

TAXATION AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions relating to tax credits and the Sales and Use Tax Act.

Highlighted Provisions:

This bill:

- ▶ provides limits on claiming, carrying forward, or carrying back certain tax credits;
- ▶ addresses requirements for the State Tax Commission in determining whether:
 - a certain dollar amount of tax credit is claimed;
 - a certain number of persons claim a tax credit;
 - a tax credit should be removed from a tax return upon which the tax credit

appears; or

- a person is prohibited from claiming a tax credit;
- ▶ reduces certain state sales and use tax rates;
- ▶ modifies the percentage of state sales and use tax to be deposited into certain funds related to transportation;
- ▶ prohibits the Utah Capital Investment Board from issuing a contingent tax credit for the taxable year beginning on or after January 1, 2009, but beginning on or before December 31, 2009; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 This bill provides for retrospective operation.

30 This bill provides an effective date.

31 **Utah Code Sections Affected:**

32 AMENDS:

- 33 **59-7-615**, as enacted by Laws of Utah 2002, Chapter 62
- 34 **59-10-1002.1**, as renumbered and amended by Laws of Utah 2008, Chapter 389
- 35 **59-10-1104**, as renumbered and amended by Laws of Utah 2006, Chapter 223
- 36 **59-10-1105**, as last amended by Laws of Utah 2008, Chapter 382
- 37 **59-10-1106**, as last amended by Laws of Utah 2008, Chapter 389
- 38 **59-10-1107**, as enacted by Laws of Utah 2008, Chapter 372
- 39 **59-12-103**, as last amended by Laws of Utah 2008, Second Special Session, Chapter 5
- 40 **63M-1-413**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 41 **63M-1-504**, as renumbered and amended by Laws of Utah 2008, Chapter 382

42 ENACTS:

43 **63M-1-1225**, Utah Code Annotated 1953



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

46 Section 1. Section **59-7-615** is amended to read:

47 **59-7-615. Limits on claiming, carrying forward, or carrying back a tax credit --**
48 **Commission may not consider a taxable year during which a tax credit may not be**
49 **claimed for certain purposes -- Removal of tax credit from tax form and prohibition on**
50 **claiming or carrying forward a tax credit -- Conditions for removal and prohibition on**
51 **claiming or carrying forward a tax credit -- Commission reporting requirements.**

52 (1) As used in this section:

53 (a) "Tax credit" means a nonrefundable tax credit listed on a tax return.

54 (b) "Tax return" means:

55 (i) a corporate return as defined in Section 59-7-101 filed in accordance with this
56 chapter; or

57 (ii) a tax return filed in accordance with Chapter 8, Gross Receipts Tax on Certain
58 Corporations Not Required to Pay Corporate Franchise or Income Tax Act.

59 (2) (a) Notwithstanding any other provision of this chapter, for the taxable year
60 beginning on or after January 1, 2009, but beginning on or before December 31, 2009 only, a
61 person may not claim, carry forward, or carry back a tax credit under this chapter.

62 (b) If, but for Subsection (2)(a), a person would have been allowed to claim a tax credit
63 for the taxable year beginning on or after January 1, 2009, but beginning on or before
64 December 31, 2009, the person may not:

65 (i) carry forward that tax credit to a taxable year beginning on or after January 1, 2010;
66 or

67 (ii) carry back that tax credit to a taxable year beginning before January 1, 2009.

68 (c) Notwithstanding any other provision of this chapter, a time period allowed under
69 this chapter for a person to carry forward or carry back a tax credit shall be reduced by one
70 taxable year if the taxable year beginning on or after January 1, 2009, but beginning on or
71 before December 31, 2009 is part of that time period during which the person may carry
72 forward or carry back the tax credit.

73 (d) For purposes of Subsections (3) through (5), the commission:

74 (i) may not consider the taxable year beginning on or after January 1, 2009, but
75 beginning on or before December 31, 2009 for purposes of determining whether:

76 (A) (I) the total amount of a tax credit claimed or carried forward by all persons filing
77 tax returns is less than \$10,000 per year for three consecutive taxable years; and

78 (II) less than ten persons per year for the three consecutive taxable years described in
79 Subsection (2)(d)(i)(A)(I) file a tax return claiming or carrying forward the tax credit described
80 in Subsection (2)(d)(i)(A)(I); or

81 (B) (I) the commission shall remove a tax credit from each return on which a tax credit
82 appears; and

83 (II) a person filing a tax return may not claim or carry forward a tax credit; and

84 (ii) shall consider the consecutive taxable years beginning before and the consecutive
85 taxable years beginning after the taxable year beginning on or after January 1, 2009, but
86 beginning on or before December 31, 2009 to be consecutive taxable years.

87 ~~[(2)]~~ (3) Beginning two taxable years after the requirements of Subsection ~~[(3)]~~ (4) are
88 met:

89 (a) the commission shall remove a tax credit from each tax return on which the tax

90 credit appears; and

91 (b) a person filing a tax return may not claim or carry forward the tax credit.

92 [~~(3)~~] (4) The commission shall remove a tax credit from a tax return and a person filing
93 a tax return may not claim or carry forward a tax credit as provided in Subsection [~~(2)~~] (3) if:

94 (a) the total amount of the tax credit claimed or carried forward by all persons filing tax
95 returns is less than \$10,000 per year for three consecutive taxable years beginning on or after
96 January 1, 2002; and

97 (b) less than ten persons per year for the three consecutive taxable years described in
98 Subsection [~~(3)~~] (4)(a), file a tax return claiming or carrying forward the tax credit.

99 [~~(4)~~] (5) The commission shall, on or before the November interim meeting of the year
100 after the taxable year in which the requirements of Subsection [~~(3)~~] (4) are met:

101 (a) report to the Revenue and Taxation Interim Committee that in accordance with this
102 section:

103 (i) the commission is required to remove a tax credit from each tax return on which the
104 tax credit appears; and

105 (ii) a person filing a tax return may not claim or carry forward the tax credit; and

106 (b) notify each state agency required by statute to assist in the administration of the tax
107 credit that in accordance with this section:

108 (i) the commission is required to remove a tax credit from each tax return on which the
109 tax credit appears; and

110 (ii) a person filing a tax return may not claim or carry forward the tax credit.

111 Section 2. Section **59-10-1002.1** is amended to read:

112 **59-10-1002.1. Limits on claiming, carrying forward, or carrying back certain tax**
113 **credits -- Commission may not consider a taxable year during which a tax credit may not**
114 **be claimed for certain purposes -- Removal of tax credit from tax return and prohibition**
115 **on claiming or carrying forward a tax credit -- Conditions for removal and prohibition**
116 **on claiming or carrying forward a tax credit -- Commission reporting requirements.**

117 (1) As used in this section, "tax return" means a tax return filed in accordance with this
118 chapter.

119 (2) (a) Notwithstanding any other provision of this part except for Subsection (2)(e),
120 for the taxable year beginning on or after January 1, 2009, but beginning on or before

121 December 31, 2009 only, a claimant, estate, or trust may not claim, carry forward, or carry back
122 a tax credit under this part.

123 (b) If, but for Subsection (2)(a), a claimant, estate, or trust would have been allowed to
124 claim a tax credit for the taxable year beginning on or after January 1, 2009, but beginning on
125 or before December 31, 2009, the claimant, estate, or trust may not:

126 (i) carry forward that tax credit to a taxable year beginning on or after January 1, 2010;

127 or

128 (ii) carry back that tax credit to a taxable year beginning before January 1, 2009.

129 (c) Notwithstanding any other provision of this part except for Subsection (2)(e), a time
130 period allowed under this part for a claimant, estate, or trust to carry forward or carry back a
131 tax credit shall be reduced by one taxable year if the taxable year beginning on or after January
132 1, 2009, but beginning on or before December 31, 2009 is part of that time period during which
133 the claimant, estate, or trust may carry forward or carry back the tax credit.

134 (d) Except as provided in Subsection (2)(e), for purposes of Subsections (3) through
135 (5), the commission:

136 (i) may not consider the taxable year beginning on or after January 1, 2009, but
137 beginning on or before December 31, 2009 for purposes of determining whether:

138 (A) (I) the total amount of a tax credit claimed or carried forward by all claimants,
139 estates, or trusts filing tax returns is less than \$10,000 per year for three consecutive taxable
140 years; and

141 (II) less than ten claimants, estates, or trusts per year for the three consecutive taxable
142 years described in Subsection (2)(d)(i)(A)(I) file a tax return claiming or carrying forward the
143 tax credit described in Subsection (2)(d)(i)(A)(I); or

144 (B) (I) the commission shall remove a tax credit from each return on which a tax credit
145 appears; and

146 (II) a claimant, estate, or trust filing a tax return may not claim or carry forward a tax
147 credit; and

148 (ii) shall consider the consecutive taxable years beginning before and the consecutive
149 taxable years beginning after the taxable year beginning on or after January 1, 2009, but
150 beginning on or before December 31, 2009 to be consecutive taxable years.

151 (e) This Subsection (2) does not apply to the tax credit under Section 59-10-1003.

152 ~~[(2)]~~ (3) Beginning two taxable years after the requirements of Subsection ~~[(3)]~~ (4) are
153 met:

154 (a) the commission shall remove a tax credit allowed under this part from each tax
155 return on which the tax credit appears; and

156 (b) a claimant, estate, or trust filing a tax return may not claim or carry forward the tax
157 credit.

158 ~~[(3)]~~ (4) The commission shall remove a tax credit allowed under this part from a tax
159 return and a claimant, estate, or trust filing a tax return may not claim or carry forward the tax
160 credit as provided in Subsection ~~[(2)]~~ (3) if:

161 (a) the total amount of the tax credit claimed or carried forward by all claimants,
162 estates, or trusts filing tax returns is less than \$10,000 per year for three consecutive taxable
163 years beginning on or after January 1, 2002; and

164 (b) less than ten claimants, estates, and trusts per year for the three consecutive taxable
165 years described in Subsection ~~[(3)]~~ (4)(a), file a tax return claiming or carrying forward the tax
166 credit.

167 ~~[(4)]~~ (5) The commission shall, on or before the November interim meeting of the year
168 after the taxable year in which the requirements of Subsection ~~[(3)]~~ (4) are met:

169 (a) report to the Revenue and Taxation Interim Committee that in accordance with this
170 section:

171 (i) the commission is required to remove a tax credit from each tax return on which the
172 tax credit appears; and

173 (ii) a claimant, estate, or trust filing a tax return may not claim or carry forward the tax
174 credit; and

175 (b) notify each state agency required by statute to assist in the administration of the tax
176 credit that in accordance with this section:

177 (i) the commission is required to remove a tax credit from each tax return on which the
178 tax credit appears; and

179 (ii) a claimant, estate, or trust filing a tax return may not claim or carry forward the tax
180 credit.

181 Section 3. Section **59-10-1104** is amended to read:

182 **59-10-1104. Tax credit for adoption of a child who has a special need --**

183 **Prohibition on claiming tax credit for one taxable year.**

184 (1) As used in this section, a "child who has a special need" means a child who meets
185 at least one of the following conditions:

186 (a) the child is five years of age or older;

187 (b) the child:

188 (i) is under the age of 18; and

189 (ii) has a physical, emotional, or mental disability; or

190 (c) the child is a member of a sibling group placed together for adoption.

191 (2) [~~For~~] Except as provided in Subsection (5), for taxable years beginning on or after
192 January 1, 2005, a claimant who adopts in this state a child who has a special need may claim
193 on the claimant's individual income tax return for the taxable year a refundable tax credit of
194 \$1,000 against taxes otherwise due under this chapter for:

195 (a) adoptions for which a court issues an order granting the adoption on or after
196 January 1, 2005;

197 (b) the taxable year during which a court issues an order granting the adoption; and

198 (c) each child who has a special need whom the claimant adopts.

199 (3) The credit provided for in this section may not be carried forward or carried back.

200 (4) Nothing in this section shall affect the ability of any claimant who adopts a child
201 who has a special need to receive adoption assistance under Section 62A-4a-907.

202 (5) For the taxable year beginning on or after January 1, 2009, but beginning on or
203 before December 31, 2009 only, a claimant may not claim a tax credit under this section.

204 Section 4. Section **59-10-1105** is amended to read:

205 **59-10-1105. Tax credit for hand tools used in farming operations -- Procedures**

206 **for refund -- Transfers from General Fund to Education Fund -- Rulemaking authority --**

207 **Prohibition on claiming tax credit for one taxable year.**

208 (1) [~~For~~] Except as provided in Subsection (4), for taxable years beginning on or after
209 January 1, 2004, a claimant, estate, or trust may claim a refundable tax credit:

210 (a) as provided in this section;

211 (b) against taxes otherwise due under this chapter; and

212 (c) in an amount equal to the amount of tax the claimant, estate, or trust pays:

213 (i) on a purchase of a hand tool:

214 (A) if the purchase is made on or after July 1, 2004;
 215 (B) if the hand tool is used or consumed primarily and directly in a farming operation
 216 in the state; and
 217 (C) if the unit purchase price of the hand tool is more than \$250; and
 218 (ii) under Chapter 12, Sales and Use Tax Act, on the purchase described in Subsection
 219 (1)(c)(i).

220 (2) A claimant, estate, or trust:
 221 (a) shall retain the following to establish the amount of tax the claimant, estate, or trust
 222 paid under Chapter 12, Sales and Use Tax Act, on the purchase described in Subsection
 223 (1)(c)(i):

224 (i) a receipt;
 225 (ii) an invoice; or
 226 (iii) a document similar to a document described in Subsection (2)(a)(i) or (ii); and
 227 (b) may not carry forward or carry back a tax credit under this section.

228 (3) (a) In accordance with any rules prescribed by the commission under Subsection
 229 (3)(b), the commission shall:
 230 (i) make a refund to a claimant, estate, or trust that claims a tax credit under this
 231 section if the amount of the tax credit exceeds the claimant's, estate's, or trust's tax liability
 232 under this chapter; and
 233 (ii) transfer at least annually from the General Fund into the Education Fund an amount
 234 equal to the amount of tax credit claimed under this section.

235 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
 236 commission may make rules providing procedures for making:
 237 (i) a refund to a claimant, estate, or trust as required by Subsection (3)(a)(i); or
 238 (ii) transfers from the General Fund into the Education Fund as required by Subsection
 239 (3)(a)(ii).

240 (4) For the taxable year beginning on or after January 1, 2009, but beginning on or
 241 before December 31, 2009 only, a claimant, estate, or trust may not claim a tax credit under
 242 this section.

243 Section 5. Section **59-10-1106** is amended to read:
 244 **59-10-1106. Refundable renewable energy tax credit -- Prohibition on claiming**

245 **tax credit for one taxable year.**

246 (1) As used in this section:

247 (a) "Active solar system" is as defined in Section 59-10-1014.

248 (b) "Biomass system" is as defined in Section 59-10-1014.

249 (c) "Business entity" is as defined in Section 59-10-1014.

250 (d) "Commercial energy system" means any active solar, passive solar, geothermal
251 electricity, direct-use geothermal, geothermal heat-pump system, wind, hydroenergy, or
252 biomass system used to supply energy to a commercial unit or as a commercial enterprise.

253 (e) "Commercial enterprise" means a business entity that:

254 (i) is a claimant, estate, or trust; and

255 (ii) has the purpose of producing electrical, mechanical, or thermal energy for sale from
256 a commercial energy system.257 (f) (i) "Commercial unit" means any building or structure that a business entity that is a
258 claimant, estate, or trust uses to transact its business.

259 (ii) Notwithstanding Subsection (1)(f)(i):

260 (A) in the case of an active solar system used for agricultural water pumping or a wind
261 system, each individual energy generating device shall be a commercial unit; and262 (B) if an energy system is the building or structure that a business entity that is a
263 claimant, estate, or trust uses to transact its business, a commercial unit is the complete energy
264 system itself.

265 (g) "Direct-use geothermal system" is as defined in Section 59-10-1014.

266 (h) "Geothermal electricity" is as defined in Section 59-10-1014.

267 (i) "Geothermal heat-pump system" is as defined in Section 59-10-1014.

268 (j) "Hydroenergy system" is as defined in Section 59-10-1014.

269 (k) "Passive solar system" is as defined in Section 59-10-1014.

270 (l) "Utah Geological Survey" means the Utah Geological Survey established in Section
271 63-73-5.

272 (m) "Wind system" is as defined in Section 59-10-1014.

273 (2) (a) (i) ~~Except as provided in Subsection (7),~~ a business entity that is a claimant,
274 estate, or trust that purchases or participates in the financing of a commercial energy system
275 situated in Utah is entitled to a refundable tax credit as provided in this Subsection (2)(a) if the

276 commercial energy system does not use wind, geothermal electricity, or biomass equipment
277 capable of producing a total of 660 or more kilowatts of electricity and:

278 (A) the commercial energy system supplies all or part of the energy required by
279 commercial units owned or used by the business entity that is a claimant, estate, or trust; or

280 (B) the business entity that is a claimant, estate, or trust sells all or part of the energy
281 produced by the commercial energy system as a commercial enterprise.

282 (ii) (A) [~~A~~] Except as provided in Subsection (7), a business entity that is a claimant,
283 estate, or trust is entitled to a tax credit of up to 10% of the reasonable costs of any commercial
284 energy system installed, including installation costs, against any tax due under this chapter for
285 the taxable year in which the commercial energy system is completed and placed in service.

286 (B) Notwithstanding Subsection (2)(a)(ii)(A), the total amount of the credit under this
287 Subsection (2)(a) may not exceed \$50,000 per commercial unit.

288 (C) The credit under this Subsection (2)(a) is allowed for any commercial energy
289 system completed and placed in service on or after January 1, 2007.

290 (iii) A business entity that is a claimant, estate, or trust that leases a commercial energy
291 system installed on a commercial unit is eligible for the tax credit under this Subsection (2)(a)
292 if the lessee can confirm that the lessor irrevocably elects not to claim the credit.

293 (iv) Only the principal recovery portion of the lease payments, which is the cost
294 incurred by a business entity that is a claimant, estate, or trust in acquiring a commercial energy
295 system, excluding interest charges and maintenance expenses, is eligible for the tax credit
296 under this Subsection (2)(a).

297 (v) A business entity that is a claimant, estate, or trust that leases a commercial energy
298 system is eligible to use the tax credit under this Subsection (2)(a) for a period no greater than
299 seven years from the initiation of the lease.

300 (b) (i) [~~A~~] Except as provided in Subsection (7), a business entity that is a claimant,
301 estate, or trust that owns a commercial energy system situated in Utah using wind, geothermal
302 electricity, or biomass equipment capable of producing a total of 660 or more kilowatts of
303 electricity is entitled to a refundable tax credit as provided in this section if:

304 (A) the commercial energy system supplies all or part of the energy required by
305 commercial units owned or used by the business entity that is a claimant, estate, or trust; or

306 (B) the business entity that is a claimant, estate, or trust sells all or part of the energy

307 produced by the commercial energy system as a commercial enterprise.

308 (ii) A business entity that is a claimant, estate, or trust is entitled to a tax credit under
309 this Subsection (2)(b) equal to the product of:

310 (A) 0.35 cents; and

311 (B) the kilowatt hours of electricity produced and either used or sold during the taxable
312 year.

313 (iii) The credit allowed by this Subsection (2)(b):

314 (A) may be claimed for production occurring during a period of 48 months beginning
315 with the month in which the commercial energy system is placed in service; and

316 (B) may not be carried forward or back.

317 (iv) A business entity that is a claimant, estate, or trust that leases a commercial energy
318 system installed on a commercial unit is eligible for the tax credit under this section if the
319 lessee can confirm that the lessor irrevocably elects not to claim the credit.

320 (3) The tax credits provided for under this section are in addition to any tax credits
321 provided under the laws or rules and regulations of the United States.

322 (4) (a) The Utah Geological Survey may set standards for commercial energy systems
323 claiming a tax credit under Subsection (2)(a) that cover the safety, reliability, efficiency,
324 leasing, and technical feasibility of the systems to ensure that the systems eligible for the tax
325 credit use the state's renewable and nonrenewable energy resources in an appropriate and
326 economic manner.

327 (b) A tax credit may not be taken under this section until the Utah Geological Survey
328 has certified that the commercial energy system has been completely installed and is a viable
329 system for saving or production of energy from renewable resources.

330 (5) The Utah Geological Survey and the commission may make rules in accordance
331 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that are necessary to
332 implement this section.

333 (6) (a) On or before October 1, 2012, and every five years thereafter, the Utah Tax
334 Review Commission shall review each tax credit provided by this section and make
335 recommendations to the Revenue and Taxation Interim Committee concerning whether the
336 credit should be continued, modified, or repealed.

337 (b) The Utah Tax Review Commission's report under Subsection (6)(a) shall include

338 information concerning the cost of the credit, the purpose and effectiveness of the credit, and
339 the state's benefit from the credit.

340 (7) For the taxable year beginning on or after January 1, 2009, but beginning on or
341 before December 31, 2009 only, a business entity that is a claimant, estate, or trust may not
342 claim a tax credit under this section.

343 Section 6. Section **59-10-1107** is amended to read:

344 **59-10-1107. Refundable economic development tax credit -- Prohibition on**
345 **claiming tax credit for one taxable year.**

346 (1) As used in this section:

347 (a) "Business entity" means a claimant, estate, or trust that meets the definition of
348 "business entity" as defined in Section 63M-1-2403.

349 (b) "Office" means the Governor's Office of Economic Development.

350 (2) [~~For~~] Except as provided in Subsection (6), for taxable years beginning on or after
351 January 1, 2008, a business entity may claim a refundable tax credit for economic development.

352 (3) The tax credit under this section is the amount listed as the tax credit amount on the
353 tax credit certificate that the office issues to the business entity for the taxable year.

354 (4) (a) In accordance with any rules prescribed by the commission under Subsection
355 (4)(b), the commission shall make a refund to a business entity that claims a tax credit under
356 this section if the amount of the tax credit exceeds the business entity's tax liability for a
357 taxable year.

358 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
359 commission may make rules providing procedures for making a refund to a business entity as
360 required by Subsection (4)(a).

361 (5) (a) On or before October 1, 2013, and every five years after October 1, 2013, the
362 Utah Tax Review Commission shall study the tax credit allowed by this section and make
363 recommendations to the Revenue and Taxation Interim Committee and the Workforce Services
364 and Community and Economic Development Interim Committee concerning whether the tax
365 credit should be continued, modified, or repealed.

366 (b) For purposes of the study required by this Subsection (5), the office shall provide
367 the following information to the Utah Tax Review Commission:

368 (i) the amount of tax credit the office grants to each taxpayer for each calendar year;

- 369 (ii) the criteria the office uses in granting a tax credit;
- 370 (iii) the new state revenues generated by each taxpayer for each calendar year;
- 371 (iv) the information contained in the office's latest report to the Legislature under
- 372 Section 63M-1-2406; and
- 373 (v) any other information that the Utah Tax Review Commission requests.
- 374 (c) The Utah Tax Review Commission shall ensure that its recommendations under
- 375 Subsection (5)(a) include an evaluation of:
- 376 (i) the cost of the tax credit to the state;
- 377 (ii) the purpose and effectiveness of the tax credit; and
- 378 (iii) the extent to which the state benefits from the tax credit.
- 379 (6) For the taxable year beginning on or after January 1, 2009, but beginning on or
- 380 before December 31, 2009 only, a business entity may not claim a tax credit under this section.
- 381 Section 7. Section **59-12-103** is amended to read:
- 382 **59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use**
- 383 **tax revenues.**
- 384 (1) A tax is imposed on the purchaser as provided in this part for amounts paid or
- 385 charged for the following transactions:
- 386 (a) retail sales of tangible personal property made within the state;
- 387 (b) amounts paid for:
- 388 (i) telecommunications service, other than mobile telecommunications service, that
- 389 originates and terminates within the boundaries of this state;
- 390 (ii) mobile telecommunications service that originates and terminates within the
- 391 boundaries of one state only to the extent permitted by the Mobile Telecommunications
- 392 Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or
- 393 (iii) an ancillary service associated with a:
- 394 (A) telecommunications service described in Subsection (1)(b)(i); or
- 395 (B) mobile telecommunications service described in Subsection (1)(b)(ii);
- 396 (c) sales of the following for commercial use:
- 397 (i) gas;
- 398 (ii) electricity;
- 399 (iii) heat;

- 400 (iv) coal;
- 401 (v) fuel oil; or
- 402 (vi) other fuels;
- 403 (d) sales of the following for residential use:
- 404 (i) gas;
- 405 (ii) electricity;
- 406 (iii) heat;
- 407 (iv) coal;
- 408 (v) fuel oil; or
- 409 (vi) other fuels;
- 410 (e) sales of prepared food;
- 411 (f) except as provided in Section 59-12-104, amounts paid or charged as admission or
- 412 user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,
- 413 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,
- 414 fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit
- 415 television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf
- 416 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,
- 417 tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises,
- 418 horseback rides, sports activities, or any other amusement, entertainment, recreation,
- 419 exhibition, cultural, or athletic activity;
- 420 (g) amounts paid or charged for services for repairs or renovations of tangible personal
- 421 property, unless Section 59-12-104 provides for an exemption from sales and use tax for:
- 422 (i) the tangible personal property; and
- 423 (ii) parts used in the repairs or renovations of the tangible personal property described
- 424 in Subsection (1)(g)(i), whether or not any parts are actually used in the repairs or renovations
- 425 of that tangible personal property;
- 426 (h) except as provided in Subsection 59-12-104(7), amounts paid or charged for
- 427 assisted cleaning or washing of tangible personal property;
- 428 (i) amounts paid or charged for tourist home, hotel, motel, or trailer court
- 429 accommodations and services that are regularly rented for less than 30 consecutive days;
- 430 (j) amounts paid or charged for laundry or dry cleaning services;

431 (k) amounts paid or charged for leases or rentals of tangible personal property if within
432 this state the tangible personal property is:

- 433 (i) stored;
- 434 (ii) used; or
- 435 (iii) otherwise consumed;

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

- 438 (i) stored;
- 439 (ii) used; or
- 440 (iii) consumed;

441 (m) amounts paid or charged for prepaid telephone calling cards; and

442 (n) amounts paid or charged for a sale:

443 (i) (A) of a product that:

444 (I) is transferred electronically; and

445 (II) would be subject to a tax under this chapter if the product was transferred in a
446 manner other than electronically; or

447 (B) of a repair or renovation of a product that:

448 (I) is transferred electronically; and

449 (II) would be subject to a tax under this chapter if the product was transferred in a
450 manner other than electronically; and

451 (ii) regardless of whether the sale provides:

452 (A) a right of permanent use of the product; or

453 (B) a right to use the product that is less than a permanent use, including a right:

454 (I) for a definite or specified length of time; and

455 (II) that terminates upon the occurrence of a condition.

456 (2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax
457 is imposed on a transaction described in Subsection (1) equal to the sum of:

458 (i) a state tax imposed on the transaction at a tax rate equal to the sum of:

459 (A) [~~4.70%~~] 3.92%; and

460 (B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales
461 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211

462 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional
463 State Sales and Use Tax Act; and

464 (II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales
465 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211
466 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state
467 imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

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

470 (b) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed
471 on a transaction described in Subsection (1)(d) equal to the sum of:

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

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

475 (c) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed
476 on amounts paid or charged for food and food ingredients equal to the sum of:

477 (i) a state tax imposed on the amounts paid or charged for food and food ingredients at
478 a tax rate of 1.75%; and

479 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
480 amounts paid or charged for food and food ingredients under this chapter other than this part.

481 (d) (i) For a bundled transaction that is attributable to food and food ingredients and
482 tangible personal property other than food and food ingredients, a state tax and a local tax is
483 imposed on the entire bundled transaction equal to the sum of:

484 (A) a state tax imposed on the entire bundled transaction equal to the sum of:

485 (I) the tax rate described in Subsection (2)(a)(i)(A); and

486 (II) (Aa) the tax rate the state imposes in accordance with Part 18, Additional State
487 Sales and Use Tax Act, if the location of the transaction as determined under Sections
488 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18,
489 Additional State Sales and Use Tax Act; and

490 (Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State
491 Sales and Use Tax Act, if the location of the transaction as determined under Sections
492 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which

493 the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

494 (B) a local tax imposed on the entire bundled transaction at the sum of the tax rates
495 described in Subsection (2)(a)(ii).

496 (ii) Subject to Subsection (2)(d)(iii), for a bundled transaction other than a bundled
497 transaction described in Subsection (2)(d)(i):

498 (A) if the sales price of the bundled transaction is attributable to tangible personal
499 property, a product, or a service that is subject to taxation under this chapter and tangible
500 personal property, a product, or service that is not subject to taxation under this chapter, the
501 entire bundled transaction is subject to taxation under this chapter unless:

502 (I) the seller is able to identify by reasonable and verifiable standards the tangible
503 personal property, product, or service that is not subject to taxation under this chapter from the
504 books and records the seller keeps in the seller's regular course of business; or

505 (II) state or federal law provides otherwise; or

506 (B) if the sales price of a bundled transaction is attributable to two or more items of
507 tangible personal property, products, or services that are subject to taxation under this chapter
508 at different rates, the entire bundled transaction is subject to taxation under this chapter at the
509 higher tax rate unless:

510 (I) the seller is able to identify by reasonable and verifiable standards the tangible
511 personal property, product, or service that is subject to taxation under this chapter at the lower
512 tax rate from the books and records the seller keeps in the seller's regular course of business; or

513 (II) state or federal law provides otherwise.

514 (iii) For purposes of Subsection (2)(d)(ii), books and records that a seller keeps in the
515 seller's regular course of business includes books and records the seller keeps in the regular
516 course of business for nontax purposes.

517 (e) Subject to Subsections (2)(f) and (g), a tax rate repeal or tax rate change for a tax
518 rate imposed under the following shall take effect on the first day of a calendar quarter:

519 (i) Subsection (2)(a)(i)(A);

520 (ii) Subsection (2)(b)(i);

521 (iii) Subsection (2)(c)(i); or

522 (iv) Subsection (2)(d)(i)(A)(I).

523 (f) (i) A tax rate increase shall take effect on the first day of the first billing period that

524 begins after the effective date of the tax rate increase if the billing period for the transaction

525 begins before the effective date of a tax rate increase imposed under:

526 (A) Subsection (2)(a)(i)(A);

527 (B) Subsection (2)(b)(i);

528 (C) Subsection (2)(c)(i); or

529 (D) Subsection (2)(d)(i)(A)(I).

530 (ii) The repeal of a tax or a tax rate decrease shall take effect on the first day of the last

531 billing period that began before the effective date of the repeal of the tax or the tax rate

532 decrease if the billing period for the transaction begins before the effective date of the repeal of

533 the tax or the tax rate decrease imposed under:

534 (A) Subsection (2)(a)(i)(A);

535 (B) Subsection (2)(b)(i);

536 (C) Subsection (2)(c)(i); or

537 (D) Subsection (2)(d)(i)(A)(I).

538 (g) (i) For a tax rate described in Subsection (2)(g)(ii), if a tax due on a catalogue sale

539 is computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal

540 or change in a tax rate takes effect:

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

542 (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.

543 (ii) Subsection (2) (g)(i) applies to the tax rates described in the following:

544 (A) Subsection (2)(a)(i)(A);

545 (B) Subsection (2)(b)(i);

546 (C) Subsection (2)(c)(i); or

547 (D) Subsection (2)(d)(i)(A)(I).

548 (iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

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

550 (3) (a) The following state taxes shall be deposited into the General Fund:

551 (i) the tax imposed by Subsection (2)(a)(i)(A);

552 (ii) the tax imposed by Subsection (2)(b)(i);

553 (iii) the tax imposed by Subsection (2)(c)(i); or

554 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

555 (b) The following local taxes shall be distributed to a county, city, or town as provided
556 in this chapter:

- 557 (i) the tax imposed by Subsection (2)(a)(ii);
- 558 (ii) the tax imposed by Subsection (2)(b)(ii);
- 559 (iii) the tax imposed by Subsection (2)(c)(ii); and
- 560 (iv) the tax imposed by Subsection (2)(d)(i)(B).

561 (4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
562 2003, the lesser of the following amounts shall be used as provided in Subsections (4)(b)
563 through (g):

- 564 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:
 - 565 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and
 - 566 (B) for the fiscal year; or
- 567 (ii) \$17,500,000.

568 (b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount
569 described in Subsection (4)(a) shall be transferred each year as dedicated credits to the
570 Department of Natural Resources to:

- 571 (A) implement the measures described in Subsections 63-34-14(4)(a) through (d) to
572 protect sensitive plant and animal species; or
- 573 (B) award grants, up to the amount authorized by the Legislature in an appropriations
574 act, to political subdivisions of the state to implement the measures described in Subsections
575 63-34-14(4)(a) through (d) to protect sensitive plant and animal species.

576 (ii) Money transferred to the Department of Natural Resources under Subsection
577 (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other
578 person to list or attempt to have listed a species as threatened or endangered under the
579 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

- 580 (iii) At the end of each fiscal year:
 - 581 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
582 Conservation and Development Fund created in Section 73-10-24;
 - 583 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
584 Program Subaccount created in Section 73-10c-5; and
 - 585 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan

586 Program Subaccount created in Section 73-10c-5.

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

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

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

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

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

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

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

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

607 (A) conduct hydrologic and geotechnical investigations by the Division of Water
608 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of
609 quantifying surface and ground water resources and describing the hydrologic systems of an
610 area in sufficient detail so as to enable local and state resource managers to plan for and
611 accommodate growth in water use without jeopardizing the resource;

612 (B) fund state required dam safety improvements; and

613 (C) protect the state's interest in interstate water compact allocations, including the
614 hiring of technical and legal staff.

615 (f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
616 in Subsection (4)(a) shall be deposited in the Utah Wastewater Loan Program Subaccount

617 created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

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

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

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

624 (iii) develop surface water sources.

625 (5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
626 2006, the difference between the following amounts shall be expended as provided in this
627 Subsection (5), if that difference is greater than \$1:

628 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the
629 fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

630 (ii) \$17,500,000.

631 (b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:

632 (A) transferred each fiscal year to the Department of Natural Resources as dedicated
633 credits; and

634 (B) expended by the Department of Natural Resources for watershed rehabilitation or
635 restoration.

636 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described
637 in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund
638 created in Section 73-10-24.

639 (c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the
640 remaining difference described in Subsection (5)(a) shall be:

641 (A) transferred each fiscal year to the Division of Water Resources as dedicated
642 credits; and

643 (B) expended by the Division of Water Resources for cloud-seeding projects
644 authorized by Title 73, Chapter 15, Modification of Weather.

645 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described
646 in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund
647 created in Section 73-10-24.

648 (d) After making the transfers required by Subsections (5)(b) and (c), 94% of the
649 remaining difference described in Subsection (5)(a) shall be deposited into the Water
650 Resources Conservation and Development Fund created in Section 73-10-24 for use by the
651 Division of Water Resources for:

652 (i) preconstruction costs:

653 (A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter
654 26, Bear River Development Act; and

655 (B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project
656 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

657 (ii) the cost of employing a civil engineer to oversee any project authorized by Title 73,
658 Chapter 26, Bear River Development Act;

659 (iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project
660 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

661 (iv) other uses authorized under Sections 73-10-24, 73-10-25.1, 73-10-30, and
662 Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

663 (e) Any unexpended monies described in Subsection (5)(d) that remain in the Water
664 Resources Conservation and Development Fund at the end of the fiscal year are nonlapsing.

665 (f) After making the transfers required by Subsections (5)(b) and (c) and subject to
666 Subsection (5)(g), 6% of the remaining difference described in Subsection (5)(a) shall be
667 transferred each year as dedicated credits to the Division of Water Rights to cover the costs
668 incurred for employing additional technical staff for the administration of water rights.

669 (g) At the end of each fiscal year, any unexpended dedicated credits described in
670 Subsection (5)(f) over \$150,000 lapse to the Water Resources Conservation and Development
671 Fund created in Section 73-10-24.

672 (6) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
673 2003, and for taxes listed under Subsection (3)(a), the amount of revenue generated by a 1/16%
674 tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited in
675 the Transportation Fund created by Section 72-2-102.

676 (7) (a) Notwithstanding Subsection (3)(a) and until Subsection (7)(b) applies,
677 beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial
678 Highway Fund Restricted Account created in Section 72-2-118 a portion of the taxes listed

679 under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate on the taxable
680 transactions under Subsection (1).

681 (b) Notwithstanding Subsection (3)(a), when the highway general obligation bonds
682 have been paid off and the highway projects completed that are intended to be paid from
683 revenues deposited in the Centennial Highway Fund Restricted Account as determined by the
684 Executive Appropriations Committee under Subsection 72-2-118(6)(d), the Division of
685 Finance shall deposit into the Transportation Investment Fund of 2005 created by Section
686 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated
687 by a 1/64% tax rate on the taxable transactions under Subsection (1).

688 (8) (a) Notwithstanding Subsection (3)(a), in addition to the amount deposited in
689 Subsection (7)(a), and until Subsection (8)(b) applies, for a fiscal year beginning on or after
690 July 1, 2007, the Division of Finance shall deposit into the Centennial Highway Fund
691 Restricted Account created by Section 72-2-118 a portion of the taxes listed under Subsection
692 (3)(a) equal to [~~8.3%~~] 10.10% of the revenues collected from the following taxes, which
693 represents a portion of the approximately 17% of sales and use tax revenues generated annually
694 by the sales and use tax on vehicles and vehicle-related products:

- 695 (i) the tax imposed by Subsection (2)(a)(i)(A);
- 696 (ii) the tax imposed by Subsection (2)(b)(i);
- 697 (iii) the tax imposed by Subsection (2)(c)(i); and
- 698 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

699 (b) Notwithstanding Subsection (3)(a) and in addition to the amounts deposited under
700 Subsection (7)(b), when the highway general obligation bonds have been paid off and the
701 highway projects completed that are intended to be paid from revenues deposited in the
702 Centennial Highway Fund Restricted Account as determined by the Executive Appropriations
703 Committee under Subsection 72-2-118(6)(d), the Division of Finance shall deposit into the
704 Transportation Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes
705 listed under Subsection (3)(a) equal to [~~8.3%~~] 10.10% of the revenues collected from the
706 following taxes, which represents a portion of the approximately 17% of sales and use tax
707 revenues generated annually by the sales and use tax on vehicles and vehicle-related products:

- 708 (i) the tax imposed by Subsection (2)(a)(i)(A);
- 709 (ii) the tax imposed by Subsection (2)(b)(i);

710 (iii) the tax imposed by Subsection (2)(c)(i); and
711 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

712 (9) (a) Notwithstanding Subsection (3)(a) and for the fiscal year 2008-09 only, the
713 Division of Finance shall deposit \$55,000,000 of the revenues generated by the taxes listed
714 under Subsection (3)(a) into the Critical Highway Needs Fund created by Section 72-2-125.

715 (b) Notwithstanding Subsection (3)(a) and until Subsection (9)(c) applies, for a fiscal
716 year beginning on or after July 1, 2009, the Division of Finance shall annually deposit
717 \$90,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the
718 Critical Highway Needs Fund created by Section 72-2-125.

719 (c) Notwithstanding Subsection (3)(a) and in addition to any amounts deposited under
720 Subsections (7) and (8), when the general obligation bonds authorized by Section 63B-16-101
721 have been paid off and the highway projects completed that are included in the prioritized
722 project list under Subsection 72-2-125(4) as determined in accordance with Subsection
723 72-2-125(6), the Division of Finance shall annually deposit \$90,000,000 of the revenues
724 generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund
725 of 2005 created by Section 72-2-124.

726 (10) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year
727 2008-09, \$915,000 shall be deposited into the Qualified Emergency Food Agencies Fund
728 created by Section 9-4-1409 and expended as provided in Section 9-4-1409.

729 (11) (a) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection
730 (11)(a)(ii), and until Subsection (11)(b) applies, beginning on January 1, 2009, the Division of
731 Finance shall deposit into the Critical Highway Needs Fund created by Section 72-2-125 the
732 amount of tax revenue generated by a .025% tax rate on the transactions described in
733 Subsection (1).

734 (ii) For purposes of Subsection (11)(a)(i), the Division of Finance may not deposit into
735 the Critical Highway Needs Fund any tax revenue generated by amounts paid or charged for
736 food and food ingredients, except for tax revenue generated by a bundled transaction
737 attributable to food and food ingredients and tangible personal property other than food and
738 food ingredients described in Subsection (2)(e).

739 (b) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection (11)(b)(ii),
740 and in addition to any amounts deposited under Subsections (7), (9), and (10), when the general

741 obligation bonds authorized by Section 63B-16-101 have been paid off and the highway
742 projects completed that are included in the prioritized project list under Subsection 72-2-125(4)
743 as determined in accordance with Subsection 72-2-125(6), the Division of Finance shall
744 deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the
745 amount of tax revenue generated by a .025% tax rate on the transactions described in
746 Subsection (1).

747 (ii) For purposes of Subsection (11)(b)(i), the Division of Finance may not deposit into
748 the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or
749 charged for food and food ingredients, except for tax revenue generated by a bundled
750 transaction attributable to food and food ingredients and tangible personal property other than
751 food and food ingredients described in Subsection (2)(e).

752 (12) (a) Notwithstanding Subsection (3)(a), and except as provided in Subsection
753 (12)(b), beginning on January 1, 2009, the Division of Finance shall deposit into the
754 Transportation Fund created by Section 72-2-102 the amount of tax revenue generated by a
755 .025% tax rate on the transactions described in Subsection (1) to be expended to address
756 chokepoints in construction management.

757 (b) For purposes of Subsection (12)(a), the Division of Finance may not deposit into
758 the Transportation Fund any tax revenue generated by amounts paid or charged for food and
759 food ingredients, except for tax revenue generated by a bundled transaction attributable to food
760 and food ingredients and tangible personal property other than food and food ingredients
761 described in Subsection (2)(e).

762 Section 8. Section **63M-1-413** is amended to read:

763 **63M-1-413. State tax credits -- Limit on claiming or carrying forward tax credits.**

764 (1) Subject to ~~[the limitations of]~~ Subsections (2) through ~~[(4)] (6)~~ and except as
765 provided in Subsection (7), the following nonrefundable tax credits against a tax under Title
766 59, Chapter 7, Corporate Franchise and Income Taxes, or Title 59, Chapter 10, Individual
767 Income Tax Act, are applicable in an enterprise zone:

768 (a) a tax credit of \$750 may be claimed by a business entity for each new full-time
769 position filled for not less than six months during a given tax year;

770 (b) an additional \$500 tax credit may be claimed if the new position pays at least 125%
771 of:

772 (i) the county average monthly nonagricultural payroll wage for the respective industry
773 as determined by the Department of Workforce Services; or

774 (ii) if the county average monthly nonagricultural payroll wage is not available for the
775 respective industry, the total average monthly nonagricultural payroll wage in the respective
776 county where the enterprise zone is located;

777 (c) an additional tax credit of \$750 may be claimed if the new position is in a business
778 entity that adds value to agricultural commodities through manufacturing or processing;

779 (d) an additional tax credit of \$200 may be claimed for two consecutive years for each
780 new employee who is insured under an employer-sponsored health insurance program if the
781 employer pays at least 50% of the premium cost for two consecutive years;

782 (e) a tax credit of 50% of the value of a cash contribution to a private nonprofit
783 corporation, except that the credit claimed may not exceed \$100,000:

784 (i) that is exempt from federal income taxation under Section 501(c)(3), Internal
785 Revenue Code;

786 (ii) whose primary purpose is community and economic development; and

787 (iii) that has been accredited by the board of directors of the Utah Rural Development
788 Council;

789 (f) a tax credit of 25% of the first \$200,000 spent on rehabilitating a building in the
790 enterprise zone that has been vacant for two years or more; and

791 (g) an annual investment tax credit of 10% of the first \$250,000 in investment, and 5%
792 of the next \$1,000,000 qualifying investment in plant, equipment, or other depreciable
793 property.

794 (2) (a) Subject to the limitations of Subsection (2)(b), a business entity claiming a tax
795 credit under Subsections (1)(a) through (d) may claim the tax credit for 30 full-time employee
796 positions or less in each of its taxable years.

797 (b) A business entity that received a tax credit for its full-time employee positions
798 under Subsections (1)(a) through (d) may claim an additional tax credit for a full-time
799 employee position under Subsections (1)(a) through (d) if:

800 (i) the business entity creates a new full-time employee position;

801 (ii) the total number of full-time employee positions at the business entity is greater
802 than the number of full-time employee positions previously claimed by the business entity

803 under Subsections (1)(a) through (d); and

804 (iii) the total number of tax credits the business entity has claimed for its current
805 taxable year, including the new full-time employee position for which the claimant, estate, or
806 trust that is a business entity is claiming a tax credit, is less than or equal to 30.

807 (c) A business entity existing in an enterprise zone on the date of its designation shall
808 calculate the number of full-time positions based on the average number of employees reported
809 to the Department of Workforce Services.

810 (d) Construction jobs are not eligible for the tax credits under Subsections (1)(a)
811 through (d).

812 (3) [H] Except as provided in Subsection (7)(c), if the amount of a tax credit under this
813 section exceeds a business entity's tax liability under this chapter for a taxable year, the amount
814 of the tax credit exceeding the liability may be carried forward for a period that does not exceed
815 the next three taxable years.

816 (4) (a) If a business entity is located in a county that met the requirements of
817 Subsections 63M-1-404(1)(b) and (c) but did not qualify as an enterprise zone prior to January
818 1, 1998, because the county was located in a metropolitan statistical area in more than one
819 state, the business entity:

820 (i) shall qualify for tax credits for a taxable year beginning on or after January 1, 1997,
821 but beginning before December 31, 1997;

822 (ii) may claim a tax credit as described in Subsection (4)(a)(i) in a taxable year
823 beginning on or after January 1, 1997, but beginning before December 31, 1997; and

824 (iii) may qualify for tax credits for any taxable year beginning on or after January 1,
825 1998, if the county is designated as an enterprise zone in accordance with this part.

826 (b) If a business entity claims a tax credit under Subsection (4)(a)(ii), the business
827 entity:

828 (i) may claim the tax credit by filing for the taxable year beginning on or after January
829 1, 1997, but beginning before December 31, 1997:

830 (A) a return under Title 59, Chapter 7, Corporate Franchise and Income Taxes;

831 (B) an amended return under Title 59, Chapter 7, Corporate Franchise and Income
832 Taxes;

833 (C) a return under Title 59, Chapter 10, Individual Income Tax Act; or

834 (D) an amended return under Title 59, Chapter 10, Individual Income Tax Act; and
835 (ii) may carry forward the tax credit to a taxable year beginning on or after January 1,
836 1998, in accordance with Subsection (3).

837 (5) The tax credits under Subsections (1)(a) through (g) may not be claimed by a
838 business entity engaged in retail trade or by a public utilities business.

839 (6) A business entity may not claim or carry forward a tax credit available under this
840 part for a taxable year during which the business entity has claimed the targeted business
841 income tax credit available under Section 63M-1-504.

842 (7) (a) For the taxable year beginning on or after January 1, 2009, but beginning on or
843 before December 31, 2009 only, a business entity may not claim or carry forward a tax credit
844 under this section.

845 (b) If, but for Subsection (7)(a), a business entity would have been allowed to claim a
846 tax credit for the taxable year beginning on or after January 1, 2009, but beginning on or before
847 December 31, 2009, the business entity may not carry forward that tax credit to a taxable year
848 beginning on or after January 1, 2010.

849 (c) The three taxable year period described in Subsection (3) for a business entity to
850 carry forward a tax credit shall be reduced to two taxable years if the taxable year beginning on
851 or after January 1, 2009, but beginning on or before December 31, 2009 is part of that three
852 taxable year period described in Subsection (3) during which the business entity may carry
853 forward the tax credit.

854 Section 9. Section **63M-1-504** is amended to read:

855 **63M-1-504. Targeted business income tax credit structure -- Duties of the local**
856 **zone administrator -- Duties of the State Tax Commission -- Prohibition on claiming tax**
857 **credit for one taxable year.**

858 (1) [~~For~~] Subject to the other provisions of this section and except as provided in
859 Subsection (10), for taxable years beginning on or after January 1, 2002, a business applicant
860 that is certified under Subsection 63M-1-503(3) and issued a targeted business tax credit
861 eligibility form by the office under Subsection (8) may claim a refundable tax credit:

862 (a) against the business applicant's tax liability under:

863 (i) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or

864 (ii) Title 59, Chapter 10, Individual Income Tax Act; and

865 (b) subject to requirements and limitations provided by this part.

866 (2) The total amount of the targeted business income tax credits allowed under this part
867 for all business applicants may not exceed \$300,000 in any fiscal year.

868 (3) (a) A targeted business income tax credit allowed under this part for each
869 community investment project provided by a business applicant may not:

870 (i) be claimed by a business applicant for more than seven consecutive taxable years
871 from the date the business applicant first qualifies for a targeted business income tax credit on
872 the basis of a community investment project;

873 (ii) be carried forward or carried back;

874 (iii) exceed \$100,000 in total amount for the community investment project period
875 during which the business applicant is eligible to claim a targeted business income tax credit;

876 or

877 (iv) exceed in any year that the targeted business income tax credit is claimed the lesser
878 of:

879 (A) 50% of the maximum amount allowed by the local zone administrator; or

880 (B) the allocated cap amount determined by the office under Subsection 63M-1-503(5).

881 (b) A business applicant may apply to the local zone administrator to claim a targeted
882 business income tax credit allowed under this part for each community investment project
883 provided by the business applicant as the basis for its eligibility for a targeted business income
884 tax credit.

885 (4) Subject to other provisions of this section, the local zone administrator shall
886 establish for each business applicant that qualifies for a targeted business income tax credit:

887 (a) criteria for maintaining eligibility for the targeted business income tax credit that
888 are reasonably related to the community investment project that is the basis for the business
889 applicant's targeted business income tax credit;

890 (b) the maximum amount of the targeted business income tax credit the business
891 applicant is allowed for the community investment project period;

892 (c) the time period over which the total amount of the targeted business income tax
893 credit may be claimed;

894 (d) the maximum amount of the targeted business income tax credit that the business
895 applicant will be allowed to claim each year; and

896 (e) requirements for a business applicant to report to the local zone administrator
897 specifying:

898 (i) the frequency of the business applicant's reports to the local zone administrator,
899 which shall be made at least quarterly; and

900 (ii) the information needed by the local zone administrator to monitor the business
901 applicant's compliance with this Subsection (4) or Section 63M-1-503 that shall be included in
902 the report.

903 (5) In accordance with Subsection (4)(e), a business applicant allowed a targeted
904 business income tax credit under this part shall report to the local zone administrator.

905 (6) The amount of a targeted business income tax credit that a business applicant is
906 allowed to claim for a taxable year shall be reduced by 25% for each quarter in which the office
907 or the local zone administrator determines that the business applicant has failed to comply with
908 a requirement of Subsection (3) or Section 63M-1-503.

909 (7) The office or local zone administrator may audit a business applicant to ensure:

910 (a) eligibility for a targeted business income tax credit; or

911 (b) compliance with Subsection (3) or Section 63M-1-503.

912 (8) The office shall issue a targeted business income tax credit eligibility form in a
913 form jointly developed by the State Tax Commission and the office no later than 30 days after
914 the last day of the business applicant's taxable year showing:

915 (a) the maximum amount of the targeted business income tax credit that the business
916 applicant is eligible for that taxable year;

917 (b) any reductions in the maximum amount of the targeted business income tax credit
918 because of failure to comply with a requirement of Subsection (3) or Section 63M-1-503;

919 (c) the allocated cap amount that the business applicant may claim for that taxable
920 year; and

921 (d) the actual amount of the targeted business income tax credit that the business
922 applicant may claim for that taxable year.

923 (9) (a) A business applicant shall retain the targeted business income tax credit
924 eligibility form provided by the office under this Subsection (9).

925 (b) The State Tax Commission may audit a business applicant to ensure:

926 (i) eligibility for a targeted business income tax credit; or

927 (ii) compliance with Subsection (3) or Section 63M-1-503.

928 (10) For the taxable year beginning on or after January 1, 2009, but beginning on or
929 before December 31, 2009 only, a business applicant may not claim a tax credit under this
930 section.

931 Section 10. Section **63M-1-1225** is enacted to read:

932 **63M-1-1225. Prohibition on issuing or claiming a contingent tax credit for one**
933 **taxable year.**

934 For the taxable year beginning on or after January 1, 2009, but beginning on or before
935 December 31, 2009 only:

936 (1) the board may not issue a contingent tax credit under this part; and

937 (2) a person may not claim a contingent tax credit under this part.

938 Section 11. **Retrospective operation -- Effective date.**

939 (1) Except as provided in Subsection (2), this bill has retrospective operation for a
940 taxable year beginning on or after January 1, 2009.

941 (2) The amendments to Section 59-12-103 take effect on July 1, 2009.

Legislative Review Note
as of 2-25-09 10:25 AM

Office of Legislative Research and General Counsel

H.B. 415 - Taxation Amendments

Fiscal Note

2009 General Session
State of Utah

State Impact

Enactment of this bill reduces the general sales tax rate to 3.92%, which decreases revenue to the General Fund by \$271,700,000 in FY 2010 and \$277,134,000 in FY 2011. The bill eliminates certain credits, which increases one-time revenue to the Education Fund by \$650,000,000 in FY 2010. The Tax Commission will require a one-time appropriation of \$38,000 for new withholding booklets and postage.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$0	\$0	\$0	\$0	(\$271,700,000)	(\$277,134,000)
Education Fund, One-Time	\$0	\$38,000	\$0	\$0	\$650,000,000	\$0
Total	\$0	\$38,000	\$0	\$0	\$378,300,000	(\$277,134,000)

Individual, Business and/or Local Impact

Individuals and businesses experience a one-time increase in income tax liability and an ongoing decrease in sales tax liability. Local entities are likely unaffected.
