

1                                   **SALES AND USE TAX - DEFINITIONS OF**  
2                                   **PERMANENTLY ATTACHED TO REAL PROPERTY**  
3                                   **AND TANGIBLE PERSONAL PROPERTY**

4                                   2008 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 the Sales and Use Tax Act relating to definitions.

12                                  **Highlighted Provisions:**

13                                  This bill:

- 14                                  ▶ amends the definitions of:
- 15                                      • "permanently attached to real property"; and
  - 16                                      • "tangible personal property"; and
- 17                                  ▶ makes technical changes.

18                                  **Monies Appropriated in this Bill:**

19                                  None

20                                  **Other Special Clauses:**

21                                  This bill has retrospective operation to January 1, 2008.

22                                  **Utah Code Sections Affected:**

23                                  AMENDS:

24                                  **59-12-102**, as last amended by Laws of Utah 2007, Chapters 9, 214, 224, and 288

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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) Subsection 59-12-103(2)(b)(i);

41 (c) Subsection 59-12-103(2)(c)(i);

42 (d) Subsection 59-12-103(2)(d)(i);

43 (e) Subsection 59-12-103(2)(e)(ii)(A);

44 (f) Subsection 59-12-103(2)(e)(iii)(A);

45 (g) Section 59-12-204;

46 (h) Section 59-12-401;

47 (i) Section 59-12-402;

48 (j) Section 59-12-501;

49 (k) Section 59-12-502;

50 (l) Section 59-12-703;

51 (m) Section 59-12-802;

52 (n) Section 59-12-804;

53 (o) Section 59-12-1001;

54 (p) Section 59-12-1102;

55 (q) Section 59-12-1302;

56 (r) Section 59-12-1402;

57 (s) Section 59-12-1503; or

58 (t) Section 59-12-1703.

- 59 (5) "Aircraft" is as defined in Section 72-10-102.
- 60 (6) "Alcoholic beverage" means a beverage that:
  - 61 (a) is suitable for human consumption; and
  - 62 (b) contains .5% or more alcohol by volume.
- 63 (7) "Area agency on aging" is as defined in Section 62A-3-101.
- 64 (8) "Assisted amusement device" means an amusement device, skill device, or ride  
65 device that is started and stopped by an individual:
  - 66 (a) who is not the purchaser or renter of the right to use or operate the amusement  
67 device, skill device, or ride device; and
  - 68 (b) at the direction of the seller of the right to use the amusement device, skill device,  
69 or ride device.
- 70 (9) "Assisted cleaning or washing of tangible personal property" means cleaning or  
71 washing of tangible personal property if the cleaning or washing labor is primarily performed  
72 by an individual:
  - 73 (a) who is not the purchaser of the cleaning or washing of the tangible personal  
74 property; and
  - 75 (b) at the direction of the seller of the cleaning or washing of the tangible personal  
76 property.
- 77 (10) "Authorized carrier" means:
  - 78 (a) in the case of vehicles operated over public highways, the holder of credentials  
79 indicating that the vehicle is or will be operated pursuant to both the International Registration  
80 Plan and the International Fuel Tax Agreement;
  - 81 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating  
82 certificate or air carrier's operating certificate; or
  - 83 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling  
84 stock, the holder of a certificate issued by the United States Surface Transportation Board.
- 85 (11) (a) Except as provided in Subsection (11)(b), "biomass energy" means any of the  
86 following that is used as the primary source of energy to produce fuel or electricity:
  - 87 (i) material from a plant or tree; or
  - 88 (ii) other organic matter that is available on a renewable basis, including:
    - 89 (A) slash and brush from forests and woodlands;

- 90 (B) animal waste;
- 91 (C) methane produced:
- 92 (I) at landfills; or
- 93 (II) as a byproduct of the treatment of wastewater residuals;
- 94 (D) aquatic plants; and
- 95 (E) agricultural products.
- 96 (b) "Biomass energy" does not include:
- 97 (i) black liquor;
- 98 (ii) treated woods; or
- 99 (iii) biomass from municipal solid waste other than methane produced:
- 100 (A) at landfills; or
- 101 (B) as a byproduct of the treatment of wastewater residuals.
- 102 (12) (a) "Bundled transaction" means the sale of two or more items of tangible personal
- 103 property if:
- 104 (i) one or more of the items of tangible personal property is food and food ingredients;
- 105 and
- 106 (ii) the items of tangible personal property are:
- 107 (A) distinct and identifiable; and
- 108 (B) sold for one price that is not itemized.
- 109 (b) "Bundled transaction" does not include the sale of tangible personal property if the
- 110 sales price varies, or is negotiable, on the basis of the selection by the purchaser of the items of
- 111 tangible personal property included in the transaction.
- 112 (c) For purposes of Subsection (12)(a)(ii)(A), tangible personal property that is distinct
- 113 and identifiable does not include:
- 114 (i) packaging that:
- 115 (A) accompanies the sale of the tangible personal property; and
- 116 (B) is incidental or immaterial to the sale of the tangible personal property;
- 117 (ii) tangible personal property provided free of charge with the purchase of another
- 118 item of tangible personal property; or
- 119 (iii) an item of tangible personal property included in the definition of "purchase
- 120 price."

121 (d) For purposes of Subsection (12)(c)(ii), an item of tangible personal property is  
122 provided free of charge with the purchase of another item of tangible personal property if the  
123 sales price of the purchased item of tangible personal property does not vary depending on the  
124 inclusion of the tangible personal property provided free of charge.

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

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

129 (i) on a transaction; and

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

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

133 (c) maintains a record of the transaction described in Subsection (13)(a)(i).

134 (14) "Certified service provider" means an agent certified:

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

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

140 (15) (a) Subject to Subsection (15)(b), "clothing" means all human wearing apparel  
141 suitable for general use.

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

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

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

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

148 (17) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other  
149 fuels that does not constitute industrial use under Subsection (42) or residential use under  
150 Subsection (80).

151 (18) (a) "Common carrier" means a person engaged in or transacting the business of

152 transporting passengers, freight, merchandise, or other property for hire within this state.

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

156 (ii) For purposes of Subsection (18)(b)(i), in accordance with Title 63, Chapter 46a,  
157 Utah Administrative Rulemaking Act, the commission may make rules defining what  
158 constitutes a person's place of employment.

159 (19) "Component part" includes:

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

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

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

165 (d) feed, seeds, and seedlings.

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

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

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

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

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

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

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

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

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

177 (24) (a) "Delivery charge" means a charge:

178 (i) by a seller of:

179 (A) tangible personal property; or

180 (B) services; and

181 (ii) for preparation and delivery of the tangible personal property or services described  
182 in Subsection (24)(a)(i) to a location designated by the purchaser.

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

184 (i) transportation;

185 (ii) shipping;

186 (iii) postage;

187 (iv) handling;

188 (v) crating; or

189 (vi) packing.

190 (25) (a) "Dental prosthesis" means the following if fabricated in a laboratory:

191 (i) a bridge;

192 (ii) a crown if that crown covers at least 75% of a tooth structure;

193 (iii) a denture;

194 (iv) an implant;

195 (v) an orthodontic device designed to:

196 (A) retain the position or spacing of teeth; and

197 (B) replace a missing tooth;

198 (vi) a partial denture; or

199 (vii) a device similar to Subsections (25)(a)(i) through (vi).

200 (b) "Dental prosthesis" does not include an appliance or device, other than a device

201 described in Subsection (25)(a), if that appliance or device is used in orthodontic therapy to

202 apply force to the teeth and their supporting structures to:

203 (i) produce changes in their relationship to each other; and

204 (ii) control their growth and development.

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

206 (a) is intended to supplement the diet;

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

208 (i) a vitamin;

209 (ii) a mineral;

210 (iii) an herb or other botanical;

211 (iv) an amino acid;

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

213 dietary intake; or

214 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient  
215 described in Subsections (26)(b)(i) through (v);

216 (c) (i) except as provided in Subsection (26)(c)(ii), is intended for ingestion in:

217 (A) tablet form;

218 (B) capsule form;

219 (C) powder form;

220 (D) softgel form;

221 (E) gelcap form; or

222 (F) liquid form; or

223 (ii) notwithstanding Subsection (26)(c)(i), if the product is not intended for ingestion in  
224 a form described in Subsections (26)(c)(i)(A) through (F), is not represented:

225 (A) as conventional food; and

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

227 (I) a meal; or

228 (II) the diet; and

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

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

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

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

234 (i) to:

235 (A) a mass audience; or

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

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

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

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

242 (28) (a) "Disposable home medical equipment or supplies" means medical equipment  
243 or supplies that:

244 (i) cannot withstand repeated use; and

- 245 (ii) are purchased by, for, or on behalf of a person other than:
- 246 (A) a health care facility as defined in Section 26-21-2;
- 247 (B) a health care provider as defined in Section 78-14-3;
- 248 (C) an office of a health care provider described in Subsection (28)(a)(ii)(B); or
- 249 (D) a person similar to a person described in Subsections (28)(a)(ii)(A) through (C).
- 250 (b) "Disposable home medical equipment or supplies" does not include:
- 251 (i) a drug;
- 252 (ii) durable medical equipment;
- 253 (iii) a hearing aid;
- 254 (iv) a hearing aid accessory;
- 255 (v) mobility enhancing equipment; or
- 256 (vi) tangible personal property used to correct impaired vision, including:
- 257 (A) eyeglasses; or
- 258 (B) contact lenses.
- 259 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 260 commission may by rule define what constitutes medical equipment or supplies.
- 261 (29) (a) "Drug" means a compound, substance, or preparation, or a component of a
- 262 compound, substance, or preparation that is:
- 263 (i) recognized in:
- 264 (A) the official United States Pharmacopoeia;
- 265 (B) the official Homeopathic Pharmacopoeia of the United States;
- 266 (C) the official National Formulary; or
- 267 (D) a supplement to a publication listed in Subsections (29)(a)(i)(A) through (C);
- 268 (ii) intended for use in the:
- 269 (A) diagnosis of disease;
- 270 (B) cure of disease;
- 271 (C) mitigation of disease;
- 272 (D) treatment of disease; or
- 273 (E) prevention of disease; or
- 274 (iii) intended to affect:
- 275 (A) the structure of the body; or

276 (B) any function of the body.

277 (b) "Drug" does not include:

278 (i) food and food ingredients;

279 (ii) a dietary supplement;

280 (iii) an alcoholic beverage; or

281 (iv) a prosthetic device.

282 (30) (a) Except as provided in Subsection (30)(c), "durable medical equipment" means  
283 equipment that:

284 (i) can withstand repeated use;

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

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

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

288 (b) "Durable medical equipment" includes parts used in the repair or replacement of the  
289 equipment described in Subsection (30)(a).

290 (c) Notwithstanding Subsection (30)(a), "durable medical equipment" does not include  
291 mobility enhancing equipment.

292 (31) "Electronic" means:

293 (a) relating to technology; and

294 (b) having:

295 (i) electrical capabilities;

296 (ii) digital capabilities;

297 (iii) magnetic capabilities;

298 (iv) wireless capabilities;

299 (v) optical capabilities;

300 (vi) electromagnetic capabilities; or

301 (vii) capabilities similar to Subsections (31)(b)(i) through (vi).

302 (32) "Employee" is as defined in Section 59-10-401.

303 (33) "Fixed guideway" means a public transit facility that uses and occupies:

304 (a) rail for the use of public transit; or

305 (b) a separate right-of-way for the use of public transit.

306 (34) (a) "Food and food ingredients" means substances:

- 307 (i) regardless of whether the substances are in:
- 308 (A) liquid form;
- 309 (B) concentrated form;
- 310 (C) solid form;
- 311 (D) frozen form;
- 312 (E) dried form; or
- 313 (F) dehydrated form; and
- 314 (ii) that are:
- 315 (A) sold for:
- 316 (I) ingestion by humans; or
- 317 (II) chewing by humans; and
- 318 (B) consumed for the substance's:
- 319 (I) taste; or
- 320 (II) nutritional value.
- 321 (b) "Food and food ingredients" includes an item described in Subsection (66)(b)(iii).
- 322 (c) "Food and food ingredients" does not include:
- 323 (i) an alcoholic beverage;
- 324 (ii) tobacco; or
- 325 (iii) prepared food.
- 326 (35) (a) "Fundraising sales" means sales:
- 327 (i) (A) made by a school; or
- 328 (B) made by a school student;
- 329 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 330 materials, or provide transportation; and
- 331 (iii) that are part of an officially sanctioned school activity.
- 332 (b) For purposes of Subsection (35)(a)(iii), "officially sanctioned school activity"
- 333 means a school activity:
- 334 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 335 district governing the authorization and supervision of fundraising activities;
- 336 (ii) that does not directly or indirectly compensate an individual teacher or other
- 337 educational personnel by direct payment, commissions, or payment in kind; and

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

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

342 (37) "Governing board of the agreement" means the governing board of the agreement  
343 that is:

344 (a) authorized to administer the agreement; and

345 (b) established in accordance with the agreement.

346 (38) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:

347 (i) the executive branch of the state, including all departments, institutions, boards,  
348 divisions, bureaus, offices, commissions, and committees;

349 (ii) the judicial branch of the state, including the courts, the Judicial Council, the  
350 Office of the Court Administrator, and similar administrative units in the judicial branch;

351 (iii) the legislative branch of the state, including the House of Representatives, the  
352 Senate, the Legislative Printing Office, the Office of Legislative Research and General  
353 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal  
354 Analyst;

355 (iv) the National Guard;

356 (v) an independent entity as defined in Section 63E-1-102; or

357 (vi) a political subdivision as defined in Section 17B-1-102.

358 (b) "Governmental entity" does not include the state systems of public and higher  
359 education, including:

360 (i) a college campus of the Utah College of Applied Technology;

361 (ii) a school;

362 (iii) the State Board of Education;

363 (iv) the State Board of Regents; or

364 (v) a state institution of higher education as defined in Section 53B-3-102.

365 (39) (a) "Hearing aid" means:

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

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

368 (II) correct impaired human hearing; and

- 369 (B) (I) be worn in the human ear; or
- 370 (II) affixed behind the human ear;
- 371 (ii) an instrument or device that is surgically implanted into the cochlea; or
- 372 (iii) a telephone amplifying device.
- 373 (b) "Hearing aid" does not include:
- 374 (i) except as provided in Subsection (39)(a)(i)(B) or (39)(a)(ii), an instrument or device
- 375 having an electronic component that is designed to be worn on the body;
- 376 (ii) except as provided in Subsection (39)(a)(iii), an assistive listening device or system
- 377 designed to be used by one individual, including:
- 378 (A) a personal amplifying system;
- 379 (B) a personal FM system;
- 380 (C) a television listening system; or
- 381 (D) a device or system similar to a device or system described in Subsections
- 382 (39)(b)(ii)(A) through (C); or
- 383 (iii) an assistive listening device or system designed to be used by more than one
- 384 individual, including:
- 385 (A) a device or system installed in:
- 386 (I) an auditorium;
- 387 (II) a church;
- 388 (III) a conference room;
- 389 (IV) a synagogue; or
- 390 (V) a theater; or
- 391 (B) a device or system similar to a device or system described in Subsections
- 392 (39)(b)(iii)(A)(I) through (V).
- 393 (40) (a) "Hearing aid accessory" means a hearing aid:
- 394 (i) component;
- 395 (ii) attachment; or
- 396 (iii) accessory.
- 397 (b) "Hearing aid accessory" includes:
- 398 (i) a hearing aid neck loop;
- 399 (ii) a hearing aid cord;

- 400 (iii) a hearing aid ear mold;
- 401 (iv) hearing aid tubing;
- 402 (v) a hearing aid ear hook; or
- 403 (vi) a hearing aid remote control.
- 404 (c) "Hearing aid accessory" does not include:
- 405 (i) a component, attachment, or accessory designed to be used only with an:
- 406 (A) instrument or device described in Subsection (39)(b)(i); or
- 407 (B) assistive listening device or system described in Subsection (39)(b)(ii) or (iii); or
- 408 (ii) a hearing aid battery.
- 409 (41) "Hydroelectric energy" means water used as the sole source of energy to produce
- 410 electricity.
- 411 (42) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
- 412 other fuels:
- 413 (a) in mining or extraction of minerals;
- 414 (b) in agricultural operations to produce an agricultural product up to the time of
- 415 harvest or placing the agricultural product into a storage facility, including:
- 416 (i) commercial greenhouses;
- 417 (ii) irrigation pumps;
- 418 (iii) farm machinery;
- 419 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
- 420 registered under Title 41, Chapter 1a, Part 2, Registration; and
- 421 (v) other farming activities;
- 422 (c) in manufacturing tangible personal property at an establishment described in SIC
- 423 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
- 424 Executive Office of the President, Office of Management and Budget;
- 425 (d) by a scrap recycler if:
- 426 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 427 one or more of the following items into prepared grades of processed materials for use in new
- 428 products:
- 429 (A) iron;
- 430 (B) steel;

431 (C) nonferrous metal;

432 (D) paper;

433 (E) glass;

434 (F) plastic;

435 (G) textile; or

436 (H) rubber; and

437 (ii) the new products under Subsection (42)(d)(i) would otherwise be made with  
438 nonrecycled materials; or

439 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a  
440 cogeneration facility as defined in Section 54-2-1.

441 (43) (a) Except as provided in Subsection (43)(b), "installation charge" means a charge  
442 for installing tangible personal property.

443 (b) Notwithstanding Subsection (43)(a), "installation charge" does not include a charge  
444 for repairs or renovations of tangible personal property.

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

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

448 (B) an indeterminate term; and

449 (ii) consideration.

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

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

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

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

460 (A) upon completion of required payments; and

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

- 462 (I) \$100; or
- 463 (II) 1% of the total required payments; or
- 464 (iii) providing tangible personal property along with an operator for a fixed period of
- 465 time or an indeterminate period of time if the operator is necessary for equipment to perform as
- 466 designed.
- 467 (d) For purposes of Subsection (44)(c)(iii), an operator is necessary for equipment to
- 468 perform as designed if the operator's duties exceed the:
  - 469 (i) set-up of tangible personal property;
  - 470 (ii) maintenance of tangible personal property; or
  - 471 (iii) inspection of tangible personal property.
- 472 (45) "Load and leave" means delivery to a purchaser by use of a tangible storage media
- 473 if the tangible storage media is not physically transferred to the purchaser.
- 474 (46) "Local taxing jurisdiction" means a:
  - 475 (a) county that is authorized to impose an agreement sales and use tax;
  - 476 (b) city that is authorized to impose an agreement sales and use tax; or
  - 477 (c) town that is authorized to impose an agreement sales and use tax.
- 478 (47) "Manufactured home" is as defined in Section 58-56-3.
- 479 (48) For purposes of Section 59-12-104, "manufacturing facility" means:
  - 480 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
  - 481 Industrial Classification Manual of the federal Executive Office of the President, Office of
  - 482 Management and Budget;
  - 483 (b) a scrap recycler if:
    - 484 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
    - 485 one or more of the following items into prepared grades of processed materials for use in new
    - 486 products:
      - 487 (A) iron;
      - 488 (B) steel;
      - 489 (C) nonferrous metal;
      - 490 (D) paper;
      - 491 (E) glass;
      - 492 (F) plastic;

- 493 (G) textile; or
- 494 (H) rubber; and
- 495 (ii) the new products under Subsection (48)(b)(i) would otherwise be made with
- 496 nonrecycled materials; or
- 497 (c) a cogeneration facility as defined in Section 54-2-1.
- 498 (49) "Member of the immediate family of the producer" means a person who is related
- 499 to a producer described in Subsection 59-12-104(20)(a) as a:
- 500 (a) child or stepchild, regardless of whether the child or stepchild is:
- 501 (i) an adopted child or adopted stepchild; or
- 502 (ii) a foster child or foster stepchild;
- 503 (b) grandchild or stepgrandchild;
- 504 (c) grandparent or stepgrandparent;
- 505 (d) nephew or stepnephew;
- 506 (e) niece or stepniece;
- 507 (f) parent or stepparent;
- 508 (g) sibling or stepsibling;
- 509 (h) spouse;
- 510 (i) person who is the spouse of a person described in Subsections (49)(a) through (g);
- 511 or
- 512 (j) person similar to a person described in Subsections (49)(a) through (i) as
- 513 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah
- 514 Administrative Rulemaking Act.
- 515 (50) "Mobile home" is as defined in Section 58-56-3.
- 516 (51) "Mobile telecommunications service" is as defined in the Mobile
- 517 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
- 518 (52) (a) Except as provided in Subsection (52)(c), "mobility enhancing equipment"
- 519 means equipment that is:
- 520 (i) primarily and customarily used to provide or increase the ability to move from one
- 521 place to another;
- 522 (ii) appropriate for use in a:
- 523 (A) home; or

524 (B) motor vehicle; and  
525 (iii) not generally used by persons with normal mobility.  
526 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of  
527 the equipment described in Subsection (52)(a).  
528 (c) Notwithstanding Subsection (52)(a), "mobility enhancing equipment" does not  
529 include:  
530 (i) a motor vehicle;  
531 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor  
532 vehicle manufacturer;  
533 (iii) durable medical equipment; or  
534 (iv) a prosthetic device.  
535 (53) "Model 1 seller" means a seller that has selected a certified service provider as the  
536 seller's agent to perform all of the seller's sales and use tax functions for agreement sales and  
537 use taxes other than the seller's obligation under Section 59-12-107.4 to remit a tax on the  
538 seller's own purchases.  
539 (54) "Model 2 seller" means a seller that:  
540 (a) except as provided in Subsection (54)(b), has selected a certified automated system  
541 to perform the seller's sales tax functions for agreement sales and use taxes; and  
542 (b) notwithstanding Subsection (54)(a), retains responsibility for remitting all of the  
543 sales tax:  
544 (i) collected by the seller; and  
545 (ii) to the appropriate local taxing jurisdiction.  
546 (55) (a) Subject to Subsection (55)(b), "model 3 seller" means a seller that has:  
547 (i) sales in at least five states that are members of the agreement;  
548 (ii) total annual sales revenues of at least \$500,000,000;  
549 (iii) a proprietary system that calculates the amount of tax:  
550 (A) for an agreement sales and use tax; and  
551 (B) due to each local taxing jurisdiction; and  
552 (iv) entered into a performance agreement with the governing board of the agreement.  
553 (b) For purposes of Subsection (55)(a), "model 3 seller" includes an affiliated group of  
554 sellers using the same proprietary system.

555 (56) "Modular home" means a modular unit as defined in Section 58-56-3.

556 (57) "Motor vehicle" is as defined in Section 41-1a-102.

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

559 (59) (a) "Other fuels" means products that burn independently to produce heat or  
560 energy.

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

563 (60) "Pawnbroker" is as defined in Section 13-32a-102.

564 (61) "Pawn transaction" is as defined in Section 13-32a-102.

565 (62) (a) "Permanently attached to real property" means that for tangible personal  
566 property attached to real property:

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

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

569 (B) suggests that the tangible personal property will remain attached to the real  
570 property in the same place over the useful life of the tangible personal property; or

571 (ii) if the tangible personal property is detached from the real property, the detachment  
572 would:

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

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

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

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

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

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

580 (ii) a temporary detachment of tangible personal property from real property for a  
581 repair or renovation if the repair or renovation is performed where the tangible personal  
582 property and real property are located; or

583 ~~[(iii) an attachment of the following tangible personal property to real property;~~  
584 ~~regardless of whether the attachment to real property is only through a line that supplies water;~~  
585 ~~electricity, gas, telephone, cable, or supplies a similar item as determined by the commission by~~

586 ~~rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:]~~

587 ~~[(A)] (iii) property attached to oil, gas, or water pipelines, other than the property listed~~  
588 ~~in Subsection (62)(c)(iii)[;].~~

589 ~~[(B) a hot water heater;]~~

590 ~~[(C) a water softener system; or]~~

591 ~~[(D) a water filtration system, other than a water filtration system manufactured as part~~  
592 ~~of a refrigerator.]~~

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

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

596 (A) convenience;

597 (B) stability; or

598 (C) for an obvious temporary purpose;

599 (ii) the detachment of tangible personal property from real property other than the  
600 detachment described in Subsection (62)(b)(ii); ~~[or]~~

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

605 (A) a refrigerator;

606 (B) a washer;

607 (C) a dryer;

608 (D) a stove;

609 (E) a television;

610 (F) a computer;

611 (G) a telephone; or

612 (H) tangible personal property similar to Subsections (62)(c)(iii)(A) through (G) as  
613 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah  
614 Administrative Rulemaking Act[-]; or

615 (iv) the following if attached to real property, regardless of whether the attachment to  
616 real property is only through a line that supplies water, electricity, gas, telephone, cable, or

617 supplies a similar item as determined by the commission by rule made in accordance with Title  
618 63, Chapter 46a, Utah Administrative Rulemaking Act:

- 619 (A) a hot water heater;
- 620 (B) a water softener system; or
- 621 (C) a water filtration system.

622 (63) "Person" includes any individual, firm, partnership, joint venture, association,  
623 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,  
624 municipality, district, or other local governmental entity of the state, or any group or  
625 combination acting as a unit.

626 (64) "Place of primary use":

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

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

634 (65) "Postproduction" means an activity related to the finishing or duplication of a  
635 medium described in Subsection 59-12-104(56)(a).

636 (66) (a) "Prepared food" means:

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

642 (iii) except as provided in Subsection (66)(c), food sold with an eating utensil provided  
643 by the seller, including a:

- 644 (A) plate;
- 645 (B) knife;
- 646 (C) fork;
- 647 (D) spoon;

- 648 (E) glass;
- 649 (F) cup;
- 650 (G) napkin; or
- 651 (H) straw.
- 652 (b) "Prepared food" does not include:
- 653 (i) food that a seller only:
- 654 (A) cuts;
- 655 (B) repackages; or
- 656 (C) pasteurizes; or
- 657 (ii) (A) the following:
- 658 (I) raw egg;
- 659 (II) raw fish;
- 660 (III) raw meat;
- 661 (IV) raw poultry; or
- 662 (V) a food containing an item described in Subsections (66)(b)(ii)(A)(I) through (IV);
- 663 and
- 664 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 665 Food and Drug Administration's Food Code that a consumer cook the items described in
- 666 Subsection (66)(b)(ii)(A) to prevent food borne illness; or
- 667 (iii) the following if sold without eating utensils provided by the seller:
- 668 (A) food and food ingredients sold by a seller if the seller's proper primary
- 669 classification under the 2002 North American Industry Classification System of the federal
- 670 Executive Office of the President, Office of Management and Budget, is manufacturing in
- 671 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
- 672 Manufacturing;
- 673 (B) food and food ingredients sold in an unheated state:
- 674 (I) by weight or volume; and
- 675 (II) as a single item; or
- 676 (C) a bakery item, including:
- 677 (I) a bagel;
- 678 (II) a bar;

- 679 (III) a biscuit;
- 680 (IV) bread;
- 681 (V) a bun;
- 682 (VI) a cake;
- 683 (VII) a cookie;
- 684 (VIII) a croissant;
- 685 (IX) a danish;
- 686 (X) a donut;
- 687 (XI) a muffin;
- 688 (XII) a pastry;
- 689 (XIII) a pie;
- 690 (XIV) a roll;
- 691 (XV) a tart;
- 692 (XVI) a torte; or
- 693 (XVII) a tortilla.

694 (c) Notwithstanding Subsection (66)(a)(iii), an eating utensil provided by the seller  
695 does not include the following used to transport the food:

- 696 (i) a container; or
  - 697 (ii) packaging.
- 698 (67) "Prescription" means an order, formula, or recipe that is issued:
- 699 (a) (i) orally;
  - 700 (ii) in writing;
  - 701 (iii) electronically; or
  - 702 (iv) by any other manner of transmission; and

703 (b) by a licensed practitioner authorized by the laws of a state.

704 (68) (a) Except as provided in Subsection (68)(b)(ii) or (iii), "prewritten computer  
705 software" means computer software that is not designed and developed:

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

708 (b) "Prewritten computer software" includes:

- 709 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer

710 software is not designed and developed:

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

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

713 (ii) notwithstanding Subsection (68)(a), computer software designed and developed by  
714 the author or other creator of the computer software to the specifications of a specific purchaser  
715 if the computer software is sold to a person other than the purchaser; or

716 (iii) notwithstanding Subsection (68)(a) and except as provided in Subsection (68)(c),  
717 prewritten computer software or a prewritten portion of prewritten computer software:

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

719 (B) if the modification or enhancement described in Subsection (68)(b)(iii)(A) is  
720 designed and developed to the specifications of a specific purchaser.

721 (c) Notwithstanding Subsection (68)(b)(iii), "prewritten computer software" does not  
722 include a modification or enhancement described in Subsection (68)(b)(iii) if the charges for  
723 the modification or enhancement are:

724 (i) reasonable; and

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

727 (69) (a) "Prosthetic device" means a device that is worn on or in the body to:

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

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

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

731 (b) "Prosthetic device" includes:

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

733 (ii) replacement parts for a prosthetic device; or

734 (iii) a dental prosthesis.

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

736 (i) corrective eyeglasses;

737 (ii) contact lenses; or

738 (iii) hearing aids.

739 (70) (a) "Protective equipment" means an item:

740 (i) for human wear; and

- 741 (ii) that is:
- 742 (A) designed as protection:
- 743 (I) to the wearer against injury or disease; or
- 744 (II) against damage or injury of other persons or property; and
- 745 (B) not suitable for general use.
- 746 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 747 commission shall make rules:
- 748 (i) listing the items that constitute "protective equipment"; and
- 749 (ii) that are consistent with the list of items that constitute "protective equipment"
- 750 under the agreement.
- 751 (71) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or
- 752 printed matter, other than a photocopy:
- 753 (i) regardless of:
- 754 (A) characteristics;
- 755 (B) copyright;
- 756 (C) form;
- 757 (D) format;
- 758 (E) method of reproduction; or
- 759 (F) source; and
- 760 (ii) made available in printed or electronic format.
- 761 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 762 commission may by rule define the term "photocopy."
- 763 (72) (a) "Purchase price" and "sales price" mean the total amount of consideration:
- 764 (i) valued in money; and
- 765 (ii) for which tangible personal property or services are:
- 766 (A) sold;
- 767 (B) leased; or
- 768 (C) rented.
- 769 (b) "Purchase price" and "sales price" include:
- 770 (i) the seller's cost of the tangible personal property or services sold;
- 771 (ii) expenses of the seller, including:

- 772 (A) the cost of materials used;
- 773 (B) a labor cost;
- 774 (C) a service cost;
- 775 (D) interest;
- 776 (E) a loss;
- 777 (F) the cost of transportation to the seller; or
- 778 (G) a tax imposed on the seller; or
- 779 (iii) a charge by the seller for any service necessary to complete the sale.
- 780 (c) "Purchase price" and "sales price" do not include:
- 781 (i) a discount:
- 782 (A) in a form including:
- 783 (I) cash;
- 784 (II) term; or
- 785 (III) coupon;
- 786 (B) that is allowed by a seller;
- 787 (C) taken by a purchaser on a sale; and
- 788 (D) that is not reimbursed by a third party; or
- 789 (ii) the following if separately stated on an invoice, bill of sale, or similar document
- 790 provided to the purchaser:
- 791 (A) the amount of a trade-in;
- 792 (B) the following from credit extended on the sale of tangible personal property or
- 793 services:
- 794 (I) interest charges;
- 795 (II) financing charges; or
- 796 (III) carrying charges;
- 797 (C) a tax or fee legally imposed directly on the consumer;
- 798 (D) a delivery charge; or
- 799 (E) an installation charge.
- 800 (73) "Purchaser" means a person to whom:
- 801 (a) a sale of tangible personal property is made; or
- 802 (b) a service is furnished.

- 803 (74) "Regularly rented" means:
- 804 (a) rented to a guest for value three or more times during a calendar year; or
- 805 (b) advertised or held out to the public as a place that is regularly rented to guests for
- 806 value.
- 807 (75) "Renewable energy" means:
- 808 (a) biomass energy;
- 809 (b) hydroelectric energy;
- 810 (c) geothermal energy;
- 811 (d) solar energy; or
- 812 (e) wind energy.
- 813 (76) (a) "Renewable energy production facility" means a facility that:
- 814 (i) uses renewable energy to produce electricity; and
- 815 (ii) has a production capacity of 20 kilowatts or greater.
- 816 (b) A facility is a renewable energy production facility regardless of whether the
- 817 facility is:
- 818 (i) connected to an electric grid; or
- 819 (ii) located on the premises of an electricity consumer.
- 820 (77) "Rental" is as defined in Subsection (44).
- 821 (78) "Repairs or renovations of tangible personal property" means:
- 822 (a) a repair or renovation of tangible personal property that is not permanently attached
- 823 to real property; or
- 824 (b) attaching tangible personal property to other tangible personal property if the other
- 825 tangible personal property to which the tangible personal property is attached is not
- 826 permanently attached to real property.
- 827 (79) "Research and development" means the process of inquiry or experimentation
- 828 aimed at the discovery of facts, devices, technologies, or applications and the process of
- 829 preparing those devices, technologies, or applications for marketing.
- 830 (80) "Residential use" means the use in or around a home, apartment building, sleeping
- 831 quarters, and similar facilities or accommodations.
- 832 (81) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
- 833 than:

- 834 (a) resale;
- 835 (b) sublease; or
- 836 (c) subrent.
- 837 (82) (a) "Retailer" means any person engaged in a regularly organized business in
- 838 tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and
- 839 who is selling to the user or consumer and not for resale.
- 840 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
- 841 engaged in the business of selling to users or consumers within the state.
- 842 (83) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
- 843 otherwise, in any manner, of tangible personal property or any other taxable transaction under
- 844 Subsection 59-12-103(1), for consideration.
- 845 (b) "Sale" includes:
- 846 (i) installment and credit sales;
- 847 (ii) any closed transaction constituting a sale;
- 848 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
- 849 chapter;
- 850 (iv) any transaction if the possession of property is transferred but the seller retains the
- 851 title as security for the payment of the price; and
- 852 (v) any transaction under which right to possession, operation, or use of any article of
- 853 tangible personal property is granted under a lease or contract and the transfer of possession
- 854 would be taxable if an outright sale were made.
- 855 (84) "Sale at retail" is as defined in Subsection (81).
- 856 (85) "Sale-leaseback transaction" means a transaction by which title to tangible
- 857 personal property that is subject to a tax under this chapter is transferred:
- 858 (a) by a purchaser-lessee;
- 859 (b) to a lessor;
- 860 (c) for consideration; and
- 861 (d) if:
- 862 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
- 863 of the tangible personal property;
- 864 (ii) the sale of the tangible personal property to the lessor is intended as a form of

865 financing:

866 (A) for the property; and

867 (B) to the purchaser-lessee; and

868 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee

869 is required to:

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

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

872 (86) "Sales price" is as defined in Subsection (72).

873 (87) (a) "Sales relating to schools" means the following sales by, amounts paid to, or

874 amounts charged by a school:

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

876 including:

877 (A) the sale of:

878 (I) textbooks;

879 (II) textbook fees;

880 (III) laboratory fees;

881 (IV) laboratory supplies; or

882 (V) safety equipment;

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

884 that:

885 (I) a student is specifically required to wear as a condition of participation in a

886 school-related event or school-related activity; and

887 (II) is not readily adaptable to general or continued usage to the extent that it takes the

888 place of ordinary clothing;

889 (C) sales of the following if the net or gross revenues generated by the sales are

890 deposited into a school district fund or school fund dedicated to school meals:

891 (I) food and food ingredients; or

892 (II) prepared food; or

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

894 (ii) amounts paid to or amounts charged by a school for admission to a school-related

895 event or school-related activity.

- 896 (b) "Sales relating to schools" does not include:
- 897 (i) bookstore sales of items that are not educational materials or supplies;
- 898 (ii) except as provided in Subsection (87)(a)(i)(B):
- 899 (A) clothing;
- 900 (B) clothing accessories or equipment;
- 901 (C) protective equipment; or
- 902 (D) sports or recreational equipment; or
- 903 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 904 event or school-related activity if the amounts paid or charged are passed through to a person:
- 905 (A) other than a:
- 906 (I) school;
- 907 (II) nonprofit organization authorized by a school board or a governing body of a
- 908 private school to organize and direct a competitive secondary school activity; or
- 909 (III) nonprofit association authorized by a school board or a governing body of a
- 910 private school to organize and direct a competitive secondary school activity; and
- 911 (B) that is required to collect sales and use taxes under this chapter.
- 912 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 913 commission may make rules defining the term "passed through."
- 914 (88) For purposes of this section and Section 59-12-104, "school":
- 915 (a) means:
- 916 (i) an elementary school or a secondary school that:
- 917 (A) is a:
- 918 (I) public school; or
- 919 (II) private school; and
- 920 (B) provides instruction for one or more grades kindergarten through 12; or
- 921 (ii) a public school district; and
- 922 (b) includes the Electronic High School as defined in Section 53A-15-1002.
- 923 (89) "Seller" means a person that makes a sale, lease, or rental of:
- 924 (a) tangible personal property; or
- 925 (b) a service.
- 926 (90) (a) "Semiconductor fabricating, processing, research, or development materials"

- 927 means tangible personal property:
- 928 (i) used primarily in the process of:
- 929 (A) (I) manufacturing a semiconductor;
- 930 (II) fabricating a semiconductor; or
- 931 (III) research or development of a:
- 932 (Aa) semiconductor; or
- 933 (Bb) semiconductor manufacturing process; or
- 934 (B) maintaining an environment suitable for a semiconductor; or
- 935 (ii) consumed primarily in the process of:
- 936 (A) (I) manufacturing a semiconductor;
- 937 (II) fabricating a semiconductor; or
- 938 (III) research or development of a:
- 939 (Aa) semiconductor; or
- 940 (Bb) semiconductor manufacturing process; or
- 941 (B) maintaining an environment suitable for a semiconductor.
- 942 (b) "Semiconductor fabricating, processing, research, or development materials"
- 943 includes:
- 944 (i) parts used in the repairs or renovations of tangible personal property described in
- 945 Subsection (90)(a); or
- 946 (ii) a chemical, catalyst, or other material used to:
- 947 (A) produce or induce in a semiconductor a:
- 948 (I) chemical change; or
- 949 (II) physical change;
- 950 (B) remove impurities from a semiconductor; or
- 951 (C) improve the marketable condition of a semiconductor.
- 952 (91) "Senior citizen center" means a facility having the primary purpose of providing
- 953 services to the aged as defined in Section 62A-3-101.
- 954 (92) "Simplified electronic return" means the electronic return:
- 955 (a) described in Section 318(C) of the agreement; and
- 956 (b) approved by the governing board of the agreement.
- 957 (93) "Solar energy" means the sun used as the sole source of energy for producing

958 electricity.

959 (94) (a) "Sports or recreational equipment" means an item:

960 (i) designed for human use; and

961 (ii) that is:

962 (A) worn in conjunction with:

963 (I) an athletic activity; or

964 (II) a recreational activity; and

965 (B) not suitable for general use.

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

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

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

971 (95) "State" means the state of Utah, its departments, and agencies.

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

975 (97) (a) "Tangible personal property" means personal property that:

976 (i) may be:

977 (A) seen;

978 (B) weighed;

979 (C) measured;

980 (D) felt; or

981 (E) touched; or

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

983 (b) "Tangible personal property" includes:

984 (i) electricity;

985 (ii) water;

986 (iii) gas;

987 (iv) steam; or

988 (v) prewritten computer software.

989           (c) "Tangible personal property" does not include the following if attached to real  
990 property, regardless of whether the attachment to real property is only through a line that  
991 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the  
992 commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative  
993 Rulemaking Act:

- 994           (i) a hot water heater;
- 995           (ii) a water softener system; or
- 996           (iii) a water filtration system.

997           (98) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon  
998 and require further processing other than mechanical blending before becoming finished  
999 petroleum products.

1000           (99) (a) "Telecommunications enabling or facilitating equipment, machinery, or  
1001 software" means an item listed in Subsection (99)(b) if that item is purchased or leased  
1002 primarily to enable or facilitate one or more of the following to function:

- 1003           (i) telecommunications switching or routing equipment, machinery, or software; or
- 1004           (ii) telecommunications transmission equipment, machinery, or software.

1005           (b) The following apply to Subsection (99)(a):

- 1006           (i) a pole;
- 1007           (ii) software;
- 1008           (iii) a supplementary power supply;
- 1009           (iv) temperature or environmental equipment or machinery;
- 1010           (v) test equipment;
- 1011           (vi) a tower; or
- 1012           (vii) equipment, machinery, or software that functions similarly to an item listed in

1013 Subsections (99)(b)(i) through (vi) as determined by the commission by rule made in  
1014 accordance with Subsection (99)(c).

1015           (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
1016 commission may by rule define what constitutes equipment, machinery, or software that  
1017 functions similarly to an item listed in Subsections (99)(b)(i) through (vi).

1018           (100) "Telecommunications equipment, machinery, or software required for 911  
1019 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.

1020 Sec. 20.18.

1021 (101) "Telecommunications maintenance or repair equipment, machinery, or software"  
1022 means equipment, machinery, or software purchased or leased primarily to maintain or repair  
1023 one or more of the following, regardless of whether the equipment, machinery, or software is  
1024 purchased or leased as a spare part or as an upgrade or modification to one or more of the  
1025 following:

- 1026 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 1027 (b) telecommunications switching or routing equipment, machinery, or software; or
- 1028 (c) telecommunications transmission equipment, machinery, or software.

1029 (102) (a) "Telecommunications switching or routing equipment, machinery, or  
1030 software" means an item listed in Subsection (102)(b) if that item is purchased or leased  
1031 primarily for switching or routing:

- 1032 (i) voice communications;
- 1033 (ii) data communications; or
- 1034 (iii) telephone service.

1035 (b) The following apply to Subsection (102)(a):

- 1036 (i) a bridge;
- 1037 (ii) a computer;
- 1038 (iii) a cross connect;
- 1039 (iv) a modem;
- 1040 (v) a multiplexer;
- 1041 (vi) plug in circuitry;
- 1042 (vii) a router;
- 1043 (viii) software;
- 1044 (ix) a switch; or
- 1045 (x) equipment, machinery, or software that functions similarly to an item listed in  
1046 Subsections (102)(b)(i) through (ix) as determined by the commission by rule made in  
1047 accordance with Subsection (102)(c).

1048 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
1049 commission may by rule define what constitutes equipment, machinery, or software that  
1050 functions similarly to an item listed in Subsections (102)(b)(i) through (ix).

- 1051 (103) (a) "Telecommunications transmission equipment, machinery, or software"  
1052 means an item listed in Subsection (103)(b) if that item is purchased or leased primarily for  
1053 sending, receiving, or transporting:
- 1054 (i) voice communications;
  - 1055 (ii) data communications; or
  - 1056 (iii) telephone service.
- 1057 (b) The following apply to Subsection (103)(a):
- 1058 (i) an amplifier;
  - 1059 (ii) a cable;
  - 1060 (iii) a closure;
  - 1061 (iv) a conduit;
  - 1062 (v) a controller;
  - 1063 (vi) a duplexer;
  - 1064 (vii) a filter;
  - 1065 (viii) an input device;
  - 1066 (ix) an input/output device;
  - 1067 (x) an insulator;
  - 1068 (xi) microwave machinery or equipment;
  - 1069 (xii) an oscillator;
  - 1070 (xiii) an output device;
  - 1071 (xiv) a pedestal;
  - 1072 (xv) a power converter;
  - 1073 (xvi) a power supply;
  - 1074 (xvii) a radio channel;
  - 1075 (xviii) a radio receiver;
  - 1076 (xix) a radio transmitter;
  - 1077 (xx) a repeater;
  - 1078 (xxi) software;
  - 1079 (xxii) a terminal;
  - 1080 (xxiii) a timing unit;
  - 1081 (xxiv) a transformer;

1082 (xxv) a wire; or  
1083 (xxvi) equipment, machinery, or software that functions similarly to an item listed in  
1084 Subsections (103)(b)(i) through (xxv) as determined by the commission by rule made in  
1085 accordance with Subsection (103)(c).

1086 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
1087 commission may by rule define what constitutes equipment, machinery, or software that  
1088 functions similarly to an item listed in Subsections (103)(b)(i) through (xxv).

1089 (104) (a) "Telephone service" means a two-way transmission:

1090 (i) by:

1091 (A) wire;

1092 (B) radio;

1093 (C) lightwave; or

1094 (D) other electromagnetic means; and

1095 (ii) of one or more of the following:

1096 (A) a sign;

1097 (B) a signal;

1098 (C) writing;

1099 (D) an image;

1100 (E) sound;

1101 (F) a message;

1102 (G) data; or

1103 (H) other information of any nature.

1104 (b) "Telephone service" includes:

1105 (i) mobile telecommunications service;

1106 (ii) private communications service; or

1107 (iii) automated digital telephone answering service.

1108 (c) "Telephone service" does not include a service or a transaction that a state or a  
1109 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet  
1110 Tax Freedom Act, Pub. L. No. 105-277.

1111 (105) Notwithstanding where a call is billed or paid, "telephone service address"  
1112 means:

1113 (a) if the location described in this Subsection (105)(a) is known, the location of the  
1114 telephone service equipment:

1115 (i) to which a call is charged; and

1116 (ii) from which the call originates or terminates;

1117 (b) if the location described in Subsection (105)(a) is not known but the location  
1118 described in this Subsection (105)(b) is known, the location of the origination point of the  
1119 signal of the telephone service first identified by:

1120 (i) the telecommunications system of the seller; or

1121 (ii) if the system used to transport the signal is not that of the seller, information  
1122 received by the seller from its service provider; or

1123 (c) if the locations described in Subsection (105)(a) or (b) are not known, the location  
1124 of a purchaser's primary place of use.

1125 (106) (a) "Telephone service provider" means a person that:

1126 (i) owns, controls, operates, or manages a telephone service; and

1127 (ii) engages in an activity described in Subsection (106)(a)(i) for the shared use with or  
1128 resale to any person of the telephone service.

1129 (b) A person described in Subsection (106)(a) is a telephone service provider whether  
1130 or not the Public Service Commission of Utah regulates:

1131 (i) that person; or

1132 (ii) the telephone service that the person owns, controls, operates, or manages.

1133 (107) "Tobacco" means:

1134 (a) a cigarette;

1135 (b) a cigar;

1136 (c) chewing tobacco;

1137 (d) pipe tobacco; or

1138 (e) any other item that contains tobacco.

1139 (108) "Unassisted amusement device" means an amusement device, skill device, or  
1140 ride device that is started and stopped by the purchaser or renter of the right to use or operate  
1141 the amusement device, skill device, or ride device.

1142 (109) (a) "Use" means the exercise of any right or power over tangible personal  
1143 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that

1144 property, item, or service.

1145 (b) "Use" does not include the sale, display, demonstration, or trial of that property in  
1146 the regular course of business and held for resale.

1147 (110) (a) Subject to Subsection (110)(b), "vehicle" means the following that are  
1148 required to be titled, registered, or titled and registered:

- 1149 (i) an aircraft as defined in Section 72-10-102;
- 1150 (ii) a vehicle as defined in Section 41-1a-102;
- 1151 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1152 (iv) a vessel as defined in Section 41-1a-102.

1153 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

- 1154 (i) a vehicle described in Subsection (110)(a); or
- 1155 (ii) (A) a locomotive;
- 1156 (B) a freight car;
- 1157 (C) railroad work equipment; or
- 1158 (D) other railroad rolling stock.

1159 (111) "Vehicle dealer" means a person engaged in the business of buying, selling, or  
1160 exchanging a vehicle as defined in Subsection (110).

1161 (112) (a) Except as provided in Subsection (112)(b), "waste energy facility" means a  
1162 facility that generates electricity:

- 1163 (i) using as the primary source of energy waste materials that would be placed in a  
1164 landfill or refuse pit if it were not used to generate electricity, including:
  - 1165 (A) tires;
  - 1166 (B) waste coal; or
  - 1167 (C) oil shale; and
- 1168 (ii) in amounts greater than actually required for the operation of the facility.

1169 (b) "Waste energy facility" does not include a facility that incinerates:

- 1170 (i) municipal solid waste;
- 1171 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or
- 1172 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1173 (113) "Watercraft" means a vessel as defined in Section 73-18-2.

1174 (114) "Wind energy" means wind used as the sole source of energy to produce

1175 electricity.  
1176 (115) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic  
1177 location by the United States Postal Service.  
1178 Section 2. **Retrospective operation.**  
1179 This bill has retrospective operation to January 1, 2008.

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**Legislative Review Note**  
as of 1-9-08 12:53 PM

**Office of Legislative Research and General Counsel**