price" and "sales price" include:
- 944 (i) the seller's cost of the tangible personal property or services sold;
- 945 (ii) expenses of the seller, including:
- 946 (A) the cost of materials used;
- 947 (B) a labor cost;
- 948 (C) a service cost;
- 949 (D) interest;
- 950 (E) a loss;
- 951 (F) the cost of transportation to the seller; or
- 952 (G) a tax imposed on the seller; or
- 953 (iii) a charge by the seller for any service necessary to complete the sale.

- 954 (c) "Purchase price" and "sales price" do not include:
- 955 (i) a discount:
- 956 (A) in a form including:
- 957 (I) cash;
- 958 (II) term; or
- 959 (III) coupon;
- 960 (B) that is allowed by a seller;
- 961 (C) taken by a purchaser on a sale; and
- 962 (D) that is not reimbursed by a third party; or
- 963 (ii) the following if separately stated on an invoice, bill of sale, or similar document
- 964 provided to the purchaser:
- 965 (A) the amount of a trade-in;
- 966 (B) the following from credit extended on the sale of tangible personal property or
- 967 services:
- 968 (I) interest charges;
- 969 (II) financing charges; or
- 970 (III) carrying charges;
- 971 (C) a tax or fee legally imposed directly on the consumer;
- 972 (D) a delivery charge; or
- 973 (E) an installation charge.
- 974 [~~(62)~~] (64) "Purchaser" means a person to whom:
- 975 (a) a sale of tangible personal property is made; or
- 976 (b) a service is furnished.
- 977 [~~(63)~~] (65) "Regularly rented" means:
- 978 (a) rented to a guest for value three or more times during a calendar year; or
- 979 (b) advertised or held out to the public as a place that is regularly rented to guests for
- 980 value.
- 981 [~~(64)~~] (66) "Renewable energy" means:

- 982 (a) biomass energy;
- 983 (b) hydroelectric energy;
- 984 (c) geothermal energy;
- 985 (d) solar energy; or
- 986 (e) wind energy.

987 ~~[(65)]~~ (67) (a) "Renewable energy production facility" means a facility that:

- 988 (i) uses renewable energy to produce electricity; and
- 989 (ii) has a production capacity of 20 kilowatts or greater.

990 (b) A facility is a renewable energy production facility regardless of whether the
991 facility is:

- 992 (i) connected to an electric grid; or
- 993 (ii) located on the premises of an electricity consumer.

994 ~~[(66)]~~ (68) "Rental" is as defined in Subsection ~~[(36)]~~ (37).

995 ~~[(67)]~~ (69) "Repairs or renovations of tangible personal property" means:

- 996 (a) a repair or renovation of tangible personal property that is not permanently attached
997 to real property; or
- 998 (b) attaching tangible personal property to other tangible personal property if the other
999 tangible personal property to which the tangible personal property is attached is not
1000 permanently attached to real property.

1001 (70) "Research and development" means the process of inquiry or experimentation
1002 aimed at the discovery of facts, devices, technologies, or applications and the process of
1003 preparing those devices, technologies, or applications for marketing.

1004 ~~[(68)]~~ (71) "Residential use" means the use in or around a home, apartment building,
1005 sleeping quarters, and similar facilities or accommodations.

1006 ~~[(69)]~~ (72) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose
1007 other than:

- 1008 (a) resale;
- 1009 (b) sublease; or

1010 (c) subrent.

1011 [~~70~~] (73) (a) "Retailer" means any person engaged in a regularly organized business
1012 in tangible personal property or any other taxable transaction under Subsection 59-12-103(1),
1013 and who is selling to the user or consumer and not for resale.

1014 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
1015 engaged in the business of selling to users or consumers within the state.

1016 [~~71~~] (74) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
1017 otherwise, in any manner, of tangible personal property or any other taxable transaction under
1018 Subsection 59-12-103(1), for consideration.

1019 (b) "Sale" includes:

1020 (i) installment and credit sales;

1021 (ii) any closed transaction constituting a sale;

1022 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
1023 chapter;

1024 (iv) any transaction if the possession of property is transferred but the seller retains the
1025 title as security for the payment of the price; and

1026 (v) any transaction under which right to possession, operation, or use of any article of
1027 tangible personal property is granted under a lease or contract and the transfer of possession
1028 would be taxable if an outright sale were made.

1029 [~~72~~] (75) "Sale at retail" is as defined in Subsection [~~69~~] (72).

1030 [~~73~~] (76) "Sale-leaseback transaction" means a transaction by which title to tangible
1031 personal property that is subject to a tax under this chapter is transferred:

1032 (a) by a purchaser-lessee;

1033 (b) to a lessor;

1034 (c) for consideration; and

1035 (d) if:

1036 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
1037 of the tangible personal property;

1038 (ii) the sale of the tangible personal property to the lessor is intended as a form of
1039 financing:

1040 (A) for the property; and

1041 (B) to the purchaser-lessee; and

1042 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
1043 is required to:

1044 (A) capitalize the property for financial reporting purposes; and

1045 (B) account for the lease payments as payments made under a financing arrangement.

1046 [~~74~~] (77) "Sales price" is as defined in Subsection [~~61~~] (63).

1047 [~~75~~] (78) (a) "Sales relating to schools" means the following sales by, amounts paid
1048 to, or amounts charged by a school:

1049 (i) sales that are directly related to the school's educational functions or activities
1050 including:

1051 (A) the sale of:

1052 (I) textbooks;

1053 (II) textbook fees;

1054 (III) laboratory fees;

1055 (IV) laboratory supplies; or

1056 (V) safety equipment;

1057 (B) the sale of a uniform, protective equipment, or sports or recreational equipment

1058 that:

1059 (I) a student is specifically required to wear as a condition of participation in a
1060 school-related event or school-related activity; and

1061 (II) is not readily adaptable to general or continued usage to the extent that it takes the
1062 place of ordinary clothing;

1063 (C) sales of the following if the net or gross revenues generated by the sales are
1064 deposited into a school district fund or school fund dedicated to school meals:

1065 (I) food and food ingredients; or

- 1066 (II) prepared food; or
- 1067 (D) transportation charges for official school activities; or
- 1068 (ii) amounts paid to or amounts charged by a school for admission to a school-related
- 1069 event or school-related activity.
- 1070 (b) "Sales relating to schools" does not include:
- 1071 (i) bookstore sales of items that are not educational materials or supplies;
- 1072 (ii) except as provided in Subsection [~~(75)~~] (78)(a)(i)(B):
- 1073 (A) clothing;
- 1074 (B) clothing accessories or equipment;
- 1075 (C) protective equipment; or
- 1076 (D) sports or recreational equipment; or
- 1077 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 1078 event or school-related activity if the amounts paid or charged are passed through to a person:
- 1079 (A) other than a:
- 1080 (I) school;
- 1081 (II) nonprofit organization authorized by a school board or a governing body of a
- 1082 private school to organize and direct a competitive secondary school activity; or
- 1083 (III) nonprofit association authorized by a school board or a governing body of a
- 1084 private school to organize and direct a competitive secondary school activity; and
- 1085 (B) that is required to collect sales and use taxes under this chapter.
- 1086 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 1087 commission may make rules defining the term "passed through."
- 1088 [~~(76)~~] (79) For purposes of this section and Section 59-12-104, "school" means:
- 1089 (a) an elementary school or a secondary school that:
- 1090 (i) is a:
- 1091 (A) public school; or
- 1092 (B) private school; and
- 1093 (ii) provides instruction for one or more grades kindergarten through 12; or

- 1094 (b) a public school district.
- 1095 [~~77~~] (80) "Seller" means a person that makes a sale, lease, or rental of:
- 1096 (a) tangible personal property; or
- 1097 (b) a service.
- 1098 [~~78~~] (81) (a) "Semiconductor fabricating or processing materials" means tangible
- 1099 personal property:
- 1100 (i) used primarily in the process of:
- 1101 (A) (I) manufacturing a semiconductor; or
- 1102 (II) fabricating a semiconductor; or
- 1103 (B) maintaining an environment suitable for a semiconductor; or
- 1104 (ii) consumed primarily in the process of:
- 1105 (A) (I) manufacturing a semiconductor; or
- 1106 (II) fabricating a semiconductor; or
- 1107 (B) maintaining an environment suitable for a semiconductor.
- 1108 (b) "Semiconductor fabricating or processing materials" includes:
- 1109 (i) parts used in the repairs or renovations of tangible personal property described in
- 1110 Subsection [~~78~~] (81)(a); or
- 1111 (ii) a chemical, catalyst, or other material used to:
- 1112 (A) produce or induce in a semiconductor a:
- 1113 (I) chemical change; or
- 1114 (II) physical change;
- 1115 (B) remove impurities from a semiconductor; or
- 1116 (C) improve the marketable condition of a semiconductor.
- 1117 [~~79~~] (82) "Senior citizen center" means a facility having the primary purpose of
- 1118 providing services to the aged as defined in Section 62A-3-101.
- 1119 [~~80~~] (83) "Simplified electronic return" means the electronic return:
- 1120 (a) described in Section 318(C) of the agreement; and
- 1121 (b) approved by the governing board of the agreement.

1122 [~~(81)~~] (84) "Solar energy" means the sun used as the sole source of energy for
1123 producing electricity.

1124 [~~(82)~~] (85) (a) "Sports or recreational equipment" means an item:

1125 (i) designed for human use; and

1126 (ii) that is:

1127 (A) worn in conjunction with:

1128 (I) an athletic activity; or

1129 (II) a recreational activity; and

1130 (B) not suitable for general use.

1131 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1132 commission shall make rules:

1133 (i) listing the items that constitute "sports or recreational equipment"; and

1134 (ii) that are consistent with the list of items that constitute "sports or recreational
1135 equipment" under the agreement.

1136 [~~(83)~~] (86) "State" means the state of Utah, its departments, and agencies.

1137 [~~(84)~~] (87) "Storage" means any keeping or retention of tangible personal property or
1138 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose
1139 except sale in the regular course of business.

1140 [~~(85)~~] (88) (a) "Tangible personal property" means personal property that:

1141 (i) may be:

1142 (A) seen;

1143 (B) weighed;

1144 (C) measured;

1145 (D) felt; or

1146 (E) touched; or

1147 (ii) is in any manner perceptible to the senses.

1148 (b) "Tangible personal property" includes:

1149 (i) electricity;

- 1150 (ii) water;
- 1151 (iii) gas;
- 1152 (iv) steam; or
- 1153 (v) prewritten computer software.
- 1154 (89) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon
- 1155 and require further processing other than mechanical blending before becoming finished
- 1156 petroleum products.
- 1157 [~~86~~] (90) (a) "Telephone service" means a two-way transmission:
- 1158 (i) by:
- 1159 (A) wire;
- 1160 (B) radio;
- 1161 (C) lightwave; or
- 1162 (D) other electromagnetic means; and
- 1163 (ii) of one or more of the following:
- 1164 (A) a sign;
- 1165 (B) a signal;
- 1166 (C) writing;
- 1167 (D) an image;
- 1168 (E) sound;
- 1169 (F) a message;
- 1170 (G) data; or
- 1171 (H) other information of any nature.
- 1172 (b) "Telephone service" includes:
- 1173 (i) mobile telecommunications service;
- 1174 (ii) private communications service; or
- 1175 (iii) automated digital telephone answering service.
- 1176 (c) "Telephone service" does not include a service or a transaction that a state or a
- 1177 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet

1178 Tax Freedom Act, Pub. L. No. 105-277.

1179 ~~[(87)]~~ (91) Notwithstanding where a call is billed or paid, "telephone service address"

1180 means:

1181 (a) if the location described in this Subsection ~~[(87)]~~ (91)(a) is known, the location of
1182 the telephone service equipment:

1183 (i) to which a call is charged; and

1184 (ii) from which the call originates or terminates;

1185 (b) if the location described in Subsection ~~[(87)]~~ (91)(a) is not known but the location
1186 described in this Subsection ~~[(87)]~~ (91)(b) is known, the location of the origination point of the
1187 signal of the telephone service first identified by:

1188 (i) the telecommunications system of the seller; or

1189 (ii) if the system used to transport the signal is not that of the seller, information
1190 received by the seller from its service provider; or

1191 (c) if the locations described in Subsection ~~[(87)]~~ (91)(a) or (b) are not known, the
1192 location of a purchaser's primary place of use.

1193 ~~[(88)]~~ (92) (a) "Telephone service provider" means a person that:

1194 (i) owns, controls, operates, or manages a telephone service; and

1195 (ii) engages in an activity described in Subsection ~~[(88)]~~ (92)(a)(i) for the shared use
1196 with or resale to any person of the telephone service.

1197 (b) A person described in Subsection ~~[(88)]~~ (92)(a) is a telephone service provider
1198 whether or not the Public Service Commission of Utah regulates:

1199 (i) that person; or

1200 (ii) the telephone service that the person owns, controls, operates, or manages.

1201 ~~[(89)]~~ (93) "Tobacco" means:

1202 (a) a cigarette;

1203 (b) a cigar;

1204 (c) chewing tobacco;

1205 (d) pipe tobacco; or

1206 (e) any other item that contains tobacco.

1207 [~~90~~] (94) (a) "Use" means the exercise of any right or power over tangible personal
1208 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that
1209 property, item, or service.

1210 (b) "Use" does not include the sale, display, demonstration, or trial of that property in
1211 the regular course of business and held for resale.

1212 [~~91~~] (95) (a) Subject to Subsection [~~91~~] (95)(b), "vehicle" means the following that
1213 are required to be titled, registered, or titled and registered:

- 1214 (i) an aircraft as defined in Section 72-10-102;
- 1215 (ii) a vehicle as defined in Section 41-1a-102;
- 1216 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1217 (iv) a vessel as defined in Section 41-1a-102.

1218 (b) For purposes of Subsection 59-12-104(35) only, "vehicle" includes:

- 1219 (i) a vehicle described in Subsection [~~91~~] (95)(a); or
- 1220 (ii) (A) a locomotive;
- 1221 (B) a freight car;
- 1222 (C) railroad work equipment; or
- 1223 (D) other railroad rolling stock.

1224 [~~92~~] (96) "Vehicle dealer" means a person engaged in the business of buying, selling,
1225 or exchanging a vehicle as defined in Subsection [~~91~~] (95).

1226 [~~93~~] (97) (a) Except as provided in Subsection [~~93~~] (97)(b), "waste energy facility"
1227 means a facility that generates electricity:

1228 (i) using as the primary source of energy waste materials that would be placed in a
1229 landfill or refuse pit if it were not used to generate electricity, including:

- 1230 (A) tires;
- 1231 (B) waste coal; or
- 1232 (C) oil shale; and

1233 (ii) in amounts greater than actually required for the operation of the facility.

- 1234 (b) "Waste energy facility" does not include a facility that incinerates:
- 1235 (i) municipal solid waste;
- 1236 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or
- 1237 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.
- 1238 [~~94~~] (98) "Watercraft" means a vessel as defined in Section 73-18-2.
- 1239 [~~95~~] (99) "Wind energy" means wind used as the sole source of energy to produce
- 1240 electricity.
- 1241 [~~96~~] (100) "ZIP Code" means a Zoning Improvement Plan Code assigned to a
- 1242 geographic location by the United States Postal Service.
- 1243 Section 6. Section **59-12-104** is amended to read:
- 1244 **59-12-104. Exemptions.**
- 1245 The following sales and uses are exempt from the taxes imposed by this chapter:
- 1246 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
- 1247 under Chapter 13, Motor and Special Fuel Tax Act;
- 1248 (2) sales to the state, its institutions, and its political subdivisions; however, this
- 1249 exemption does not apply to sales of:
- 1250 (a) construction materials except:
- 1251 (i) construction materials purchased by or on behalf of institutions of the public
- 1252 education system as defined in Utah Constitution Article X, Section 2, provided the
- 1253 construction materials are clearly identified and segregated and installed or converted to real
- 1254 property which is owned by institutions of the public education system; and
- 1255 (ii) construction materials purchased by the state, its institutions, or its political
- 1256 subdivisions which are installed or converted to real property by employees of the state, its
- 1257 institutions, or its political subdivisions; or
- 1258 (b) tangible personal property in connection with the construction, operation,
- 1259 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities
- 1260 providing additional project capacity, as defined in Section 11-13-103;
- 1261 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:

- 1262 (i) the proceeds of each sale do not exceed \$1; and
- 1263 (ii) the seller or operator of the vending machine reports an amount equal to 150% of
- 1264 the cost of the item described in Subsection (3)(b) as goods consumed; and
- 1265 (b) Subsection (3)(a) applies to:
- 1266 (i) food and food ingredients; or
- 1267 (ii) prepared food;
- 1268 (4) sales of the following to a commercial airline carrier for in-flight consumption:
- 1269 (a) food and food ingredients;
- 1270 (b) prepared food; or
- 1271 (c) services related to Subsection (4)(a) or (b);
- 1272 (5) sales of parts and equipment for installation in aircraft operated by common carriers
- 1273 in interstate or foreign commerce;
- 1274 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
- 1275 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
- 1276 exhibitor, distributor, or commercial television or radio broadcaster;
- 1277 (7) sales of cleaning or washing of tangible personal property by a coin-operated
- 1278 laundry or dry cleaning machine;
- 1279 (8) sales made to or by religious or charitable institutions in the conduct of their regular
- 1280 religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are
- 1281 fulfilled;
- 1282 (9) sales of vehicles of a type required to be registered under the motor vehicle laws of
- 1283 this state which are made to bona fide nonresidents of this state and are not afterwards
- 1284 registered or used in this state except as necessary to transport them to the borders of this state;
- 1285 (10) (a) amounts paid for an item described in Subsection (10)(b) if:
- 1286 (i) the item is intended for human use; and
- 1287 (ii) (A) a prescription was issued for the item; or
- 1288 (B) the item was purchased by a hospital or other medical facility; and
- 1289 (b) (i) Subsection (10)(a) applies to:

1290 (A) a drug;
1291 (B) a syringe; or
1292 (C) a stoma supply; and
1293 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1294 commission may by rule define the terms:
1295 (A) "syringe"; or
1296 (B) "stoma supply";
1297 (11) sales or use of property, materials, or services used in the construction of or
1298 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;
1299 (12) (a) sales of an item described in Subsection (12)(c) served by:
1300 (i) the following if the item described in Subsection (12)(c) is not available to the
1301 general public:
1302 (A) a church; or
1303 (B) a charitable institution;
1304 (ii) an institution of higher education if:
1305 (A) the item described in Subsection (12)(c) is not available to the general public; or
1306 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
1307 offered by the institution of higher education; or
1308 (b) sales of an item described in Subsection (12)(c) provided for a patient by:
1309 (i) a medical facility; or
1310 (ii) a nursing facility; and
1311 (c) Subsections (12)(a) and (b) apply to:
1312 (i) food and food ingredients;
1313 (ii) prepared food; or
1314 (iii) alcoholic beverages;
1315 (13) isolated or occasional sales by persons not regularly engaged in business, except
1316 the sale of vehicles or vessels required to be titled or registered under the laws of this state in
1317 which case the tax is based upon:

1318 (a) the bill of sale or other written evidence of value of the vehicle or vessel being sold;
1319 or
1320 (b) in the absence of a bill of sale or other written evidence of value, the then existing
1321 fair market value of the vehicle or vessel being sold as determined by the commission;
1322 (14) (a) the following purchases or leases by a manufacturer on or after July 1, 1995:
1323 (i) machinery and equipment:
1324 (A) used in the manufacturing process;
1325 (B) having an economic life of three or more years; and
1326 (C) used:
1327 (I) to manufacture an item sold as tangible personal property; and
1328 (II) in new or expanding operations in a manufacturing facility in the state; and
1329 (ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:
1330 (A) have an economic life of three or more years;
1331 (B) are used in the manufacturing process in a manufacturing facility in the state;
1332 (C) are used to replace or adapt an existing machine to extend the normal estimated
1333 useful life of the machine; and
1334 (D) do not include repairs and maintenance;
1335 (b) the rates for the exemption under Subsection (14)(a)(ii) are as follows:
1336 (i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in
1337 Subsection (14)(a)(ii) is exempt;
1338 (ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described
1339 in Subsection (14)(a)(ii) is exempt; and
1340 (iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection
1341 (14)(a)(ii) is exempt;
1342 (c) for purposes of this Subsection (14), the commission shall by rule define the terms
1343 "new or expanding operations" and "establishment"; and
1344 (d) on or before October 1, 1991, and every five years after October 1, 1991, the
1345 commission shall:

- 1346 (i) review the exemptions described in Subsection (14)(a) and make recommendations
1347 to the Revenue and Taxation Interim Committee concerning whether the exemptions should be
1348 continued, modified, or repealed; and
- 1349 (ii) include in its report:
- 1350 (A) the cost of the exemptions;
- 1351 (B) the purpose and effectiveness of the exemptions; and
- 1352 (C) the benefits of the exemptions to the state;
- 1353 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:
- 1354 (i) tooling;
- 1355 (ii) special tooling;
- 1356 (iii) support equipment;
- 1357 (iv) special test equipment; or
- 1358 (v) parts used in the repairs or renovations of tooling or equipment described in
1359 Subsections (15)(a)(i) through (iv); and
- 1360 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:
- 1361 (i) the tooling, equipment, or parts are used or consumed exclusively in the
1362 performance of any aerospace or electronics industry contract with the United States
1363 government or any subcontract under that contract; and
- 1364 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
1365 title to the tooling, equipment, or parts is vested in the United States government as evidenced
1366 by:
- 1367 (A) a government identification tag placed on the tooling, equipment, or parts; or
- 1368 (B) listing on a government-approved property record if placing a government
1369 identification tag on the tooling, equipment, or parts is impractical;
- 1370 (16) intrastate movements of:
- 1371 (a) freight by common carriers; or
- 1372 (b) passengers:
- 1373 (i) by taxicabs as described in SIC Code 4121 of the 1987 Standard Industrial

1374 Classification Manual of the federal Executive Office of the President, Office of Management
1375 and Budget;

1376 (ii) transported by an establishment described in SIC Code 4111 of the 1987 Standard
1377 Industrial Classification Manual of the federal Executive Office of the President, Office of
1378 Management and Budget, if the transportation originates and terminates within a county of the
1379 first, second, or third class; or

1380 (iii) transported by the following described in SIC Code 4789 of the 1987 Standard
1381 Industrial Classification Manual of the federal Executive Office of the President, Office of
1382 Management and Budget:

1383 (A) a horse-drawn cab; or

1384 (B) a horse-drawn carriage;

1385 (17) sales of newspapers or newspaper subscriptions;

1386 (18) (a) except as provided in Subsection (18)(b), tangible personal property traded in
1387 as full or part payment of the purchase price, except that for purposes of calculating sales or use
1388 tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and
1389 the tax is based upon:

1390 (i) the bill of sale or other written evidence of value of the vehicle being sold and the
1391 vehicle being traded in; or

1392 (ii) in the absence of a bill of sale or other written evidence of value, the then existing
1393 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
1394 commission; and

1395 (b) notwithstanding Subsection (18)(a), Subsection (18)(a) does not apply to the
1396 following items of tangible personal property traded in as full or part payment of the purchase
1397 price:

1398 (i) money;

1399 (ii) electricity;

1400 (iii) water;

1401 (iv) gas; or

- 1402 (v) steam;
- 1403 (19) (a) (i) except as provided in Subsection (19)(b), sales of tangible personal property
- 1404 used or consumed primarily and directly in farming operations, regardless of whether the
- 1405 tangible personal property:
 - 1406 (A) becomes part of real estate; or
 - 1407 (B) is installed by a:
 - 1408 (I) farmer;
 - 1409 (II) contractor; or
 - 1410 (III) subcontractor; or
 - 1411 (ii) sales of parts used in the repairs or renovations of tangible personal property if the
 - 1412 tangible personal property is exempt under Subsection (19)(a)(i); and
 - 1413 (b) notwithstanding Subsection (19)(a), amounts paid or charged for the following
 - 1414 tangible personal property are subject to the taxes imposed by this chapter:
 - 1415 (i) (A) subject to Subsection (19)(b)(i)(B), the following tangible personal property if
 - 1416 the tangible personal property is used in a manner that is incidental to farming:
 - 1417 (I) machinery;
 - 1418 (II) equipment;
 - 1419 (III) materials; or
 - 1420 (IV) supplies; and
 - 1421 (B) tangible personal property that is considered to be used in a manner that is
 - 1422 incidental to farming includes:
 - 1423 (I) hand tools; or
 - 1424 (II) maintenance and janitorial equipment and supplies;
 - 1425 (ii) (A) subject to Subsection (19)(b)(ii)(B), tangible personal property if the tangible
 - 1426 personal property is used in an activity other than farming; and
 - 1427 (B) tangible personal property that is considered to be used in an activity other than
 - 1428 farming includes:
 - 1429 (I) office equipment and supplies; or

- 1430 (II) equipment and supplies used in:
- 1431 (Aa) the sale or distribution of farm products;
- 1432 (Bb) research; or
- 1433 (Cc) transportation; or
- 1434 (iii) a vehicle required to be registered by the laws of this state during the period
- 1435 ending two years after the date of the vehicle's purchase;
- 1436 (20) sales of hay;
- 1437 (21) exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or
- 1438 other agricultural produce if sold by a producer during the harvest season;
- 1439 (22) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
- 1440 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;
- 1441 (23) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
- 1442 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
- 1443 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
- 1444 manufacturer, processor, wholesaler, or retailer;
- 1445 (24) property stored in the state for resale;
- 1446 (25) property brought into the state by a nonresident for his or her own personal use or
- 1447 enjoyment while within the state, except property purchased for use in Utah by a nonresident
- 1448 living and working in Utah at the time of purchase;
- 1449 (26) property purchased for resale in this state, in the regular course of business, either
- 1450 in its original form or as an ingredient or component part of a manufactured or compounded
- 1451 product;
- 1452 (27) property upon which a sales or use tax was paid to some other state, or one of its
- 1453 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
- 1454 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if
- 1455 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax
- 1456 Act;
- 1457 (28) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a

1458 person for use in compounding a service taxable under the subsections;
1459 (29) purchases made in accordance with the special supplemental nutrition program for
1460 women, infants, and children established in 42 U.S.C. Sec. 1786;
1461 (30) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers,
1462 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens
1463 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification
1464 Manual of the federal Executive Office of the President, Office of Management and Budget;
1465 (31) sales of boats of a type required to be registered under Title 73, Chapter 18, State
1466 Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of
1467 this state and are not thereafter registered or used in this state except as necessary to transport
1468 them to the borders of this state;
1469 (32) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah
1470 where a sales or use tax is not imposed, even if the title is passed in Utah;
1471 (33) amounts paid for the purchase of telephone service for purposes of providing
1472 telephone service;
1473 (34) fares charged to persons transported directly by a public transit district created
1474 under the authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;
1475 (35) sales or leases of vehicles to, or use of vehicles by an authorized carrier;
1476 (36) (a) 45% of the sales price of any new manufactured home; and
1477 (b) 100% of the sales price of any used manufactured home;
1478 (37) sales relating to schools and fundraising sales;
1479 (38) sales or rentals of durable medical equipment if:
1480 (a) a person presents a prescription for the durable medical equipment; and
1481 (b) the durable medical equipment is used for home use only;
1482 (39) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
1483 Section 72-11-102; and
1484 (b) the commission shall by rule determine the method for calculating sales exempt
1485 under Subsection (39)(a) that are not separately metered and accounted for in utility billings;

- 1486 (40) sales to a ski resort of:
- 1487 (a) snowmaking equipment;
- 1488 (b) ski slope grooming equipment;
- 1489 (c) passenger ropeways as defined in Section 72-11-102; or
- 1490 (d) parts used in the repairs or renovations of equipment or passenger ropeways
- 1491 described in Subsections (40)(a) through (c);
- 1492 (41) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
- 1493 (42) sales or rentals of the right to use or operate for amusement, entertainment, or
- 1494 recreation a coin-operated amusement device as defined in Section 59-12-102;
- 1495 (43) sales of cleaning or washing of tangible personal property by a coin-operated car
- 1496 wash machine;
- 1497 (44) sales by the state or a political subdivision of the state, except state institutions of
- 1498 higher education as defined in Section 53B-3-102, of:
- 1499 (a) photocopies; or
- 1500 (b) other copies of records held or maintained by the state or a political subdivision of
- 1501 the state;
- 1502 (45) (a) amounts paid:
- 1503 (i) to a person providing intrastate transportation to an employer's employee to or from
- 1504 the employee's primary place of employment;
- 1505 (ii) by an:
- 1506 (A) employee; or
- 1507 (B) employer; and
- 1508 (iii) pursuant to a written contract between:
- 1509 (A) the employer; and
- 1510 (B) (I) the employee; or
- 1511 (II) a person providing transportation to the employer's employee; and
- 1512 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 1513 commission may for purposes of Subsection (45)(a) make rules defining what constitutes an

1514 employee's primary place of employment;

1515 (46) amounts paid for admission to an athletic event at an institution of higher
1516 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
1517 20 U.S.C. Sec. 1681 et seq.;

1518 (47) sales of telephone service charged to a prepaid telephone calling card;

1519 (48) (a) sales of:

1520 (i) hearing aids;

1521 (ii) hearing aid accessories; or

1522 (iii) except as provided in Subsection (48)(b), parts used in the repairs or renovations
1523 of hearing aids or hearing aid accessories; and

1524 (b) for purposes of this Subsection (48), notwithstanding Subsection (48)(a)(iii),
1525 "parts" does not include batteries;

1526 (49) (a) sales made to or by:

1527 (i) an area agency on aging; or

1528 (ii) a senior citizen center owned by a county, city, or town; or

1529 (b) sales made by a senior citizen center that contracts with an area agency on aging;

1530 (50) (a) beginning on July 1, 2001, through June 30, 2007, and subject to Subsection
1531 (50)(b), a sale or lease of semiconductor fabricating or processing materials regardless of
1532 whether the semiconductor fabricating or processing materials:

1533 (i) actually come into contact with a semiconductor; or

1534 (ii) ultimately become incorporated into real property;

1535 (b) (i) beginning on July 1, 2001, through June 30, 2002, 10% of the sale or lease
1536 described in Subsection (50)(a) is exempt;

1537 (ii) beginning on July 1, 2002, through June 30, 2003, 50% of the sale or lease
1538 described in Subsection (50)(a) is exempt; and

1539 (iii) beginning on July 1, 2003, through June 30, 2007, the entire amount of the sale or
1540 lease described in Subsection (50)(a) is exempt; and

1541 (c) each year on or before the November interim meeting, the Revenue and Taxation

1542 Interim Committee shall:

1543 (i) review the exemption described in this Subsection (50) and make recommendations
1544 concerning whether the exemption should be continued, modified, or repealed; and

1545 (ii) include in the review under this Subsection (50)(c):

1546 (A) the cost of the exemption;

1547 (B) the purpose and effectiveness of the exemption; and

1548 (C) the benefits of the exemption to the state;

1549 (51) an amount paid by or charged to a purchaser for accommodations and services
1550 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
1551 59-12-104.2;

1552 (52) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary
1553 sports event registration certificate in accordance with Section 41-3-306 for the event period
1554 specified on the temporary sports event registration certificate;

1555 (53) sales or uses of electricity, if the sales or uses are:

1556 (a) made under a tariff adopted by the Public Service Commission of Utah only for
1557 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy
1558 source, as designated in the tariff by the Public Service Commission of Utah; and

1559 (b) for an amount of electricity that is:

1560 (i) unrelated to the amount of electricity used by the person purchasing the electricity
1561 under the tariff described in Subsection (53)(a); and

1562 (ii) equivalent to the number of kilowatthours specified in the tariff described in
1563 Subsection (53)(a) that may be purchased under the tariff described in Subsection (53)(a);

1564 (54) sales or rentals of mobility enhancing equipment if a person presents a
1565 prescription for the mobility enhancing equipment;

1566 (55) sales of water in a:

1567 (a) pipe;

1568 (b) conduit;

1569 (c) ditch; or

1570 (d) reservoir;

1571 (56) sales of currency or coinage that constitute legal tender of the United States or of a
1572 foreign nation;

1573 (57) (a) sales of an item described in Subsection (57)(b) if the item:

1574 (i) does not constitute legal tender of any nation; and

1575 (ii) has a gold, silver, or platinum content of 80% or more; and

1576 (b) Subsection (57)(a) applies to a gold, silver, or platinum:

1577 (i) ingot;

1578 (ii) bar;

1579 (iii) medallion; or

1580 (iv) decorative coin;

1581 (58) amounts paid on a sale-leaseback transaction;

1582 (59) sales of a prosthetic device:

1583 (a) for use on or in a human;

1584 (b) for which a prescription is issued; and

1585 (c) to a person that presents a prescription for the prosthetic device;

1586 (60) (a) except as provided in Subsection (60)(b), purchases, leases, or rentals of
1587 machinery or equipment by an establishment described in Subsection (60)(c) if the machinery
1588 or equipment is primarily used in the production or postproduction of the following media for
1589 commercial distribution:

1590 (i) a motion picture;

1591 (ii) a television program;

1592 (iii) a movie made for television;

1593 (iv) a music video;

1594 (v) a commercial;

1595 (vi) a documentary; or

1596 (vii) a medium similar to Subsections (60)(a)(i) through (vi) as determined by the
1597 commission by administrative rule made in accordance with Subsection (60)(d); or

1598 (b) notwithstanding Subsection (60)(a), purchases, leases, or rentals of machinery or
1599 equipment by an establishment described in Subsection (60)(c) that is used for the production
1600 or postproduction of the following are subject to the taxes imposed by this chapter:

1601 (i) a live musical performance;

1602 (ii) a live news program; or

1603 (iii) a live sporting event;

1604 (c) the following establishments listed in the 1997 North American Industry
1605 Classification System of the federal Executive Office of the President, Office of Management
1606 and Budget, apply to Subsections (60)(a) and (b):

1607 (i) NAICS Code 512110; or

1608 (ii) NAICS Code 51219; and

1609 (d) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1610 commission may by rule:

1611 (i) prescribe what constitutes a medium similar to Subsections (60)(a)(i) through (vi);

1612 or

1613 (ii) define:

1614 (A) "commercial distribution";

1615 (B) "live musical performance";

1616 (C) "live news program"; or

1617 (D) "live sporting event";

1618 (61) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on
1619 or before June 30, 2009, of machinery or equipment that:

1620 (i) is leased or purchased for or by a facility that:

1621 (A) is a renewable energy production facility;

1622 (B) is located in the state; and

1623 (C) (I) becomes operational on or after July 1, 2004; or

1624 (II) has its generation capacity increased by one or more megawatts on or after July 1,
1625 2004 as a result of the use of the machinery or equipment;

1626 (ii) has an economic life of five or more years; and
1627 (iii) is used to make the facility or the increase in capacity of the facility described in
1628 Subsection (61)(a)(i) operational up to the point of interconnection with an existing
1629 transmission grid including:
1630 (A) a wind turbine;
1631 (B) generating equipment;
1632 (C) a control and monitoring system;
1633 (D) a power line;
1634 (E) substation equipment;
1635 (F) lighting;
1636 (G) fencing;
1637 (H) pipes; or
1638 (I) other equipment used for locating a power line or pole; and
1639 (b) this Subsection (61) does not apply to:
1640 (i) machinery or equipment used in construction of:
1641 (A) a new renewable energy production facility; or
1642 (B) the increase in the capacity of a renewable energy production facility;
1643 (ii) contracted services required for construction and routine maintenance activities;
1644 and
1645 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
1646 of the facility described in Subsection (61)(a)(i)(C)(II), machinery or equipment used or
1647 acquired after:
1648 (A) the renewable energy production facility described in Subsection (61)(a)(i) is
1649 operational as described in Subsection (61)(a)(iii); or
1650 (B) the increased capacity described in Subsection (61)(a)(i) is operational as described
1651 in Subsection (61)(a)(iii);
1652 (62) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on
1653 or before June 30, 2009, of machinery or equipment that:

- 1654 (i) is leased or purchased for or by a facility that:
- 1655 (A) is a waste energy production facility;
- 1656 (B) is located in the state; and
- 1657 (C) (I) becomes operational on or after July 1, 2004; or
- 1658 (II) has its generation capacity increased by one or more megawatts on or after July 1,
- 1659 2004 as a result of the use of the machinery or equipment;
- 1660 (ii) has an economic life of five or more years; and
- 1661 (iii) is used to make the facility or the increase in capacity of the facility described in
- 1662 Subsection (62)(a)(i) operational up to the point of interconnection with an existing
- 1663 transmission grid including:
- 1664 (A) generating equipment;
- 1665 (B) a control and monitoring system;
- 1666 (C) a power line;
- 1667 (D) substation equipment;
- 1668 (E) lighting;
- 1669 (F) fencing;
- 1670 (G) pipes; or
- 1671 (H) other equipment used for locating a power line or pole; and
- 1672 (b) this Subsection (62) does not apply to:
- 1673 (i) machinery or equipment used in construction of:
- 1674 (A) a new waste energy facility; or
- 1675 (B) the increase in the capacity of a waste energy facility;
- 1676 (ii) contracted services required for construction and routine maintenance activities;
- 1677 and
- 1678 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
- 1679 described in Subsection (62)(a)(i)(C)(II), machinery or equipment used or acquired after:
- 1680 (A) the waste energy facility described in Subsection (62)(a)(i) is operational as
- 1681 described in Subsection (62)(a)(iii); or

1682 (B) the increased capacity described in Subsection (62)(a)(i) is operational as described
1683 in Subsection (62)(a)(iii);

1684 (63) (a) leases of five or more years or purchases made on or after July 1, 2004 but on
1685 or before June 30, 2009, of machinery or equipment that:

1686 (i) is leased or purchased for or by a facility that:

1687 (A) is located in the state;

1688 (B) produces fuel from biomass energy including:

1689 (I) methanol; or

1690 (II) ethanol; and

1691 (C) (I) becomes operational on or after July 1, 2004; or

1692 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004 as
1693 a result of the installation of the machinery or equipment;

1694 (ii) has an economic life of five or more years; and

1695 (iii) is installed on the facility described in Subsection (63)(a)(i);

1696 (b) this Subsection (63) does not apply to:

1697 (i) machinery or equipment used in construction of:

1698 (A) a new facility described in Subsection (63)(a)(i); or

1699 (B) the increase in capacity of the facility described in Subsection (63)(a)(i); or

1700 (ii) contracted services required for construction and routine maintenance activities;

1701 and

1702 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
1703 described in Subsection (63)(a)(i)(C)(II), machinery or equipment used or acquired after:

1704 (A) the facility described in Subsection (63)(a)(i) is operational; or

1705 (B) the increased capacity described in Subsection (63)(a)(i) is operational;

1706 (64) amounts paid to a purchaser as a rebate from the manufacturer of a new vehicle
1707 for purchasing the new vehicle;

1708 (65) (a) subject to Subsection (65)(b), sales of tangible personal property to persons
1709 within this state that is subsequently shipped outside the state and incorporated pursuant to

1710 contract into and becomes a part of real property located outside of this state, except to the
1711 extent that the other state or political entity imposes a sales, use, gross receipts, or other similar
1712 transaction excise tax on it against which the other state or political entity allows a credit for
1713 taxes imposed by this chapter; and

1714 (b) the exemption provided for in Subsection (65)(a):

1715 (i) is allowed only if the exemption is applied:

1716 (A) in calculating the purchase price of the tangible personal property; and

1717 (B) to a written contract that is in effect on July 1, 2004; and

1718 (ii) (A) does not apply beginning on the day on which the contract described in

1719 Subsection (65)(b)(i):

1720 (I) is substantially modified; or

1721 (II) terminates; and

1722 (B) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,

1723 the commission may by rule prescribe the circumstances under which a contract is substantially
1724 modified;

1725 (66) purchases:

1726 (a) of one or more of the following items in printed or electronic format:

1727 (i) a list containing information that includes one or more:

1728 (A) names; or

1729 (B) addresses; or

1730 (ii) a database containing information that includes one or more:

1731 (A) names; or

1732 (B) addresses; and

1733 (b) used to send direct mail; and

1734 (67) redemptions or repurchases of property by a person if that property was:

1735 (a) delivered to a pawnbroker as part of a pawn transaction; [~~and~~]

1736 (b) redeemed or repurchased within the time period established in a written agreement

1737 between the person and the pawnbroker for redeeming or repurchasing the property[:]; and

1738 (68) (a) beginning on July 1, 2006 and ending on June 30, 2016, purchases of tangible
1739 personal property used in the research and development of coal-to-liquids, oil shale, or tar
1740 sands technology; and

1741 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1742 commission may, for purposes of Subsection (68)(a), make rules defining what constitutes
1743 tangible personal property used in the research and development of coal-to-liquids, oil shale,
1744 and tar sands technology.

1745 Section 7. Section **59-12-104.5** is amended to read:

1746 **59-12-104.5. Review of sales tax exemptions.**

1747 (1) Beginning with the 2001 interim, the Utah Tax Review Commission, in
1748 cooperation with the governor's office and the tax commission, shall conduct a review of the
1749 sales and use tax exemptions created by Section 59-12-104 as provided in this section.

1750 (2) The Utah Tax Review Commission shall:

1751 (a) review each of the sales and use tax exemptions created by Section 59-12-104 one
1752 or more times every eight years; and

1753 (b) subject to Subsection (2)(a) and except as provided in Subsection (3), for each year
1754 select the exemptions that the Utah Tax Review Commission will review for that year.

1755 (3) Notwithstanding Subsection (2):

1756 (a) the Utah Tax Review Commission shall review Subsection 59-12-104(29) before
1757 October 1 of the year after the year in which Congress permits a state to participate in the
1758 special supplemental nutrition program under 42 U.S.C. Sec. 1786 even if state or local sales
1759 taxes are collected within the state on purchases of food under that program; [~~and~~]

1760 (b) the Utah Tax Review Commission shall review Subsection 59-12-104(22) before
1761 October 1 of the year after the year in which Congress permits a state to participate in the food
1762 stamp program under the Food Stamp Act, 7 U.S.C. Sec. 2011 et seq., even if state or local
1763 sales taxes are collected within the state on purchases of food under that program[:]; and

1764 (c) the Utah Tax Review Commission shall review Subsection 59-12-104(68) before
1765 the October 2011 interim meeting.

1766 (4) The Utah Tax Review Commission shall for each sales and use tax exemption the
1767 Utah Tax Review Commission reviews make a report to the governor and the Revenue and
1768 Taxation Interim Committee:

1769 (a) on or before the November interim meeting in the year in which the Utah Tax
1770 Review Commission reviews the sales and use tax exemption;

1771 (b) including:

1772 (i) a review of the cost of the sales and use tax exemption;

1773 (ii) a review of the following criteria for granting or extending incentives for
1774 businesses:

1775 (A) whether the business is willing to make a substantial capital investment in the state
1776 indicating that it will be a long-term member of the community in which the business is or will
1777 be located;

1778 (B) whether the business brings new dollars into the state, which generally means the
1779 business must export goods or services outside of the state, not just recirculate existing dollars;

1780 (C) subject to Subsection (5), whether the business pays higher than average wages in
1781 the area in which the business is or will be located, increasing the state's overall household
1782 income;

1783 (D) whether the same incentives offered to a new business locating in the state from
1784 another state are available to existing in-state businesses so as not to discriminate against the
1785 in-state businesses; and

1786 (E) whether the incentives clearly produce a positive return on investment as
1787 determined by state economic modeling formulas;

1788 (iii) a determination of whether the sales and use tax exemption is consistent with the
1789 Legislature's sales and use tax policy positions adopted in 1990 General Session H.J.R. 32;

1790 (iv) a review of the purpose of the sales and use tax exemption;

1791 (v) a review of the effectiveness of the sales and use tax exemption; and

1792 (vi) a review of the benefits of the sales and use tax exemption to the state;

1793 (c) recommending whether the sales and use tax exemption should be:

1794 (i) continued;
1795 (ii) modified; or
1796 (iii) repealed; and
1797 (d) reviewing any other issue the Utah Tax Review Commission determines to study.
1798 (5) For purposes of Subsection (4)(b)(ii)(C), in determining whether a business pays
1799 higher than average wages in the area in which the business is or will be located, the Utah Tax
1800 Review Commission may not include wages of the following in making average wage
1801 calculations:
1802 (a) wages of school district employees;
1803 (b) wages of county, city, or town employees;
1804 (c) wages of state employees; or
1805 (d) wages of federal government employees.
1806 **Section 8. Retrospective operation.**
1807 Section 59-5-120 and the amendments to Sections 59-5-101, 59-12-102, and 59-12-104
1808 have retrospective operation for taxable years beginning on or after January 1, 2006.