

Senator Curtis S. Bramble proposes the following substitute bill:

**FUNDING RELATING TO AIRPORTS, HIGHWAYS,
AND PUBLIC TRANSIT**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: David Clark

LONG TITLE

General Description:

This bill amends the Sales and Use Tax Act and the Transportation Code relating to a local sales and use tax to fund tourism, recreation, cultural, convention, and airport facilities, a local sales and use tax to fund certain highway or public transit projects, and financing of certain fixed guideways with certain airport revenue.

Highlighted Provisions:

This bill:

- ▶ addresses an audit relating to the local sales and use tax to fund tourism, recreation, cultural, convention, and airport facilities;
- ▶ repeals a purpose statement;
- ▶ provides a part title;
- ▶ defines terms;
- ▶ provides that a county legislative body may expend the local sales and use tax revenues for an airport facility in addition to other purposes allowed by statute;
- ▶ authorizes a county of the second class to impose a local option sales and use tax to fund certain highway or public transit projects;
- ▶ addresses the procedures and requirements for imposing the local option sales and



26 use tax to fund certain highway or public transit projects, including providing that the sales and
27 use tax is an agreement sales and use tax;

28 ▶ creates a special revenue fund known as the County of the Second Class State

29 Highway Projects Fund, including:

30 • addressing funding of the fund; and

31 • addressing the purposes for which fund monies may be expended;

32 ▶ provides that an airport operator may not use airport revenue to contribute to
33 constructing, equipping, maintaining, or operating a fixed guideway; and

34 ▶ makes technical changes.

35 **Monies Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 None

39 **Utah Code Sections Affected:**

40 AMENDS:

41 **17-31-5.5**, as last amended by Laws of Utah 2007, Chapter 3

42 **59-12-102**, as last amended by Laws of Utah 2007, Chapters 9, 214, 224, and 288

43 **59-12-602**, as last amended by Laws of Utah 1995, Chapter 248

44 **59-12-603**, as last amended by Laws of Utah 2007, Chapters 3, 9, and 219

45 **72-10-102**, as last amended by Laws of Utah 2003, Chapter 183

46 ENACTS:

47 **59-12-601.1**, Utah Code Annotated 1953

48 **59-12-1901**, Utah Code Annotated 1953

49 **59-12-1902**, Utah Code Annotated 1953

50 **59-12-1903**, Utah Code Annotated 1953

51 **72-2-121.2**, Utah Code Annotated 1953

52 **72-10-215**, Utah Code Annotated 1953

53 REPEALS:

54 **59-12-601**, as last amended by Laws of Utah 1991, Chapter 265



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

57 Section 1. Section 17-31-5.5 is amended to read:

58 **17-31-5.5. Independent audit -- Report to county legislative body -- Content.**

59 (1) The legislative body of each county imposing the transient room tax provided for in
60 Section 59-12-301 shall annually engage an independent auditor to perform an audit to verify
61 that transient room tax funds are used only as authorized by this chapter and to report the
62 findings of the audit to the county legislative body.

63 (2) Subsection (1) applies to the tourism, recreation, cultural, [~~and~~] convention, and
64 airport facilities tax provided for in Section 59-12-603, except that the audit verification
65 required under this Subsection (2) shall be for the uses authorized under Section 59-12-603.

66 (3) The report required under Subsection (1) shall include a breakdown of expenditures
67 into the following categories:

68 (a) for the transient room tax, identification of expenditures for:

69 (i) establishing and promoting:

70 (A) recreation;

71 (B) tourism;

72 (C) film production; and

73 (D) conventions;

74 (ii) acquiring, leasing, constructing, furnishing, or operating:

75 (A) convention meeting rooms;

76 (B) exhibit halls;

77 (C) visitor information centers;

78 (D) museums; and

79 (E) related facilities;

80 (iii) acquiring or leasing land required for or related to the purposes listed in

81 Subsection (3)(a)(ii);

82 (iv) mitigation costs as identified in Subsection 17-31-2(1)(d); and

83 (v) making the annual payment of principal, interest, premiums, and necessary reserves

84 for any or the aggregate of bonds issued to pay for costs referred to in Subsections

85 17-31-2(2)(c) and (3)(a); and

86 (b) for the tourism, recreation, cultural, [~~and~~] convention, and airport facilities tax,

87 identification of expenditures for:

88 (i) financing tourism promotion, which means an activity to develop, encourage,
89 solicit, or market tourism that attracts transient guests to the county, including planning,
90 product development, and advertising;

91 (ii) the development, operation, and maintenance of the following facilities as defined
92 in Section 59-12-602:

- 93 (A) ~~[tourist facilities]~~ an airport facility;
- 94 (B) ~~[recreation facilities]~~ a convention facility;
- 95 (C) a cultural [facilities, and] facility;
- 96 (D) ~~[convention facilities]~~ a recreation facility; and
- 97 (E) a tourist facility; and

98 (iii) a pledge as security for evidences of indebtedness under Subsection 59-12-603(3).

99 (4) A county legislative body shall provide a copy of a report it receives under this
100 section to:

- 101 (a) the Governor's Office of Economic Development;
- 102 (b) its tourism tax advisory board; and
- 103 (c) the Office of the Legislative Fiscal Analyst.

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

105 **59-12-102. Definitions.**

106 As used in this chapter:

- 107 (1) (a) "Admission or user fees" includes season passes.
- 108 (b) "Admission or user fees" does not include annual membership dues to private
109 organizations.

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

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

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

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

- 116 (a) Subsection 59-12-103(2)(a)(i);
- 117 (b) Subsection 59-12-103(2)(b)(i);
- 118 (c) Subsection 59-12-103(2)(c)(i);

- 119 (d) Subsection 59-12-103(2)(d)(i);
- 120 (e) Subsection 59-12-103(2)(e)(ii)(A);
- 121 (f) Subsection 59-12-103(2)(e)(iii)(A);
- 122 (g) Section 59-12-204;
- 123 (h) Section 59-12-401;
- 124 (i) Section 59-12-402;
- 125 (j) Section 59-12-501;
- 126 (k) Section 59-12-502;
- 127 (l) Section 59-12-703;
- 128 (m) Section 59-12-802;
- 129 (n) Section 59-12-804;
- 130 (o) Section 59-12-1001;
- 131 (p) Section 59-12-1102;
- 132 (q) Section 59-12-1302;
- 133 (r) Section 59-12-1402;
- 134 (s) Section 59-12-1503; [or]
- 135 (t) Section 59-12-1703[-]; or
- 136 (u) Section 59-12-1903.
- 137 (5) "Aircraft" is as defined in Section 72-10-102.
- 138 (6) "Alcoholic beverage" means a beverage that:
 - 139 (a) is suitable for human consumption; and
 - 140 (b) contains .5% or more alcohol by volume.
- 141 (7) "Area agency on aging" is as defined in Section 62A-3-101.
- 142 (8) "Assisted amusement device" means an amusement device, skill device, or ride
143 device that is started and stopped by an individual:
 - 144 (a) who is not the purchaser or renter of the right to use or operate the amusement
145 device, skill device, or ride device; and
 - 146 (b) at the direction of the seller of the right to use the amusement device, skill device,
147 or ride device.
- 148 (9) "Assisted cleaning or washing of tangible personal property" means cleaning or
149 washing of tangible personal property if the cleaning or washing labor is primarily performed

150 by an individual:

151 (a) who is not the purchaser of the cleaning or washing of the tangible personal
152 property; and

153 (b) at the direction of the seller of the cleaning or washing of the tangible personal
154 property.

155 (10) "Authorized carrier" means:

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

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

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

163 (11) (a) Except as provided in Subsection (11)(b), "biomass energy" means any of the
164 following that is used as the primary source of energy to produce fuel or electricity:

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

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

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

168 (B) animal waste;

169 (C) methane produced:

170 (I) at landfills; or

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

172 (D) aquatic plants; and

173 (E) agricultural products.

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

175 (i) black liquor;

176 (ii) treated woods; or

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

178 (A) at landfills; or

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

180 (12) (a) "Bundled transaction" means the sale of two or more items of tangible personal

181 property if:

182 (i) one or more of the items of tangible personal property is food and food ingredients;

183 and

184 (ii) the items of tangible personal property are:

185 (A) distinct and identifiable; and

186 (B) sold for one price that is not itemized.

187 (b) "Bundled transaction" does not include the sale of tangible personal property if the

188 sales price varies, or is negotiable, on the basis of the selection by the purchaser of the items of

189 tangible personal property included in the transaction.

190 (c) For purposes of Subsection (12)(a)(ii)(A), tangible personal property that is distinct

191 and identifiable does not include:

192 (i) packaging that:

193 (A) accompanies the sale of the tangible personal property; and

194 (B) is incidental or immaterial to the sale of the tangible personal property;

195 (ii) tangible personal property provided free of charge with the purchase of another

196 item of tangible personal property; or

197 (iii) an item of tangible personal property included in the definition of "purchase

198 price."

199 (d) For purposes of Subsection (12)(c)(ii), an item of tangible personal property is

200 provided free of charge with the purchase of another item of tangible personal property if the

201 sales price of the purchased item of tangible personal property does not vary depending on the

202 inclusion of the tangible personal property provided free of charge.

203 (13) "Certified automated system" means software certified by the governing board of

204 the agreement in accordance with Section 59-12-102.1 that:

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

206 jurisdiction:

207 (i) on a transaction; and

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

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

210 member of the agreement; and

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

212 (14) "Certified service provider" means an agent certified:
213 (a) by the governing board of the agreement in accordance with Section 59-12-102.1;
214 and
215 (b) to perform all of a seller's sales and use tax functions for an agreement sales and
216 use tax other than the seller's obligation under Section 59-12-107.4 to remit a tax on the seller's
217 own purchases.

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

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

222 (i) listing the items that constitute "clothing"; and
223 (ii) that are consistent with the list of items that constitute "clothing" under the
224 agreement.

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

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

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

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

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

237 (19) "Component part" includes:
238 (a) poultry, dairy, and other livestock feed, and their components;
239 (b) baling ties and twine used in the baling of hay and straw;
240 (c) fuel used for providing temperature control of orchards and commercial
241 greenhouses doing a majority of their business in wholesale sales, and for providing power for
242 off-highway type farm machinery; and

- 243 (d) feed, seeds, and seedlings.
- 244 (20) "Computer" means an electronic device that accepts information:
- 245 (a) (i) in digital form; or
- 246 (ii) in a form similar to digital form; and
- 247 (b) manipulates that information for a result based on a sequence of instructions.
- 248 (21) "Computer software" means a set of coded instructions designed to cause:
- 249 (a) a computer to perform a task; or
- 250 (b) automatic data processing equipment to perform a task.
- 251 (22) "Construction materials" means any tangible personal property that will be
- 252 converted into real property.
- 253 (23) "Delivered electronically" means delivered to a purchaser by means other than
- 254 tangible storage media.
- 255 (24) (a) "Delivery charge" means a charge:
- 256 (i) by a seller of:
- 257 (A) tangible personal property; or
- 258 (B) services; and
- 259 (ii) for preparation and delivery of the tangible personal property or services described
- 260 in Subsection (24)(a)(i) to a location designated by the purchaser.
- 261 (b) "Delivery charge" includes a charge for the following:
- 262 (i) transportation;
- 263 (ii) shipping;
- 264 (iii) postage;
- 265 (iv) handling;
- 266 (v) crating; or
- 267 (vi) packing.
- 268 (25) (a) "Dental prosthesis" means the following if fabricated in a laboratory:
- 269 (i) a bridge;
- 270 (ii) a crown if that crown covers at least 75% of a tooth structure;
- 271 (iii) a denture;
- 272 (iv) an implant;
- 273 (v) an orthodontic device designed to:

- 274 (A) retain the position or spacing of teeth; and
275 (B) replace a missing tooth;
276 (vi) a partial denture; or
277 (vii) a device similar to Subsections (25)(a)(i) through (vi).
278 (b) "Dental prosthesis" does not include an appliance or device, other than a device
279 described in Subsection (25)(a), if that appliance or device is used in orthodontic therapy to
280 apply force to the teeth and their supporting structures to:
281 (i) produce changes in their relationship to each other; and
282 (ii) control their growth and development.
283 (26) "Dietary supplement" means a product, other than tobacco, that:
284 (a) is intended to supplement the diet;
285 (b) contains one or more of the following dietary ingredients:
286 (i) a vitamin;
287 (ii) a mineral;
288 (iii) an herb or other botanical;
289 (iv) an amino acid;
290 (v) a dietary substance for use by humans to supplement the diet by increasing the total
291 dietary intake; or
292 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
293 described in Subsections (26)(b)(i) through (v);
294 (c) (i) except as provided in Subsection (26)(c)(ii), is intended for ingestion in:
295 (A) tablet form;
296 (B) capsule form;
297 (C) powder form;
298 (D) softgel form;
299 (E) gelcap form; or
300 (F) liquid form; or
301 (ii) notwithstanding Subsection (26)(c)(i), if the product is not intended for ingestion in
302 a form described in Subsections (26)(c)(i)(A) through (F), is not represented:
303 (A) as conventional food; and
304 (B) for use as a sole item of:

- 305 (I) a meal; or
- 306 (II) the diet; and
- 307 (d) is required to be labeled as a dietary supplement:
- 308 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 309 (ii) as required by 21 C.F.R. Sec. 101.36.
- 310 (27) (a) "Direct mail" means printed material delivered or distributed by United States
- 311 mail or other delivery service:
- 312 (i) to:
- 313 (A) a mass audience; or
- 314 (B) addressees on a mailing list provided by a purchaser of the mailing list; and
- 315 (ii) if the cost of the printed material is not billed directly to the recipients.
- 316 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
- 317 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 318 (c) "Direct mail" does not include multiple items of printed material delivered to a
- 319 single address.
- 320 (28) (a) "Disposable home medical equipment or supplies" means medical equipment
- 321 or supplies that:
- 322 (i) cannot withstand repeated use; and
- 323 (ii) are purchased by, for, or on behalf of a person other than:
- 324 (A) a health care facility as defined in Section 26-21-2;
- 325 (B) a health care provider as defined in Section 78-14-3;
- 326 (C) an office of a health care provider described in Subsection (28)(a)(ii)(B); or
- 327 (D) a person similar to a person described in Subsections (28)(a)(ii)(A) through (C).
- 328 (b) "Disposable home medical equipment or supplies" does not include:
- 329 (i) a drug;
- 330 (ii) durable medical equipment;
- 331 (iii) a hearing aid;
- 332 (iv) a hearing aid accessory;
- 333 (v) mobility enhancing equipment; or
- 334 (vi) tangible personal property used to correct impaired vision, including:
- 335 (A) eyeglasses; or

336 (B) contact lenses.

337 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
338 commission may by rule define what constitutes medical equipment or supplies.

339 (29) (a) "Drug" means a compound, substance, or preparation, or a component of a
340 compound, substance, or preparation that is:

341 (i) recognized in:

342 (A) the official United States Pharmacopoeia;

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

344 (C) the official National Formulary; or

345 (D) a supplement to a publication listed in Subsections (29)(a)(i)(A) through (C);

346 (ii) intended for use in the:

347 (A) diagnosis of disease;

348 (B) cure of disease;

349 (C) mitigation of disease;

350 (D) treatment of disease; or

351 (E) prevention of disease; or

352 (iii) intended to affect:

353 (A) the structure of the body; or

354 (B) any function of the body.

355 (b) "Drug" does not include:

356 (i) food and food ingredients;

357 (ii) a dietary supplement;

358 (iii) an alcoholic beverage; or

359 (iv) a prosthetic device.

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

362 (i) can withstand repeated use;

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

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

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

366 (b) "Durable medical equipment" includes parts used in the repair or replacement of the

367 equipment described in Subsection (30)(a).

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

370 (31) "Electronic" means:

371 (a) relating to technology; and

372 (b) having:

373 (i) electrical capabilities;

374 (ii) digital capabilities;

375 (iii) magnetic capabilities;

376 (iv) wireless capabilities;

377 (v) optical capabilities;

378 (vi) electromagnetic capabilities; or

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

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

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

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

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

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

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

386 (A) liquid form;

387 (B) concentrated form;

388 (C) solid form;

389 (D) frozen form;

390 (E) dried form; or

391 (F) dehydrated form; and

392 (ii) that are:

393 (A) sold for:

394 (I) ingestion by humans; or

395 (II) chewing by humans; and

396 (B) consumed for the substance's:

397 (I) taste; or

- 398 (II) nutritional value.
- 399 (b) "Food and food ingredients" includes an item described in Subsection (66)(b)(iii).
- 400 (c) "Food and food ingredients" does not include:
- 401 (i) an alcoholic beverage;
- 402 (ii) tobacco; or
- 403 (iii) prepared food.
- 404 (35) (a) "Fundraising sales" means sales:
- 405 (i) (A) made by a school; or
- 406 (B) made by a school student;
- 407 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 408 materials, or provide transportation; and
- 409 (iii) that are part of an officially sanctioned school activity.
- 410 (b) For purposes of Subsection (35)(a)(iii), "officially sanctioned school activity"
- 411 means a school activity:
- 412 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 413 district governing the authorization and supervision of fundraising activities;
- 414 (ii) that does not directly or indirectly compensate an individual teacher or other
- 415 educational personnel by direct payment, commissions, or payment in kind; and
- 416 (iii) the net or gross revenues from which are deposited in a dedicated account
- 417 controlled by the school or school district.
- 418 (36) "Geothermal energy" means energy contained in heat that continuously flows
- 419 outward from the earth that is used as the sole source of energy to produce electricity.
- 420 (37) "Governing board of the agreement" means the governing board of the agreement
- 421 that is:
- 422 (a) authorized to administer the agreement; and
- 423 (b) established in accordance with the agreement.
- 424 (38) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:
- 425 (i) the executive branch of the state, including all departments, institutions, boards,
- 426 divisions, bureaus, offices, commissions, and committees;
- 427 (ii) the judicial branch of the state, including the courts, the Judicial Council, the
- 428 Office of the Court Administrator, and similar administrative units in the judicial branch;

429 (iii) the legislative branch of the state, including the House of Representatives, the
430 Senate, the Legislative Printing Office, the Office of Legislative Research and General
431 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal
432 Analyst;

433 (iv) the National Guard;

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

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

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

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

439 (ii) a school;

440 (iii) the State Board of Education;

441 (iv) the State Board of Regents; or

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

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

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

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

446 (II) correct impaired human hearing; and

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

448 (II) affixed behind the human ear;

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

450 (iii) a telephone amplifying device.

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

452 (i) except as provided in Subsection (39)(a)(i)(B) or (39)(a)(ii), an instrument or device
453 having an electronic component that is designed to be worn on the body;

454 (ii) except as provided in Subsection (39)(a)(iii), an assistive listening device or system
455 designed to be used by one individual, including:

456 (A) a personal amplifying system;

457 (B) a personal FM system;

458 (C) a television listening system; or

459 (D) a device or system similar to a device or system described in Subsections

- 460 (39)(b)(ii)(A) through (C); or
461 (iii) an assistive listening device or system designed to be used by more than one
462 individual, including:
463 (A) a device or system installed in:
464 (I) an auditorium;
465 (II) a church;
466 (III) a conference room;
467 (IV) a synagogue; or
468 (V) a theater; or
469 (B) a device or system similar to a device or system described in Subsections
470 (39)(b)(iii)(A)(I) through (V).
- 471 (40) (a) "Hearing aid accessory" means a hearing aid:
472 (i) component;
473 (ii) attachment; or
474 (iii) accessory.
475 (b) "Hearing aid accessory" includes:
476 (i) a hearing aid neck loop;
477 (ii) a hearing aid cord;
478 (iii) a hearing aid ear mold;
479 (iv) hearing aid tubing;
480 (v) a hearing aid ear hook; or
481 (vi) a hearing aid remote control.
482 (c) "Hearing aid accessory" does not include:
483 (i) a component, attachment, or accessory designed to be used only with an:
484 (A) instrument or device described in Subsection (39)(b)(i); or
485 (B) assistive listening device or system described in Subsection (39)(b)(ii) or (iii); or
486 (ii) a hearing aid battery.
- 487 (41) "Hydroelectric energy" means water used as the sole source of energy to produce
488 electricity.
489 (42) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
490 other fuels:

- 491 (a) in mining or extraction of minerals;
- 492 (b) in agricultural operations to produce an agricultural product up to the time of
493 harvest or placing the agricultural product into a storage facility, including:
- 494 (i) commercial greenhouses;
- 495 (ii) irrigation pumps;
- 496 (iii) farm machinery;
- 497 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
498 registered under Title 41, Chapter 1a, Part 2, Registration; and
- 499 (v) other farming activities;
- 500 (c) in manufacturing tangible personal property at an establishment described in SIC
501 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
502 Executive Office of the President, Office of Management and Budget;
- 503 (d) by a scrap recycler if:
- 504 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
505 one or more of the following items into prepared grades of processed materials for use in new
506 products:
- 507 (A) iron;
- 508 (B) steel;
- 509 (C) nonferrous metal;
- 510 (D) paper;
- 511 (E) glass;
- 512 (F) plastic;
- 513 (G) textile; or
- 514 (H) rubber; and
- 515 (ii) the new products under Subsection (42)(d)(i) would otherwise be made with
516 nonrecycled materials; or
- 517 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a
518 cogeneration facility as defined in Section 54-2-1.
- 519 (43) (a) Except as provided in Subsection (43)(b), "installation charge" means a charge
520 for installing tangible personal property.
- 521 (b) Notwithstanding Subsection (43)(a), "installation charge" does not include a charge

522 for repairs or renovations of tangible personal property.

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

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

526 (B) an indeterminate term; and

527 (ii) consideration.

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

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

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

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

538 (A) upon completion of required payments; and

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

540 (I) \$100; or

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

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

545 (d) For purposes of Subsection (44)(c)(iii), an operator is necessary for equipment to
546 perform as designed if the operator's duties exceed the:

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

548 (ii) maintenance of tangible personal property; or

549 (iii) inspection of tangible personal property.

550 (45) "Load and leave" means delivery to a purchaser by use of a tangible storage media
551 if the tangible storage media is not physically transferred to the purchaser.

552 (46) "Local taxing jurisdiction" means a:

- 553 (a) county that is authorized to impose an agreement sales and use tax;
- 554 (b) city that is authorized to impose an agreement sales and use tax; or
- 555 (c) town that is authorized to impose an agreement sales and use tax.
- 556 (47) "Manufactured home" is as defined in Section 58-56-3.
- 557 (48) For purposes of Section 59-12-104, "manufacturing facility" means:
- 558 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
- 559 Industrial Classification Manual of the federal Executive Office of the President, Office of
- 560 Management and Budget;
- 561 (b) a scrap recycler if:
- 562 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 563 one or more of the following items into prepared grades of processed materials for use in new
- 564 products:
- 565 (A) iron;
- 566 (B) steel;
- 567 (C) nonferrous metal;
- 568 (D) paper;
- 569 (E) glass;
- 570 (F) plastic;
- 571 (G) textile; or
- 572 (H) rubber; and
- 573 (ii) the new products under Subsection (48)(b)(i) would otherwise be made with
- 574 nonrecycled materials; or
- 575 (c) a cogeneration facility as defined in Section 54-2-1.
- 576 (49) "Member of the immediate family of the producer" means a person who is related
- 577 to a producer described in Subsection 59-12-104(20)(a) as a:
- 578 (a) child or stepchild, regardless of whether the child or stepchild is:
- 579 (i) an adopted child or adopted stepchild; or
- 580 (ii) a foster child or foster stepchild;
- 581 (b) grandchild or stepgrandchild;
- 582 (c) grandparent or stepgrandparent;
- 583 (d) nephew or stepnephew;

- 584 (e) niece or stepniece;
- 585 (f) parent or stepparent;
- 586 (g) sibling or stepsibling;
- 587 (h) spouse;
- 588 (i) person who is the spouse of a person described in Subsections (49)(a) through (g);

589 or

- 590 (j) person similar to a person described in Subsections (49)(a) through (i) as
- 591 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah
- 592 Administrative Rulemaking Act.

593 (50) "Mobile home" is as defined in Section 58-56-3.

594 (51) "Mobile telecommunications service" is as defined in the Mobile

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

596 (52) (a) Except as provided in Subsection (52)(c), "mobility enhancing equipment"

597 means equipment that is:

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

- 600 (ii) appropriate for use in a:

- 601 (A) home; or

- 602 (B) motor vehicle; and

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

- 604 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
- 605 the equipment described in Subsection (52)(a).

- 606 (c) Notwithstanding Subsection (52)(a), "mobility enhancing equipment" does not
- 607 include:

- 608 (i) a motor vehicle;

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

- 611 (iii) durable medical equipment; or

- 612 (iv) a prosthetic device.

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

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

615 use taxes other than the seller's obligation under Section 59-12-107.4 to remit a tax on the
616 seller's own purchases.

617 (54) "Model 2 seller" means a seller that:

618 (a) except as provided in Subsection (54)(b), has selected a certified automated system
619 to perform the seller's sales tax functions for agreement sales and use taxes; and

620 (b) notwithstanding Subsection (54)(a), retains responsibility for remitting all of the
621 sales tax:

622 (i) collected by the seller; and

623 (ii) to the appropriate local taxing jurisdiction.

624 (55) (a) Subject to Subsection (55)(b), "model 3 seller" means a seller that has:

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

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

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

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

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

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

631 (b) For purposes of Subsection (55)(a), "model 3 seller" includes an affiliated group of
632 sellers using the same proprietary system.

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

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

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

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

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

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

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

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

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

- 646 (A) is essential to the use of the tangible personal property; and
- 647 (B) suggests that the tangible personal property will remain attached to the real
- 648 property in the same place over the useful life of the tangible personal property; or
- 649 (ii) if the tangible personal property is detached from the real property, the detachment
- 650 would:
- 651 (A) cause substantial damage to the tangible personal property; or
- 652 (B) require substantial alteration or repair of the real property to which the tangible
- 653 personal property is attached.
- 654 (b) "Permanently attached to real property" includes:
- 655 (i) the attachment of an accessory to the tangible personal property if the accessory is:
- 656 (A) essential to the operation of the tangible personal property; and
- 657 (B) attached only to facilitate the operation of the tangible personal property;
- 658 (ii) a temporary detachment of tangible personal property from real property for a
- 659 repair or renovation if the repair or renovation is performed where the tangible personal
- 660 property and real property are located; or
- 661 (iii) an attachment of the following tangible personal property to real property,
- 662 regardless of whether the attachment to real property is only through a line that supplies water,
- 663 electricity, gas, telephone, cable, or supplies a similar item as determined by the commission by
- 664 rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:
- 665 (A) property attached to oil, gas, or water pipelines, other than the property listed in
- 666 Subsection (62)(c)(iii);
- 667 (B) a hot water heater;
- 668 (C) a water softener system; or
- 669 (D) a water filtration system, other than a water filtration system manufactured as part
- 670 of a refrigerator.
- 671 (c) "Permanently attached to real property" does not include:
- 672 (i) the attachment of portable or movable tangible personal property to real property if
- 673 that portable or movable tangible personal property is attached to real property only for:
- 674 (A) convenience;
- 675 (B) stability; or
- 676 (C) for an obvious temporary purpose;

677 (ii) the detachment of tangible personal property from real property other than the
678 detachment described in Subsection (62)(b)(ii); or

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

683 (A) a refrigerator;

684 (B) a washer;

685 (C) a dryer;

686 (D) a stove;

687 (E) a television;

688 (F) a computer;

689 (G) a telephone; or

690 (H) tangible personal property similar to Subsections (62)(c)(iii)(A) through (G) as
691 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah
692 Administrative Rulemaking Act.

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

697 (64) "Place of primary use":

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

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

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

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

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

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

- 708 (i) food:
- 709 (A) sold in a heated state; or
- 710 (B) heated by a seller;
- 711 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 712 item; or
- 713 (iii) except as provided in Subsection (66)(c), food sold with an eating utensil provided
- 714 by the seller, including a:
- 715 (A) plate;
- 716 (B) knife;
- 717 (C) fork;
- 718 (D) spoon;
- 719 (E) glass;
- 720 (F) cup;
- 721 (G) napkin; or
- 722 (H) straw.
- 723 (b) "Prepared food" does not include:
- 724 (i) food that a seller only:
- 725 (A) cuts;
- 726 (B) repackages; or
- 727 (C) pasteurizes; or
- 728 (ii) (A) the following:
- 729 (I) raw egg;
- 730 (II) raw fish;
- 731 (III) raw meat;
- 732 (IV) raw poultry; or
- 733 (V) a food containing an item described in Subsections (66)(b)(ii)(A)(I) through (IV);
- 734 and
- 735 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 736 Food and Drug Administration's Food Code that a consumer cook the items described in
- 737 Subsection (66)(b)(ii)(A) to prevent food borne illness; or
- 738 (iii) the following if sold without eating utensils provided by the seller:

739 (A) food and food ingredients sold by a seller if the seller's proper primary
740 classification under the 2002 North American Industry Classification System of the federal
741 Executive Office of the President, Office of Management and Budget, is manufacturing in
742 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
743 Manufacturing;

744 (B) food and food ingredients sold in an unheated state:

745 (I) by weight or volume; and

746 (II) as a single item; or

747 (C) a bakery item, including:

748 (I) a bagel;

749 (II) a bar;

750 (III) a biscuit;

751 (IV) bread;

752 (V) a bun;

753 (VI) a cake;

754 (VII) a cookie;

755 (VIII) a croissant;

756 (IX) a danish;

757 (X) a donut;

758 (XI) a muffin;

759 (XII) a pastry;

760 (XIII) a pie;

761 (XIV) a roll;

762 (XV) a tart;

763 (XVI) a torte; or

764 (XVII) a tortilla.

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

767 (i) a container; or

768 (ii) packaging.

769 (67) "Prescription" means an order, formula, or recipe that is issued:

- 770 (a) (i) orally;
- 771 (ii) in writing;
- 772 (iii) electronically; or
- 773 (iv) by any other manner of transmission; and
- 774 (b) by a licensed practitioner authorized by the laws of a state.
- 775 (68) (a) Except as provided in Subsection (68)(b)(ii) or (iii), "prewritten computer
- 776 software" means computer software that is not designed and developed:
- 777 (i) by the author or other creator of the computer software; and
- 778 (ii) to the specifications of a specific purchaser.
- 779 (b) "Prewritten computer software" includes:
- 780 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
- 781 software is not designed and developed:
- 782 (A) by the author or other creator of the computer software; and
- 783 (B) to the specifications of a specific purchaser;
- 784 (ii) notwithstanding Subsection (68)(a), computer software designed and developed by
- 785 the author or other creator of the computer software to the specifications of a specific purchaser
- 786 if the computer software is sold to a person other than the purchaser; or
- 787 (iii) notwithstanding Subsection (68)(a) and except as provided in Subsection (68)(c),
- 788 prewritten computer software or a prewritten portion of prewritten computer software:
- 789 (A) that is modified or enhanced to any degree; and
- 790 (B) if the modification or enhancement described in Subsection (68)(b)(iii)(A) is
- 791 designed and developed to the specifications of a specific purchaser.
- 792 (c) Notwithstanding Subsection (68)(b)(iii), "prewritten computer software" does not
- 793 include a modification or enhancement described in Subsection (68)(b)(iii) if the charges for
- 794 the modification or enhancement are:
- 795 (i) reasonable; and
- 796 (ii) separately stated on the invoice or other statement of price provided to the
- 797 purchaser.
- 798 (69) (a) "Prosthetic device" means a device that is worn on or in the body to:
- 799 (i) artificially replace a missing portion of the body;
- 800 (ii) prevent or correct a physical deformity or physical malfunction; or

- 801 (iii) support a weak or deformed portion of the body.
- 802 (b) "Prosthetic device" includes:
- 803 (i) parts used in the repairs or renovation of a prosthetic device;
- 804 (ii) replacement parts for a prosthetic device; or
- 805 (iii) a dental prosthesis.
- 806 (c) "Prosthetic device" does not include:
- 807 (i) corrective eyeglasses;
- 808 (ii) contact lenses; or
- 809 (iii) hearing aids.
- 810 (70) (a) "Protective equipment" means an item:
- 811 (i) for human wear; and
- 812 (ii) that is:
- 813 (A) designed as protection:
- 814 (I) to the wearer against injury or disease; or
- 815 (II) against damage or injury of other persons or property; and
- 816 (B) not suitable for general use.
- 817 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 818 commission shall make rules:
- 819 (i) listing the items that constitute "protective equipment"; and
- 820 (ii) that are consistent with the list of items that constitute "protective equipment"
- 821 under the agreement.
- 822 (71) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or
- 823 printed matter, other than a photocopy:
- 824 (i) regardless of:
- 825 (A) characteristics;
- 826 (B) copyright;
- 827 (C) form;
- 828 (D) format;
- 829 (E) method of reproduction; or
- 830 (F) source; and
- 831 (ii) made available in printed or electronic format.

832 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
833 commission may by rule define the term "photocopy."

834 (72) (a) "Purchase price" and "sales price" mean the total amount of consideration:

835 (i) valued in money; and

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

837 (A) sold;

838 (B) leased; or

839 (C) rented.

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

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

842 (ii) expenses of the seller, including:

843 (A) the cost of materials used;

844 (B) a labor cost;

845 (C) a service cost;

846 (D) interest;

847 (E) a loss;

848 (F) the cost of transportation to the seller; or

849 (G) a tax imposed on the seller; or

850 (iii) a charge by the seller for any service necessary to complete the sale.

851 (c) "Purchase price" and "sales price" do not include:

852 (i) a discount:

853 (A) in a form including:

854 (I) cash;

855 (II) term; or

856 (III) coupon;

857 (B) that is allowed by a seller;

858 (C) taken by a purchaser on a sale; and

859 (D) that is not reimbursed by a third party; or

860 (ii) the following if separately stated on an invoice, bill of sale, or similar document
861 provided to the purchaser:

862 (A) the amount of a trade-in;

- 863 (B) the following from credit extended on the sale of tangible personal property or
864 services:
- 865 (I) interest charges;
 - 866 (II) financing charges; or
 - 867 (III) carrying charges;
 - 868 (C) a tax or fee legally imposed directly on the consumer;
 - 869 (D) a delivery charge; or
 - 870 (E) an installation charge.
- 871 (73) "Purchaser" means a person to whom:
- 872 (a) a sale of tangible personal property is made; or
 - 873 (b) a service is furnished.
- 874 (74) "Regularly rented" means:
- 875 (a) rented to a guest for value three or more times during a calendar year; or
 - 876 (b) advertised or held out to the public as a place that is regularly rented to guests for
877 value.
- 878 (75) "Renewable energy" means:
- 879 (a) biomass energy;
 - 880 (b) hydroelectric energy;
 - 881 (c) geothermal energy;
 - 882 (d) solar energy; or
 - 883 (e) wind energy.
- 884 (76) (a) "Renewable energy production facility" means a facility that:
- 885 (i) uses renewable energy to produce electricity; and
 - 886 (ii) has a production capacity of 20 kilowatts or greater.
- 887 (b) A facility is a renewable energy production facility regardless of whether the
888 facility is:
- 889 (i) connected to an electric grid; or
 - 890 (ii) located on the premises of an electricity consumer.
- 891 (77) "Rental" is as defined in Subsection (44).
- 892 (78) "Repairs or renovations of tangible personal property" means:
- 893 (a) a repair or renovation of tangible personal property that is not permanently attached

894 to real property; or

895 (b) attaching tangible personal property to other tangible personal property if the other
896 tangible personal property to which the tangible personal property is attached is not
897 permanently attached to real property.

898 (79) "Research and development" means the process of inquiry or experimentation
899 aimed at the discovery of facts, devices, technologies, or applications and the process of
900 preparing those devices, technologies, or applications for marketing.

901 (80) "Residential use" means the use in or around a home, apartment building, sleeping
902 quarters, and similar facilities or accommodations.

903 (81) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
904 than:

905 (a) resale;

906 (b) sublease; or

907 (c) subrent.

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

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

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

916 (b) "Sale" includes:

917 (i) installment and credit sales;

918 (ii) any closed transaction constituting a sale;

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

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

923 (v) any transaction under which right to possession, operation, or use of any article of
924 tangible personal property is granted under a lease or contract and the transfer of possession

925 would be taxable if an outright sale were made.

926 (84) "Sale at retail" is as defined in Subsection (81).

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

929 (a) by a purchaser-lessee;

930 (b) to a lessor;

931 (c) for consideration; and

932 (d) if:

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

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

937 (A) for the property; and

938 (B) to the purchaser-lessee; and

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

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

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

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

944 (87) (a) "Sales relating to schools" means the following sales by, amounts paid to, or
945 amounts charged by a school:

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

948 (A) the sale of:

949 (I) textbooks;

950 (II) textbook fees;

951 (III) laboratory fees;

952 (IV) laboratory supplies; or

953 (V) safety equipment;

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

955 that:

- 956 (I) a student is specifically required to wear as a condition of participation in a
957 school-related event or school-related activity; and
- 958 (II) is not readily adaptable to general or continued usage to the extent that it takes the
959 place of ordinary clothing;
- 960 (C) sales of the following if the net or gross revenues generated by the sales are
961 deposited into a school district fund or school fund dedicated to school meals:
- 962 (I) food and food ingredients; or
963 (II) prepared food; or
964 (D) transportation charges for official school activities; or
965 (ii) amounts paid to or amounts charged by a school for admission to a school-related
966 event or school-related activity.
- 967 (b) "Sales relating to schools" does not include:
968 (i) bookstore sales of items that are not educational materials or supplies;
969 (ii) except as provided in Subsection (87)(a)(i)(B):
970 (A) clothing;
971 (B) clothing accessories or equipment;
972 (C) protective equipment; or
973 (D) sports or recreational equipment; or
974 (iii) amounts paid to or amounts charged by a school for admission to a school-related
975 event or school-related activity if the amounts paid or charged are passed through to a person:
976 (A) other than a:
977 (I) school;
978 (II) nonprofit organization authorized by a school board or a governing body of a
979 private school to organize and direct a competitive secondary school activity; or
980 (III) nonprofit association authorized by a school board or a governing body of a
981 private school to organize and direct a competitive secondary school activity; and
982 (B) that is required to collect sales and use taxes under this chapter.
- 983 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
984 commission may make rules defining the term "passed through."
985 (88) For purposes of this section and Section 59-12-104, "school":
986 (a) means:

- 987 (i) an elementary school or a secondary school that:
- 988 (A) is a:
- 989 (I) public school; or
- 990 (II) private school; and
- 991 (B) provides instruction for one or more grades kindergarten through 12; or
- 992 (ii) a public school district; and
- 993 (b) includes the Electronic High School as defined in Section 53A-15-1002.
- 994 (89) "Seller" means a person that makes a sale, lease, or rental of:
- 995 (a) tangible personal property; or
- 996 (b) a service.
- 997 (90) (a) "Semiconductor fabricating, processing, research, or development materials"
- 998 means tangible personal property:
- 999 (i) used primarily in the process of:
- 1000 (A) (I) manufacturing a semiconductor;
- 1001 (II) fabricating a semiconductor; or
- 1002 (III) research or development of a:
- 1003 (Aa) semiconductor; or
- 1004 (Bb) semiconductor manufacturing process; or
- 1005 (B) maintaining an environment suitable for a semiconductor; or
- 1006 (ii) consumed primarily in the process of:
- 1007 (A) (I) manufacturing a semiconductor;
- 1008 (II) fabricating a semiconductor; or
- 1009 (III) research or development of a:
- 1010 (Aa) semiconductor; or
- 1011 (Bb) semiconductor manufacturing process; or
- 1012 (B) maintaining an environment suitable for a semiconductor.
- 1013 (b) "Semiconductor fabricating, processing, research, or development materials"
- 1014 includes:
- 1015 (i) parts used in the repairs or renovations of tangible personal property described in
- 1016 Subsection (90)(a); or
- 1017 (ii) a chemical, catalyst, or other material used to:

- 1018 (A) produce or induce in a semiconductor a:
- 1019 (I) chemical change; or
- 1020 (II) physical change;
- 1021 (B) remove impurities from a semiconductor; or
- 1022 (C) improve the marketable condition of a semiconductor.
- 1023 (91) "Senior citizen center" means a facility having the primary purpose of providing
- 1024 services to the aged as defined in Section 62A-3-101.
- 1025 (92) "Simplified electronic return" means the electronic return:
- 1026 (a) described in Section 318(C) of the agreement; and
- 1027 (b) approved by the governing board of the agreement.
- 1028 (93) "Solar energy" means the sun used as the sole source of energy for producing
- 1029 electricity.
- 1030 (94) (a) "Sports or recreational equipment" means an item:
- 1031 (i) designed for human use; and
- 1032 (ii) that is:
- 1033 (A) worn in conjunction with:
- 1034 (I) an athletic activity; or
- 1035 (II) a recreational activity; and
- 1036 (B) not suitable for general use.
- 1037 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 1038 commission shall make rules:
- 1039 (i) listing the items that constitute "sports or recreational equipment"; and
- 1040 (ii) that are consistent with the list of items that constitute "sports or recreational
- 1041 equipment" under the agreement.
- 1042 (95) "State" means the state of Utah, its departments, and agencies.
- 1043 (96) "Storage" means any keeping or retention of tangible personal property or any
- 1044 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except
- 1045 sale in the regular course of business.
- 1046 (97) (a) "Tangible personal property" means personal property that:
- 1047 (i) may be:
- 1048 (A) seen;

- 1049 (B) weighed;
- 1050 (C) measured;
- 1051 (D) felt; or
- 1052 (E) touched; or
- 1053 (ii) is in any manner perceptible to the senses.
- 1054 (b) "Tangible personal property" includes:
- 1055 (i) electricity;
- 1056 (ii) water;
- 1057 (iii) gas;
- 1058 (iv) steam; or
- 1059 (v) prewritten computer software.
- 1060 (98) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon
- 1061 and require further processing other than mechanical blending before becoming finished
- 1062 petroleum products.
- 1063 (99) (a) "Telecommunications enabling or facilitating equipment, machinery, or
- 1064 software" means an item listed in Subsection (99)(b) if that item is purchased or leased
- 1065 primarily to enable or facilitate one or more of the following to function:
- 1066 (i) telecommunications switching or routing equipment, machinery, or software; or
- 1067 (ii) telecommunications transmission equipment, machinery, or software.
- 1068 (b) The following apply to Subsection (99)(a):
- 1069 (i) a pole;
- 1070 (ii) software;
- 1071 (iii) a supplementary power supply;
- 1072 (iv) temperature or environmental equipment or machinery;
- 1073 (v) test equipment;
- 1074 (vi) a tower; or
- 1075 (vii) equipment, machinery, or software that functions similarly to an item listed in
- 1076 Subsections (99)(b)(i) through (vi) as determined by the commission by rule made in
- 1077 accordance with Subsection (99)(c).
- 1078 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 1079 commission may by rule define what constitutes equipment, machinery, or software that

1080 functions similarly to an item listed in Subsections (99)(b)(i) through (vi).

1081 (100) "Telecommunications equipment, machinery, or software required for 911
1082 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.
1083 Sec. 20.18.

1084 (101) "Telecommunications maintenance or repair equipment, machinery, or software"
1085 means equipment, machinery, or software purchased or leased primarily to maintain or repair
1086 one or more of the following, regardless of whether the equipment, machinery, or software is
1087 purchased or leased as a spare part or as an upgrade or modification to one or more of the
1088 following:

- 1089 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 1090 (b) telecommunications switching or routing equipment, machinery, or software; or
- 1091 (c) telecommunications transmission equipment, machinery, or software.

1092 (102) (a) "Telecommunications switching or routing equipment, machinery, or
1093 software" means an item listed in Subsection (102)(b) if that item is purchased or leased
1094 primarily for switching or routing:

- 1095 (i) voice communications;
- 1096 (ii) data communications; or
- 1097 (iii) telephone service.

1098 (b) The following apply to Subsection (102)(a):

- 1099 (i) a bridge;
- 1100 (ii) a computer;
- 1101 (iii) a cross connect;
- 1102 (iv) a modem;
- 1103 (v) a multiplexer;
- 1104 (vi) plug in circuitry;
- 1105 (vii) a router;
- 1106 (viii) software;
- 1107 (ix) a switch; or

1108 (x) equipment, machinery, or software that functions similarly to an item listed in
1109 Subsections (102)(b)(i) through (ix) as determined by the commission by rule made in
1110 accordance with Subsection (102)(c).

1111 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1112 commission may by rule define what constitutes equipment, machinery, or software that
1113 functions similarly to an item listed in Subsections (102)(b)(i) through (ix).

1114 (103) (a) "Telecommunications transmission equipment, machinery, or software"
1115 means an item listed in Subsection (103)(b) if that item is purchased or leased primarily for
1116 sending, receiving, or transporting:

- 1117 (i) voice communications;
- 1118 (ii) data communications; or
- 1119 (iii) telephone service.

1120 (b) The following apply to Subsection (103)(a):

- 1121 (i) an amplifier;
- 1122 (ii) a cable;
- 1123 (iii) a closure;
- 1124 (iv) a conduit;
- 1125 (v) a controller;
- 1126 (vi) a duplexer;
- 1127 (vii) a filter;
- 1128 (viii) an input device;
- 1129 (ix) an input/output device;
- 1130 (x) an insulator;
- 1131 (xi) microwave machinery or equipment;
- 1132 (xii) an oscillator;
- 1133 (xiii) an output device;
- 1134 (xiv) a pedestal;
- 1135 (xv) a power converter;
- 1136 (xvi) a power supply;
- 1137 (xvii) a radio channel;
- 1138 (xviii) a radio receiver;
- 1139 (xix) a radio transmitter;
- 1140 (xx) a repeater;
- 1141 (xxi) software;

1142 (xxii) a terminal;
1143 (xxiii) a timing unit;
1144 (xxiv) a transformer;
1145 (xxv) a wire; or
1146 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
1147 Subsections (103)(b)(i) through (xxv) as determined by the commission by rule made in
1148 accordance with Subsection (103)(c).

1149 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1150 commission may by rule define what constitutes equipment, machinery, or software that
1151 functions similarly to an item listed in Subsections (103)(b)(i) through (xxv).

1152 (104) (a) "Telephone service" means a two-way transmission:

1153 (i) by:

1154 (A) wire;

1155 (B) radio;

1156 (C) lightwave; or

1157 (D) other electromagnetic means; and

1158 (ii) of one or more of the following:

1159 (A) a sign;

1160 (B) a signal;

1161 (C) writing;

1162 (D) an image;

1163 (E) sound;

1164 (F) a message;

1165 (G) data; or

1166 (H) other information of any nature.

1167 (b) "Telephone service" includes:

1168 (i) mobile telecommunications service;

1169 (ii) private communications service; or

1170 (iii) automated digital telephone answering service.

1171 (c) "Telephone service" does not include a service or a transaction that a state or a

1172 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet

1173 Tax Freedom Act, Pub. L. No. 105-277.

1174 (105) Notwithstanding where a call is billed or paid, "telephone service address"

1175 means:

1176 (a) if the location described in this Subsection (105)(a) is known, the location of the

1177 telephone service equipment:

1178 (i) to which a call is charged; and

1179 (ii) from which the call originates or terminates;

1180 (b) if the location described in Subsection (105)(a) is not known but the location

1181 described in this Subsection (105)(b) is known, the location of the origination point of the

1182 signal of the telephone service first identified by:

1183 (i) the telecommunications system of the seller; or

1184 (ii) if the system used to transport the signal is not that of the seller, information

1185 received by the seller from its service provider; or

1186 (c) if the locations described in Subsection (105)(a) or (b) are not known, the location

1187 of a purchaser's primary place of use.

1188 (106) (a) "Telephone service provider" means a person that:

1189 (i) owns, controls, operates, or manages a telephone service; and

1190 (ii) engages in an activity described in Subsection (106)(a)(i) for the shared use with or

1191 resale to any person of the telephone service.

1192 (b) A person described in Subsection (106)(a) is a telephone service provider whether

1193 or not the Public Service Commission of Utah regulates:

1194 (i) that person; or

1195 (ii) the telephone service that the person owns, controls, operates, or manages.

1196 (107) "Tobacco" means:

1197 (a) a cigarette;

1198 (b) a cigar;

1199 (c) chewing tobacco;

1200 (d) pipe tobacco; or

1201 (e) any other item that contains tobacco.

1202 (108) "Unassisted amusement device" means an amusement device, skill device, or

1203 ride device that is started and stopped by the purchaser or renter of the right to use or operate

1204 the amusement device, skill device, or ride device.

1205 (109) (a) "Use" means the exercise of any right or power over tangible personal
1206 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that
1207 property, item, or service.

1208 (b) "Use" does not include the sale, display, demonstration, or trial of that property in
1209 the regular course of business and held for resale.

1210 (110) (a) Subject to Subsection (110)(b), "vehicle" means the following that are
1211 required to be titled, registered, or titled and registered:

- 1212 (i) an aircraft as defined in Section 72-10-102;
- 1213 (ii) a vehicle as defined in Section 41-1a-102;
- 1214 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1215 (iv) a vessel as defined in Section 41-1a-102.

1216 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

- 1217 (i) a vehicle described in Subsection (110)(a); or
- 1218 (ii) (A) a locomotive;
- 1219 (B) a freight car;
- 1220 (C) railroad work equipment; or
- 1221 (D) other railroad rolling stock.

1222 (111) "Vehicle dealer" means a person engaged in the business of buying, selling, or
1223 exchanging a vehicle as defined in Subsection (110).

1224 (112) (a) Except as provided in Subsection (112)(b), "waste energy facility" means a
1225 facility that generates electricity:

1226 (i) using as the primary source of energy waste materials that would be placed in a
1227 landfill or refuse pit if it were not used to generate electricity, including:

- 1228 (A) tires;
- 1229 (B) waste coal; or
- 1230 (C) oil shale; and

1231 (ii) in amounts greater than actually required for the operation of the facility.

1232 (b) "Waste energy facility" does not include a facility that incinerates:

- 1233 (i) municipal solid waste;
- 1234 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or

1235 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1236 (113) "Watercraft" means a vessel as defined in Section 73-18-2.

1237 (114) "Wind energy" means wind used as the sole source of energy to produce
1238 electricity.

1239 (115) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
1240 location by the United States Postal Service.

1241 Section 3. Section **59-12-601.1** is enacted to read:

1242 **Part 6. Tourism, Recreation, Cultural, Convention, and Airport Facilities Tax Act**

1243 **59-12-601.1. Title.**

1244 This part is known as the "Tourism, Recreation, Cultural, Convention, and Airport
1245 Facilities Tax Act."

1246 Section 4. Section **59-12-602** is amended to read:

1247 **59-12-602. Definitions.**

1248 As used in this part:

1249 (1) (a) Subject to Subsection (1)(b), "airport facility" means an airport of regional
1250 significance, as defined by the Transportation Commission by rule made in accordance with
1251 Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

1252 (b) "Airport facility" includes:

1253 (i) an appurtenance to an airport, including a fixed guideway as defined in Section
1254 59-12-1702 that provides transportation service to or from the airport;

1255 (ii) a control tower, including a radar system;

1256 (iii) a public area of an airport; or

1257 (iv) a terminal facility.

1258 ~~(1)~~ (2) "Convention facility" means any publicly owned or operated convention
1259 center, sports arena, or other facility at which conventions, conferences, and other gatherings
1260 are held and whose primary business or function is to host such conventions, conferences, and
1261 other gatherings.

1262 ~~(2)~~ (3) "Cultural facility" means any publicly owned or operated museum, theater, art
1263 center, music hall, or other cultural or arts facility.

1264 ~~(3)~~ (4) "Recreation facility" or "tourist facility" means any publicly owned or
1265 operated park, campground, marina, dock, golf course, water park, historic park, monument,

1266 planetarium, zoo, bicycle trails, and other recreation or tourism-related facility.

1267 [~~(4)~~] (5) (a) "Restaurant" includes any coffee shop, cafeteria, luncheonette, soda
1268 fountain, or fast-food service where food is prepared for immediate consumption.

1269 (b) "Restaurant" does not include:

1270 (i) any retail establishment whose primary business or function is the sale of fuel or
1271 food items for off-premise, but not immediate, consumption; and

1272 (ii) a theater that sells food items, but not a dinner theater.

1273 Section 5. Section **59-12-603** is amended to read:

1274 **59-12-603. County tax -- Bases -- Rates -- Use of revenues -- Adoption of**
1275 **ordinance required -- Advisory board -- Administration -- Collection -- Distribution --**
1276 **Enactment or repeal of tax or tax rate change -- Effective date -- Notice requirements.**

1277 (1) (a) In addition to any other taxes, a county legislative body may, as provided in this
1278 part, impose a tax as follows:

1279 (i) (A) a county legislative body of any county may impose a tax of not to exceed 3%
1280 on all short-term leases and rentals of motor vehicles not exceeding 30 days, except for leases
1281 and rentals of motor vehicles made for the purpose of temporarily replacing a person's motor
1282 vehicle that is being repaired pursuant to a repair or an insurance agreement; and

1283 (B) beginning on or after January 1, 1999, a county legislative body of any county
1284 imposing a tax under Subsection (1)(a)(i)(A) may, in addition to imposing the tax under
1285 Subsection (1)(a)(i)(A), impose a tax of not to exceed 4% on all short-term leases and rentals
1286 of motor vehicles not exceeding 30 days, except for leases and rentals of motor vehicles made
1287 for the purpose of temporarily replacing a person's motor vehicle that is being repaired pursuant
1288 to a repair or an insurance agreement;

1289 (ii) a county legislative body of any county may impose a tax of not to exceed 1% of all
1290 sales of the following that are sold by a restaurant:

1291 (A) prepared food; or

1292 (B) food and food ingredients; and

1293 (iii) a county legislative body of a county of the first class may impose a tax of not to
1294 exceed .5% on charges for the accommodations and services described in Subsection
1295 59-12-103(1)(i).

1296 (b) A tax imposed under Subsection (1)(a) is subject to the audit provisions of Section

1297 17-31-5.5.

1298 (2) (a) Subject to Subsection (2)(b), revenue from the imposition of the taxes provided
1299 for in Subsections (1)(a)(i) through (iii) may be used for ~~[the purposes of]:~~

1300 (i) financing tourism promotion; and

1301 (ii) the development, operation, and maintenance of ~~[tourist, recreation, cultural, and~~
1302 ~~convention facilities as defined in Section 59-12-602.]:~~

1303 (A) an airport facility;

1304 (B) a convention facility;

1305 (C) a cultural facility;

1306 (D) a recreation facility; or

1307 (E) a tourist facility.

1308 (b) A county of the first class shall expend at least \$450,000 each year of the revenues
1309 from the imposition of a tax authorized by Subsection (1)(a)(iii) within the county to fund a
1310 marketing and ticketing system designed to:

1311 (i) promote tourism in ski areas within the county by persons that do not reside within
1312 the state; and

1313 (ii) combine the sale of:

1314 (A) ski lift tickets; and

1315 (B) accommodations and services described in Subsection 59-12-103(1)(i).

1316 (3) A tax imposed under this part may be pledged as security for bonds, notes, or other
1317 evidences of indebtedness incurred by a county under Title 11, Chapter 14, Local Government
1318 Bonding Act, to finance ~~[tourism, recreation, cultural, and convention facilities.]:~~

1319 (a) an airport facility;

1320 (b) a convention facility;

1321 (c) a cultural facility;

1322 (d) a recreation facility; or

1323 (e) a tourist facility.

1324 (4) (a) In order to impose the tax under Subsection (1), each county legislative body
1325 shall annually adopt an ordinance imposing the tax.

1326 (b) The ordinance under Subsection (4)(a) shall include provisions substantially the
1327 same as those contained in Part 1, Tax Collection, except that the tax shall be imposed only on

1328 those items and sales described in Subsection (1).

1329 (c) The name of the county as the taxing agency shall be substituted for that of the state
1330 where necessary, and an additional license is not required if one has been or is issued under
1331 Section 59-12-106.

1332 (5) In order to maintain in effect its tax ordinance adopted under this part, each county
1333 legislative body shall, within 30 days of any amendment of any applicable provisions of Part 1,
1334 Tax Collection, adopt amendments to its tax ordinance to conform with the applicable
1335 amendments to Part 1, Tax Collection.

1336 (6) (a) Regardless of whether a county of the first class creates a tourism tax advisory
1337 board in accordance with Section 17-31-8, the county legislative body of the county of the first
1338 class shall create a tax advisory board in accordance with this Subsection (6).

1339 (b) The tax advisory board shall be composed of nine members appointed as follows:

1340 (i) four members shall be appointed by the county legislative body of the county of the
1341 first class as follows:

1342 (A) one member shall be a resident of the unincorporated area of the county;

1343 (B) two members shall be residents of the incorporated area of the county; and

1344 (C) one member shall be a resident of the unincorporated or incorporated area of the
1345 county; and

1346 (ii) subject to Subsections (6)(c) and (d), five members shall be mayors of cities or
1347 towns within the county of the first class appointed by an organization representing all mayors
1348 of cities and towns within the county of the first class.

1349 (c) Five members of the tax advisory board constitute a quorum.

1350 (d) The county legislative body of the county of the first class shall determine:

1351 (i) terms of the members of the tax advisory board;

1352 (ii) procedures and requirements for removing a member of the tax advisory board;

1353 (iii) voting requirements, except that action of the tax advisory board shall be by at
1354 least a majority vote of a quorum of the tax advisory board;

1355 (iv) chairs or other officers of the tax advisory board;

1356 (v) how meetings are to be called and the frequency of meetings; and

1357 (vi) the compensation, if any, of members of the tax advisory board.

1358 (e) The tax advisory board under this Subsection (6) shall advise the county legislative

1359 body of the county of the first class on the expenditure of revenues collected within the county
1360 of the first class from the taxes described in Subsection (1)(a).

1361 (7) (a) (i) Except as provided in Subsection (7)(a)(ii), a tax authorized under this part
1362 shall be administered, collected, and enforced in accordance with:

1363 (A) the same procedures used to administer, collect, and enforce the tax under:

1364 (I) Part 1, Tax Collection; or

1365 (II) Part 2, Local Sales and Use Tax Act; and

1366 (B) Chapter 1, General Taxation Policies.

1367 (ii) A tax under this part is not subject to Section 59-12-107.1 or Subsections
1368 59-12-205(2) through (7).

1369 (b) Except as provided in Subsection (7)(c):

1370 (i) for a tax under this part other than the tax under Subsection (1)(a)(i)(B), the
1371 commission shall distribute the revenues to the county imposing the tax; and

1372 (ii) for a tax under Subsection (1)(a)(i)(B), the commission shall distribute the revenues
1373 according to the distribution formula provided in Subsection (8).

1374 (c) The commission shall deduct from the distributions under Subsection (7)(b) an
1375 administrative charge for collecting the tax as provided in Section 59-12-206.

1376 (8) The commission shall distribute the revenues generated by the tax under Subsection
1377 (1)(a)(i)(B) to each county collecting a tax under Subsection (1)(a)(i)(B) according to the
1378 following formula:

1379 (a) the commission shall distribute 70% of the revenues based on the percentages
1380 generated by dividing the revenues collected by each county under Subsection (1)(a)(i)(B) by
1381 the total revenues collected by all counties under Subsection (1)(a)(i)(B); and

1382 (b) the commission shall distribute 30% of the revenues based on the percentages
1383 generated by dividing the population of each county collecting a tax under Subsection
1384 (1)(a)(i)(B) by the total population of all counties collecting a tax under Subsection (1)(a)(i)(B).

1385 (9) (a) For purposes of this Subsection (9):

1386 (i) "Annexation" means an annexation to a county under Title 17, Chapter 2,
1387 Annexation to County.

1388 (ii) "Annexing area" means an area that is annexed into a county.

1389 (b) (i) Except as provided in Subsection (9)(c), if, on or after July 1, 2004, a county

1390 enacts or repeals a tax or changes the rate of a tax under this part, the enactment, repeal, or
1391 change shall take effect:

1392 (A) on the first day of a calendar quarter; and

1393 (B) after a 90-day period beginning on the date the commission receives notice meeting
1394 the requirements of Subsection (9)(b)(ii) from the county.

1395 (ii) The notice described in Subsection (9)(b)(i)(B) shall state:

1396 (A) that the county will enact or repeal a tax or change the rate of a tax under this part;

1397 (B) the statutory authority for the tax described in Subsection (9)(b)(ii)(A);

1398 (C) the effective date of the tax described in Subsection (9)(b)(ii)(A); and

1399 (D) if the county enacts the tax or changes the rate of the tax described in Subsection
1400 (9)(b)(ii)(A), the rate of the tax.

1401 (c) (i) Notwithstanding Subsection (9)(b)(i), for a transaction described in Subsection
1402 (9)(c)(iii), the enactment of a tax or a tax rate increase shall take effect on the first day of the
1403 first billing period:

1404 (A) that begins after the effective date of the enactment of the tax or the tax rate
1405 increase; and

1406 (B) if the billing period for the transaction begins before the effective date of the
1407 enactment of the tax or the tax rate increase imposed under Subsection (1).

1408 (ii) Notwithstanding Subsection (9)(b)(i), for a transaction described in Subsection
1409 (9)(c)(iii), the repeal of a tax or a tax rate decrease shall take effect on the first day of the last
1410 billing period:

1411 (A) that began before the effective date of the repeal of the tax or the tax rate decrease;
1412 and

1413 (B) if the billing period for the transaction begins before the effective date of the repeal
1414 of the tax or the tax rate decrease imposed under Subsection (1).

1415 (iii) Subsections (9)(c)(i) and (ii) apply to transactions subject to a tax under:

1416 (A) Subsection 59-12-103(1)(e);

1417 (B) Subsection 59-12-103(1)(i); or

1418 (C) Subsection 59-12-103(1)(k).

1419 (d) (i) Except as provided in Subsection (9)(e), if, for an annexation that occurs on or
1420 after July 1, 2004, the annexation will result in the enactment, repeal, or change in the rate of a

1421 tax under this part for an annexing area, the enactment, repeal, or change shall take effect:

1422 (A) on the first day of a calendar quarter; and

1423 (B) after a 90-day period beginning on the date the commission receives notice meeting
1424 the requirements of Subsection (9)(d)(ii) from the county that annexes the annexing area.

1425 (ii) The notice described in Subsection (9)(d)(i)(B) shall state:

1426 (A) that the annexation described in Subsection (9)(d)(i) will result in an enactment,
1427 repeal, or change in the rate of a tax under this part for the annexing area;

1428 (B) the statutory authority for the tax described in Subsection (9)(d)(ii)(A);

1429 (C) the effective date of the tax described in Subsection (9)(d)(ii)(A); and

1430 (D) if the county enacts the tax or changes the rate of the tax described in Subsection
1431 (9)(d)(ii)(A), the rate of the tax.

1432 (e) (i) Notwithstanding Subsection (9)(d)(i), for a transaction described in Subsection
1433 (9)(e)(iii), the enactment of a tax or a tax rate increase shall take effect on the first day of the
1434 first billing period:

1435 (A) that begins after the effective date of the enactment of the tax or the tax rate
1436 increase; and

1437 (B) if the billing period for the transaction begins before the effective date of the
1438 enactment of the tax or the tax rate increase imposed under Subsection (1).

1439 (ii) Notwithstanding Subsection (9)(d)(i), for a transaction described in Subsection
1440 (9)(e)(iii), the repeal of a tax or a tax rate decrease shall take effect on the first day of the last
1441 billing period:

1442 (A) that began before the effective date of the repeal of the tax or the tax rate decrease;
1443 and

1444 (B) if the billing period for the transaction begins before the effective date of the repeal
1445 of the tax or the tax rate decrease imposed under Subsection (1).

1446 (iii) Subsections (9)(e)(i) and (ii) apply to transactions subject to a tax under:

1447 (A) Subsection 59-12-103(1)(e);

1448 (B) Subsection 59-12-103(1)(i); or

1449 (C) Subsection 59-12-103(1)(k).

1450 Section 6. Section **59-12-1901** is enacted to read:

1451 **Part 19. County of the Second Class State Highway Project Sales and Use Tax Act**

1452 **59-12-1901. Title.**

1453 This part is known as the "County of the Second Class State Highway Project Sales and
1454 Use Tax Act."

1455 Section 7. Section **59-12-1902** is enacted to read:

1456 **59-12-1902. Definitions.**

1457 As used in this part:

1458 (1) "Annexation" means an annexation to a county under Title 17, Chapter 2,
1459 Annexation to County.

1460 (2) "Annexing area" means an area that is annexed into a county.

1461 Section 8. Section **59-12-1903** is enacted to read:

1462 **59-12-1903. Imposition of tax -- Base -- Rate -- Expenditure of revenues collected**
1463 **from the tax -- Administration, collection, and enforcement of tax by commission --**
1464 **Administrative fee -- Enactment or repeal of tax -- Annexation -- Notice.**

1465 (1) (a) Subject to the other provisions of this section and except as provided in
1466 Subsection (2), beginning on January 1, 2009, a county legislative body of a county of the
1467 second class may impose a sales and use tax on the transactions:

1468 (i) described in Subsection 59-12-103(1); and

1469 (ii) within the county, including the cities and towns within the county.

1470 (b) For purposes of Subsection (1)(a), a county legislative body may impose a tax at a
1471 rate of:

1472 (i) .10% , to be deposited into the County of the Second Class State Highway Projects
1473 Fund created by Section 72-2-121.2 and expended as provided in Section 72-2-121.2; or

1474 (ii) .25%, to be expended as follows:

1475 (A) .10% to be deposited into the County of the Second Class State Highway Projects
1476 Fund created by Section 72-2-121.2 and expended as provided in Section 72-2-121.2; and

1477 (B) .15% to be expended for a project or service relating to a:

1478 (I) system for public transit:

1479 (Aa) as defined in Section 59-12-1502; and

1480 (Bb) for the portion of the project or service that is performed within the county;

1481 (II) fixed guideway:

1482 (Aa) as defined in Section 59-12-1702; and

1483 (Bb) for the portion of the project or service that is performed within the county; or
1484 (III) combination of Subsections (1)(b)(ii)(B)(I) and (II).

1485 (c) If a county legislative body imposes a tax under this part, the county legislative
1486 body may not impose a tax under Part 17, County Option Sales and Use Tax for Transportation
1487 Act.

1488 (d) For purposes of this Subsection (1), the location of a transaction shall be
1489 determined in accordance with Section 59-12-207.

1490 (2) (a) A county legislative body may not impose a tax under this section on:

1491 (i) the sales and uses described in Section 59-12-104 to the extent the sales and uses
1492 are exempt from taxation under Section 59-12-104;

1493 (ii) any amounts paid or charged by a seller that collects a tax under Subsection
1494 59-12-107(1)(b); or

1495 (iii) except as provided in Subsection (2)(b), amounts paid or charged for food and
1496 food ingredients.

1497 (b) A county legislative body imposing a tax under this section shall impose the tax on
1498 amounts paid or charged for food and food ingredients if:

1499 (i) the food and food ingredients are sold as part of a bundled transaction attributable to
1500 food and food ingredients and tangible personal property other than food and food ingredients;
1501 and

1502 (ii) the seller collecting the tax is a seller other than a seller that collects a tax in
1503 accordance with Subsection 59-12-107(1)(b).

1504 (3) To impose a tax under this part, a county legislative body shall obtain approval
1505 from a majority of the members of the county legislative body.

1506 (4) (a) Except as provided in Subsection (4)(b) or Subsection (6), the commission shall
1507 transmit revenues collected within a county from a tax under this part that are required to be
1508 expended for a purpose described in Subsection (1)(b)(ii)(B):

1509 (i) to the county legislative body;

1510 (ii) monthly; and

1511 (iii) by electronic funds transfer.

1512 (b) Except as provided in Subsection (6), the commission shall transfer the revenues
1513 described in Subsection (4)(a) directly to a public transit district organized under Title 17B,

1514 Chapter 2a, Part 8, Public Transit District Act, if the county legislative body:
1515 (i) provides written notice to the commission requesting the transfer; and
1516 (ii) designates the public transit district to which the county legislative body requests
1517 the commission to transfer the revenues described in Subsection (4)(a).
1518 (c) Except as provided in Subsection (6), the commission shall deposit revenues
1519 collected within a county from a tax under this part that are required to be expended for a
1520 purpose described in Subsection (1)(b)(i) or (1)(b)(ii)(A) into the County of the Second Class
1521 State Highway Projects Fund created by Section 72-2-121.2.
1522 (5) (a) Except as provided in Subsection (5)(b), the commission shall administer,
1523 collect, and enforce a tax under this part in accordance with:
1524 (i) the same procedures used to administer, collect, and enforce the tax under:
1525 (A) Part 1, Tax Collection; or
1526 (B) Part 2, Local Sales and Use Tax Act; and
1527 (ii) Chapter 1, General Taxation Policies.
1528 (b) A tax under this part is not subject to Subsections 59-12-205(2) through (7).
1529 (6) (a) The commission may retain an amount of tax collected under this part of not to
1530 exceed the lesser of:
1531 (i) 1.5%; or
1532 (ii) an amount equal to the cost to the commission of administering this part.
1533 (b) Any amount the commission retains under Subsection (6)(a) shall be:
1534 (i) deposited into the Sales and Use Tax Administrative Fees Account; and
1535 (ii) used as provided in Subsection 59-12-206(2).
1536 (7) (a) (i) Except as provided in Subsection (7)(b) or (c), if, on or after January 1, 2009,
1537 a county enacts or repeals a tax or changes the rate of a tax under this part, the enactment,
1538 repeal, or change shall take effect:
1539 (A) on the first day of a calendar quarter; and
1540 (B) after a 90-day period beginning on the date the commission receives notice meeting
1541 the requirements of Subsection (7)(a)(ii) from the county.
1542 (ii) The notice described in Subsection (7)(a)(i)(B) shall state:
1543 (A) that the county will enact, repeal, or change the rate of a tax under this part;
1544 (B) the statutory authority for the tax described in Subsection (7)(a)(ii)(A);

- 1545 (C) the effective date of the tax described in Subsection (7)(a)(ii)(A); and
1546 (D) if the county enacts the tax or changes the rate of the tax described in Subsection
1547 (7)(a)(ii)(A), the rate of the tax.
- 1548 (b) (i) For a transaction described in Subsection (7)(b)(iii), if the billing period for the
1549 transaction begins before the effective date of the enactment of the tax or the tax rate increase
1550 under Subsection (1), the enactment of a tax or a tax rate increase shall take effect on the first
1551 day of the first billing period that begins after the effective date of the enactment of the tax or
1552 the tax rate increase.
- 1553 (ii) For a transaction described in Subsection (7)(b)(iii), if the billing period for the
1554 transaction begins before the effective date of the repeal of the tax or the tax rate decrease
1555 imposed under Subsection (1), the repeal of a tax or a tax rate decrease shall take effect on the
1556 first day of the last billing period that began before the effective date of the repeal of the tax or
1557 the tax rate decrease.
- 1558 (iii) Subsections (7)(b)(i) and (ii) apply to transactions subject to a tax under:
- 1559 (A) Subsection 59-12-103(1)(b);
1560 (B) Subsection 59-12-103(1)(c);
1561 (C) Subsection 59-12-103(1)(d);
1562 (D) Subsection 59-12-103(1)(e);
1563 (E) Subsection 59-12-103(1)(f);
1564 (F) Subsection 59-12-103(1)(g);
1565 (G) Subsection 59-12-103(1)(h);
1566 (H) Subsection 59-12-103(1)(i);
1567 (I) Subsection 59-12-103(1)(j); or
1568 (J) Subsection 59-12-103(1)(k).
- 1569 (c) (i) If a tax due under this chapter on a catalogue sale is computed on the basis of
1570 sales and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of
1571 a tax described in Subsection (7)(a)(i) takes effect:
- 1572 (A) on the first day of a calendar quarter; and
1573 (B) beginning 60 days after the effective date of the enactment, repeal, or change in the
1574 rate of the tax under Subsection (7)(a)(i).
- 1575 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,

1576 the commission may by rule define the term "catalogue sale."

1577 (d) (i) Except as provided in Subsection (7)(e) or (f), if, for an annexation that occurs
1578 on or after January 1, 2009, the annexation will result in the enactment, repeal, or change in the
1579 rate of a tax under this part for an annexing area, the enactment, repeal, or change shall take
1580 effect:

1581 (A) on the first day of a calendar quarter; and

1582 (B) after a 90-day period beginning on the date the commission receives notice meeting
1583 the requirements of Subsection (7)(d)(ii) from the county that annexes the annexing area.

1584 (ii) The notice described in Subsection (7)(d)(i)(B) shall state:

1585 (A) that the annexation described in Subsection (7)(d)(i)(B) will result in an enactment,
1586 repeal, or change in the rate of a tax under this part for the annexing area;

1587 (B) the statutory authority for the tax described in Subsection (7)(d)(ii)(A);

1588 (C) the effective date of the tax described in Subsection (7)(d)(ii)(A); and

1589 (D) if the county enacts the tax or changes the rate of the tax described in Subsection
1590 (7)(d)(ii)(A), the rate of the tax.

1591 (e) (i) For a transaction described in Subsection (7)(e)(iii), if the billing period for the
1592 transaction begins before the effective date of the enactment of the tax or a tax rate increase
1593 under Subsection (1), the enactment of a tax or a tax rate increase shall take effect on the first
1594 day of the first billing period that begins after the effective date of the enactment of the tax or
1595 the tax rate increase.

1596 (ii) For a transaction described in Subsection (7)(e)(iii), if the billing period for the
1597 transaction begins before the effective date of the repeal of the tax or the tax rate decrease
1598 imposed under Subsection (1), the repeal of a tax or a tax rate decrease shall take effect on the
1599 first day of the last billing period that began before the effective date of the repeal of the tax or
1600 the tax rate decrease.

1601 (iii) Subsections (7)(e)(i) and (ii) apply to transactions subject to a tax under:

1602 (A) Subsection 59-12-103(1)(b);

1603 (B) Subsection 59-12-103(1)(c);

1604 (C) Subsection 59-12-103(1)(d);

1605 (D) Subsection 59-12-103(1)(e);

1606 (E) Subsection 59-12-103(1)(f);

- 1607 (F) Subsection 59-12-103(1)(g);
- 1608 (G) Subsection 59-12-103(1)(h);
- 1609 (H) Subsection 59-12-103(1)(i);
- 1610 (I) Subsection 59-12-103(1)(j); or
- 1611 (J) Subsection 59-12-103(1)(k).
- 1612 (f) (i) If a tax due under this chapter on a catalogue sale is computed on the basis of
- 1613 sales and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of
- 1614 a tax described in Subsection (7)(d)(i) takes effect:
- 1615 (A) on the first day of a calendar quarter; and
- 1616 (B) beginning 60 days after the effective date of the enactment, repeal, or change in the
- 1617 rate under Subsection (7)(d)(i).
- 1618 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
- 1619 the commission may by rule define the term "catalogue sale."
- 1620 Section 9. Section **72-2-121.2** is enacted to read:
- 1621 **72-2-121.2. County of the Second Class State Highway Projects Fund.**
- 1622 (1) As used in this section, "fund" means the County of the Second Class State
- 1623 Highway Projects Fund created by this section.
- 1624 (2) There is created a special revenue fund known as the County of the Second Class
- 1625 State Highway Projects Fund.
- 1626 (3) The fund shall be funded by monies collected from:
- 1627 (a) any voluntary contributions the department receives for new construction, major
- 1628 renovations, and improvements to state highways within a county of the second class; and
- 1629 (b) the sales and use tax described in:
- 1630 (i) Subsection 59-12-1903(1)(b)(i); or
- 1631 (ii) Subsection 59-12-1903(1)(b)(ii)(A).
- 1632 (4) The department shall make a separate accounting for:
- 1633 (a) the revenues described in Subsection (3); and
- 1634 (b) each county for which revenues are deposited into the fund.
- 1635 (5) (a) The fund shall earn interest.
- 1636 (b) Interest earned on fund monies shall be deposited into the fund.
- 1637 (6) The executive director may use fund monies only:

1638 (a) for right-of-way acquisition, new construction, major renovations, and
1639 improvements to state highways within a county of the second class;
1640 (b) to pay any debt service and bond issuance costs related to a purpose described in
1641 Subsection (6)(a); and
1642 (c) to pay the costs of the department to administer the fund.
1643 (7) Revenues described in Subsection (3)(b) that are deposited into the fund are
1644 considered to be a local matching contribution for the purposes described in Subsection
1645 72-2-123.

1646 Section 10. Section **72-10-102** is amended to read:

1647 **72-10-102. Definitions.**

1648 As used in this chapter:

1649 (1) "Acrobatics" means the intentional maneuvers of an aircraft not necessary to air
1650 navigation.

1651 (2) "Aeronautics" means transportation by aircraft, air instruction, the operation, repair,
1652 or maintenance of aircraft, and the design, operation, repair, or maintenance of airports, or
1653 other air navigation facilities.

1654 (3) "Aeronautics instructor" means any individual engaged in giving or offering to give
1655 instruction in aeronautics, flying, or ground subjects, either with or without:

1656 (a) compensation or other reward;

1657 (b) advertising the occupation;

1658 (c) calling his facilities an air school, or any equivalent term; or

1659 (d) employing or using other instructors.

1660 (4) "Aircraft" means any contrivance now known or in the future invented, used, or
1661 designed for navigation of or flight in the air.

1662 (5) "Air instruction" means the imparting of aeronautical information by any aviation
1663 instructor or in any air school or flying club.

1664 (6) "Airport" means any area of land, water, or both, that:

1665 (a) is used or is made available for landing and takeoff;

1666 (b) provides facilities for the shelter, supply, and repair of aircraft, and handling of
1667 passengers and cargo; ~~and~~

1668 (c) meets the minimum requirements established by the division as to size and design,

1669 surface, marking, equipment, and operation; and

1670 (d) includes all areas shown as part of the airport in the current airport layout plan as
1671 approved by the Federal Aviation Administration.

1672 (7) "Airport authority" means a political subdivision of the state, other than a county or
1673 municipality, that is authorized by statute to operate an airport.

1674 (8) "Airport operator" means a municipality, county, or airport authority that owns or
1675 operates a commercial airport.

1676 (9) (a) "Airport revenue" means:

1677 (i) all fees, charges, rents, or other payments received by or accruing to an airport
1678 operator for any of the following reasons:

1679 (A) revenue from air carriers, tenants, lessees, purchasers of airport properties, airport
1680 permittees making use of airport property and services, and other parties;

1681 (B) revenue received from the activities of others or the transfer of rights to others
1682 relating to the airport, including revenue received:

1683 (I) for the right to conduct an activity on the airport or to use or occupy airport
1684 property;

1685 (II) for the sale, transfer, or disposition of airport real or personal property, or any
1686 interest in that property, including transfer through a condemnation proceeding;

1687 (III) for the sale of, or the sale or lease of rights in, mineral, natural, or agricultural
1688 products or water owned by the airport operator to be taken from the airport; and

1689 (IV) for the right to conduct an activity on, or for the use or disposition of, real or
1690 personal property or any interest in real or personal property owned or controlled by the airport
1691 operator and used for an airport-related purpose but not located on the airport;

1692 (C) revenue received from activities conducted by the airport operator whether on or
1693 off the airport, which is directly connected to the airport operator's ownership or operation of
1694 the airport; and

1695 (ii) state and local taxes on aviation fuel.

1696 (b) "Airport revenue" does not include amounts received by an airport operator as
1697 passenger facility fees pursuant to 49 U.S.C. Sec. 40117.

1698 [~~8~~] (10) "Air school" means any person engaged in giving, offering to give, or
1699 advertising, representing, or holding himself out as giving, with or without compensation or

1700 other reward, instruction in aeronautics, flying, or ground subjects, or in more than one of these
1701 subjects.

1702 ~~[(9)]~~ (11) "Airworthiness" means conformity with requirements prescribed by the
1703 Federal Aviation Administration regarding the structure or functioning of aircraft, engine,
1704 parts, or accessories.

1705 ~~[(10)]~~ (12) "Antique aircraft" means a civil aircraft that is:

- 1706 (a) 30 years old or older, calculated as to include the current year;
1707 (b) primarily a collector's item and used solely for recreational or display purposes;
1708 (c) not used for daily or regular transportation; and
1709 (d) not used for commercial operations.

1710 ~~[(11)]~~ (13) "Civil aircraft" means any aircraft other than a public aircraft.

1711 ~~[(12)]~~ (14) "Commercial aircraft" means aircraft used for commercial purposes.

1712 ~~[(13)]~~ (15) "Commercial airport" means a landing area, landing strip, or airport that
1713 may be used for commercial operations.

1714 ~~[(14)]~~ (16) "Commercial flight operator" means a person who conducts commercial
1715 operations.

1716 ~~[(15)]~~ (17) "Commercial operations" means:

- 1717 (a) any operations of an aircraft for compensation or hire or any services performed
1718 incidental to the operation of any aircraft for which a fee is charged or compensation is
1719 received, including the servicing, maintaining, and repairing of aircraft, the rental or charter of
1720 aircraft, the operation of flight or ground schools, the operation of aircraft for the application or
1721 distribution of chemicals or other substances, and the operation of aircraft for hunting and
1722 fishing; or

1723 (b) the brokering or selling of any of these services; but

1724 (c) does not include any operations of aircraft as common carriers certificated by the
1725 federal government or the services incidental to those operations.

1726 ~~[(16)]~~ (18) "Dealer" means any person who is actively engaged in the business of flying
1727 for demonstration purposes, or selling or exchanging aircraft, and who has an established place
1728 of business.

1729 ~~[(17)]~~ (19) "Division" means the Operations Division in the Department of
1730 Transportation, created in Section 72-1-204.

- 1731 [~~(18)~~] (20) "Experimental aircraft" means:
- 1732 (a) any aircraft designated by the Federal Aviation Administration or the military as
- 1733 experimental and used solely for the purpose of experiments, or tests regarding the structure or
- 1734 functioning of aircraft, engines, or their accessories; and
- 1735 (b) any aircraft designated by the Federal Aviation Administration as:
- 1736 (i) being custom or amateur built; and
- 1737 (ii) used for recreational, educational, or display purposes.
- 1738 [~~(19)~~] (21) "Flight" means any kind of locomotion by aircraft while in the air.
- 1739 [~~(20)~~] (22) "Flying club" means five or more persons who for neither profit nor reward
- 1740 own, lease, or use one or more aircraft for the purpose of instruction, pleasure, or both.
- 1741 [~~(21)~~] (23) "Glider" means an aircraft heavier than air, similar to an airplane, but
- 1742 without a power plant.
- 1743 [~~(22)~~] (24) "Mechanic" means a person who constructs, repairs, adjusts, inspects, or
- 1744 overhauls aircraft, engines, or accessories.
- 1745 [~~(23)~~] (25) "Parachute jumper" means any person who has passed the required test for
- 1746 jumping with a parachute from an aircraft, and has passed an examination showing that he
- 1747 possesses the required physical and mental qualifications for the jumping.
- 1748 [~~(24)~~] (26) "Parachute rigger" means any person who has passed the required test for
- 1749 packing, repairing, and maintaining parachutes.
- 1750 [~~(25)~~] (27) "Passenger aircraft" means aircraft used for transporting persons, in
- 1751 addition to the pilot or crew, with or without their necessary personal belongings.
- 1752 [~~(26)~~] (28) "Person" means any individual, corporation, limited liability company, or
- 1753 association of individuals.
- 1754 [~~(27)~~] (29) "Pilot" means any person who operates the controls of an aircraft while
- 1755 in-flight.
- 1756 [~~(28)~~] (30) "Primary glider" means any glider that has a gliding angle of less than ten to
- 1757 one.
- 1758 [~~(29)~~] (31) "Public aircraft" means an aircraft used exclusively in the service of any
- 1759 government or of any political subdivision, including the government of the United States, of
- 1760 the District of Columbia, and of any state, territory, or insular possession of the United States,
- 1761 but not including any government-owned aircraft engaged in carrying persons or goods for

1762 commercial purposes.

1763 ~~[(30)]~~ (32) "Reckless flying" means the operation or piloting of any aircraft recklessly,
1764 or in a manner as to endanger the property, life, or body of any person, due regard being given
1765 to the prevailing weather conditions, field conditions, and to the territory being flown over.

1766 ~~[(31)]~~ (33) "Registration number" means the number assigned by the Federal Aviation
1767 Administration to any aircraft, whether or not the number includes a letter or letters.

1768 ~~[(32)]~~ (34) "Secondary glider" means any glider that has a gliding angle between ten to
1769 one and 16 to one, inclusive.

1770 ~~[(33)]~~ (35) "Soaring glider" means any glider that has a gliding angle of more than 16
1771 to one.

1772 Section 11. Section **72-10-215** is enacted to read:

1773 **72-10-215. Restrictions on use of airport revenue to finance a fixed guideway.**

1774 An airport operator may not use airport revenue to contribute to the cost of
1775 constructing, equipping, maintaining, or operating any portion of a fixed guideway as defined
1776 in Section 59-12-1702.

1777 Section 12. **Repealer.**

1778 This bill repeals:

1779 Section **59-12-601, Purpose statement.**