

1                   **SALES AND USE TAX - ATTACHMENT OF**  
2                   **TANGIBLE PERSONAL PROPERTY TO REAL**  
3                   **PROPERTY**

4                   2006 GENERAL SESSION

5                   STATE OF UTAH

6                   **Chief Sponsor: Howard A. Stephenson**

7                   House Sponsor: Wayne A. Harper

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9                   **LONG TITLE**

10                  **General Description:**

11                    This bill amends a definition within the Sales and Use Tax Act.

12                  **Highlighted Provisions:**

13                    This bill:

14                    ▶ modifies the definition of "permanently attached to real property" to address the  
15 circumstances under which certain tangible personal property is or is not  
16 permanently attached to real property; and

17                    ▶ makes technical changes.

18                  **Monies Appropriated in this Bill:**

19                    None

20                  **Other Special Clauses:**

21                    This bill takes effect on July 1, 2006.

22                  **Utah Code Sections Affected:**

23                    AMENDS:

24                    **59-12-102**, as last amended by Chapters 158 and 246, Laws of Utah 2005

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

27                    Section 1. Section **59-12-102** is amended to read:



28 **59-12-102. Definitions.**

29 As used in this chapter:

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

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

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

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

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

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

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

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

40 (b) Section 59-12-204;

41 (c) Section 59-12-401;

42 (d) Section 59-12-402;

43 (e) Section 59-12-501;

44 (f) Section 59-12-502;

45 (g) Section 59-12-703;

46 (h) Section 59-12-802;

47 (i) Section 59-12-804;

48 (j) Section 59-12-1001;

49 (k) Section 59-12-1102;

50 (l) Section 59-12-1302;

51 (m) Section 59-12-1402; or

52 (n) Section 59-12-1503.

53 (5) "Aircraft" is as defined in Section 72-10-102.

54 (6) "Alcoholic beverage" means a beverage that:

55 (a) is suitable for human consumption; and

56 (b) contains .5% or more alcohol by volume.

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

58 (8) "Authorized carrier" means:

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

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

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

66 (9) (a) Except as provided in Subsection (9)(b), "biomass energy" means any of the  
67 following that is used as the primary source of energy to produce fuel or electricity:

68 (i) material from a plant or tree; or

69 (ii) other organic matter that is available on a renewable basis, including:

70 (A) slash and brush from forests and woodlands;

71 (B) animal waste;

72 (C) methane produced:

73 (I) at landfills; or

74 (II) as a byproduct of the treatment of wastewater residuals;

75 (D) aquatic plants; and

76 (E) agricultural products.

77 (b) "Biomass energy" does not include:

78 (i) black liquor;

79 (ii) treated woods; or

80 (iii) biomass from municipal solid waste other than methane produced:

81 (A) at landfills; or

82 (B) as a byproduct of the treatment of wastewater residuals.

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

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

87 (i) on a transaction; and

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

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

90 member of the agreement; and

91 (c) maintains a record of the transaction described in Subsection (10)(a)(i).

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

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

94 and

95 (b) to perform all of a seller's sales and use tax functions for an agreement sales and  
96 use tax other than the seller's obligation under Section 59-12-107.4 to remit a tax on the seller's  
97 own purchases.

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

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

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

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

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

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

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

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

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

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

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

116 (14) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other  
117 fuels that does not constitute industrial use under Subsection (34) or residential use under  
118 Subsection (68).

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

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

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

127 (16) "Component part" includes:

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

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

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

133 (d) feed, seeds, and seedlings.

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

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

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

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

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

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

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

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

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

145 (21) (a) "Delivery charge" means a charge:

146 (i) by a seller of:

147 (A) tangible personal property; or

148 (B) services; and

149 (ii) for preparation and delivery of the tangible personal property or services described  
150 in Subsection (21)(a)(i) to a location designated by the purchaser.

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

- 152 (i) transportation;
- 153 (ii) shipping;
- 154 (iii) postage;
- 155 (iv) handling;
- 156 (v) crating; or
- 157 (vi) packing.
- 158 (22) "Dietary supplement" means a product, other than tobacco, that:
- 159 (a) is intended to supplement the diet;
- 160 (b) contains one or more of the following dietary ingredients:
  - 161 (i) a vitamin;
  - 162 (ii) a mineral;
  - 163 (iii) an herb or other botanical;
  - 164 (iv) an amino acid;
  - 165 (v) a dietary substance for use by humans to supplement the diet by increasing the total
  - 166 dietary intake; or
  - 167 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
  - 168 described in Subsections (22)(b)(i) through (v);
  - 169 (c) (i) except as provided in Subsection (22)(c)(ii), is intended for ingestion in:
    - 170 (A) tablet form;
    - 171 (B) capsule form;
    - 172 (C) powder form;
    - 173 (D) softgel form;
    - 174 (E) gelcap form; or
    - 175 (F) liquid form; or
  - 176 (ii) notwithstanding Subsection (22)(c)(i), if the product is not intended for ingestion in
  - 177 a form described in Subsections (22)(c)(i)(A) through (F), is not represented:
    - 178 (A) as conventional food; and
    - 179 (B) for use as a sole item of:
      - 180 (I) a meal; or
      - 181 (II) the diet; and
    - 182 (d) is required to be labeled as a dietary supplement:

- 183 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 184 (ii) as required by 21 C.F.R. Sec. 101.36.
- 185 (23) (a) "Direct mail" means printed material delivered or distributed by United States
- 186 mail or other delivery service:
- 187 (i) to:
- 188 (A) a mass audience; or
- 189 (B) addressees on a mailing list provided by a purchaser of the mailing list; and
- 190 (ii) if the cost of the printed material is not billed directly to the recipients.
- 191 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
- 192 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 193 (c) "Direct mail" does not include multiple items of printed material delivered to a
- 194 single address.
- 195 (24) (a) "Drug" means a compound, substance, or preparation, or a component of a
- 196 compound, substance, or preparation that is:
- 197 (i) recognized in:
- 198 (A) the official United States Pharmacopoeia;
- 199 (B) the official Homeopathic Pharmacopoeia of the United States;
- 200 (C) the official National Formulary; or
- 201 (D) a supplement to a publication listed in Subsections (24)(a)(i)(A) through (C);
- 202 (ii) intended for use in the:
- 203 (A) diagnosis of disease;
- 204 (B) cure of disease;
- 205 (C) mitigation of disease;
- 206 (D) treatment of disease; or
- 207 (E) prevention of disease; or
- 208 (iii) intended to affect:
- 209 (A) the structure of the body; or
- 210 (B) any function of the body.
- 211 (b) "Drug" does not include:
- 212 (i) food and food ingredients;
- 213 (ii) a dietary supplement;

214 (iii) an alcoholic beverage; or

215 (iv) a prosthetic device.

216 (25) (a) Except as provided in Subsection (25)(c), "durable medical equipment" means  
217 equipment that:

218 (i) can withstand repeated use;

219 (ii) is primarily and customarily used to serve a medical purpose;

220 (iii) generally is not useful to a person in the absence of illness or injury; and

221 (iv) is not worn in or on the body.

222 (b) "Durable medical equipment" includes parts used in the repair or replacement of the  
223 equipment described in Subsection (25)(a).

224 (c) Notwithstanding Subsection (25)(a), "durable medical equipment" does not include  
225 mobility enhancing equipment.

226 (26) "Electronic" means:

227 (a) relating to technology; and

228 (b) having:

229 (i) electrical capabilities;

230 (ii) digital capabilities;

231 (iii) magnetic capabilities;

232 (iv) wireless capabilities;

233 (v) optical capabilities;

234 (vi) electromagnetic capabilities; or

235 (vii) capabilities similar to Subsections (26)(b)(i) through (vi).

236 (27) (a) "Food and food ingredients" means substances:

237 (i) regardless of whether the substances are in:

238 (A) liquid form;

239 (B) concentrated form;

240 (C) solid form;

241 (D) frozen form;

242 (E) dried form; or

243 (F) dehydrated form; and

244 (ii) that are:

- 245 (A) sold for:
- 246 (I) ingestion by humans; or
- 247 (II) chewing by humans; and
- 248 (B) consumed for the substance's:
- 249 (I) taste; or
- 250 (II) nutritional value.
- 251 (b) "Food and food ingredients" does not include:
- 252 (i) an alcoholic beverage;
- 253 (ii) tobacco; or
- 254 (iii) prepared food.
- 255 (28) (a) "Fundraising sales" means sales:
- 256 (i) (A) made by a school; or
- 257 (B) made by a school student;
- 258 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 259 materials, or provide transportation; and
- 260 (iii) that are part of an officially sanctioned school activity.
- 261 (b) For purposes of Subsection (28)(a)(iii), "officially sanctioned school activity"
- 262 means a school activity:
- 263 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 264 district governing the authorization and supervision of fundraising activities;
- 265 (ii) that does not directly or indirectly compensate an individual teacher or other
- 266 educational personnel by direct payment, commissions, or payment in kind; and
- 267 (iii) the net or gross revenues from which are deposited in a dedicated account
- 268 controlled by the school or school district.
- 269 (29) "Geothermal energy" means energy contained in heat that continuously flows
- 270 outward from the earth that is used as the sole source of energy to produce electricity.
- 271 (30) "Governing board of the agreement" means the governing board of the agreement
- 272 that is:
- 273 (a) authorized to administer the agreement; and
- 274 (b) established in accordance with the agreement.
- 275 (31) (a) "Hearing aid" means:

- 276 (i) an instrument or device having an electronic component that is designed to:
- 277 (A) (I) improve impaired human hearing; or
- 278 (II) correct impaired human hearing; and
- 279 (B) (I) be worn in the human ear; or
- 280 (II) affixed behind the human ear;
- 281 (ii) an instrument or device that is surgically implanted into the cochlea; or
- 282 (iii) a telephone amplifying device.
- 283 (b) "Hearing aid" does not include:
- 284 (i) except as provided in Subsection (31)(a)(i)(B) or (31)(a)(ii), an instrument or device
- 285 having an electronic component that is designed to be worn on the body;
- 286 (ii) except as provided in Subsection (31)(a)(iii), an assistive listening device or system
- 287 designed to be used by one individual, including:
- 288 (A) a personal amplifying system;
- 289 (B) a personal FM system;
- 290 (C) a television listening system; or
- 291 (D) a device or system similar to a device or system described in Subsections
- 292 (31)(b)(ii)(A) through (C); or
- 293 (iii) an assistive listening device or system designed to be used by more than one
- 294 individual, including:
- 295 (A) a device or system installed in:
- 296 (I) an auditorium;
- 297 (II) a church;
- 298 (III) a conference room;
- 299 (IV) a synagogue; or
- 300 (V) a theater; or
- 301 (B) a device or system similar to a device or system described in Subsections
- 302 (31)(b)(iii)(A)(I) through (V).
- 303 (32) (a) "Hearing aid accessory" means a hearing aid:
- 304 (i) component;
- 305 (ii) attachment; or
- 306 (iii) accessory.

- 307 (b) "Hearing aid accessory" includes:
- 308 (i) a hearing aid neck loop;
- 309 (ii) a hearing aid cord;
- 310 (iii) a hearing aid ear mold;
- 311 (iv) hearing aid tubing;
- 312 (v) a hearing aid ear hook; or
- 313 (vi) a hearing aid remote control.
- 314 (c) "Hearing aid accessory" does not include:
- 315 (i) a component, attachment, or accessory designed to be used only with an:
- 316 (A) instrument or device described in Subsection (31)(b)(i); or
- 317 (B) assistive listening device or system described in Subsection (31)(b)(ii) or (iii); or
- 318 (ii) a hearing aid battery.
- 319 (33) "Hydroelectric energy" means water used as the sole source of energy to produce
- 320 electricity.
- 321 (34) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
- 322 other fuels:
- 323 (a) in mining or extraction of minerals;
- 324 (b) in agricultural operations to produce an agricultural product up to the time of
- 325 harvest or placing the agricultural product into a storage facility, including:
- 326 (i) commercial greenhouses;
- 327 (ii) irrigation pumps;
- 328 (iii) farm machinery;
- 329 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
- 330 registered under Title 41, Chapter 1a, Part 2, Registration; and
- 331 (v) other farming activities;
- 332 (c) in manufacturing tangible personal property at an establishment described in SIC
- 333 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
- 334 Executive Office of the President, Office of Management and Budget; or
- 335 (d) by a scrap recycler if:
- 336 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 337 one or more of the following items into prepared grades of processed materials for use in new

338 products:

339 (A) iron;

340 (B) steel;

341 (C) nonferrous metal;

342 (D) paper;

343 (E) glass;

344 (F) plastic;

345 (G) textile; or

346 (H) rubber; and

347 (ii) the new products under Subsection (34)(d)(i) would otherwise be made with

348 nonrecycled materials.

349 (35) (a) Except as provided in Subsection (35)(b), "installation charge" means a charge

350 for installing tangible personal property.

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

352 for repairs or renovations of tangible personal property.

353 (36) (a) "Lease" or "rental" means a transfer of possession or control of tangible

354 personal property for:

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

356 (B) an indeterminate term; and

357 (ii) consideration.

358 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the

359 amount of consideration may be increased or decreased by reference to the amount realized

360 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue

361 Code.

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

363 (i) a transfer of possession or control of property under a security agreement or

364 deferred payment plan that requires the transfer of title upon completion of the required

365 payments;

366 (ii) a transfer of possession or control of property under an agreement that requires the

367 transfer of title:

368 (A) upon completion of required payments; and

- 369 (B) if the payment of an option price does not exceed the greater of:
- 370 (I) \$100; or
- 371 (II) 1% of the total required payments; or
- 372 (iii) providing tangible personal property along with an operator for a fixed period of
- 373 time or an indeterminate period of time if the operator is necessary for equipment to perform as
- 374 designed.
- 375 (d) For purposes of Subsection (36)(c)(iii), an operator is necessary for equipment to
- 376 perform as designed if the operator's duties exceed the:
- 377 (i) set-up of tangible personal property;
- 378 (ii) maintenance of tangible personal property; or
- 379 (iii) inspection of tangible personal property.
- 380 (37) "Load and leave" means delivery to a purchaser by use of a tangible storage media
- 381 if the tangible storage media is not physically transferred to the purchaser.
- 382 (38) "Local taxing jurisdiction" means a:
- 383 (a) county that is authorized to impose an agreement sales and use tax;
- 384 (b) city that is authorized to impose an agreement sales and use tax; or
- 385 (c) town that is authorized to impose an agreement sales and use tax.
- 386 (39) "Manufactured home" is as defined in Section 58-56-3.
- 387 (40) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:
- 388 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
- 389 Industrial Classification Manual of the federal Executive Office of the President, Office of
- 390 Management and Budget; or
- 391 (b) a scrap recycler if:
- 392 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 393 one or more of the following items into prepared grades of processed materials for use in new
- 394 products:
- 395 (A) iron;
- 396 (B) steel;
- 397 (C) nonferrous metal;
- 398 (D) paper;
- 399 (E) glass;

400 (F) plastic;

401 (G) textile; or

402 (H) rubber; and

403 (ii) the new products under Subsection (40)(b)(i) would otherwise be made with

404 nonrecycled materials.

405 (41) "Mobile home" is as defined in Section 58-56-3.

406 (42) "Mobile telecommunications service" is as defined in the Mobile

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

408 (43) (a) Except as provided in Subsection (43)(c), "mobility enhancing equipment"

409 means equipment that is:

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

411 place to another;

412 (ii) appropriate for use in a:

413 (A) home; or

414 (B) motor vehicle; and

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

416 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of

417 the equipment described in Subsection (43)(a).

418 (c) Notwithstanding Subsection (43)(a), "mobility enhancing equipment" does not

419 include:

420 (i) a motor vehicle;

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

422 vehicle manufacturer;

423 (iii) durable medical equipment; or

424 (iv) a prosthetic device.

425 (44) "Model 1 seller" means a seller that has selected a certified service provider as the

426 seller's agent to perform all of the seller's sales and use tax functions for agreement sales and

427 use taxes other than the seller's obligation under Section 59-12-107.4 to remit a tax on the

428 seller's own purchases.

429 (45) "Model 2 seller" means a seller that:

430 (a) except as provided in Subsection (45)(b), has selected a certified automated system

431 to perform the seller's sales tax functions for agreement sales and use taxes; and  
432 (b) notwithstanding Subsection (45)(a), retains responsibility for remitting all of the  
433 sales tax:  
434 (i) collected by the seller; and  
435 (ii) to the appropriate local taxing jurisdiction.  
436 (46) (a) Subject to Subsection (46)(b), "model 3 seller" means a seller that has:  
437 (i) sales in at least five states that are members of the agreement;  
438 (ii) total annual sales revenues of at least \$500,000,000;  
439 (iii) a proprietary system that calculates the amount of tax:  
440 (A) for an agreement sales and use tax; and  
441 (B) due to each local taxing jurisdiction; and  
442 (iv) entered into a performance agreement with the governing board of the agreement.  
443 (b) For purposes of Subsection (46)(a), "model 3 seller" includes an affiliated group of  
444 sellers using the same proprietary system.  
445 (47) "Modular home" means a modular unit as defined in Section 58-56-3.  
446 (48) "Motor vehicle" is as defined in Section 41-1a-102.  
447 (49) (a) "Other fuels" means products that burn independently to produce heat or  
448 energy.  
449 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible  
450 personal property.  
451 (50) "Pawnbroker" is as defined in Section 13-32a-102.  
452 (51) "Pawn transaction" is as defined in Section 13-32a-102.  
453 (52) (a) "Permanently attached to real property" means that for tangible personal  
454 property attached to real property:  
455 (i) the attachment of the tangible personal property to the real property:  
456 (A) is essential to the use of the tangible personal property; and  
457 (B) suggests that the tangible personal property will remain attached to the real  
458 property in the same place over the useful life of the tangible personal property; or  
459 (ii) if the tangible personal property is detached from the real property, the detachment  
460 would:  
461 (A) cause substantial damage to the tangible personal property; or

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

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

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

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

467 (B) attached only to facilitate the operation of the tangible personal property; [or]

468 (ii) a temporary detachment of tangible personal property from real property for a  
469 repair or renovation if the repair or renovation is performed where the tangible personal

470 property and real property are located[-]; or

471 (iii) an attachment of the following tangible personal property to real property,  
472 regardless of whether the attachment to real property is only through a line that supplies water,  
473 electricity, gas, telephone, cable, or supplies a similar item as determined by the commission by  
474 rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

475 (A) property attached to oil, gas, or water pipelines, other than the property listed in  
476 Subsection (52)(c)(iii);

477 (B) a hot water heater;

478 (C) a water softener system; or

479 (D) a water filtration system, other than a water filtration system manufactured as part  
480 of a refrigerator.

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

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

484 (A) convenience;

485 (B) stability; or

486 (C) for an obvious temporary purpose; [or]

487 (ii) the detachment of tangible personal property from real property other than the  
488 detachment described in Subsection (52)(b)(ii)[-]; or

489 (iii) an attachment of the following tangible personal property to real property if the  
490 attachment to real property is only through a line that supplies water, electricity, gas, telephone,  
491 cable, or supplies a similar item as determined by the commission by rule made in accordance  
492 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

- 493            (A) a refrigerator;
- 494            (B) a washer;
- 495            (C) a dryer;
- 496            (D) a stove;
- 497            (E) a television;
- 498            (F) a computer;
- 499            (G) a telephone; or
- 500            (H) tangible personal property similar to Subsections (52)(c)(iii)(A) through (G) as
- 501 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah
- 502 Administrative Rulemaking Act.

503            (53) "Person" includes any individual, firm, partnership, joint venture, association,  
504 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,  
505 municipality, district, or other local governmental entity of the state, or any group or  
506 combination acting as a unit.

507            (54) "Place of primary use":

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

- 511            (i) the residential street address of the purchaser; or
- 512            (ii) the primary business street address of the purchaser; or
- 513            (b) for mobile telecommunications service, is as defined in the Mobile  
514 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

515            (55) "Postproduction" means an activity related to the finishing or duplication of a  
516 medium described in Subsection 59-12-104(60)(a).

517            (56) (a) "Prepared food" means:

518            (i) food:

519            (A) sold in a heated state; or

520            (B) heated by a seller;

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

523            (iii) except as provided in Subsection (56)(c), food sold with an eating utensil provided

524 by the seller, including a:

525 (A) plate;

526 (B) knife;

527 (C) fork;

528 (D) spoon;

529 (E) glass;

530 (F) cup;

531 (G) napkin; or

532 (H) straw.

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

534 (i) food that a seller only:

535 (A) cuts;

536 (B) repackages; or

537 (C) pasteurizes; or

538 (ii) (A) the following:

539 (I) raw egg;

540 (II) raw fish;

541 (III) raw meat;

542 (IV) raw poultry; or

543 (V) a food containing an item described in Subsections (56)(b)(ii)(A)(I) through (IV);

544 and

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

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

547 Subsection (56)(b)(ii)(A) to prevent food borne illness.

548 (c) Notwithstanding Subsection (56)(a)(iii), an eating utensil provided by the seller

549 does not include the following used to transport the food:

550 (i) a container; or

551 (ii) packaging.

552 (57) "Prescription" means an order, formula, or recipe that is issued:

553 (a) (i) orally;

554 (ii) in writing;

555 (iii) electronically; or  
556 (iv) by any other manner of transmission; and  
557 (b) by a licensed practitioner authorized by the laws of a state.  
558 (58) (a) Except as provided in Subsection (58)(b)(ii) or (iii), "prewritten computer  
559 software" means computer software that is not designed and developed:  
560 (i) by the author or other creator of the computer software; and  
561 (ii) to the specifications of a specific purchaser.  
562 (b) "Prewritten computer software" includes:  
563 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer  
564 software is not designed and developed:  
565 (A) by the author or other creator of the computer software; and  
566 (B) to the specifications of a specific purchaser;  
567 (ii) notwithstanding Subsection (58)(a), computer software designed and developed by  
568 the author or other creator of the computer software to the specifications of a specific purchaser  
569 if the computer software is sold to a person other than the purchaser; or  
570 (iii) notwithstanding Subsection (58)(a) and except as provided in Subsection (58)(c),  
571 prewritten computer software or a prewritten portion of prewritten computer software:  
572 (A) that is modified or enhanced to any degree; and  
573 (B) if the modification or enhancement described in Subsection (58)(b)(iii)(A) is  
574 designed and developed to the specifications of a specific purchaser.  
575 (c) Notwithstanding Subsection (58)(b)(iii), "prewritten computer software" does not  
576 include a modification or enhancement described in Subsection (58)(b)(iii) if the charges for  
577 the modification or enhancement are:  
578 (i) reasonable; and  
579 (ii) separately stated on the invoice or other statement of price provided to the  
580 purchaser.  
581 (59) (a) "Prosthetic device" means a device that is worn on or in the body to:  
582 (i) artificially replace a missing portion of the body;  
583 (ii) prevent or correct a physical deformity or physical malfunction; or  
584 (iii) support a weak or deformed portion of the body.  
585 (b) "Prosthetic device" includes:

- 586 (i) parts used in the repairs or renovation of a prosthetic device; or
- 587 (ii) replacement parts for a prosthetic device.
- 588 (c) "Prosthetic device" does not include:
- 589 (i) corrective eyeglasses;
- 590 (ii) contact lenses;
- 591 (iii) hearing aids; or
- 592 (iv) dental prostheses.
- 593 (60) (a) "Protective equipment" means an item:
- 594 (i) for human wear; and
- 595 (ii) that is:
- 596 (A) designed as protection:
- 597 (I) to the wearer against injury or disease; or
- 598 (II) against damage or injury of other persons or property; and
- 599 (B) not suitable for general use.
- 600 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 601 commission shall make rules:
- 602 (i) listing the items that constitute "protective equipment"; and
- 603 (ii) that are consistent with the list of items that constitute "protective equipment"
- 604 under the agreement.
- 605 (61) (a) "Purchase price" and "sales price" mean the total amount of consideration:
- 606 (i) valued in money; and
- 607 (ii) for which tangible personal property or services are:
- 608 (A) sold;
- 609 (B) leased; or
- 610 (C) rented.
- 611 (b) "Purchase price" and "sales price" include:
- 612 (i) the seller's cost of the tangible personal property or services sold;
- 613 (ii) expenses of the seller, including:
- 614 (A) the cost of materials used;
- 615 (B) a labor cost;
- 616 (C) a service cost;

- 617 (D) interest;
- 618 (E) a loss;
- 619 (F) the cost of transportation to the seller; or
- 620 (G) a tax imposed on the seller; or
- 621 (iii) a charge by the seller for any service necessary to complete the sale.
- 622 (c) "Purchase price" and "sales price" do not include:
- 623 (i) a discount:
- 624 (A) in a form including:
- 625 (I) cash;
- 626 (II) term; or
- 627 (III) coupon;
- 628 (B) that is allowed by a seller;
- 629 (C) taken by a purchaser on a sale; and
- 630 (D) that is not reimbursed by a third party; or
- 631 (ii) the following if separately stated on an invoice, bill of sale, or similar document
- 632 provided to the purchaser:
- 633 (A) the amount of a trade-in;
- 634 (B) the following from credit extended on the sale of tangible personal property or
- 635 services:
- 636 (I) interest charges;
- 637 (II) financing charges; or
- 638 (III) carrying charges;
- 639 (C) a tax or fee legally imposed directly on the consumer;
- 640 (D) a delivery charge; or
- 641 (E) an installation charge.
- 642 (62) "Purchaser" means a person to whom:
- 643 (a) a sale of tangible personal property is made; or
- 644 (b) a service is furnished.
- 645 (63) "Regularly rented" means:
- 646 (a) rented to a guest for value three or more times during a calendar year; or
- 647 (b) advertised or held out to the public as a place that is regularly rented to guests for

648 value.

649 (64) "Renewable energy" means:

650 (a) biomass energy;

651 (b) hydroelectric energy;

652 (c) geothermal energy;

653 (d) solar energy; or

654 (e) wind energy.

655 (65) (a) "Renewable energy production facility" means a facility that:

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

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

658 (b) A facility is a renewable energy production facility regardless of whether the  
659 facility is:

660 (i) connected to an electric grid; or

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

662 (66) "Rental" is as defined in Subsection (36).

663 (67) "Repairs or renovations of tangible personal property" means:

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

666 (b) attaching tangible personal property to other tangible personal property if the other  
667 tangible personal property to which the tangible personal property is attached is not  
668 permanently attached to real property.

669 (68) "Residential use" means the use in or around a home, apartment building, sleeping  
670 quarters, and similar facilities or accommodations.

671 (69) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other  
672 than:

673 (a) resale;

674 (b) sublease; or

675 (c) subrent.

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

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

681 (71) (a) "Sale" means any transfer of title, exchange, or barter, conditional or  
682 otherwise, in any manner, of tangible personal property or any other taxable transaction under  
683 Subsection 59-12-103(1), for consideration.

684 (b) "Sale" includes:

685 (i) installment and credit sales;

686 (ii) any closed transaction constituting a sale;

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

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

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

694 (72) "Sale at retail" is as defined in Subsection (69).

695 (73) "Sale-leaseback transaction" means a transaction by which title to tangible  
696 personal property that is subject to a tax under this chapter is transferred:

697 (a) by a purchaser-lessee;

698 (b) to a lessor;

699 (c) for consideration; and

700 (d) if:

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

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

705 (A) for the property; and

706 (B) to the purchaser-lessee; and

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

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

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

711 (74) "Sales price" is as defined in Subsection (61).

712 (75) (a) "Sales relating to schools" means the following sales by, amounts paid to, or  
713 amounts charged by a school:

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

716 (A) the sale of:

717 (I) textbooks;

718 (II) textbook fees;

719 (III) laboratory fees;

720 (IV) laboratory supplies; or

721 (V) safety equipment;

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

723 that:

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

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

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

730 (I) food and food ingredients; or

731 (II) prepared food; or

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

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

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

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

737 (ii) except as provided in Subsection (75)(a)(i)(B):

738 (A) clothing;

739 (B) clothing accessories or equipment;

740 (C) protective equipment; or

- 741 (D) sports or recreational equipment; or
- 742 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 743 event or school-related activity if the amounts paid or charged are passed through to a person:
- 744 (A) other than a:
  - 745 (I) school;
  - 746 (II) nonprofit organization authorized by a school board or a governing body of a
  - 747 private school to organize and direct a competitive secondary school activity; or
  - 748 (III) nonprofit association authorized by a school board or a governing body of a
  - 749 private school to organize and direct a competitive secondary school activity; and
- 750 (B) that is required to collect sales and use taxes under this chapter.
- 751 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 752 commission may make rules defining the term "passed through."
- 753 (76) For purposes of this section and Section 59-12-104, "school" means:
  - 754 (a) an elementary school or a secondary school that:
    - 755 (i) is a:
      - 756 (A) public school; or
      - 757 (B) private school; and
    - 758 (ii) provides instruction for one or more grades kindergarten through 12; or
  - 759 (b) a public school district.
- 760 (77) "Seller" means a person that makes a sale, lease, or rental of:
  - 761 (a) tangible personal property; or
  - 762 (b) a service.
- 763 (78) (a) "Semiconductor fabricating or processing materials" means tangible personal
- 764 property:
  - 765 (i) used primarily in the process of:
    - 766 (A) (I) manufacturing a semiconductor; or
    - 767 (II) fabricating a semiconductor; or
    - 768 (B) maintaining an environment suitable for a semiconductor; or
  - 769 (ii) consumed primarily in the process of:
    - 770 (A) (I) manufacturing a semiconductor; or
    - 771 (II) fabricating a semiconductor; or

- 772 (B) maintaining an environment suitable for a semiconductor.
- 773 (b) "Semiconductor fabricating or processing materials" includes:
- 774 (i) parts used in the repairs or renovations of tangible personal property described in
- 775 Subsection (78)(a); or
- 776 (ii) a chemical, catalyst, or other material used to:
- 777 (A) produce or induce in a semiconductor a:
- 778 (I) chemical change; or
- 779 (II) physical change;
- 780 (B) remove impurities from a semiconductor; or
- 781 (C) improve the marketable condition of a semiconductor.
- 782 (79) "Senior citizen center" means a facility having the primary purpose of providing
- 783 services to the aged as defined in Section 62A-3-101.
- 784 (80) "Simplified electronic return" means the electronic return:
- 785 (a) described in Section 318(C) of the agreement; and
- 786 (b) approved by the governing board of the agreement.
- 787 (81) "Solar energy" means the sun used as the sole source of energy for producing
- 788 electricity.
- 789 (82) (a) "Sports or recreational equipment" means an item:
- 790 (i) designed for human use; and
- 791 (ii) that is:
- 792 (A) worn in conjunction with:
- 793 (I) an athletic activity; or
- 794 (II) a recreational activity; and
- 795 (B) not suitable for general use.
- 796 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 797 commission shall make rules:
- 798 (i) listing the items that constitute "sports or recreational equipment"; and
- 799 (ii) that are consistent with the list of items that constitute "sports or recreational
- 800 equipment" under the agreement.
- 801 (83) "State" means the state of Utah, its departments, and agencies.
- 802 (84) "Storage" means any keeping or retention of tangible personal property or any

803 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except  
804 sale in the regular course of business.

805 (85) (a) "Tangible personal property" means personal property that:

806 (i) may be:

807 (A) seen;

808 (B) weighed;

809 (C) measured;

810 (D) felt; or

811 (E) touched; or

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

813 (b) "Tangible personal property" includes:

814 (i) electricity;

815 (ii) water;

816 (iii) gas;

817 (iv) steam; or

818 (v) prewritten computer software.

819 (86) (a) "Telephone service" means a two-way transmission:

820 (i) by:

821 (A) wire;

822 (B) radio;

823 (C) lightwave; or

824 (D) other electromagnetic means; and

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

826 (A) a sign;

827 (B) a signal;

828 (C) writing;

829 (D) an image;

830 (E) sound;

831 (F) a message;

832 (G) data; or

833 (H) other information of any nature.

834 (b) "Telephone service" includes:

835 (i) mobile telecommunications service;

836 (ii) private communications service; or

837 (iii) automated digital telephone answering service.

838 (c) "Telephone service" does not include a service or a transaction that a state or a

839 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet

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

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

842 (a) if the location described in this Subsection (87)(a) is known, the location of the  
843 telephone service equipment:

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

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

846 (b) if the location described in Subsection (87)(a) is not known but the location

847 described in this Subsection (87)(b) is known, the location of the origination point of the signal

848 of the telephone service first identified by:

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

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

852 (c) if the locations described in Subsection (87)(a) or (b) are not known, the location of  
853 a purchaser's primary place of use.

854 (88) (a) "Telephone service provider" means a person that:

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

856 (ii) engages in an activity described in Subsection (88)(a)(i) for the shared use with or  
857 resale to any person of the telephone service.

858 (b) A person described in Subsection (88)(a) is a telephone service provider whether or  
859 not the Public Service Commission of Utah regulates:

860 (i) that person; or

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

862 (89) "Tobacco" means:

863 (a) a cigarette;

864 (b) a cigar;

865 (c) chewing tobacco;

866 (d) pipe tobacco; or

867 (e) any other item that contains tobacco.

868 (90) (a) "Use" means the exercise of any right or power over tangible personal property  
869 under Subsection 59-12-103(1), incident to the ownership or the leasing of that property, item,  
870 or service.

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

873 (91) (a) Subject to Subsection (91)(b), "vehicle" means the following that are required  
874 to be titled, registered, or titled and registered:

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

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

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

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

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

880 (i) a vehicle described in Subsection (91)(a); or

881 (ii) (A) a locomotive;

882 (B) a freight car;

883 (C) railroad work equipment; or

884 (D) other railroad rolling stock.

885 (92) "Vehicle dealer" means a person engaged in the business of buying, selling, or  
886 exchanging a vehicle as defined in Subsection (91).

887 (93) (a) Except as provided in Subsection (93)(b), "waste energy facility" means a  
888 facility that generates electricity:

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

891 (A) tires;

892 (B) waste coal; or

893 (C) oil shale; and

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

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

- 896 (i) municipal solid waste;
- 897 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or
- 898 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.
- 899 (94) "Watercraft" means a vessel as defined in Section 73-18-2.
- 900 (95) "Wind energy" means wind used as the sole source of energy to produce
- 901 electricity.
- 902 (96) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
- 903 location by the United States Postal Service.
- 904 Section 2. **Effective date.**
- 905 This bill takes effect on July 1, 2006.

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**Legislative Review Note**  
**as of 1-26-06 10:15 AM**

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

**Office of Legislative Research and General Counsel**