

Senator Curtis S. Bramble proposes the following substitute bill:

SALES AND USE TAX AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill amends the Sales and Use Tax Act and related provisions.

Highlighted Provisions:

This bill:

- ▶ addresses an exemption from certain penalties relating to sales and use taxes;
- ▶ modifies and repeals definitions;
- ▶ provides that amounts paid or charged for prepaid telephone calling cards are not subject to state and local sales and use taxes;
- ▶ repeals a sales and use tax exemption for sales of telecommunications service charged to a prepaid telephone calling card;
- ▶ provides a requirement that to be eligible for exemption from state and local sales and use taxes, certain machinery, equipment, or repair or replacement parts be used in an establishment or facility in the state;
- ▶ repeals obsolete language;
- ▶ addresses a state sales and use tax exemption for certain accommodations and services taxed by the Navajo Nation;
- ▶ addresses a refund for overpayment of a sales and use tax;
- ▶ addresses a seller's or certified service provider's reliance on State Tax Commission



- 26 information;
- 27 ▶ addresses the transactions that are taxable or exempt under Title 59, Chapter 12,
- 28 Part 2, Local Sales and Use Tax Act;
- 29 ▶ addresses the determination of the location of certain transactions;
- 30 ▶ provides that the motor vehicle rental tax is not subject to certain provisions
- 31 designating the state sales and use tax for particular purposes;
- 32 ▶ conforms terminology in the emergency telephone service charge for 911
- 33 administered by the State Tax Commission to terminology in the Sales and Use Tax
- 34 Act; and
- 35 ▶ makes technical changes.

36 **Monies Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 This bill takes effect on July 1, 2009.

40 **Utah Code Sections Affected:**

41 AMENDS:

- 42 **59-1-401**, as last amended by Laws of Utah 2008, Chapter 382
- 43 **59-1-403**, as last amended by Laws of Utah 2008, Chapters 3, 382, and 384
- 44 **59-12-102**, as last amended by Laws of Utah 2008, Chapters 3, 28, 286, 323, 382, and
- 45 384
- 46 **59-12-103**, as last amended by Laws of Utah 2008, Second Special Session, Chapter 5
- 47 **59-12-104**, as last amended by Laws of Utah 2008, Second Special Session, Chapter 2
- 48 **59-12-104.2**, as last amended by Laws of Utah 2008, Chapter 286
- 49 **59-12-104.5**, as last amended by Laws of Utah 2008, Chapter 384
- 50 **59-12-105**, as last amended by Laws of Utah 2008, Chapter 384
- 51 **59-12-110**, as last amended by Laws of Utah 2008, Chapters 382 and 384
- 52 **59-12-125**, as enacted by Laws of Utah 2008, Chapter 384
- 53 **59-12-204**, as last amended by Laws of Utah 2006, Chapter 253
- 54 **59-12-205**, as last amended by Laws of Utah 2008, Chapter 384
- 55 **59-12-215**, as renumbered and amended by Laws of Utah 2008, Chapter 384
- 56 **59-12-216**, as enacted by Laws of Utah 2008, Chapter 384

- 57 **59-12-304**, as enacted by Laws of Utah 2008, Chapter 384
- 58 **59-12-357**, as enacted by Laws of Utah 2008, Chapter 384
- 59 **59-12-406**, as enacted by Laws of Utah 2008, Chapter 384
- 60 **59-12-506**, as enacted by Laws of Utah 2008, Chapter 384
- 61 **59-12-605**, as enacted by Laws of Utah 2008, Chapter 384
- 62 **59-12-707**, as enacted by Laws of Utah 2008, Chapter 384
- 63 **59-12-808**, as enacted by Laws of Utah 2008, Chapter 384
- 64 **59-12-1004**, as enacted by Laws of Utah 2008, Chapter 384
- 65 **59-12-1104**, as enacted by Laws of Utah 2008, Chapter 384
- 66 **59-12-1201**, as last amended by Laws of Utah 2008, Chapter 384
- 67 **59-12-1202**, as enacted by Laws of Utah 2008, Chapter 384
- 68 **59-12-1304**, as enacted by Laws of Utah 2008, Chapter 384
- 69 **59-12-1405**, as enacted by Laws of Utah 2008, Chapter 384
- 70 **59-12-1505**, as enacted by Laws of Utah 2008, Chapter 384
- 71 **59-12-1706**, as enacted by Laws of Utah 2008, Chapter 384
- 72 **59-12-1804**, as enacted by Laws of Utah 2008, Chapter 384
- 73 **59-12-1904**, as enacted by Laws of Utah 2008, Chapter 286
- 74 **59-12-2005**, as enacted by Laws of Utah 2008, Chapter 286
- 75 **59-12-2104**, as enacted by Laws of Utah 2008, Chapter 323
- 76 **69-2-5**, as last amended by Laws of Utah 2008, Chapters 360 and 384



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

79 Section 1. Section **59-1-401** is amended to read:

80 **59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute**
81 **of limitations -- Commission authority to waive, reduce, or compromise penalty or**
82 **interest.**

83 (1) As used in this section:

84 (a) (i) "Nonqualifying obligation" means a charge, fee, payment, or tax administered by
85 the commission.

86 (ii) "Nonqualifying obligation" does not include:

87 (A) beginning on the phase I activation date, a phase I obligation; or

- 88 (B) beginning on the phase II activation date, a phase II obligation.
- 89 (b) "Phase I activation date" means the earlier of:
- 90 (i) the day on which the commission's GenTax system is activated to administer all
- 91 phase I obligations; or
- 92 (ii) May 1, 2008.
- 93 (c) "Phase I obligation" means:
- 94 (i) a fee under Section 19-6-808;
- 95 (ii) a tax under Chapter 10, Part 1, Determination and Reporting of Tax Liability and
- 96 Information;
- 97 (iii) a tax under Chapter 10, Part 2, Trusts and Estates;
- 98 (iv) a tax under Chapter 10, Part 12, Single Rate Individual Income Tax Act; or
- 99 (v) a tax under Chapter 12, Sales and Use Tax Act.
- 100 (d) "Phase II activation date" means the earlier of:
- 101 (i) the day on which the commission's GenTax system is activated to administer all
- 102 phase II obligations; or
- 103 (ii) May 4, 2009.
- 104 (e) (i) "Phase II obligation" means:
- 105 (A) a payment under Chapter 6, Mineral Production Tax Withholding;
- 106 (B) a tax under Chapter 7, Corporate Franchise and Income Taxes;
- 107 (C) a payment under Chapter 10, Part 4, Withholding of Tax; or
- 108 (D) a tax paid on a return filed in accordance with Section 59-10-507.
- 109 (ii) "Phase II obligation" does not include a payment of estimated tax under Section
- 110 59-7-504.
- 111 (2) (a) The due date for filing a return is:
- 112 (i) if the person filing the return is not allowed by law an extension of time for filing
- 113 the return, the day on which the return is due as provided by law; or
- 114 (ii) if the person filing the return is allowed by law an extension of time for filing the
- 115 return, the last day of that extension of time.
- 116 (b) (i) A penalty in the amount described in Subsection (2)(b)(ii) is imposed if:
- 117 (A) a person is required to file a return with respect to a nonqualifying obligation; and
- 118 (B) the person described in Subsection (2)(b)(i)(A) files the return after the due date

119 described in Subsection (2)(a).

120 (ii) For purposes of Subsection (2)(b)(i), the penalty is an amount equal to the greater
121 of:

122 (A) \$20; or

123 (B) 10% of the unpaid nonqualifying obligation due on the return.

124 (c) (i) A penalty in the amount described in Subsection (2)(c)(ii) is imposed if a person:

125 (A) (I) is required to file a return:

126 (Aa) on or after the phase I activation date; and

127 (Bb) with respect to a phase I obligation; and

128 (II) files the return after the due date described in Subsection (2)(a); or

129 (B) (I) is required to file a return:

130 (Aa) on or after the phase II activation date; and

131 (Bb) with respect to a phase II obligation; and

132 (II) files the return after the due date described in Subsection (2)(a).

133 (ii) For purposes of Subsection (2)(c)(i), the penalty is an amount equal to the greater
134 of:

135 (A) \$20; or

136 (B) (I) 2% of the unpaid phase I obligation or phase II obligation due on the return if
137 the return is filed no later than five days after the due date described in Subsection (2)(a);

138 (II) 5% of the unpaid phase I obligation or phase II obligation due on the return if the
139 return is filed more than five days after the due date but no later than 15 days after the due date
140 described in Subsection (2)(a); or

141 (III) 10% of the unpaid phase I obligation or phase II obligation due on the return if the
142 return is filed more than 15 days after the due date described in Subsection (2)(a).

143 (d) This Subsection (2) does not apply to:

144 (i) an amended return; or

145 (ii) a return with no tax due.

146 (3) (a) If a person fails to pay a tax, fee, or charge due, the person is subject to a penalty
147 as provided in this Subsection (3).

148 (b) (i) A penalty in the amount described in Subsection (3)(b)(ii) is imposed if:

149 (A) a person files a return with respect to a nonqualifying obligation on or before the

150 due date for filing a return described in Subsection (2)(a), but fails to pay the nonqualifying
151 obligation due on the return on or before that due date;

152 (B) a person:

153 (I) is subject to a penalty under Subsection (2)(b); and

154 (II) fails to pay a nonqualifying obligation due on a return within a 90-day period after
155 the due date for filing a return described in Subsection (2)(a);

156 (C) a person:

157 (I) is mailed a notice of deficiency; and

158 (II) within a 30-day period after the day on which the notice of deficiency described in
159 Subsection (3)(b)(i)(C)(I) is mailed:

160 (Aa) does not file a petition for redetermination or a request for agency action; and

161 (Bb) fails to pay a nonqualifying obligation due on a return;

162 (D) (I) the commission:

163 (Aa) issues an order constituting final agency action resulting from a timely filed
164 petition for redetermination or a timely filed request for agency action; or

165 (Bb) is considered to have denied a request for reconsideration under Subsection
166 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed
167 request for agency action; and

168 (II) a person fails to pay a nonqualifying obligation due on a return within a 30-day
169 period after the date the commission:

170 (Aa) issues the order constituting final agency action described in Subsection
171 (3)(b)(i)(D)(I)(Aa); or

172 (Bb) is considered to have denied the request for reconsideration described in
173 Subsection (3)(b)(i)(D)(I)(Bb); or

174 (E) a person fails to pay a nonqualifying obligation within a 30-day period after the
175 date of a final judicial decision resulting from a timely filed petition for judicial review.

176 (ii) For purposes of Subsection (3)(b)(i), the penalty is an amount equal to the greater
177 of:

178 (A) \$20; or

179 (B) 10% of the unpaid nonqualifying obligation due on the return.

180 (c) (i) This Subsection (3)(c) applies to a penalty:

181 (A) imposed on or after the phase I activation date with respect to a phase I obligation;

182 or

183 (B) imposed on or after the phase II activation date with respect to a phase II

184 obligation.

185 (ii) (A) The penalty described in Subsection (3)(c)(ii)(B) applies if a person:

186 (I) with respect to a phase I obligation:

187 (Aa) files a return on or before the due date for filing a return described in Subsection

188 (2)(a); and

189 (Bb) fails to pay the phase I obligation due on the return on or before the due date

190 described in Subsection (2)(a); or

191 (II) with respect to a phase II obligation:

192 (Aa) files a return on or before the due date for filing a return described in Subsection

193 (2)(a); and

194 (Bb) fails to pay the phase II obligation due on the return on or before the due date

195 described in Subsection (2)(a).

196 (B) For purposes of Subsection (3)(c)(ii)(A), the penalty is an amount equal to the

197 greater of:

198 (I) \$20; or

199 (II) (Aa) 2% of the unpaid phase I obligation or phase II obligation due on the return if

200 the phase I obligation or phase II obligation due on the return is paid no later than five days

201 after the due date for filing a return described in Subsection (2)(a);

202 (Bb) 5% of the unpaid phase I obligation or phase II obligation due on the return if the

203 phase I obligation or phase II obligation due on the return is paid more than five days after the

204 due date for filing a return described in Subsection (2)(a) but no later than 15 days after that

205 due date; or

206 (Cc) 10% of the unpaid phase I obligation or phase II obligation due on the return if the

207 phase I obligation or phase II obligation due on the return is paid more than 15 days after the

208 due date for filing a return described in Subsection (2)(a).

209 (iii) (A) A person is subject to a penalty as provided in Subsection (3)(c)(iii)(B) if the

210 person:

211 (I) is subject to a penalty under Subsection (2)(c); and

212 (II) fails to pay a phase I obligation or phase II obligation due on a return within a
213 90-day period after the due date for filing a return described in Subsection (2)(a).

214 (B) For purposes of Subsection (3)(c)(iii)(A), the penalty is an amount equal to the
215 greater of:

216 (I) \$20; or

217 (II) (Aa) 2% of the unpaid phase I obligation or phase II obligation due on the return if
218 the phase I obligation or phase II obligation due on the return is paid no later than five days
219 after the last day of the 90-day period described in Subsection (3)(c)(iii)(A)(II);

220 (Bb) 5% of the unpaid phase I obligation or phase II obligation due on the return if the
221 phase I obligation or phase II obligation due on the return is paid more than five days after the
222 last day of the 90-day period described in Subsection (3)(c)(iii)(A)(II) but no later than 15 days
223 after the last day of the 90-day period described in Subsection (3)(c)(iii)(A)(II); or

224 (Cc) 10% of the unpaid phase I obligation or phase II obligation due on the return if the
225 phase I obligation or phase II obligation due on the return is paid more than 15 days after the
226 last day of the 90-day period described in Subsection (3)(c)(iii)(A)(II).

227 (iv) (A) A person is subject to a penalty as provided in Subsection (3)(c)(iv)(B) if the
228 person:

229 (I) is mailed a notice of deficiency; and

230 (II) within a 30-day period after the day on which the notice of deficiency described in
231 Subsection (3)(c)(iv)(A)(I) is mailed:

232 (Aa) does not file a petition for redetermination or a request for agency action; and

233 (Bb) fails to pay a phase I obligation or phase II obligation due on a return.

234 (B) For purposes of Subsection (3)(c)(iv)(A), the penalty is an amount equal to the
235 greater of:

236 (I) \$20; or

237 (II) (Aa) 2% of the unpaid phase I obligation or phase II obligation due on the return if
238 the phase I obligation or phase II obligation due on the return is paid no later than five days
239 after the last day of the 30-day period described in Subsection (3)(c)(iv)(A)(II);

240 (Bb) 5% of the unpaid phase I obligation or phase II obligation due on the return if the
241 phase I obligation or phase II obligation due on the return is paid more than five days after the
242 last day of the 30-day period described in Subsection (3)(c)(iv)(A)(II) but no later than 15 days

243 after the last day of the 30-day period described in Subsection (3)(c)(iv)(A)(II); or
244 (Cc) 10% of the unpaid phase I obligation or phase II obligation due on the return if the
245 phase I obligation or phase II obligation due on the return is paid more than 15 days after the
246 last day of the 30-day period described in Subsection (3)(c)(iv)(A)(II).

247 (v) (A) A person is subject to a penalty as provided in Subsection (3)(c)(v)(B) if:
248 (I) the commission:
249 (Aa) issues an order constituting final agency action resulting from a timely filed
250 petition for redetermination or a timely filed request for agency action; or
251 (Bb) is considered to have denied a request for reconsideration under Subsection
252 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed
253 request for agency action; and
254 (II) the person fails to pay a phase I obligation or phase II obligation due on a return
255 within a 30-day period after the date the commission:
256 (Aa) issues the order constituting final agency action described in Subsection
257 (3)(c)(v)(A)(I)(Aa); or
258 (Bb) is considered to have denied the request for reconsideration described in
259 Subsection (3)(c)(v)(A)(I)(Bb).

260 (B) For purposes of Subsection (3)(c)(v)(A), the penalty is an amount equal to the
261 greater of:
262 (I) \$20; or
263 (II) (Aa) 2% of the unpaid phase I obligation or phase II obligation due on the return if
264 the phase I obligation or phase II obligation due on the return is paid no later than five days
265 after the last day of the 30-day period described in Subsection (3)(c)(v)(A)(II);
266 (Bb) 5% of the unpaid phase I obligation or phase II obligation due on the return if the
267 phase I obligation or phase II obligation due on the return is paid more than five days after the
268 last day of the 30-day period described in Subsection (3)(c)(v)(A)(II) but no later than 15 days
269 after the last day of the 30-day period described in Subsection (3)(c)(v)(A)(II); or
270 (Cc) 10% of the unpaid phase I obligation or phase II obligation due on the return if the
271 phase I obligation or phase II obligation due on the return is paid more than 15 days after the
272 last day of the 30-day period described in Subsection (3)(c)(v)(A)(II).

273 (vi) (A) A person is subject to a penalty as provided in Subsection (3)(c)(vi)(B) if

274 within a 30-day period after the date of a final judicial decision resulting from a timely filed
275 petition for judicial review, the person fails to pay a phase I obligation or phase II obligation.

276 (B) For purposes of Subsection (3)(c)(vi)(A), the penalty is an amount equal to the
277 greater of:

278 (I) \$20; or

279 (II) (Aa) 2% of the unpaid phase I obligation or phase II obligation due on the return if
280 the phase I obligation or phase II obligation due on the return is paid no later than five days
281 after the last day of the 30-day period described in Subsection (3)(c)(vi)(A);

282 (Bb) 5% of the unpaid phase I obligation or phase II obligation due on the return if the
283 phase I obligation or phase II obligation due on the return is paid more than five days after the
284 last day of the 30-day period described in Subsection (3)(c)(vi)(A) but no later than 15 days
285 after the last day of the 30-day period described in Subsection (3)(c)(vi)(A); or

286 (Cc) 10% of the unpaid phase I obligation or phase II obligation due on the return if the
287 phase I obligation or phase II obligation due on the return is paid more than 15 days after the
288 last day of the 30-day period described in Subsection (3)(c)(vi)(A).

289 (4) (a) Beginning January 1, 1995, in the case of any underpayment of estimated tax or
290 quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104, there
291 shall be added a penalty in an amount determined by applying the interest rate provided under
292 Section 59-1-402 plus four percentage points to the amount of the underpayment for the period
293 of the underpayment.

294 (b) (i) For purposes of Subsection (4)(a), the amount of the underpayment shall be the
295 excess of the required installment over the amount, if any, of the installment paid on or before
296 the due date for the installment.

297 (ii) The period of the underpayment shall run from the due date for the installment to
298 whichever of the following dates is the earlier:

299 (A) the original due date of the tax return, without extensions, for the taxable year; or

300 (B) with respect to any portion of the underpayment, the date on which that portion is
301 paid.

302 (iii) For purposes of this Subsection (4), a payment of estimated tax shall be credited
303 against unpaid required installments in the order in which the installments are required to be
304 paid.

305 (5) (a) Notwithstanding Subsection (2) and except as provided in Subsection (6), a
306 person allowed by law an extension of time for filing a corporate franchise or income tax return
307 under Chapter 7, Corporate Franchise and Income Taxes, or an individual income tax return
308 under Chapter 10, Individual Income Tax Act, is subject to a penalty in the amount described in
309 Subsection (5)(b) if, on or before the day on which the return is due as provided by law, not
310 including the extension of time, the person fails to pay:

311 (i) for a person filing a corporate franchise or income tax return under Chapter 7,
312 Corporate Franchise and Income Taxes, the payment required by Subsection 59-7-507(1)(b); or

313 (ii) for a person filing an individual income tax return under Chapter 10, Individual
314 Income Tax Act, the payment required by Subsection 59-10-516(2).

315 (b) For purposes of Subsection (5)(a), the penalty per month during the period of the
316 extension of time for filing the return is an amount equal to 2% of the unpaid tax due on the
317 return.

318 (6) If a person does not file a return within an extension of time allowed by Section
319 59-7-505 or 59-10-516, the person:

320 (a) is not subject to a penalty in the amount described in Subsection (5)(b); and

321 (b) is subject to a penalty in an amount equal to the sum of:

322 (i) a late file penalty in an amount equal to the greater of:

323 (A) \$20; or

324 (B) 10% of the unpaid tax due on the return; and

325 (ii) a late pay penalty in an amount equal to the greater of:

326 (A) \$20; or

327 (B) 10% of the unpaid tax due on the return.

328 (7) (a) Additional penalties for underpayments of tax are as provided in this Subsection
329 (7)(a).

330 (i) Except as provided in Subsection (7)(c), if any underpayment of tax is due to
331 negligence, the penalty is 10% of the underpayment.

332 (ii) Except as provided in Subsection (7)(d), if any underpayment of tax is due to
333 intentional disregard of law or rule, the penalty is 15% of the underpayment.

334 (iii) For intent to evade the tax, the penalty is the greater of \$500 per period or 50% of
335 the tax due.

336 (iv) If the underpayment is due to fraud with intent to evade the tax, the penalty is the
337 greater of \$500 per period or 100% of the underpayment.

338 (b) If the commission determines that a person is liable for a penalty imposed under
339 Subsection (7)(a)(ii), (iii), or (iv), the commission shall notify the taxpayer of the proposed
340 penalty.

341 (i) The notice of proposed penalty shall:

342 (A) set forth the basis of the assessment; and

343 (B) be mailed by certified mail, postage prepaid, to the person's last-known address.

344 (ii) Upon receipt of the notice of proposed penalty, the person against whom the
345 penalty is proposed may:

346 (A) pay the amount of the proposed penalty at the place and time stated in the notice;

347 or

348 (B) proceed in accordance with the review procedures of Subsection (7)(b)(iii).

349 (iii) Any person against whom a penalty has been proposed in accordance with this
350 Subsection (7) may contest the proposed penalty by filing a petition for an adjudicative
351 proceeding with the commission.

352 (iv) (A) If the commission determines that a person is liable for a penalty under this
353 Subsection (7), the commission shall assess the penalty and give notice and demand for
354 payment.

355 (B) The notice and demand for payment described in Subsection (7)(b)(iv)(A) shall be
356 mailed by certified mail, postage prepaid, to the person's last-known address.

357 (c) A seller that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not
358 subject to the penalty under Subsection (7)(a)(i) if on or after July 1, 2001:

359 (i) a court of competent jurisdiction issues a final unappealable judgment or order
360 determining that:

361 (A) the seller meets one or more of the criteria described in Subsection
362 59-12-107(1)(a); and

363 (B) the commission or a county, city, or town may require the seller to collect a tax
364 under Subsection 59-12-103(2)(a) [~~or (b)~~] through (d); or

365 (ii) the commission issues a final unappealable administrative order determining that:

366 (A) the seller meets one or more of the criteria described in Subsection

367 59-12-107(1)(a); and

368 (B) the commission or a county, city, or town may require the seller to collect a tax
369 under Subsection 59-12-103(2)(a) [~~or (b)~~] through (d).

370 (d) A seller that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not
371 subject to the penalty under Subsection (7)(a)(ii) if:

372 (i) (A) a court of competent jurisdiction issues a final unappealable judgment or order
373 determining that:

374 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a);
375 and

376 (II) the commission or a county, city, or town may require the seller to collect a tax
377 under Subsection 59-12-103(2)(a) [~~or (b)~~] through (d); or

378 (B) the commission issues a final unappealable administrative order determining that:

379 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a);
380 and

381 (II) the commission or a county, city, or town may require the seller to collect a tax
382 under Subsection 59-12-103(2)(a) [~~or (b)~~] through (d); and

383 (ii) the seller's intentional disregard of law or rule is warranted by existing law or by a
384 nonfrivolous argument for the extension, modification, or reversal of existing law or the
385 establishment of new law.

386 (8) Except as provided in Section 59-12-105, the penalty for failure to file an
387 information return, information report, or a complete supporting schedule is \$50 for each
388 information return, information report, or supporting schedule up to a maximum of \$1,000.

389 (9) If any taxpayer, in furtherance of a frivolous position, has a prima facie intent to
390 delay or impede administration of the tax law and files a purported return that fails to contain
391 information from which the correctness of reported tax liability can be determined or that
392 clearly indicates that the tax liability shown must be substantially incorrect, the penalty is \$500.

393 (10) (a) A seller that fails to remit a tax, fee, or charge monthly as required by
394 Subsection 59-12-108(1)(a)(ii):

395 (i) is subject to a penalty described in Subsection (2); and

396 (ii) may not retain the percentage of sales and use taxes that would otherwise be
397 allowable under Subsection 59-12-108(2).

398 (b) A seller that fails to remit a tax, fee, or charge by electronic funds transfer as
399 required by Subsection 59-12-108(1)(a)(ii)(B):

400 (i) is subject to a penalty described in Subsection (2); and

401 (ii) may not retain the percentage of sales and use taxes that would otherwise be
402 allowable under Subsection 59-12-108(2).

403 (11) (a) A person is subject to the penalty provided in Subsection (11)(c) if that person:

404 (i) commits an act described in Subsection (11)(b) with respect to one or more of the
405 following documents:

406 (A) a return;

407 (B) an affidavit;

408 (C) a claim; or

409 (D) a document similar to Subsections (11)(a)(i)(A) through (C);

410 (ii) knows or has reason to believe that the document described in Subsection (11)(a)(i)
411 will be used in connection with any material matter administered by the commission; and

412 (iii) knows that the document described in Subsection (11)(a)(i), if used in connection
413 with any material matter administered by the commission, would result in an understatement of
414 another person's liability for a tax, fee, or charge administered by the commission.

415 (b) The following acts apply to Subsection (11)(a)(i):

416 (i) preparing any portion of a document described in Subsection (11)(a)(i);

417 (ii) presenting any portion of a document described in Subsection (11)(a)(i);

418 (iii) procuring any portion of a document described in Subsection (11)(a)(i);

419 (iv) advising in the preparation or presentation of any portion of a document described
420 in Subsection (11)(a)(i);

421 (v) aiding in the preparation or presentation of any portion of a document described in
422 Subsection (11)(a)(i);

423 (vi) assisting in the preparation or presentation of any portion of a document described
424 in Subsection (11)(a)(i); or

425 (vii) counseling in the preparation or presentation of any portion of a document
426 described in Subsection (11)(a)(i).

427 (c) For purposes of Subsection (11)(a), the penalty:

428 (i) shall be imposed by the commission;

429 (ii) is \$500 for each document described in Subsection (11)(a)(i) with respect to which
430 the person described in Subsection (11)(a) meets the requirements of Subsection (11)(a); and

431 (iii) is in addition to any other penalty provided by law.

432 (d) The commission may seek a court order to enjoin a person from engaging in
433 conduct that is subject to a penalty under this Subsection (11).

434 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
435 commission may make rules prescribing the documents that are similar to Subsections
436 (11)(a)(i)(A) through (C).

437 (12) (a) As provided in Section 76-8-1101, criminal offenses and penalties are as
438 provided in Subsections (12)(b) through (e).

439 (b) (i) Any person who is required by this title or any laws the commission administers
440 or regulates to register with or obtain a license or permit from the commission, who operates
441 without having registered or secured a license or permit, or who operates when the registration,
442 license, or permit is expired or not current, is guilty of a class B misdemeanor.

443 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(b)(i), the
444 penalty may not:

445 (A) be less than \$500; or

446 (B) exceed \$1,000.

447 (c) (i) Any person who, with intent to evade any tax or requirement of this title or any
448 lawful requirement of the commission, fails to make, render, sign, or verify any return or to
449 supply any information within the time required by law, or who makes, renders, signs, or
450 verifies any false or fraudulent return or statement, or who supplies any false or fraudulent
451 information, is guilty of a third degree felony.

452 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(c)(i), the
453 penalty may not:

454 (A) be less than \$1,000; or

455 (B) exceed \$5,000.

456 (d) (i) Any person who intentionally or willfully attempts to evade or defeat any tax or
457 the payment of a tax is, in addition to other penalties provided by law, guilty of a second degree
458 felony.

459 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(d)(i), the

460 penalty may not:

461 (A) be less than \$1,500; or

462 (B) exceed \$25,000.

463 (e) (i) A person is guilty of a second degree felony if that person commits an act:

464 (A) described in Subsection (12)(e)(ii) with respect to one or more of the following
465 documents:

466 (I) a return;

467 (II) an affidavit;

468 (III) a claim; or

469 (IV) a document similar to Subsections (12)(e)(i)(A)(I) through (III); and

470 (B) subject to Subsection (12)(e)(iii), with knowledge that the document described in
471 Subsection (12)(e)(i)(A):

472 (I) is false or fraudulent as to any material matter; and

473 (II) could be used in connection with any material matter administered by the
474 commission.

475 (ii) The following acts apply to Subsection (12)(e)(i):

476 (A) preparing any portion of a document described in Subsection (12)(e)(i)(A);

477 (B) presenting any portion of a document described in Subsection (12)(e)(i)(A);

478 (C) procuring any portion of a document described in Subsection (12)(e)(i)(A);

479 (D) advising in the preparation or presentation of any portion of a document described
480 in Subsection (12)(e)(i)(A);

481 (E) aiding in the preparation or presentation of any portion of a document described in
482 Subsection (12)(e)(i)(A);

483 (F) assisting in the preparation or presentation of any portion of a document described
484 in Subsection (12)(e)(i)(A); or

485 (G) counseling in the preparation or presentation of any portion of a document
486 described in Subsection (12)(e)(i)(A).

487 (iii) This Subsection (12)(e) applies:

488 (A) regardless of whether the person for which the document described in Subsection
489 (12)(e)(i)(A) is prepared or presented:

490 (I) knew of the falsity of the document described in Subsection (12)(e)(i)(A); or

491 (II) consented to the falsity of the document described in Subsection (12)(e)(i)(A); and
492 (B) in addition to any other penalty provided by law.

493 (iv) Notwithstanding Section 76-3-301, for purposes of this Subsection (12)(e), the
494 penalty may not:

- 495 (A) be less than \$1,500; or
- 496 (B) exceed \$25,000.

497 (v) The commission may seek a court order to enjoin a person from engaging in
498 conduct that is subject to a penalty under this Subsection (12)(e).

499 (vi) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
500 the commission may make rules prescribing the documents that are similar to Subsections
501 (12)(e)(i)(A)(I) through (III).

502 (f) The statute of limitations for prosecution for a violation of this Subsection (12) is
503 the later of six years:

- 504 (i) from the date the tax should have been remitted; or
- 505 (ii) after the day on which the person commits the criminal offense.

506 (13) Upon making a record of its actions, and upon reasonable cause shown, the
507 commission may waive, reduce, or compromise any of the penalties or interest imposed under
508 this part.

509 Section 2. Section **59-1-403** is amended to read:

510 **59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

511 (1) (a) Any of the following may not divulge or make known in any manner any
512 information gained by that person from any return filed with the commission:

- 513 (i) a tax commissioner;
- 514 (ii) an agent, clerk, or other officer or employee of the commission; or
- 515 (iii) a representative, agent, clerk, or other officer or employee of any county, city, or
516 town.

517 (b) An official charged with the custody of a return filed with the commission is not
518 required to produce the return or evidence of anything contained in the return in any action or
519 proceeding in any court, except:

- 520 (i) in accordance with judicial order;
- 521 (ii) on behalf of the commission in any action or proceeding under:

522 (A) this title; or
523 (B) other law under which persons are required to file returns with the commission;
524 (iii) on behalf of the commission in any action or proceeding to which the commission
525 is a party; or
526 (iv) on behalf of any party to any action or proceeding under this title if the report or
527 facts shown by the return are directly involved in the action or proceeding.
528 (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may
529 admit in evidence, any portion of a return or of the facts shown by the return, as are specifically
530 pertinent to the action or proceeding.
531 (2) This section does not prohibit:
532 (a) a person or that person's duly authorized representative from receiving a copy of
533 any return or report filed in connection with that person's own tax;
534 (b) the publication of statistics as long as the statistics are classified to prevent the
535 identification of particular reports or returns; and
536 (c) the inspection by the attorney general or other legal representative of the state of the
537 report or return of any taxpayer:
538 (i) who brings action to set aside or review a tax based on the report or return;
539 (ii) against whom an action or proceeding is contemplated or has been instituted under
540 this title; or
541 (iii) against whom the state has an unsatisfied money judgment.
542 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the
543 commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative
544 Rulemaking Act, provide for a reciprocal exchange of information with:
545 (i) the United States Internal Revenue Service; or
546 (ii) the revenue service of any other state.
547 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and
548 corporate franchise tax, the commission may by rule, made in accordance with Title 63G,
549 Chapter 3, Utah Administrative Rulemaking Act, share information gathered from returns and
550 other written statements with the federal government, any other state, any of the political
551 subdivisions of another state, or any political subdivision of this state, except as limited by
552 Sections 59-12-209 and 59-12-210, if the political subdivision, other state, or the federal

553 government grant substantially similar privileges to this state.

554 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and
555 corporate franchise tax, the commission may by rule, in accordance with Title 63G, Chapter 3,
556 Utah Administrative Rulemaking Act, provide for the issuance of information concerning the
557 identity and other information of taxpayers who have failed to file tax returns or to pay any tax
558 due.

559 (d) Notwithstanding Subsection (1), the commission shall provide to the Solid and
560 Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, as
561 requested by the executive secretary, any records, returns, or other information filed with the
562 commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5
563 regarding the environmental assurance program participation fee.

564 (e) Notwithstanding Subsection (1), at the request of any person the commission shall
565 provide that person sales and purchase volume data reported to the commission on a report,
566 return, or other information filed with the commission under:

567 (i) Chapter 13, Part 2, Motor Fuel; or

568 (ii) Chapter 13, Part 4, Aviation Fuel.

569 (f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer,
570 as defined in Section 59-22-202, the commission shall report to the manufacturer:

571 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
572 manufacturer and reported to the commission for the previous calendar year under Section
573 59-14-407; and

574 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
575 manufacturer for which a tax refund was granted during the previous calendar year under
576 Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

577 (g) Notwithstanding Subsection (1), the commission shall notify manufacturers,
578 distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited
579 from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

580 (h) Notwithstanding Subsection (1), the commission may:

581 (i) provide to the Division of Consumer Protection within the Department of
582 Commerce and the attorney general data:

583 (A) reported to the commission under Section 59-14-212; or

584 (B) related to a violation under Section 59-14-211; and

585 (ii) upon request provide to any person data reported to the commission under
586 Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).

587 (i) Notwithstanding Subsection (1), the commission shall, at the request of a committee
588 of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning
589 and Budget, provide to the committee or office the total amount of revenues collected by the
590 commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period
591 specified by the committee or office.

592 (j) Notwithstanding Subsection (1), the commission shall at the request of the
593 Legislature provide to the Legislature the total amount of sales or uses exempt under
594 Subsection 59-12-104~~(46)~~(44) reported to the commission in accordance with Section
595 59-12-105.

596 (k) Notwithstanding Subsection (1), the commission shall make the directory required
597 by Section 59-14-603 available for public inspection.

598 (l) Notwithstanding Subsection (1), the commission may share information with
599 federal, state, or local agencies as provided in Subsection 59-14-606(3).

600 (m) (i) Notwithstanding Subsection (1), the commission shall provide the Office of
601 Recovery Services within the Department of Human Services any relevant information
602 obtained from a return filed under Chapter 10, Individual Income Tax Act, regarding a taxpayer
603 who has become obligated to the Office of Recovery Services.

604 (ii) The information described in Subsection (3)(m)(i) may be provided by the Office
605 of Recovery Services to any other state's child support collection agency involved in enforcing
606 that support obligation.

607 (n) (i) Notwithstanding Subsection (1), upon request from the state court administrator,
608 the commission shall provide to the state court administrator, the name, address, telephone
609 number, county of residence, and Social Security number on resident returns filed under
610 Chapter 10, Individual Income Tax Act.

611 (ii) The state court administrator may use the information described in Subsection
612 (3)(n)(i) only as a source list for the master jury list described in Section 78B-1-106.

613 (o) Notwithstanding Subsection (1), the commission shall at the request of a
614 committee, commission, or task force of the Legislature provide to the committee, commission,

615 or task force of the Legislature any information relating to a tax imposed under Chapter 9,
616 Taxation of Admitted Insurers, relating to the study required by Section 59-9-101.

617 (p) (i) As used in this Subsection (3)(p), "office" means the:

618 (A) Office of the Legislative Fiscal Analyst; or

619 (B) Office of Legislative Research and General Counsel.

620 (ii) Notwithstanding Subsection (1) and except as provided in Subsection (3)(p)(iii),
621 the commission shall at the request of an office provide to the office all information:

622 (A) gained by the commission; and

623 (B) required to be attached to or included in returns filed with the commission.

624 (iii) (A) An office may not request and the commission may not provide to an office a
625 person's:

626 (I) address;

627 (II) name;

628 (III) Social Security number; or

629 (IV) taxpayer identification number.

630 (B) The commission shall in all instances protect the privacy of a person as required by
631 Subsection (3)(p)(iii)(A).

632 (iv) An office may provide information received from the commission in accordance
633 with this Subsection (3)(p) only:

634 (A) as:

635 (I) a fiscal estimate;

636 (II) fiscal note information; or

637 (III) statistical information; and

638 (B) if the information is classified to prevent the identification of a particular return.

639 (v) (A) A person may not request information from an office under Title 63G, Chapter
640 2, Government Records Access and Management Act, or this section, if that office received the
641 information from the commission in accordance with this Subsection (3)(p).

642 (B) An office may not provide to a person that requests information in accordance with
643 Subsection (3)(p)(v)(A) any information other than the information the office provides in
644 accordance with Subsection (3)(p)(iv).

645 (q) Notwithstanding Subsection (1), the commission may provide to the governing

646 board of the agreement or a taxing official of another state, the District of Columbia, the United
647 States, or a territory of the United States:

648 (i) the following relating to an agreement sales and use tax:

649 (A) information contained in a return filed with the commission;

650 (B) information contained in a report filed with the commission;

651 (C) a schedule related to Subsection (3)(q)(i)(A) or (B); or

652 (D) a document filed with the commission; or

653 (ii) a report of an audit or investigation made with respect to an agreement sales and
654 use tax.

655 (4) (a) Reports and returns shall be preserved for at least three years.

656 (b) After the three-year period provided in Subsection (4)(a) the commission may
657 destroy a report or return.

658 (5) (a) Any person who violates this section is guilty of a class A misdemeanor.

659 (b) If the person described in Subsection (5)(a) is an officer or employee of the state,
660 the person shall be dismissed from office and be disqualified from holding public office in this
661 state for a period of five years thereafter.

662 (c) Notwithstanding Subsection (5)(a) or (b), an office that requests information in
663 accordance with Subsection (3)(p)(iii) or a person that requests information in accordance with
664 Subsection (3)(p)(v):

665 (i) is not guilty of a class A misdemeanor; and

666 (ii) is not subject to:

667 (A) dismissal from office in accordance with Subsection (5)(b); or

668 (B) disqualification from holding public office in accordance with Subsection (5)(b).

669 (6) Except as provided in Section 59-1-404, this part does not apply to the property tax.

670 Section 3. Section **59-12-102** is amended to read:

671 **59-12-102. Definitions.**

672 As used in this chapter:

673 (1) "800 service" means a telecommunications service that:

674 (a) allows a caller to dial a toll-free number without incurring a charge for the call; and

675 (b) is typically marketed:

676 (i) under the name 800 toll-free calling;

677 (ii) under the name 855 toll-free calling;
678 (iii) under the name 866 toll-free calling;
679 (iv) under the name 877 toll-free calling;
680 (v) under the name 888 toll-free calling; or
681 (vi) under a name similar to Subsections (1)(b)(i) through (v) as designated by the
682 Federal Communications Commission.

683 (2) (a) "900 service" means an inbound toll telecommunications service that:

684 (i) a subscriber purchases;
685 (ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to
686 the subscriber's:

687 (A) prerecorded announcement; or

688 (B) live service; and

689 (iii) is typically marketed:

690 (A) under the name 900 service; or

691 (B) under a name similar to Subsection (2)(~~e~~)(a)(iii)(A) as designated by the Federal
692 Communications Commission.

693 (b) "900 service" does not include a charge for:

694 (i) a collection service a seller of a telecommunications service provides to a
695 subscriber; or

696 (ii) the following a subscriber sells to the subscriber's customer:

697 (A) a product; or

698 (B) a service.

699 (3) (a) "Admission or user fees" includes season passes.

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

702 (4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on
703 November 12, 2002, including amendments made to the Streamlined Sales and Use Tax
704 Agreement after November 12, 2002.

705 (5) "Agreement combined tax rate" means the sum of the tax rates:

706 (a) listed under Subsection (6); and

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

- 708 (6) "Agreement sales and use tax" means a tax imposed under:
- 709 (a) Subsection 59-12-103(2)(a)(i)(A);
- 710 (b) Subsection 59-12-103(2)(b)(i);
- 711 (c) Subsection 59-12-103(2)(c)(i);
- 712 (d) Subsection 59-12-103(2)(d)(i)(A)(I);
- 713 (e) Section 59-12-204;
- 714 (f) Section 59-12-401;
- 715 (g) Section 59-12-402;
- 716 (h) Section 59-12-501;
- 717 (i) Section 59-12-502;
- 718 (j) Section 59-12-703;
- 719 (k) Section 59-12-802;
- 720 (l) Section 59-12-804;
- 721 (m) Section 59-12-1001;
- 722 (n) Section 59-12-1102;
- 723 (o) Section 59-12-1302;
- 724 (p) Section 59-12-1402;
- 725 (q) Section 59-12-1503;
- 726 (r) Section 59-12-1703;
- 727 (s) Section 59-12-1802;
- 728 (t) Section 59-12-1903;
- 729 (u) Section 59-12-2003; or
- 730 (v) Section 59-12-2103.
- 731 (7) "Aircraft" is as defined in Section 72-10-102.
- 732 (8) "Alcoholic beverage" means a beverage that:
- 733 (a) is suitable for human consumption; and
- 734 (b) contains .5% or more alcohol by volume.
- 735 (9) (a) "Ancillary service" means a service associated with, or incidental to, the
- 736 provision of telecommunications service.
- 737 (b) "Ancillary service" includes:
- 738 (i) a conference bridging service;

739 (ii) a detailed communications billing service;

740 (iii) directory assistance;

741 (iv) a vertical service; or

742 (v) a voice mail service.

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

744 (11) "Assisted amusement device" means an amusement device, skill device, or ride
745 device that is started and stopped by an individual:

746 (a) who is not the purchaser or renter of the right to use or operate the amusement
747 device, skill device, or ride device; and

748 (b) at the direction of the seller of the right to use the amusement device, skill device,
749 or ride device.

750 (12) "Assisted cleaning or washing of tangible personal property" means cleaning or
751 washing of tangible personal property if the cleaning or washing labor is primarily performed
752 by an individual:

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

755 (b) at the direction of the seller of the cleaning or washing of the tangible personal
756 property.

757 (13) "Authorized carrier" means:

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

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

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

765 (14) (a) Except as provided in Subsection (14)(b), "biomass energy" means any of the
766 following that is used as the primary source of energy to produce fuel or electricity:

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

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

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

- 770 (B) animal waste;
- 771 (C) methane produced:
- 772 (I) at landfills; or
- 773 (II) as a byproduct of the treatment of wastewater residuals;
- 774 (D) aquatic plants; and
- 775 (E) agricultural products.
- 776 (b) "Biomass energy" does not include:
- 777 (i) black liquor;
- 778 (ii) treated woods; or
- 779 (iii) biomass from municipal solid waste other than methane produced:
- 780 (A) at landfills; or
- 781 (B) as a byproduct of the treatment of wastewater residuals.
- 782 (15) (a) "Bundled transaction" means the sale of two or more items of tangible personal
- 783 property, products, or services if the tangible personal property, products, or services are:
- 784 (i) distinct and identifiable; and
- 785 (ii) sold for one nonitemized price.
- 786 (b) "Bundled transaction" does not include:
- 787 (i) the sale of tangible personal property if the sales price varies, or is negotiable, on
- 788 the basis of the selection by the purchaser of the items of tangible personal property included in
- 789 the transaction;
- 790 (ii) the sale of real property;
- 791 (iii) the sale of services to real property;
- 792 (iv) the retail sale of tangible personal property and a service if:
- 793 (A) the tangible personal property:
- 794 (I) is essential to the use of the service; and
- 795 (II) is provided exclusively in connection with the service; and
- 796 (B) the service is the true object of the transaction;
- 797 (v) the retail sale of two services if:
- 798 (A) one service is provided that is essential to the use or receipt of a second service;
- 799 (B) the first service is provided exclusively in connection with the second service; and
- 800 (C) the second service is the true object of the transaction;

801 (vi) a transaction that includes tangible personal property or a product subject to
802 taxation under this chapter and tangible personal property or a product that is not subject to
803 taxation under this chapter if the:

804 (A) seller's purchase price of the tangible personal property or product subject to
805 taxation under this chapter is de minimis; or

806 (B) seller's sales price of the tangible personal property or product subject to taxation
807 under this chapter is de minimis; and

808 (vii) the retail sale of tangible personal property that is not subject to taxation under
809 this chapter and tangible personal property that is subject to taxation under this chapter if:

810 (A) that retail sale includes:

811 (I) food and food ingredients;

812 (II) a drug;

813 (III) durable medical equipment;

814 (IV) mobility enhancing equipment;

815 (V) an over-the-counter drug;

816 (VI) a prosthetic device; or

817 (VII) a medical supply; and

818 (B) subject to Subsection (15)(f):

819 (I) the seller's purchase price of the tangible personal property subject to taxation under
820 this chapter is 50% or less of the seller's total purchase price of that retail sale; or

821 (II) the seller's sales price of the tangible personal property subject to taxation under
822 this chapter is 50% or less of the seller's total sales price of that retail sale.

823 (c) (i) For purposes of Subsection (15)(a)(i), tangible personal property, a product, or a
824 service that is distinct and identifiable does not include:

825 (A) packaging that:

826 (I) accompanies the sale of the tangible personal property, product, or service; and

827 (II) is incidental or immaterial to the sale of the tangible personal property, product, or
828 service;

829 (B) tangible personal property, a product, or a service provided free of charge with the
830 purchase of another item of tangible personal property, a product, or a service; or

831 (C) an item of tangible personal property, a product, or a service included in the

832 definition of "purchase price."

833 (ii) For purposes of Subsection (15)(c)(i)(B), an item of tangible personal property, a
834 product, or a service is provided free of charge with the purchase of another item of tangible
835 personal property, a product, or a service if the sales price of the purchased item of tangible
836 personal property, product, or service does not vary depending on the inclusion of the tangible
837 personal property, product, or service provided free of charge.

838 (d) (i) For purposes of Subsection (15)(a)(ii), property sold for one nonitemized price
839 does not include a price that is separately identified by product on the following, regardless of
840 whether the following is in paper format or electronic format:

841 (A) a binding sales document; or

842 (B) another supporting sales-related document that is available to a purchaser.

843 (ii) For purposes of Subsection (15)(d)(i), a binding sales document or another
844 supporting sales-related document that is available to a purchaser includes:

845 (A) a bill of sale;

846 (B) a contract;

847 (C) an invoice;

848 (D) a lease agreement;

849 (E) a periodic notice of rates and services;

850 (F) a price list;

851 (G) a rate card;

852 (H) a receipt; or

853 (I) a service agreement.

854 (e) (i) For purposes of Subsection (15)(b)(vi), the sales price of tangible personal
855 property or a product subject to taxation under this chapter is de minimis if:

856 (A) the seller's purchase price of the tangible personal property or product is 10% or
857 less of the seller's total purchase price of the bundled transaction; or

858 (B) the seller's sales price of the tangible personal property or product is 10% or less of
859 the seller's total sales price of the bundled transaction.

860 (ii) For purposes of Subsection (15)(b)(vi), a seller:

861 (A) shall use the seller's purchase price or the seller's sales price to determine if the
862 purchase price or sales price of the tangible personal property or product subject to taxation

863 under this chapter is de minimis; and

864 (B) may not use a combination of the seller's purchase price and the seller's sales price
865 to determine if the purchase price or sales price of the tangible personal property or product
866 subject to taxation under this chapter is de minimis.

867 (iii) For purposes of Subsection (15)(b)(vi), a seller shall use the full term of a service
868 contract to determine if the sales price of tangible personal property or a product is de minimis.

869 (f) For purposes of Subsection (15)(b)(vii)(B), a seller may not use a combination of
870 the seller's purchase price and the seller's sales price to determine if tangible personal property
871 subject to taxation under this chapter is 50% or less of the seller's total purchase price or sales
872 price of that retail sale.

873 (16) "Certified automated system" means software certified by the governing board of
874 the agreement [~~in accordance with Section 59-12-102.1~~] that:

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

877 (i) on a transaction; and

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

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

881 (c) maintains a record of the transaction described in Subsection (16)(a)(i).

882 (17) "Certified service provider" means an agent certified:

883 (a) by the governing board of the agreement [~~in accordance with Section 59-12-102.1~~];
884 and

885 (b) to perform all of a seller's sales and use tax functions for an agreement sales and
886 use tax other than the seller's obligation under Section [~~59-12-107.4~~] 59-12-124 to remit a tax
887 on the seller's own purchases.

888 (18) (a) Subject to Subsection (18)(b), "clothing" means all human wearing apparel
889 suitable for general use.

890 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
891 commission shall make rules:

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

893 (ii) that are consistent with the list of items that constitute "clothing" under the

894 agreement.

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

896 (20) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
897 fuels that does not constitute industrial use under Subsection (46) or residential use under
898 Subsection (91).

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

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

904 (ii) For purposes of Subsection (21)(b)(i), in accordance with Title 63G, Chapter 3,
905 Utah Administrative Rulemaking Act, the commission may make rules defining what
906 constitutes a person's place of employment.

907 (22) "Component part" includes:

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

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

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

913 (d) feed, seeds, and seedlings.

914 (23) "Computer" means an electronic device that accepts information:

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

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

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

918 (24) "Computer software" means a set of coded instructions designed to cause:

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

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

921 (25) (a) "Conference bridging service" means an ancillary service that links two or
922 more participants of an audio conference call or video conference call.

923 (b) "Conference bridging service" includes providing a telephone number as part of the
924 ancillary service described in Subsection (25)(a).

925 (c) "Conference bridging service" does not include a telecommunications service used
926 to reach the ancillary service described in Subsection (25)(a).

927 (26) "Construction materials" means any tangible personal property that will be
928 converted into real property.

929 (27) "Delivered electronically" means delivered to a purchaser by means other than
930 tangible storage media.

931 (28) (a) "Delivery charge" means a charge:

932 (i) by a seller of:

933 (A) tangible personal property;

934 (B) a product transferred electronically; or

935 (C) services; and

936 (ii) for preparation and delivery of the tangible personal property, product transferred
937 electronically, or services described in Subsection (28)(a)(i) to a location designated by the
938 purchaser.

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

940 (i) transportation;

941 (ii) shipping;

942 (iii) postage;

943 (iv) handling;

944 (v) crating; or

945 (vi) packing.

946 (29) "Detailed telecommunications billing service" means an ancillary service of
947 separately stating information pertaining to individual calls on a customer's billing statement.

948 (30) "Dietary supplement" means a product, other than tobacco, that:

949 (a) is intended to supplement the diet;

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

951 (i) a vitamin;

952 (ii) a mineral;

953 (iii) an herb or other botanical;

954 (iv) an amino acid;

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

956 dietary intake; or
957 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
958 described in Subsections (30)(b)(i) through (v);
959 (c) (i) except as provided in Subsection (30)(c)(ii), is intended for ingestion in:
960 (A) tablet form;
961 (B) capsule form;
962 (C) powder form;
963 (D) softgel form;
964 (E) gelcap form; or
965 (F) liquid form; or
966 (ii) notwithstanding Subsection (30)(c)(i), if the product is not intended for ingestion in
967 a form described in Subsections (30)(c)(i)(A) through (F), is not represented:
968 (A) as conventional food; and
969 (B) for use as a sole item of:
970 (I) a meal; or
971 (II) the diet; and
972 (d) is required to be labeled as a dietary supplement:
973 (i) identifiable by the "Supplemental Facts" box found on the label; and
974 (ii) as required by 21 C.F.R. Sec. 101.36.
975 (31) (a) "Direct mail" means printed material delivered or distributed by United States
976 mail or other delivery service:
977 (i) to:
978 (A) a mass audience; or
979 (B) addressees on a mailing list provided;
980 (I) by a purchaser of the mailing list; or
981 (II) at the discretion of the purchaser of the mailing list; and
982 (ii) if the cost of the printed material is not billed directly to the recipients.
983 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
984 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
985 (c) "Direct mail" does not include multiple items of printed material delivered to a
986 single address.

987 (32) "Directory assistance" means an ancillary service of providing:

988 (a) address information; or

989 (b) telephone number information.

990 (33) (a) "Disposable home medical equipment or supplies" means medical equipment

991 or supplies that:

992 (i) cannot withstand repeated use; and

993 (ii) are purchased by, for, or on behalf of a person other than:

994 (A) a health care facility as defined in Section 26-21-2;

995 (B) a health care provider as defined in Section 78B-3-403;

996 (C) an office of a health care provider described in Subsection (33)(a)(ii)(B); or

997 (D) a person similar to a person described in Subsections (33)(a)(ii)(A) through (C).

998 (b) "Disposable home medical equipment or supplies" does not include:

999 (i) a drug;

1000 (ii) durable medical equipment;

1001 (iii) a hearing aid;

1002 (iv) a hearing aid accessory;

1003 (v) mobility enhancing equipment; or

1004 (vi) tangible personal property used to correct impaired vision, including:

1005 (A) eyeglasses; or

1006 (B) contact lenses.

1007 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1008 commission may by rule define what constitutes medical equipment or supplies.

1009 (34) (a) "Drug" means a compound, substance, or preparation, or a component of a
1010 compound, substance, or preparation that is:

1011 (i) recognized in:

1012 (A) the official United States Pharmacopoeia;

1013 (B) the official Homeopathic Pharmacopoeia of the United States;

1014 (C) the official National Formulary; or

1015 (D) a supplement to a publication listed in Subsections (34)(a)(i)(A) through (C);

1016 (ii) intended for use in the:

1017 (A) diagnosis of disease;

- 1018 (B) cure of disease;
- 1019 (C) mitigation of disease;
- 1020 (D) treatment of disease; or
- 1021 (E) prevention of disease; or
- 1022 (iii) intended to affect:
- 1023 (A) the structure of the body; or
- 1024 (B) any function of the body.
- 1025 (b) "Drug" does not include:
- 1026 (i) food and food ingredients;
- 1027 (ii) a dietary supplement;
- 1028 (iii) an alcoholic beverage; or
- 1029 (iv) a prosthetic device.
- 1030 (35) (a) Except as provided in Subsection (35)(c), "durable medical equipment" means
- 1031 equipment that:
- 1032 (i) can withstand repeated use;
- 1033 (ii) is primarily and customarily used to serve a medical purpose;
- 1034 (iii) generally is not useful to a person in the absence of illness or injury; and
- 1035 (iv) is not worn in or on the body.
- 1036 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 1037 equipment described in Subsection (35)(a).
- 1038 (c) Notwithstanding Subsection (35)(a), "durable medical equipment" does not include
- 1039 mobility enhancing equipment.
- 1040 (36) "Electronic" means:
- 1041 (a) relating to technology; and
- 1042 (b) having:
- 1043 (i) electrical capabilities;
- 1044 (ii) digital capabilities;
- 1045 (iii) magnetic capabilities;
- 1046 (iv) wireless capabilities;
- 1047 (v) optical capabilities;
- 1048 (vi) electromagnetic capabilities; or

- 1049 (vii) capabilities similar to Subsections (36)(b)(i) through (vi).
- 1050 (37) "Employee" is as defined in Section 59-10-401.
- 1051 (38) "Fixed guideway" means a public transit facility that uses and occupies:
 - 1052 (a) rail for the use of public transit; or
 - 1053 (b) a separate right-of-way for the use of public transit.
- 1054 (39) "Fixed wireless service" means a telecommunications service that provides radio
- 1055 communication between fixed points.
- 1056 (40) (a) "Food and food ingredients" means substances:
 - 1057 (i) regardless of whether the substances are in:
 - 1058 (A) liquid form;
 - 1059 (B) concentrated form;
 - 1060 (C) solid form;
 - 1061 (D) frozen form;
 - 1062 (E) dried form; or
 - 1063 (F) dehydrated form; and
 - 1064 (ii) that are:
 - 1065 (A) sold for:
 - 1066 (I) ingestion by humans; or
 - 1067 (II) chewing by humans; and
 - 1068 (B) consumed for the substance's:
 - 1069 (I) taste; or
 - 1070 (II) nutritional value.
- 1071 (b) "Food and food ingredients" includes an item described in Subsection (75)(b)(iii).
- 1072 (c) "Food and food ingredients" does not include:
 - 1073 (i) an alcoholic beverage;
 - 1074 (ii) tobacco; or
 - 1075 (iii) prepared food.
- 1076 (41) (a) "Fundraising sales" means sales:
 - 1077 (i) (A) made by a school; or
 - 1078 (B) made by a school student;
 - 1079 (ii) that are for the purpose of raising funds for the school to purchase equipment,

1080 materials, or provide transportation; and

1081 (iii) that are part of an officially sanctioned school activity.

1082 (b) For purposes of Subsection (41)(a)(iii), "officially sanctioned school activity"

1083 means a school activity:

1084 (i) that is conducted in accordance with a formal policy adopted by the school or school
1085 district governing the authorization and supervision of fundraising activities;

1086 (ii) that does not directly or indirectly compensate an individual teacher or other
1087 educational personnel by direct payment, commissions, or payment in kind; and

1088 (iii) the net or gross revenues from which are deposited in a dedicated account
1089 controlled by the school or school district.

1090 (42) "Geothermal energy" means energy contained in heat that continuously flows
1091 outward from the earth that is used as the sole source of energy to produce electricity.

1092 (43) "Governing board of the agreement" means the governing board of the agreement
1093 that is:

1094 (a) authorized to administer the agreement; and

1095 (b) established in accordance with the agreement.

1096 (44) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:

1097 (i) the executive branch of the state, including all departments, institutions, boards,
1098 divisions, bureaus, offices, commissions, and committees;

1099 (ii) the judicial branch of the state, including the courts, the Judicial Council, the
1100 Office of the Court Administrator, and similar administrative units in the judicial branch;

1101 (iii) the legislative branch of the state, including the House of Representatives, the
1102 Senate, the Legislative Printing Office, the Office of Legislative Research and General
1103 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal
1104 Analyst;

1105 (iv) the National Guard;

1106 (v) an independent entity as defined in Section 63E-1-102; or

1107 (vi) a political subdivision as defined in Section 17B-1-102.

1108 (b) "Governmental entity" does not include the state systems of public and higher
1109 education, including:

1110 (i) a college campus of the Utah College of Applied Technology;

- 1111 (ii) a school;
- 1112 (iii) the State Board of Education;
- 1113 (iv) the State Board of Regents; or
- 1114 (v) a state institution of higher education as defined in Section 53B-3-102.
- 1115 (45) "Hydroelectric energy" means water used as the sole source of energy to produce
- 1116 electricity.
- 1117 (46) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
- 1118 other fuels:
- 1119 (a) in mining or extraction of minerals;
- 1120 (b) in agricultural operations to produce an agricultural product up to the time of
- 1121 harvest or placing the agricultural product into a storage facility, including:
- 1122 (i) commercial greenhouses;
- 1123 (ii) irrigation pumps;
- 1124 (iii) farm machinery;
- 1125 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
- 1126 registered under Title 41, Chapter 1a, Part 2, Registration; and
- 1127 (v) other farming activities;
- 1128 (c) in manufacturing tangible personal property at an establishment described in SIC
- 1129 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
- 1130 Executive Office of the President, Office of Management and Budget;
- 1131 (d) by a scrap recycler if:
- 1132 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 1133 one or more of the following items into prepared grades of processed materials for use in new
- 1134 products:
- 1135 (A) iron;
- 1136 (B) steel;
- 1137 (C) nonferrous metal;
- 1138 (D) paper;
- 1139 (E) glass;
- 1140 (F) plastic;
- 1141 (G) textile; or

- 1142 (H) rubber; and
- 1143 (ii) the new products under Subsection (46)(d)(i) would otherwise be made with
- 1144 nonrecycled materials; or
- 1145 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a
- 1146 cogeneration facility as defined in Section 54-2-1.
- 1147 (47) (a) Except as provided in Subsection (47)(b), "installation charge" means a charge
- 1148 for installing:
- 1149 (i) tangible personal property; or
- 1150 (ii) a product transferred electronically.
- 1151 (b) "Installation charge" does not include a charge for repairs or renovations of:
- 1152 (i) tangible personal property; or
- 1153 (ii) a product transferred electronically.
- 1154 (48) (a) "Lease" or "rental" means a transfer of possession or control of tangible
- 1155 personal property or a product transferred electronically for:
- 1156 (i) (A) a fixed term; or
- 1157 (B) an indeterminate term; and
- 1158 (ii) consideration.
- 1159 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
- 1160 amount of consideration may be increased or decreased by reference to the amount realized
- 1161 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
- 1162 Code.
- 1163 (c) "Lease" or "rental" does not include:
- 1164 (i) a transfer of possession or control of property under a security agreement or
- 1165 deferred payment plan that requires the transfer of title upon completion of the required
- 1166 payments;
- 1167 (ii) a transfer of possession or control of property under an agreement that requires the
- 1168 transfer of title:
- 1169 (A) upon completion of required payments; and
- 1170 (B) if the payment of an option price does not exceed the greater of:
- 1171 (I) \$100; or
- 1172 (II) 1% of the total required payments; or

1173 (iii) providing tangible personal property along with an operator for a fixed period of
1174 time or an indeterminate period of time if the operator is necessary for equipment to perform as
1175 designed.

1176 (d) For purposes of Subsection (48)(c)(iii), an operator is necessary for equipment to
1177 perform as designed if the operator's duties exceed the:

- 1178 (i) set-up of tangible personal property;
- 1179 (ii) maintenance of tangible personal property; or
- 1180 (iii) inspection of tangible personal property.

1181 (49) "Load and leave" means delivery to a purchaser by use of a tangible storage media
1182 if the tangible storage media is not physically transferred to the purchaser.

1183 (50) "Local taxing jurisdiction" means a:

- 1184 (a) county that is authorized to impose an agreement sales and use tax;
- 1185 (b) city that is authorized to impose an agreement sales and use tax; or
- 1186 (c) town that is authorized to impose an agreement sales and use tax.

1187 (51) "Manufactured home" is as defined in Section 58-56-3.

1188 (52) For purposes of Section 59-12-104, "manufacturing facility" means:

1189 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard

1190 Industrial Classification Manual of the federal Executive Office of the President, Office of
1191 Management and Budget;

1192 (b) a scrap recycler if:

1193 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
1194 one or more of the following items into prepared grades of processed materials for use in new
1195 products:

- 1196 (A) iron;
- 1197 (B) steel;
- 1198 (C) nonferrous metal;
- 1199 (D) paper;
- 1200 (E) glass;
- 1201 (F) plastic;
- 1202 (G) textile; or
- 1203 (H) rubber; and

1204 (ii) the new products under Subsection (52)(b)(i) would otherwise be made with
1205 nonrecycled materials; or

1206 (c) a cogeneration facility as defined in Section 54-2-1.

1207 (53) "Member of the immediate family of the producer" means a person who is related
1208 to a producer described in Subsection 59-12-104(20)(a) as a:

1209 (a) child or stepchild, regardless of whether the child or stepchild is:

1210 (i) an adopted child or adopted stepchild; or

1211 (ii) a foster child or foster stepchild;

1212 (b) grandchild or stepgrandchild;

1213 (c) grandparent or stepgrandparent;

1214 (d) nephew or stepnephew;

1215 (e) niece or stepniece;

1216 (f) parent or stepparent;

1217 (g) sibling or stepsibling;

1218 (h) spouse;

1219 (i) person who is the spouse of a person described in Subsections (53)(a) through (g);

1220 or

1221 (j) person similar to a person described in Subsections (53)(a) through (i) as

1222 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
1223 Administrative Rulemaking Act.

1224 (54) "Mobile home" is as defined in Section 58-56-3.

1225 (55) "Mobile telecommunications service" is as defined in the Mobile
1226 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

1227 (56) (a) "Mobile wireless service" means a telecommunications service, regardless of
1228 the technology used, if:

1229 (i) the origination point of the conveyance, routing, or transmission is not fixed;

1230 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or

1231 (iii) the origination point described in Subsection (56)(a)(i) and the termination point
1232 described in Subsection (56)(a)(ii) are not fixed.

1233 (b) "Mobile wireless service" includes a telecommunications service that is provided
1234 by a commercial mobile radio service provider.

1235 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1236 commission may by rule define "commercial mobile radio service provider."

1237 (57) (a) Except as provided in Subsection (57)(c), "mobility enhancing equipment"
1238 means equipment that is:

1239 (i) primarily and customarily used to provide or increase the ability to move from one
1240 place to another;

1241 (ii) appropriate for use in a:

1242 (A) home; or

1243 (B) motor vehicle; and

1244 (iii) not generally used by persons with normal mobility.

1245 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
1246 the equipment described in Subsection (57)(a).

1247 (c) Notwithstanding Subsection (57)(a), "mobility enhancing equipment" does not
1248 include:

1249 (i) a motor vehicle;

1250 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
1251 vehicle manufacturer;

1252 (iii) durable medical equipment; or

1253 (iv) a prosthetic device.

1254 (58) "Model 1 seller" means a seller that has selected a certified service provider as the
1255 seller's agent to perform all of the seller's sales and use tax functions for agreement sales and
1256 use taxes other than the seller's obligation under Section [~~59-12-107.4~~] 59-12-124 to remit a
1257 tax on the seller's own purchases.

1258 (59) "Model 2 seller" means a seller that:

1259 (a) except as provided in Subsection (59)(b), has selected a certified automated system
1260 to perform the seller's sales tax functions for agreement sales and use taxes; and

1261 (b) notwithstanding Subsection (59)(a), retains responsibility for remitting all of the
1262 sales tax:

1263 (i) collected by the seller; and

1264 (ii) to the appropriate local taxing jurisdiction.

1265 (60) (a) Subject to Subsection (60)(b), "model 3 seller" means a seller that has:

- 1266 (i) sales in at least five states that are members of the agreement;
- 1267 (ii) total annual sales revenues of at least \$500,000,000;
- 1268 (iii) a proprietary system that calculates the amount of tax:
- 1269 (A) for an agreement sales and use tax; and
- 1270 (B) due to each local taxing jurisdiction; and
- 1271 (iv) entered into a performance agreement with the governing board of the agreement.
- 1272 (b) For purposes of Subsection (60)(a), "model 3 seller" includes an affiliated group of
- 1273 sellers using the same proprietary system.
- 1274 (61) "Modular home" means a modular unit as defined in Section 58-56-3.
- 1275 (62) "Motor vehicle" is as defined in Section 41-1a-102.
- 1276 (63) "Oil shale" means a group of fine black to dark brown shales containing
- 1277 bituminous material that yields petroleum upon distillation.
- 1278 (64) (a) "Other fuels" means products that burn independently to produce heat or
- 1279 energy.
- 1280 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible
- 1281 personal property.
- 1282 (65) (a) "Paging service" means a telecommunications service that provides
- 1283 transmission of a coded radio signal for the purpose of activating a specific pager.
- 1284 (b) For purposes of Subsection (65)(a), the transmission of a coded radio signal
- 1285 includes a transmission by message or sound.
- 1286 (66) "Pawnbroker" is as defined in Section 13-32a-102.
- 1287 (67) "Pawn transaction" is as defined in Section 13-32a-102.
- 1288 (68) (a) "Permanently attached to real property" means that for tangible personal
- 1289 property attached to real property:
- 1290 (i) the attachment of the tangible personal property to the real property:
- 1291 (A) is essential to the use of the tangible personal property; and
- 1292 (B) suggests that the tangible personal property will remain attached to the real
- 1293 property in the same place over the useful life of the tangible personal property; or
- 1294 (ii) if the tangible personal property is detached from the real property, the detachment
- 1295 would:
- 1296 (A) cause substantial damage to the tangible personal property; or

1297 (B) require substantial alteration or repair of the real property to which the tangible
1298 personal property is attached.

1299 (b) "Permanently attached to real property" includes:

1300 (i) the attachment of an accessory to the tangible personal property if the accessory is:

1301 (A) essential to the operation of the tangible personal property; and

1302 (B) attached only to facilitate the operation of the tangible personal property;

1303 (ii) a temporary detachment of tangible personal property from real property for a

1304 repair or renovation if the repair or renovation is performed where the tangible personal

1305 property and real property are located; or

1306 (iii) property attached to oil, gas, or water pipelines, other than the property listed in

1307 Subsection (68)(c)(iii).

1308 (c) "Permanently attached to real property" does not include:

1309 (i) the attachment of portable or movable tangible personal property to real property if

1310 that portable or movable tangible personal property is attached to real property only for:

1311 (A) convenience;

1312 (B) stability; or

1313 (C) for an obvious temporary purpose;

1314 (ii) the detachment of tangible personal property from real property other than the

1315 detachment described in Subsection (68)(b)(ii);

1316 (iii) an attachment of the following tangible personal property to real property if the

1317 attachment to real property is only through a line that supplies water, electricity, gas,

1318 telecommunications, cable, or supplies a similar item as determined by the commission by rule

1319 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

1320 (A) a refrigerator;

1321 (B) a washer;

1322 (C) a dryer;

1323 (D) a stove;

1324 (E) a television;

1325 (F) a computer;

1326 (G) a telephone; or

1327 (H) tangible personal property similar to Subsections (68)(c)(iii)(A) through (G) as

1328 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
1329 Administrative Rulemaking Act; or

1330 (iv) the following if attached to real property, regardless of whether the attachment to
1331 real property is only through a line that supplies water, electricity, gas, telephone, cable, or
1332 supplies a similar item as determined by the commission by rule made in accordance with Title
1333 63G, Chapter 3, Utah Administrative Rulemaking Act:

- 1334 (A) a hot water heater;
- 1335 (B) a water softener system; or
- 1336 (C) a water filtration system.

1337 (69) "Person" includes any individual, firm, partnership, joint venture, association,
1338 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
1339 municipality, district, or other local governmental entity of the state, or any group or
1340 combination acting as a unit.

1341 (70) "Place of primary use":

1342 (a) for telecommunications service other than mobile telecommunications service,
1343 means the street address representative of where the [~~purchaser's~~] customer's use of the
1344 telecommunications service primarily occurs, which shall be:

- 1345 (i) the residential street address of the [~~purchaser~~] customer; or
- 1346 (ii) the primary business street address of the [~~purchaser~~] customer; or
- 1347 (b) for mobile telecommunications service, is as defined in the Mobile
1348 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

1349 (71) (a) "Postpaid calling service" means a telecommunications service a person
1350 obtains by making a payment on a call-by-call basis:

- 1351 (i) through the use of a:
 - 1352 (A) bank card;
 - 1353 (B) credit card;
 - 1354 (C) debit card; or
 - 1355 (D) travel card; or
- 1356 (ii) by a charge made to a telephone number that is not associated with the origination
1357 or termination of the telecommunications service.

1358 (b) "Postpaid calling service" includes a service, except for a prepaid wireless calling

1359 service, that would be a prepaid wireless calling service if the service were exclusively a
1360 telecommunications service.

1361 (72) "Postproduction" means an activity related to the finishing or duplication of a
1362 medium described in Subsection 59-12-104[(55)](54)(a).

1363 (73) "Prepaid calling service" means a telecommunications service:

1364 (a) that allows a purchaser access to telecommunications service that is exclusively
1365 telecommunications service;

1366 (b) that:

1367 (i) is paid for in advance; and

1368 (ii) enables the origination of a call using an:

1369 (A) access number; or

1370 (B) authorization code;

1371 (c) that is dialed:

1372 (i) manually; or

1373 (ii) electronically; and

1374 (d) sold in predetermined units or dollars that decline:

1375 (i) by a known amount; and

1376 (ii) with use.

1377 (74) "Prepaid wireless calling service" means a telecommunications service:

1378 (a) that provides the right to utilize:

1379 (i) mobile wireless service; and

1380 (ii) other service that is not a telecommunications service, including:

1381 (A) the download of a product transferred electronically;

1382 (B) a content service; or

1383 (C) an ancillary service;

1384 (b) that:

1385 (i) is paid for in advance; and

1386 (ii) enables the origination of a call using an:

1387 (A) access number; or

1388 (B) authorization code;

1389 (c) that is dialed:

- 1390 (i) manually; or
- 1391 (ii) electronically; and
- 1392 (d) sold in predetermined units or dollars that decline:
- 1393 (i) by a known amount; and
- 1394 (ii) with use.
- 1395 (75) (a) "Prepared food" means:
- 1396 (i) food:
- 1397 (A) sold in a heated state; or
- 1398 (B) heated by a seller;
- 1399 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 1400 item; or
- 1401 (iii) except as provided in Subsection (75)(c), food sold with an eating utensil provided
- 1402 by the seller, including a:
- 1403 (A) plate;
- 1404 (B) knife;
- 1405 (C) fork;
- 1406 (D) spoon;
- 1407 (E) glass;
- 1408 (F) cup;
- 1409 (G) napkin; or
- 1410 (H) straw.
- 1411 (b) "Prepared food" does not include:
- 1412 (i) food that a seller only:
- 1413 (A) cuts;
- 1414 (B) repackages; or
- 1415 (C) pasteurizes; or
- 1416 (ii) (A) the following:
- 1417 (I) raw egg;
- 1418 (II) raw fish;
- 1419 (III) raw meat;
- 1420 (IV) raw poultry; or

- 1421 (V) a food containing an item described in Subsections (75)(b)(ii)(A)(I) through (IV);
1422 and
- 1423 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
1424 Food and Drug Administration's Food Code that a consumer cook the items described in
1425 Subsection (75)(b)(ii)(A) to prevent food borne illness; or
- 1426 (iii) the following if sold without eating utensils provided by the seller:
- 1427 (A) food and food ingredients sold by a seller if the seller's proper primary
1428 classification under the 2002 North American Industry Classification System of the federal
1429 Executive Office of the President, Office of Management and Budget, is manufacturing in
1430 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
1431 Manufacturing;
- 1432 (B) food and food ingredients sold in an unheated state:
- 1433 (I) by weight or volume; and
1434 (II) as a single item; or
1435 (C) a bakery item, including:
- 1436 (I) a bagel;
1437 (II) a bar;
1438 (III) a biscuit;
1439 (IV) bread;
1440 (V) a bun;
1441 (VI) a cake;
1442 (VII) a cookie;
1443 (VIII) a croissant;
1444 (IX) a danish;
1445 (X) a donut;
1446 (XI) a muffin;
1447 (XII) a pastry;
1448 (XIII) a pie;
1449 (XIV) a roll;
1450 (XV) a tart;
1451 (XVI) a torte; or

1452 (XVII) a tortilla.

1453 (c) Notwithstanding Subsection (75)(a)(iii), an eating utensil provided by the seller

1454 does not include the following used to transport the food:

1455 (i) a container; or

1456 (ii) packaging.

1457 (76) "Prescription" means an order, formula, or recipe that is issued:

1458 (a) (i) orally;

1459 (ii) in writing;

1460 (iii) electronically; or

1461 (iv) by any other manner of transmission; and

1462 (b) by a licensed practitioner authorized by the laws of a state.

1463 (77) (a) Except as provided in Subsection (77)(b)(ii) or (iii), "prewritten computer

1464 software" means computer software that is not designed and developed:

1465 (i) by the author or other creator of the computer software; and

1466 (ii) to the specifications of a specific purchaser.

1467 (b) "Prewritten computer software" includes:

1468 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer

1469 software is not designed and developed:

1470 (A) by the author or other creator of the computer software; and

1471 (B) to the specifications of a specific purchaser;

1472 (ii) notwithstanding Subsection (77)(a), computer software designed and developed by

1473 the author or other creator of the computer software to the specifications of a specific purchaser

1474 if the computer software is sold to a person other than the purchaser; or

1475 (iii) notwithstanding Subsection (77)(a) and except as provided in Subsection (77)(c),

1476 prewritten computer software or a prewritten portion of prewritten computer software:

1477 (A) that is modified or enhanced to any degree; and

1478 (B) if the modification or enhancement described in Subsection (77)(b)(iii)(A) is

1479 designed and developed to the specifications of a specific purchaser.

1480 (c) Notwithstanding Subsection (77)(b)(iii), "prewritten computer software" does not

1481 include a modification or enhancement described in Subsection (77)(b)(iii) if the charges for

1482 the modification or enhancement are:

- 1483 (i) reasonable; and
- 1484 (ii) separately stated on the invoice or other statement of price provided to the
- 1485 purchaser.
- 1486 (78) (a) "Private communication service" means a telecommunications service:
- 1487 (i) that entitles a customer to exclusive or priority use of one or more communications
- 1488 channels between or among termination points; and
- 1489 (ii) regardless of the manner in which the one or more communications channels are
- 1490 connected.
- 1491 (b) "Private communications service" includes the following provided in connection
- 1492 with the use of one or more communications channels:
- 1493 (i) an extension line;
- 1494 (ii) a station; [or]
- 1495 (iii) switching capacity; or
- 1496 (iv) another associated service that is provided in connection with the use of one or
- 1497 more communications channels as defined in Section 59-12-215.
- 1498 (79) (a) "Prosthetic device" means a device that is worn on or in the body to:
- 1499 (i) artificially replace a missing portion of the body;
- 1500 (ii) prevent or correct a physical deformity or physical malfunction; or
- 1501 (iii) support a weak or deformed portion of the body.
- 1502 (b) "Prosthetic device" includes:
- 1503 (i) parts used in the repairs or renovation of a prosthetic device;
- 1504 (ii) replacement parts for a prosthetic device;
- 1505 (iii) a dental prosthesis; or
- 1506 (iv) a hearing aid.
- 1507 (c) "Prosthetic device" does not include:
- 1508 (i) corrective eyeglasses; or
- 1509 (ii) contact lenses.
- 1510 (80) (a) "Protective equipment" means an item:
- 1511 (i) for human wear; and
- 1512 (ii) that is:
- 1513 (A) designed as protection:

- 1514 (I) to the wearer against injury or disease; or
1515 (II) against damage or injury of other persons or property; and
1516 (B) not suitable for general use.
- 1517 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1518 commission shall make rules:
- 1519 (i) listing the items that constitute "protective equipment"; and
1520 (ii) that are consistent with the list of items that constitute "protective equipment"
1521 under the agreement.
- 1522 (81) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or
1523 printed matter, other than a photocopy:
- 1524 (i) regardless of:
1525 (A) characteristics;
1526 (B) copyright;
1527 (C) form;
1528 (D) format;
1529 (E) method of reproduction; or
1530 (F) source; and
1531 (ii) made available in printed or electronic format.
- 1532 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1533 commission may by rule define the term "photocopy."
- 1534 (82) (a) "Purchase price" and "sales price" mean the total amount of consideration:
1535 (i) valued in money; and
1536 (ii) for which tangible personal property, a product transferred electronically, or
1537 services are:
1538 (A) sold;
1539 (B) leased; or
1540 (C) rented.
- 1541 (b) "Purchase price" and "sales price" include:
1542 (i) the seller's cost of the tangible personal property, a product transferred
1543 electronically, or services sold;
1544 (ii) expenses of the seller, including:

- 1545 (A) the cost of materials used;
- 1546 (B) a labor cost;
- 1547 (C) a service cost;
- 1548 (D) interest;
- 1549 (E) a loss;
- 1550 (F) the cost of transportation to the seller; or
- 1551 (G) a tax imposed on the seller;
- 1552 (iii) a charge by the seller for any service necessary to complete the sale; or
- 1553 (iv) consideration a seller receives from a person other than the purchaser if:
- 1554 (A) (I) the seller actually receives consideration from a person other than the purchaser;
- 1555 and
- 1556 (II) the consideration described in Subsection (82)(b)(iv)(A)(I) is directly related to a
- 1557 price reduction or discount on the sale;
- 1558 (B) the seller has an obligation to pass the price reduction or discount through to the
- 1559 purchaser;
- 1560 (C) the amount of the consideration attributable to the sale is fixed and determinable by
- 1561 the seller at the time of the sale to the purchaser; and
- 1562 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the
- 1563 seller to claim a price reduction or discount; and
- 1564 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,
- 1565 coupon, or other documentation with the understanding that the person other than the seller
- 1566 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;
- 1567 (II) the purchaser identifies that purchaser to the seller as a member of a group or
- 1568 organization allowed a price reduction or discount, except that a preferred customer card that is
- 1569 available to any patron of a seller does not constitute membership in a group or organization
- 1570 allowed a price reduction or discount; or
- 1571 (III) the price reduction or discount is identified as a third party price reduction or
- 1572 discount on the:
- 1573 (Aa) invoice the purchaser receives; or
- 1574 (Bb) certificate, coupon, or other documentation the purchaser presents.
- 1575 (c) "Purchase price" and "sales price" do not include:

- 1576 (i) a discount:
- 1577 (A) in a form including:
- 1578 (I) cash;
- 1579 (II) term; or
- 1580 (III) coupon;
- 1581 (B) that is allowed by a seller;
- 1582 (C) taken by a purchaser on a sale; and
- 1583 (D) that is not reimbursed by a third party; or
- 1584 (ii) the following if separately stated on an invoice, bill of sale, or similar document
- 1585 provided to the purchaser:
- 1586 (A) the following from credit extended on the sale of tangible personal property or
- 1587 services:
- 1588 (I) a carrying charge;
- 1589 (II) a financing charge; or
- 1590 (III) an interest charge;
- 1591 (B) a delivery charge;
- 1592 (C) an installation charge;
- 1593 (D) a manufacturer rebate on a motor vehicle; or
- 1594 (E) a tax or fee legally imposed directly on the consumer.
- 1595 (83) "Purchaser" means a person to whom:
- 1596 (a) a sale of tangible personal property is made;
- 1597 (b) a product is transferred electronically; or
- 1598 (c) a service is furnished.
- 1599 (84) "Regularly rented" means:
- 1600 (a) rented to a guest for value three or more times during a calendar year; or
- 1601 (b) advertised or held out to the public as a place that is regularly rented to guests for
- 1602 value.
- 1603 (85) "Renewable energy" means:
- 1604 (a) biomass energy;
- 1605 (b) hydroelectric energy;
- 1606 (c) geothermal energy;

1607 (d) solar energy; or

1608 (e) wind energy.

1609 (86) (a) "Renewable energy production facility" means a facility that:

1610 (i) uses renewable energy to produce electricity; and

1611 (ii) has a production capacity of 20 kilowatts or greater.

1612 (b) A facility is a renewable energy production facility regardless of whether the

1613 facility is:

1614 (i) connected to an electric grid; or

1615 (ii) located on the premises of an electricity consumer.

1616 (87) "Rental" is as defined in Subsection (48).

1617 (88) "Repairs or renovations of tangible personal property" means:

1618 (a) a repair or renovation of tangible personal property that is not permanently attached

1619 to real property; or

1620 (b) attaching tangible personal property or a product that is transferred electronically to

1621 other tangible personal property if the other tangible personal property to which the tangible

1622 personal property or product that is transferred electronically is attached is not permanently

1623 attached to real property.

1624 (89) "Research and development" means the process of inquiry or experimentation

1625 aimed at the discovery of facts, devices, technologies, or applications and the process of

1626 preparing those devices, technologies, or applications for marketing.

1627 (90) (a) "Residential telecommunications services" means a telecommunications

1628 service or an ancillary service that is provided to an individual for personal use:

1629 (i) at a residential address; or

1630 (ii) at an institution, including a nursing home or a school, if the telecommunications

1631 service or ancillary service is provided to and paid for by the individual residing at the

1632 institution rather than the institution.

1633 (b) For purposes of Subsection (90)(a), a residential address includes an:

1634 (i) apartment; or

1635 (ii) other individual dwelling unit.

1636 (91) "Residential use" means the use in or around a home, apartment building, sleeping

1637 quarters, and similar facilities or accommodations.

1638 (92) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
1639 than:

- 1640 (a) resale;
- 1641 (b) sublease; or
- 1642 (c) subrent.

1643 (93) (a) "Retailer" means any person engaged in a regularly organized business in
1644 tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and
1645 who is selling to the user or consumer and not for resale.

1646 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
1647 engaged in the business of selling to users or consumers within the state.

1648 (94) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
1649 otherwise, in any manner, of tangible personal property or any other taxable transaction under
1650 Subsection 59-12-103(1), for consideration.

1651 (b) "Sale" includes:

- 1652 (i) installment and credit sales;
- 1653 (ii) any closed transaction constituting a sale;
- 1654 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
1655 chapter;

1656 (iv) any transaction if the possession of property is transferred but the seller retains the
1657 title as security for the payment of the price; and

1658 (v) any transaction under which right to possession, operation, or use of any article of
1659 tangible personal property is granted under a lease or contract and the transfer of possession
1660 would be taxable if an outright sale were made.

1661 (95) "Sale at retail" is as defined in Subsection (92).

1662 (96) "Sale-leaseback transaction" means a transaction by which title to tangible
1663 personal property or a product transferred electronically that is subject to a tax under this
1664 chapter is transferred:

- 1665 (a) by a purchaser-lessee;
- 1666 (b) to a lessor;
- 1667 (c) for consideration; and
- 1668 (d) if:

1669 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
1670 of the tangible personal property or product transferred electronically;

1671 (ii) the sale of the tangible personal property or product transferred electronically to the
1672 lessor is intended as a form of financing:

1673 (A) for the tangible personal property or product transferred electronically; and

1674 (B) to the purchaser-lessee; and

1675 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
1676 is required to:

1677 (A) capitalize the tangible personal property or product transferred electronically for
1678 financial reporting purposes; and

1679 (B) account for the lease payments as payments made under a financing arrangement.

1680 (97) "Sales price" is as defined in Subsection (82).

1681 (98) (a) "Sales relating to schools" means the following sales by, amounts paid to, or
1682 amounts charged by a school:

1683 (i) sales that are directly related to the school's educational functions or activities
1684 including:

1685 (A) the sale of:

1686 (I) textbooks;

1687 (II) textbook fees;

1688 (III) laboratory fees;

1689 (IV) laboratory supplies; or

1690 (V) safety equipment;

1691 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
1692 that:

1693 (I) a student is specifically required to wear as a condition of participation in a
1694 school-related event or school-related activity; and

1695 (II) is not readily adaptable to general or continued usage to the extent that it takes the
1696 place of ordinary clothing;

1697 (C) sales of the following if the net or gross revenues generated by the sales are
1698 deposited into a school district fund or school fund dedicated to school meals:

1699 (I) food and food ingredients; or

- 1700 (II) prepared food; or
- 1701 (D) transportation charges for official school activities; or
- 1702 (ii) amounts paid to or amounts charged by a school for admission to a school-related
- 1703 event or school-related activity.
- 1704 (b) "Sales relating to schools" does not include:
- 1705 (i) bookstore sales of items that are not educational materials or supplies;
- 1706 (ii) except as provided in Subsection (98)(a)(i)(B):
- 1707 (A) clothing;
- 1708 (B) clothing accessories or equipment;
- 1709 (C) protective equipment; or
- 1710 (D) sports or recreational equipment; or
- 1711 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 1712 event or school-related activity if the amounts paid or charged are passed through to a person:
- 1713 (A) other than a:
- 1714 (I) school;
- 1715 (II) nonprofit organization authorized by a school board or a governing body of a
- 1716 private school to organize and direct a competitive secondary school activity; or
- 1717 (III) nonprofit association authorized by a school board or a governing body of a
- 1718 private school to organize and direct a competitive secondary school activity; and
- 1719 (B) that is required to collect sales and use taxes under this chapter.
- 1720 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1721 commission may make rules defining the term "passed through."
- 1722 (99) For purposes of this section and Section 59-12-104, "school":
- 1723 (a) means:
- 1724 (i) an elementary school or a secondary school that:
- 1725 (A) is a:
- 1726 (I) public school; or
- 1727 (II) private school; and
- 1728 (B) provides instruction for one or more grades kindergarten through 12; or
- 1729 (ii) a public school district; and
- 1730 (b) includes the Electronic High School as defined in Section 53A-15-1002.

- 1731 (100) "Seller" means a person that makes a sale, lease, or rental of:
- 1732 (a) tangible personal property;
- 1733 (b) a product transferred electronically; or
- 1734 (c) a service.
- 1735 (101) (a) "Semiconductor fabricating, processing, research, or development materials"
- 1736 means tangible personal property or a product transferred electronically if the tangible personal
- 1737 property or product transferred electronically is:
- 1738 (i) used primarily in the process of:
- 1739 (A) (I) manufacturing a semiconductor;
- 1740 (II) fabricating a semiconductor; or
- 1741 (III) research or development of a:
- 1742 (Aa) semiconductor; or
- 1743 (Bb) semiconductor manufacturing process; or
- 1744 (B) maintaining an environment suitable for a semiconductor; or
- 1745 (ii) consumed primarily in the process of:
- 1746 (A) (I) manufacturing a semiconductor;
- 1747 (II) fabricating a semiconductor; or
- 1748 (III) research or development of a:
- 1749 (Aa) semiconductor; or
- 1750 (Bb) semiconductor manufacturing process; or
- 1751 (B) maintaining an environment suitable for a semiconductor.
- 1752 (b) "Semiconductor fabricating, processing, research, or development materials"
- 1753 includes:
- 1754 (i) parts used in the repairs or renovations of tangible personal property or a product
- 1755 transferred electronically described in Subsection (101)(a); or
- 1756 (ii) a chemical, catalyst, or other material used to:
- 1757 (A) produce or induce in a semiconductor a:
- 1758 (I) chemical change; or
- 1759 (II) physical change;
- 1760 (B) remove impurities from a semiconductor; or
- 1761 (C) improve the marketable condition of a semiconductor.

1762 (102) "Senior citizen center" means a facility having the primary purpose of providing
1763 services to the aged as defined in Section 62A-3-101.

1764 (103) "Simplified electronic return" means the electronic return:

1765 (a) described in Section 318(C) of the agreement; and

1766 (b) approved by the governing board of the agreement.

1767 (104) "Solar energy" means the sun used as the sole source of energy for producing
1768 electricity.

1769 (105) (a) "Sports or recreational equipment" means an item:

1770 (i) designed for human use; and

1771 (ii) that is:

1772 (A) worn in conjunction with:

1773 (I) an athletic activity; or

1774 (II) a recreational activity; and

1775 (B) not suitable for general use.

1776 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1777 commission shall make rules:

1778 (i) listing the items that constitute "sports or recreational equipment"; and

1779 (ii) that are consistent with the list of items that constitute "sports or recreational
1780 equipment" under the agreement.

1781 (106) "State" means the state of Utah, its departments, and agencies.

1782 (107) "Storage" means any keeping or retention of tangible personal property or any
1783 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except
1784 sale in the regular course of business.

1785 (108) (a) Except as provided in Subsection (108)(c), "tangible personal property"
1786 means personal property that:

1787 (i) may be:

1788 (A) seen;

1789 (B) weighed;

1790 (C) measured;

1791 (D) felt; or

1792 (E) touched; or

1793 (ii) is in any manner perceptible to the senses.

1794 (b) "Tangible personal property" includes:

1795 (i) electricity;

1796 (ii) water;

1797 (iii) gas;

1798 (iv) steam; or

1799 (v) prewritten computer software.

1800 (c) "Tangible personal property" does not include a product that is transferred

1801 electronically.

1802 (d) "Tangible personal property" does not include the following if attached to real

1803 property, regardless of whether the attachment to real property is only through a line that

1804 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the

1805 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative

1806 Rulemaking Act:

1807 (i) a hot water heater;

1808 (ii) a water softener system; or

1809 (iii) a water filtration system.

1810 (109) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon

1811 and require further processing other than mechanical blending before becoming finished

1812 petroleum products.

1813 (110) (a) "Telecommunications enabling or facilitating equipment, machinery, or

1814 software" means an item listed in Subsection (110)(b) if that item is purchased or leased

1815 primarily to enable or facilitate one or more of the following to function:

1816 (i) telecommunications switching or routing equipment, machinery, or software; or

1817 (ii) telecommunications transmission equipment, machinery, or software.

1818 (b) The following apply to Subsection (110)(a):

1819 (i) a pole;

1820 (ii) software;

1821 (iii) a supplementary power supply;

1822 (iv) temperature or environmental equipment or machinery;

1823 (v) test equipment;

1824 (vi) a tower; or
1825 (vii) equipment, machinery, or software that functions similarly to an item listed in
1826 Subsections (110)(b)(i) through (vi) as determined by the commission by rule made in
1827 accordance with Subsection (110)(c).

1828 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1829 commission may by rule define what constitutes equipment, machinery, or software that
1830 functions similarly to an item listed in Subsections (110)(b)(i) through (vi).

1831 (111) "Telecommunications equipment, machinery, or software required for 911
1832 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.
1833 Sec. 20.18.

1834 (112) "Telecommunications maintenance or repair equipment, machinery, or software"
1835 means equipment, machinery, or software purchased or leased primarily to maintain or repair
1836 one or more of the following, regardless of whether the equipment, machinery, or software is
1837 purchased or leased as a spare part or as an upgrade or modification to one or more of the
1838 following:

- 1839 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 1840 (b) telecommunications switching or routing equipment, machinery, or software; or
- 1841 (c) telecommunications transmission equipment, machinery, or software.

1842 (113) (a) "Telecommunications service" means the electronic conveyance, routing, or
1843 transmission of audio, data, video, voice, or any other information or signal to a point, or
1844 among or between points.

1845 (b) "Telecommunications service" includes:

1846 (i) an electronic conveyance, routing, or transmission with respect to which a computer
1847 processing application is used to act:

- 1848 (A) on the code, form, or protocol of the content;
- 1849 (B) for the purpose of electronic conveyance, routing, or transmission; and
- 1850 (C) regardless of whether the service:

1851 (I) is referred to as voice over Internet protocol service; or
1852 (II) is classified by the Federal Communications Commission as enhanced or value
1853 added;

1854 (ii) an 800 service;

- 1855 (iii) a 900 service;
- 1856 (iv) a fixed wireless service;
- 1857 (v) a mobile wireless service;
- 1858 (vi) a postpaid calling service;
- 1859 (vii) a prepaid calling service;
- 1860 (viii) a prepaid wireless calling service; or
- 1861 (ix) a private communications service.
- 1862 (c) "Telecommunications service" does not include:
- 1863 (i) advertising, including directory advertising;
- 1864 (ii) an ancillary service;
- 1865 (iii) a billing and collection service provided to a third party;
- 1866 (iv) a data processing and information service if:
- 1867 (A) the data processing and information service allows data to be:
- 1868 (I) (Aa) acquired;
- 1869 (Bb) generated;
- 1870 (Cc) processed;
- 1871 (Dd) retrieved; or
- 1872 (Ee) stored; and
- 1873 (II) delivered by an electronic transmission to a purchaser; and
- 1874 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 1875 or information;
- 1876 (v) installation or maintenance of the following on a customer's premises:
- 1877 (A) equipment; or
- 1878 (B) wiring;
- 1879 (vi) Internet access service;
- 1880 (vii) a paging service;
- 1881 (viii) a product transferred electronically, including:
- 1882 (A) music;
- 1883 (B) reading material;
- 1884 (C) a ring tone;
- 1885 (D) software; or

- 1886 (E) video;
- 1887 (ix) a radio and television audio and video programming service:
- 1888 (A) regardless of the medium; and
- 1889 (B) including:
- 1890 (I) furnishing conveyance, routing, or transmission of a television audio and video
- 1891 programming service by a programming service provider;
- 1892 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
- 1893 (III) audio and video programming services delivered by a commercial mobile radio
- 1894 service provider as defined in 47 C.F.R. Sec. 20.3;
- 1895 (x) a value-added nonvoice data service; or
- 1896 (xi) tangible personal property.
- 1897 (114) (a) "Telecommunications service provider" means a person that:
- 1898 (i) owns, controls, operates, or manages a telecommunications service; and
- 1899 (ii) engages in an activity described in Subsection (114)(a)(i) for the shared use with or
- 1900 resale to any person of the telecommunications service.
- 1901 (b) A person described in Subsection (114)(a) is a telecommunications service provider
- 1902 whether or not the Public Service Commission of Utah regulates:
- 1903 (i) that person; or
- 1904 (ii) the telecommunications service that the person owns, controls, operates, or
- 1905 manages.
- 1906 (115) (a) "Telecommunications switching or routing equipment, machinery, or
- 1907 software" means an item listed in Subsection (115)(b) if that item is purchased or leased
- 1908 primarily for switching or routing:
- 1909 (i) an ancillary service;
- 1910 (ii) data communications;
- 1911 (iii) voice communications; or
- 1912 (iv) telecommunications service.
- 1913 (b) The following apply to Subsection (115)(a):
- 1914 (i) a bridge;
- 1915 (ii) a computer;
- 1916 (iii) a cross connect;

- 1917 (iv) a modem;
- 1918 (v) a multiplexer;
- 1919 (vi) plug in circuitry;
- 1920 (vii) a router;
- 1921 (viii) software;
- 1922 (ix) a switch; or
- 1923 (x) equipment, machinery, or software that functions similarly to an item listed in
- 1924 Subsections (115)(b)(i) through (ix) as determined by the commission by rule made in
- 1925 accordance with Subsection (115)(c).

1926 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1927 commission may by rule define what constitutes equipment, machinery, or software that

1928 functions similarly to an item listed in Subsections (115)(b)(i) through (ix).

1929 (116) (a) "Telecommunications transmission equipment, machinery, or software"

1930 means an item listed in Subsection (116)(b) if that item is purchased or leased primarily for

1931 sending, receiving, or transporting:

- 1932 (i) an ancillary service;
- 1933 (ii) data communications;
- 1934 (iii) voice communications; or
- 1935 (iv) telecommunications service.

1936 (b) The following apply to Subsection (116)(a):

- 1937 (i) an amplifier;
- 1938 (ii) a cable;
- 1939 (iii) a closure;
- 1940 (iv) a conduit;
- 1941 (v) a controller;
- 1942 (vi) a duplexer;
- 1943 (vii) a filter;
- 1944 (viii) an input device;
- 1945 (ix) an input/output device;
- 1946 (x) an insulator;
- 1947 (xi) microwave machinery or equipment;

- 1948 (xii) an oscillator;
- 1949 (xiii) an output device;
- 1950 (xiv) a pedestal;
- 1951 (xv) a power converter;
- 1952 (xvi) a power supply;
- 1953 (xvii) a radio channel;
- 1954 (xviii) a radio receiver;
- 1955 (xix) a radio transmitter;
- 1956 (xx) a repeater;
- 1957 (xxi) software;
- 1958 (xxii) a terminal;
- 1959 (xxiii) a timing unit;
- 1960 (xxiv) a transformer;
- 1961 (xxv) a wire; or
- 1962 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
- 1963 Subsections (116)(b)(i) through (xxv) as determined by the commission by rule made in
- 1964 accordance with Subsection (116)(c).

1965 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1966 commission may by rule define what constitutes equipment, machinery, or software that

1967 functions similarly to an item listed in Subsections (116)(b)(i) through (xxv).

1968 (117) "Tobacco" means:

- 1969 (a) a cigarette;
- 1970 (b) a cigar;
- 1971 (c) chewing tobacco;
- 1972 (d) pipe tobacco; or
- 1973 (e) any other item that contains tobacco.

1974 (118) "Unassisted amusement device" means an amusement device, skill device, or

1975 ride device that is started and stopped by the purchaser or renter of the right to use or operate

1976 the amusement device, skill device, or ride device.

1977 (119) (a) "Use" means the exercise of any right or power over tangible personal

1978 property, a product transferred electronically, or a service under Subsection 59-12-103(1),

1979 incident to the ownership or the leasing of that tangible personal property, product transferred
1980 electronically, or service.

1981 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal
1982 property, a product transferred electronically, or a service in the regular course of business and
1983 held for resale.

1984 (120) "Value-added nonvoice data service" means a service:

1985 (a) that otherwise meets the definition of a telecommunications service except that a
1986 computer processing application is used to act primarily for a purpose other than conveyance,
1987 routing, or transmission; and

1988 (b) with respect to which a computer processing application is used to act on data or
1989 information:

- 1990 (i) code;
- 1991 (ii) content;
- 1992 (iii) form; or
- 1993 (iv) protocol.

1994 (121) (a) Subject to Subsection (121)(b), "vehicle" means the following that are
1995 required to be titled, registered, or titled and registered:

- 1996 (i) an aircraft as defined in Section 72-10-102;
- 1997 (ii) a vehicle as defined in Section 41-1a-102;
- 1998 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1999 (iv) a vessel as defined in Section 41-1a-102.

2000 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

- 2001 (i) a vehicle described in Subsection (121)(a); or
- 2002 (ii) (A) a locomotive;
- 2003 (B) a freight car;
- 2004 (C) railroad work equipment; or
- 2005 (D) other railroad rolling stock.

2006 (122) "Vehicle dealer" means a person engaged in the business of buying, selling, or
2007 exchanging a vehicle as defined in Subsection (121).

2008 (123) (a) "Vertical service" means an ancillary service that:

- 2009 (i) is offered in connection with one or more telecommunications services; and

2010 (ii) offers an advanced calling feature that allows a customer to:

2011 (A) identify a caller; and

2012 (B) manage multiple calls and call connections.

2013 (b) "Vertical service" includes an ancillary service that allows a customer to manage a

2014 conference bridging service.

2015 (124) (a) "Voice mail service" means an ancillary service that enables a customer to

2016 receive, send, or store a recorded message.

2017 (b) "Voice mail service" does not include a vertical service that a customer is required

2018 to have in order to utilize a voice mail service.

2019 (125) (a) Except as provided in Subsection (125)(b), "waste energy facility" means a

2020 facility that generates electricity:

2021 (i) using as the primary source of energy waste materials that would be placed in a

2022 landfill or refuse pit if it were not used to generate electricity, including:

2023 (A) tires;

2024 (B) waste coal; or

2025 (C) oil shale; and

2026 (ii) in amounts greater than actually required for the operation of the facility.

2027 (b) "Waste energy facility" does not include a facility that incinerates:

2028 (i) municipal solid waste;

2029 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or

2030 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

2031 (126) "Watercraft" means a vessel as defined in Section 73-18-2.

2032 (127) "Wind energy" means wind used as the sole source of energy to produce

2033 electricity.

2034 (128) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic

2035 location by the United States Postal Service.

2036 Section 4. Section **59-12-103** is amended to read:

2037 **59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use**
2038 **tax revenues.**

2039 (1) A tax is imposed on the purchaser as provided in this part for amounts paid or

2040 charged for the following transactions:

- 2041 (a) retail sales of tangible personal property made within the state;
- 2042 (b) amounts paid for:
 - 2043 (i) telecommunications service, other than mobile telecommunications service, that
 - 2044 originates and terminates within the boundaries of this state;
 - 2045 (ii) mobile telecommunications service that originates and terminates within the
 - 2046 boundaries of one state only to the extent permitted by the Mobile Telecommunications
 - 2047 Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or
 - 2048 (iii) an ancillary service associated with a:
 - 2049 (A) telecommunications service described in Subsection (1)(b)(i); or
 - 2050 (B) mobile telecommunications service described in Subsection (1)(b)(ii);
 - 2051 (c) sales of the following for commercial use:
 - 2052 (i) gas;
 - 2053 (ii) electricity;
 - 2054 (iii) heat;
 - 2055 (iv) coal;
 - 2056 (v) fuel oil; or
 - 2057 (vi) other fuels;
 - 2058 (d) sales of the following for residential use:
 - 2059 (i) gas;
 - 2060 (ii) electricity;
 - 2061 (iii) heat;
 - 2062 (iv) coal;
 - 2063 (v) fuel oil; or
 - 2064 (vi) other fuels;
 - 2065 (e) sales of prepared food;
 - 2066 (f) except as provided in Section 59-12-104, amounts paid or charged as admission or
 - 2067 user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,
 - 2068 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,
 - 2069 fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit
 - 2070 television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf
 - 2071 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,

2072 tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises,
2073 horseback rides, sports activities, or any other amusement, entertainment, recreation,
2074 exhibition, cultural, or athletic activity;

2075 (g) amounts paid or charged for services for repairs or renovations of tangible personal
2076 property, unless Section 59-12-104 provides for an exemption from sales and use tax for:

2077 (i) the tangible personal property; and

2078 (ii) parts used in the repairs or renovations of the tangible personal property described
2079 in Subsection (1)(g)(i), whether or not any parts are actually used in the repairs or renovations
2080 of that tangible personal property;

2081 (h) except as provided in Subsection 59-12-104(7), amounts paid or charged for
2082 assisted cleaning or washing of tangible personal property;

2083 (i) amounts paid or charged for tourist home, hotel, motel, or trailer court
2084 accommodations and services that are regularly rented for less than 30 consecutive days;

2085 (j) amounts paid or charged for laundry or dry cleaning services;

2086 (k) amounts paid or charged for leases or rentals of tangible personal property if within
2087 this state the tangible personal property is:

2088 (i) stored;

2089 (ii) used; or

2090 (iii) otherwise consumed;

2091 (l) amounts paid or charged for tangible personal property if within this state the
2092 tangible personal property is:

2093 (i) stored;

2094 (ii) used; or

2095 (iii) consumed; and

2096 [~~(m) amounts paid or charged for prepaid telephone calling cards; and~~]

2097 [~~(n)~~] (m) amounts paid or charged for a sale:

2098 (i) (A) of a product that:

2099 (I) is transferred electronically; and

2100 (II) would be subject to a tax under this chapter if the product was transferred in a
2101 manner other than electronically; or

2102 (B) of a repair or renovation of a product that:

2103 (I) is transferred electronically; and
2104 (II) would be subject to a tax under this chapter if the product was transferred in a
2105 manner other than electronically; and
2106 (ii) regardless of whether the sale provides:
2107 (A) a right of permanent use of the product; or
2108 (B) a right to use the product that is less than a permanent use, including a right:
2109 (I) for a definite or specified length of time; and
2110 (II) that terminates upon the occurrence of a condition.
2111 (2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax
2112 is imposed on a transaction described in Subsection (1) equal to the sum of:
2113 (i) a state tax imposed on the transaction at a tax rate equal to the sum of:
2114 (A) 4.70%; and
2115 (B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales
2116 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211
2117 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional
2118 State Sales and Use Tax Act; and
2119 (II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales
2120 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211
2121 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state
2122 imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and
2123 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
2124 transaction under this chapter other than this part.
2125 (b) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed
2126 on a transaction described in Subsection (1)(d) equal to the sum of:
2127 (i) a state tax imposed on the transaction at a tax rate of 2%; and
2128 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
2129 transaction under this chapter other than this part.
2130 (c) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed
2131 on amounts paid or charged for food and food ingredients equal to the sum of:
2132 (i) a state tax imposed on the amounts paid or charged for food and food ingredients at
2133 a tax rate of 1.75%; and

2134 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
2135 amounts paid or charged for food and food ingredients under this chapter other than this part.

2136 (d) (i) For a bundled transaction that is attributable to food and food ingredients and
2137 tangible personal property other than food and food ingredients, a state tax and a local tax is
2138 imposed on the entire bundled transaction equal to the sum of:

2139 (A) a state tax imposed on the entire bundled transaction equal to the sum of:

2140 (I) the tax rate described in Subsection (2)(a)(i)(A); and

2141 (II) (Aa) the tax rate the state imposes in accordance with Part 18, Additional State
2142 Sales and Use Tax Act, if the location of the transaction as determined under Sections
2143 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18,
2144 Additional State Sales and Use Tax Act; and

2145 (Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State
2146 Sales and Use Tax Act, if the location of the transaction as determined under Sections
2147 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which
2148 the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

2149 (B) a local tax imposed on the entire bundled transaction at the sum of the tax rates
2150 described in Subsection (2)(a)(ii).

2151 (ii) Subject to Subsection (2)(d)(iii), for a bundled transaction other than a bundled
2152 transaction described in Subsection (2)(d)(i):

2153 (A) if the sales price of the bundled transaction is attributable to tangible personal
2154 property, a product, or a service that is subject to taxation under this chapter and tangible
2155 personal property, a product, or service that is not subject to taxation under this chapter, the
2156 entire bundled transaction is subject to taxation under this chapter unless:

2157 (I) the seller is able to identify by reasonable and verifiable standards the tangible
2158 personal property, product, or service that is not subject to taxation under this chapter from the
2159 books and records the seller keeps in the seller's regular course of business; or

2160 (II) state or federal law provides otherwise; or

2161 (B) if the sales price of a bundled transaction is attributable to two or more items of
2162 tangible personal property, products, or services that are subject to taxation under this chapter
2163 at different rates, the entire bundled transaction is subject to taxation under this chapter at the
2164 higher tax rate unless:

2165 (I) the seller is able to identify by reasonable and verifiable standards the tangible
2166 personal property, product, or service that is subject to taxation under this chapter at the lower
2167 tax rate from the books and records the seller keeps in the seller's regular course of business; or

2168 (II) state or federal law provides otherwise.

2169 (iii) For purposes of Subsection (2)(d)(ii), books and records that a seller keeps in the
2170 seller's regular course of business includes books and records the seller keeps in the regular
2171 course of business for nontax purposes.

2172 (e) Subject to Subsections (2)(f) and (g), a tax rate repeal or tax rate change for a tax
2173 rate imposed under the following shall take effect on the first day of a calendar quarter:

2174 (i) Subsection (2)(a)(i)(A);

2175 (ii) Subsection (2)(b)(i);

2176 (iii) Subsection (2)(c)(i); or

2177 (iv) Subsection (2)(d)(i)(A)(I).

2178 (f) (i) A tax rate increase shall take effect on the first day of the first billing period that
2179 begins after the effective date of the tax rate increase if the billing period for the transaction
2180 begins before the effective date of a tax rate increase imposed under:

2181 (A) Subsection (2)(a)(i)(A);

2182 (B) Subsection (2)(b)(i);

2183 (C) Subsection (2)(c)(i); or

2184 (D) Subsection (2)(d)(i)(A)(I).

2185 (ii) The repeal of a tax or a tax rate decrease shall take effect on the first day of the last
2186 billing period that began before the effective date of the repeal of the tax or the tax rate
2187 decrease if the billing period for the transaction begins before the effective date of the repeal of
2188 the tax or the tax rate decrease imposed under:

2189 (A) Subsection (2)(a)(i)(A);

2190 (B) Subsection (2)(b)(i);

2191 (C) Subsection (2)(c)(i); or

2192 (D) Subsection (2)(d)(i)(A)(I).

2193 (g) (i) For a tax rate described in Subsection (2)(g)(ii), if a tax due on a catalogue sale
2194 is computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal
2195 or change in a tax rate takes effect:

- 2196 (A) on the first day of a calendar quarter; and
- 2197 (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.
- 2198 (ii) Subsection (2)(g)(i) applies to the tax rates described in the following:
- 2199 (A) Subsection (2)(a)(i)(A);
- 2200 (B) Subsection (2)(b)(i);
- 2201 (C) Subsection (2)(c)(i); or
- 2202 (D) Subsection (2)(d)(i)(A)(I).
- 2203 (iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
- 2204 the commission may by rule define the term "catalogue sale."
- 2205 (3) (a) The following state taxes shall be deposited into the General Fund:
- 2206 (i) the tax imposed by Subsection (2)(a)(i)(A);
- 2207 (ii) the tax imposed by Subsection (2)(b)(i);
- 2208 (iii) the tax imposed by Subsection (2)(c)(i); or
- 2209 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).
- 2210 (b) The following local taxes shall be distributed to a county, city, or town as provided
- 2211 in this chapter:
- 2212 (i) the tax imposed by Subsection (2)(a)(ii);
- 2213 (ii) the tax imposed by Subsection (2)(b)(ii);
- 2214 (iii) the tax imposed by Subsection (2)(c)(ii); and
- 2215 (iv) the tax imposed by Subsection (2)(d)(i)(B).
- 2216 (4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
- 2217 2003, the lesser of the following amounts shall be used as provided in Subsections (4)(b)
- 2218 through (g):
- 2219 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:
- 2220 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and
- 2221 (B) for the fiscal year; or
- 2222 (ii) \$17,500,000.
- 2223 (b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount
- 2224 described in Subsection (4)(a) shall be transferred each year as dedicated credits to the
- 2225 Department of Natural Resources to:
- 2226 (A) implement the measures described in Subsections 63-34-14(4)(a) through (d) to

2227 protect sensitive plant and animal species; or

2228 (B) award grants, up to the amount authorized by the Legislature in an appropriations
2229 act, to political subdivisions of the state to implement the measures described in Subsections
2230 63-34-14(4)(a) through (d) to protect sensitive plant and animal species.

2231 (ii) Money transferred to the Department of Natural Resources under Subsection
2232 (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other
2233 person to list or attempt to have listed a species as threatened or endangered under the
2234 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

2235 (iii) At the end of each fiscal year:

2236 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
2237 Conservation and Development Fund created in Section 73-10-24;

2238 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
2239 Program Subaccount created in Section 73-10c-5; and

2240 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
2241 Program Subaccount created in Section 73-10c-5.

2242 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in
2243 Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund
2244 created in Section 4-18-6.

2245 (d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described
2246 in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water
2247 Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of
2248 water rights.

2249 (ii) At the end of each fiscal year:

2250 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
2251 Conservation and Development Fund created in Section 73-10-24;

2252 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
2253 Program Subaccount created in Section 73-10c-5; and

2254 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
2255 Program Subaccount created in Section 73-10c-5.

2256 (e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described
2257 in Subsection (4)(a) shall be deposited in the Water Resources Conservation and Development

2258 Fund created in Section 73-10-24 for use by the Division of Water Resources.

2259 (ii) In addition to the uses allowed of the Water Resources Conservation and
2260 Development Fund under Section 73-10-24, the Water Resources Conservation and
2261 Development Fund may also be used to:

2262 (A) conduct hydrologic and geotechnical investigations by the Division of Water
2263 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of
2264 quantifying surface and ground water resources and describing the hydrologic systems of an
2265 area in sufficient detail so as to enable local and state resource managers to plan for and
2266 accommodate growth in water use without jeopardizing the resource;

2267 (B) fund state required dam safety improvements; and

2268 (C) protect the state's interest in interstate water compact allocations, including the
2269 hiring of technical and legal staff.

2270 (f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
2271 in Subsection (4)(a) shall be deposited in the Utah Wastewater Loan Program Subaccount
2272 created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

2273 (g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
2274 in Subsection (4)(a) shall be deposited in the Drinking Water Loan Program Subaccount
2275 created in Section 73-10c-5 for use by the Division of Drinking Water to:

2276 (i) provide for the installation and repair of collection, treatment, storage, and
2277 distribution facilities for any public water system, as defined in Section 19-4-102;

2278 (ii) develop underground sources of water, including springs and wells; and

2279 (iii) develop surface water sources.

2280 (5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
2281 2006, the difference between the following amounts shall be expended as provided in this
2282 Subsection (5), if that difference is greater than \$1:

2283 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the
2284 fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

2285 (ii) \$17,500,000.

2286 (b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:

2287 (A) transferred each fiscal year to the Department of Natural Resources as dedicated
2288 credits; and

2289 (B) expended by the Department of Natural Resources for watershed rehabilitation or
2290 restoration.

2291 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described
2292 in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund
2293 created in Section 73-10-24.

2294 (c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the
2295 remaining difference described in Subsection (5)(a) shall be:

2296 (A) transferred each fiscal year to the Division of Water Resources as dedicated
2297 credits; and

2298 (B) expended by the Division of Water Resources for cloud-seeding projects
2299 authorized by Title 73, Chapter 15, Modification of Weather.

2300 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described
2301 in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund
2302 created in Section 73-10-24.

2303 (d) After making the transfers required by Subsections (5)(b) and (c), 94% of the
2304 remaining difference described in Subsection (5)(a) shall be deposited into the Water
2305 Resources Conservation and Development Fund created in Section 73-10-24 for use by the
2306 Division of Water Resources for:

2307 (i) preconstruction costs:

2308 (A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter
2309 26, Bear River Development Act; and

2310 (B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project
2311 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

2312 (ii) the cost of employing a civil engineer to oversee any project authorized by Title 73,
2313 Chapter 26, Bear River Development Act;

2314 (iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project
2315 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

2316 (iv) other uses authorized under Sections 73-10-24, 73-10-25.1, 73-10-30, and
2317 Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

2318 (e) Any unexpended monies described in Subsection (5)(d) that remain in the Water
2319 Resources Conservation and Development Fund at the end of the fiscal year are nonlapsing.

2320 (f) After making the transfers required by Subsections (5)(b) and (c) and subject to
2321 Subsection (5)(g), 6% of the remaining difference described in Subsection (5)(a) shall be
2322 transferred each year as dedicated credits to the Division of Water Rights to cover the costs
2323 incurred for employing additional technical staff for the administration of water rights.

2324 (g) At the end of each fiscal year, any unexpended dedicated credits described in
2325 Subsection (5)(f) over \$150,000 lapse to the Water Resources Conservation and Development
2326 Fund created in Section 73-10-24.

2327 (6) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
2328 2003, and for taxes listed under Subsection (3)(a), the amount of revenue generated by a 1/16%
2329 tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited in
2330 the Transportation Fund created by Section 72-2-102.

2331 (7) (a) Notwithstanding Subsection (3)(a) and until Subsection (7)(b) applies,
2332 beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial
2333 Highway Fund Restricted Account created in Section 72-2-118 a portion of the taxes listed
2334 under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate on the taxable
2335 transactions under Subsection (1).

2336 (b) Notwithstanding Subsection (3)(a), when the highway general obligation bonds
2337 have been paid off and the highway projects completed that are intended to be paid from
2338 revenues deposited in the Centennial Highway Fund Restricted Account as determined by the
2339 Executive Appropriations Committee under Subsection 72-2-118(6)(d), the Division of
2340 Finance shall deposit into the Transportation Investment Fund of 2005 created by Section
2341 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated
2342 by a 1/64% tax rate on the taxable transactions under Subsection (1).

2343 (8) (a) Notwithstanding Subsection (3)(a), in addition to the amount deposited in
2344 Subsection (7)(a), and until Subsection (8)(b) applies, for a fiscal year beginning on or after
2345 July 1, 2007, the Division of Finance shall deposit into the Centennial Highway Fund
2346 Restricted Account created by Section 72-2-118 a portion of the taxes listed under Subsection
2347 (3)(a) equal to 8.3% of the revenues collected from the following taxes, which represents a
2348 portion of the approximately 17% of sales and use tax revenues generated annually by the sales
2349 and use tax on vehicles and vehicle-related products:

2350 (i) the tax imposed by Subsection (2)(a)(i)(A);

- 2351 (ii) the tax imposed by Subsection (2)(b)(i);
- 2352 (iii) the tax imposed by Subsection (2)(c)(i); and
- 2353 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

2354 (b) Notwithstanding Subsection (3)(a) and in addition to the amounts deposited under
2355 Subsection (7)(b), when the highway general obligation bonds have been paid off and the
2356 highway projects completed that are intended to be paid from revenues deposited in the
2357 Centennial Highway Fund Restricted Account as determined by the Executive Appropriations
2358 Committee under Subsection 72-2-118(6)(d), the Division of Finance shall deposit into the
2359 Transportation Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes
2360 listed under Subsection (3)(a) equal to 8.3% of the revenues collected from the following taxes,
2361 which represents a portion of the approximately 17% of sales and use tax revenues generated
2362 annually by the sales and use tax on vehicles and vehicle-related products:

- 2363 (i) the tax imposed by Subsection (2)(a)(i)(A);
- 2364 (ii) the tax imposed by Subsection (2)(b)(i);
- 2365 (iii) the tax imposed by Subsection (2)(c)(i); and
- 2366 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

2367 (9) (a) Notwithstanding Subsection (3)(a) and for the fiscal year 2008-09 only, the
2368 Division of Finance shall deposit \$55,000,000 of the revenues generated by the taxes listed
2369 under Subsection (3)(a) into the Critical Highway Needs Fund created by Section 72-2-125.

2370 (b) Notwithstanding Subsection (3)(a) and until Subsection (9)(c) applies, for a fiscal
2371 year beginning on or after July 1, 2009, the Division of Finance shall annually deposit
2372 \$90,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the
2373 Critical Highway Needs Fund created by Section 72-2-125.

2374 (c) Notwithstanding Subsection (3)(a) and in addition to any amounts deposited under
2375 Subsections (7) and (8), when the general obligation bonds authorized by Section 63B-16-101
2376 have been paid off and the highway projects completed that are included in the prioritized
2377 project list under Subsection 72-2-125(4) as determined in accordance with Subsection
2378 72-2-125(6), the Division of Finance shall annually deposit \$90,000,000 of the revenues
2379 generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund
2380 of 2005 created by Section 72-2-124.

2381 (10) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year

2382 2008-09, \$915,000 shall be deposited into the Qualified Emergency Food Agencies Fund
2383 created by Section 9-4-1409 and expended as provided in Section 9-4-1409.

2384 (11) (a) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection
2385 (11)(a)(ii), and until Subsection (11)(b) applies, beginning on January 1, 2009, the Division of
2386 Finance shall deposit into the Critical Highway Needs Fund created by Section 72-2-125 the
2387 amount of tax revenue generated by a .025% tax rate on the transactions described in
2388 Subsection (1).

2389 (ii) For purposes of Subsection (11)(a)(i), the Division of Finance may not deposit into
2390 the Critical Highway Needs Fund any tax revenue generated by amounts paid or charged for
2391 food and food ingredients, except for tax revenue generated by a bundled transaction
2392 attributable to food and food ingredients and tangible personal property other than food and
2393 food ingredients described in Subsection (2)(e).

2394 (b) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection (11)(b)(ii),
2395 and in addition to any amounts deposited under Subsections (7), (9), and (10), when the general
2396 obligation bonds authorized by Section 63B-16-101 have been paid off and the highway
2397 projects completed that are included in the prioritized project list under Subsection 72-2-125(4)
2398 as determined in accordance with Subsection 72-2-125(6), the Division of Finance shall
2399 deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the
2400 amount of tax revenue generated by a .025% tax rate on the transactions described in
2401 Subsection (1).

2402 (ii) For purposes of Subsection (11)(b)(i), the Division of Finance may not deposit into
2403 the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or
2404 charged for food and food ingredients, except for tax revenue generated by a bundled
2405 transaction attributable to food and food ingredients and tangible personal property other than
2406 food and food ingredients described in Subsection (2)(e).

2407 (12) (a) Notwithstanding Subsection (3)(a), and except as provided in Subsection
2408 (12)(b), beginning on January 1, 2009, the Division of Finance shall deposit into the
2409 Transportation Fund created by Section 72-2-102 the amount of tax revenue generated by a
2410 .025% tax rate on the transactions described in Subsection (1) to be expended to address
2411 chokepoints in construction management.

2412 (b) For purposes of Subsection (12)(a), the Division of Finance may not deposit into

2413 the Transportation Fund any tax revenue generated by amounts paid or charged for food and
2414 food ingredients, except for tax revenue generated by a bundled transaction attributable to food
2415 and food ingredients and tangible personal property other than food and food ingredients
2416 described in Subsection (2)(e).

2417 Section 5. Section **59-12-104** is amended to read:

2418 **59-12-104. Exemptions.**

2419 The following sales and uses are exempt from the taxes imposed by this chapter:

2420 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
2421 under Chapter 13, Motor and Special Fuel Tax Act;

2422 (2) sales to the state, its institutions, and its political subdivisions; however, this
2423 exemption does not apply to sales of:

2424 (a) construction materials except:

2425 (i) construction materials purchased by or on behalf of institutions of the public
2426 education system as defined in Utah Constitution Article X, Section 2, provided the
2427 construction materials are clearly identified and segregated and installed or converted to real
2428 property which is owned by institutions of the public education system; and

2429 (ii) construction materials purchased by the state, its institutions, or its political
2430 subdivisions which are installed or converted to real property by employees of the state, its
2431 institutions, or its political subdivisions; or

2432 (b) tangible personal property in connection with the construction, operation,
2433 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities
2434 providing additional project capacity, as defined in Section 11-13-103;

2435 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:

2436 (i) the proceeds of each sale do not exceed \$1; and

2437 (ii) the seller or operator of the vending machine reports an amount equal to 150% of
2438 the cost of the item described in Subsection (3)(b) as goods consumed; and

2439 (b) Subsection (3)(a) applies to:

2440 (i) food and food ingredients; or

2441 (ii) prepared food;

2442 (4) sales of the following to a commercial airline carrier for in-flight consumption:

2443 (a) food and food ingredients;

2444 (b) prepared food; or
2445 (c) services related to Subsection (4)(a) or (b);
2446 (5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts
2447 and equipment:
2448 (A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002
2449 North American Industry Classification System of the federal Executive Office of the
2450 President, Office of Management and Budget; and
2451 (II) for:
2452 (Aa) installation in an aircraft, including services relating to the installation of parts or
2453 equipment in the aircraft;
2454 (Bb) renovation of an aircraft; or
2455 (Cc) repair of an aircraft; or
2456 (B) for installation in an aircraft operated by a common carrier in interstate or foreign
2457 commerce; or
2458 (ii) beginning on October 1, 2008, sales of parts and equipment for installation in an
2459 aircraft operated by a common carrier in interstate or foreign commerce; and
2460 (b) notwithstanding the time period of Subsection 59-12-110(2) for filing for a refund,
2461 a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a
2462 refund:
2463 (i) if the sale is made on or after July 1, 2008, but on or before September 30, 2008;
2464 (ii) as if Subsection (5)(a)(i)(B) were in effect on the day on which the sale is made;
2465 (iii) if the person did not claim the exemption allowed by Subsection (5)(a)(i)(B) for
2466 the sale prior to filing for the refund;
2467 (iv) for sales and use taxes paid under this chapter on the sale;
2468 (v) in accordance with Section 59-12-110; and
2469 (vi) subject to any extension allowed for filing for a refund under Section 59-12-110, if
2470 the person files for the refund on or before September 30, 2011;
2471 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
2472 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
2473 exhibitor, distributor, or commercial television or radio broadcaster;
2474 (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal

2475 property if the cleaning or washing of the tangible personal property is not assisted cleaning or
2476 washing of tangible personal property;

2477 (b) if a seller that sells at the same business location assisted cleaning or washing of
2478 tangible personal property and cleaning or washing of tangible personal property that is not
2479 assisted cleaning or washing of tangible personal property, the exemption described in
2480 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning
2481 or washing of the tangible personal property; and

2482 (c) for purposes of Subsection (7)(b) and in accordance with Title 63G, Chapter 3,
2483 Utah Administrative Rulemaking Act, the commission may make rules:

2484 (i) governing the circumstances under which sales are at the same business location;
2485 and

2486 (ii) establishing the procedures and requirements for a seller to separately account for
2487 sales of assisted cleaning or washing of tangible personal property;

2488 (8) sales made to or by religious or charitable institutions in the conduct of their regular
2489 religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are
2490 fulfilled;

2491 (9) sales of a vehicle of a type required to be registered under the motor vehicle laws of
2492 this state if the vehicle is:

2493 (a) not registered in this state; and

2494 (b) (i) not used in this state; or

2495 (ii) used in this state:

2496 (A) if the vehicle is not used to conduct business, for a time period that does not
2497 exceed the longer of:

2498 (I) 30 days in any calendar year; or

2499 (II) the time period necessary to transport the vehicle to the borders of this state; or

2500 (B) if the vehicle is used to conduct business, for the time period necessary to transport
2501 the vehicle to the borders of this state;

2502 (10) (a) amounts paid for an item described in Subsection (10)(b) if:

2503 (i) the item is intended for human use; and

2504 (ii) (A) a prescription was issued for the item; or

2505 (B) the item was purchased by a hospital or other medical facility; and

- 2506 (b) (i) Subsection (10)(a) applies to:
- 2507 (A) a drug;
- 2508 (B) a syringe; or
- 2509 (C) a stoma supply; and
- 2510 (ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 2511 commission may by rule define the terms:
- 2512 (A) "syringe"; or
- 2513 (B) "stoma supply";
- 2514 (11) sales or use of property, materials, or services used in the construction of or
- 2515 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;
- 2516 (12) (a) sales of an item described in Subsection (12)(c) served by:
- 2517 (i) the following if the item described in Subsection (12)(c) is not available to the
- 2518 general public:
- 2519 (A) a church; or
- 2520 (B) a charitable institution;
- 2521 (ii) an institution of higher education if:
- 2522 (A) the item described in Subsection (12)(c) is not available to the general public; or
- 2523 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
- 2524 offered by the institution of higher education; or
- 2525 (b) sales of an item described in Subsection (12)(c) provided for a patient by:
- 2526 (i) a medical facility; or
- 2527 (ii) a nursing facility; and
- 2528 (c) Subsections (12)(a) and (b) apply to:
- 2529 (i) food and food ingredients;
- 2530 (ii) prepared food; or
- 2531 (iii) alcoholic beverages;
- 2532 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property
- 2533 or a product transferred electronically by a person:
- 2534 (i) regardless of the number of transactions involving the sale of that tangible personal
- 2535 property or product transferred electronically by that person; and
- 2536 (ii) not regularly engaged in the business of selling that type of tangible personal

2537 property or product transferred electronically;

2538 (b) this Subsection (13) does not apply if:

2539 (i) the sale is one of a series of sales of a character to indicate that the person is
2540 regularly engaged in the business of selling that type of tangible personal property or product
2541 transferred electronically;

2542 (ii) the person holds that person out as regularly engaged in the business of selling that
2543 type of tangible personal property or product transferred electronically;

2544 (iii) the person sells an item of tangible personal property or product transferred
2545 electronically that the person purchased as a sale that is exempt under Subsection (25); or

2546 (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of
2547 this state in which case the tax is based upon:

2548 (A) the bill of sale or other written evidence of value of the vehicle or vessel being
2549 sold; or

2550 (B) in the absence of a bill of sale or other written evidence of value, the fair market
2551 value of the vehicle or vessel being sold at the time of the sale as determined by the
2552 commission; and

2553 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2554 commission shall make rules establishing the circumstances under which:

2555 (i) a person is regularly engaged in the business of selling a type of tangible personal
2556 property or product transferred electronically;

2557 (ii) a sale of tangible personal property or a product transferred electronically is one of
2558 a series of sales of a character to indicate that a person is regularly engaged in the business of
2559 selling that type of tangible personal property or product transferred electronically; or

2560 (iii) a person holds that person out as regularly engaged in the business of selling a type
2561 of tangible personal property or product transferred electronically;

2562 (14) (a) except as provided in Subsection (14)(b), amounts paid or charged on or after
2563 July 1, 2006, for a purchase or lease by a manufacturing facility [~~other than~~] except for a
2564 cogeneration facility, for the following:

2565 (i) machinery and equipment that:

2566 (A) [~~is~~] are used:

2567 (I) for a manufacturing facility [~~other than~~] except for a manufacturing facility that is a

2568 scrap recycler described in Subsection 59-12-102(52)(b):
2569 (Aa) in the manufacturing process; ~~and~~
2570 (Bb) to manufacture an item sold as tangible personal property; and
2571 (Cc) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
2572 (14)(a)(i)(A)(I) in the state; or
2573 (II) for a manufacturing facility that is a scrap recycler described in Subsection
2574 59-12-102(52)(b)[;]:
2575 (Aa) to process an item sold as tangible personal property; and
2576 (Bb) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
2577 (14)(a)(i)(A)(II) in the state; and
2578 (B) ~~has~~ have an economic life of three or more years; and
2579 (ii) normal operating repair or replacement parts that:
2580 (A) have an economic life of three or more years; and
2581 (B) are used:
2582 (I) for a manufacturing facility ~~[in the state other than]~~ except for a manufacturing
2583 facility that is a scrap recycler described in Subsection 59-12-102(52)(b)[;]:
2584 (Aa) in the manufacturing process; and
2585 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(I) in the
2586 state; or
2587 (II) for a manufacturing facility ~~[in the state]~~ that is a scrap recycler described in
2588 Subsection 59-12-102(52)(b)[;]:
2589 (Aa) to process an item sold as tangible personal property; and
2590 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(II) in the
2591 state;
2592 (b) ~~(+)~~ amounts paid or charged on or after July 1, 2005, for a purchase or lease by a
2593 manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006,
2594 for the following:
2595 ~~(A)~~ (i) machinery and equipment that:
2596 ~~(+)~~ is (A) are used:
2597 ~~(Aa)~~ (I) in the manufacturing process; ~~and~~
2598 ~~(Bb)~~ (II) to manufacture an item sold as tangible personal property; and

2599 (III) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
2600 (14)(b) in the state; and
2601 [~~(H)~~ has] (B) have an economic life of three or more years; and
2602 [~~(B)~~] (ii) normal operating repair or replacement parts that:
2603 [~~(F)~~] (A) are used;
2604 (I) in the manufacturing process; and
2605 (II) in a manufacturing facility described in this Subsection (14)(b) in the state; and
2606 [~~(H)~~] (B) have an economic life of three or more years; [~~and~~]
2607 [~~(ii) for amounts paid or charged on or after July 1, 2005, but on or before June 30,~~
2608 ~~2006, for a purchase or lease described in Subsection (14)(b)(i), a cogeneration facility may~~
2609 ~~claim the exemption allowed by Subsection (14)(b)(i) by filing for a refund:]~~
2610 [~~(A) for sales and use taxes paid under this chapter on the purchase or lease payment;~~
2611 ~~and]~~
2612 [~~(B) in accordance with Section 59-12-110;]~~
2613 (c) amounts paid or charged for a purchase or lease made on or after January 1, 2008,
2614 by an establishment described in NAICS Subsector 212, Mining (except Oil and Gas), or
2615 NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for
2616 Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining,
2617 of the 2002 North American Industry Classification System of the federal Executive Office of
2618 the President, Office of Management and Budget:
2619 (i) machinery and equipment that:
2620 (A) are used [~~in~~]:
2621 (I) (Aa) in the production process, other than the production of real property; or
2622 [~~(H)~~] (Bb) in research and development; and
2623 (II) beginning on July 1, 2009, in an establishment described in this Subsection (14)(c)
2624 in the state; and
2625 (B) have an economic life of three or more years; and
2626 (ii) normal operating repair or replacement parts that:
2627 (A) have an economic life of three or more years; and
2628 (B) are used in:
2629 (I) (Aa) the production process, [~~other than~~] except for the production of real property[;

2630 in]; and
2631 (Bb) an establishment described in this Subsection (14)(c) in the state; or
2632 (II) (Aa) research and development; and
2633 (Bb) in an establishment described in this Subsection (14)(c) in the state;
2634 (d) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter 3,
2635 Utah Administrative Rulemaking Act, the commission:
2636 (i) shall by rule define the term "establishment"; and
2637 (ii) may by rule define what constitutes:
2638 (A) processing an item sold as tangible personal property;
2639 (B) the production process, [~~other than~~] except for the production of real property; or
2640 (C) research and development; and
2641 (e) on or before October 1, 2011, and every five years after October 1, 2011, the
2642 commission shall:
2643 (i) review the exemptions described in this Subsection (14) and make
2644 recommendations to the Revenue and Taxation Interim Committee concerning whether the
2645 exemptions should be continued, modified, or repealed; and
2646 (ii) include in its report:
2647 (A) the cost of the exemptions;
2648 (B) the purpose and effectiveness of the exemptions; and
2649 (C) the benefits of the exemptions to the state;
2650 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:
2651 (i) tooling;
2652 (ii) special tooling;
2653 (iii) support equipment;
2654 (iv) special test equipment; or
2655 (v) parts used in the repairs or renovations of tooling or equipment described in
2656 Subsections (15)(a)(i) through (iv); and
2657 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:
2658 (i) the tooling, equipment, or parts are used or consumed exclusively in the
2659 performance of any aerospace or electronics industry contract with the United States
2660 government or any subcontract under that contract; and

2661 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
2662 title to the tooling, equipment, or parts is vested in the United States government as evidenced
2663 by:

2664 (A) a government identification tag placed on the tooling, equipment, or parts; or

2665 (B) listing on a government-approved property record if placing a government
2666 identification tag on the tooling, equipment, or parts is impractical;

2667 (16) sales of newspapers or newspaper subscriptions;

2668 (17) (a) except as provided in Subsection (17)(b), tangible personal property or a
2669 product transferred electronically traded in as full or part payment of the purchase price, except
2670 that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer,
2671 trade-ins are limited to other vehicles only, and the tax is based upon:

2672 (i) the bill of sale or other written evidence of value of the vehicle being sold and the
2673 vehicle being traded in; or

2674 (ii) in the absence of a bill of sale or other written evidence of value, the then existing
2675 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
2676 commission; and

2677 (b) notwithstanding Subsection (17)(a), Subsection (17)(a) does not apply to the
2678 following items of tangible personal property or products transferred electronically traded in as
2679 full or part payment of the purchase price:

2680 (i) money;

2681 (ii) electricity;

2682 (iii) water;

2683 (iv) gas; or

2684 (v) steam;

2685 (18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property
2686 or a product transferred electronically used or consumed primarily and directly in farming
2687 operations, regardless of whether the tangible personal property or product transferred
2688 electronically:

2689 (A) becomes part of real estate; or

2690 (B) is installed by a:

2691 (I) farmer;

- 2692 (II) contractor; or
- 2693 (III) subcontractor; or
- 2694 (ii) sales of parts used in the repairs or renovations of tangible personal property or a
- 2695 product transferred electronically if the tangible personal property or product transferred
- 2696 electronically is exempt under Subsection (18)(a)(i); and
- 2697 (b) notwithstanding Subsection (18)(a), amounts paid or charged for the following are
- 2698 subject to the taxes imposed by this chapter:
- 2699 (i) (A) subject to Subsection (18)(b)(i)(B), the following if used in a manner that is
- 2700 incidental to farming:
- 2701 (I) machinery;
- 2702 (II) equipment;
- 2703 (III) materials; or
- 2704 (IV) supplies; and
- 2705 (B) tangible personal property that is considered to be used in a manner that is
- 2706 incidental to farming includes:
- 2707 (I) hand tools; or
- 2708 (II) maintenance and janitorial equipment and supplies;
- 2709 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product
- 2710 transferred electronically if the tangible personal property or product transferred electronically
- 2711 is used in an activity other than farming; and
- 2712 (B) tangible personal property or a product transferred electronically that is considered
- 2713 to be used in an activity other than farming includes:
- 2714 (I) office equipment and supplies; or
- 2715 (II) equipment and supplies used in:
- 2716 (Aa) the sale or distribution of farm products;
- 2717 (Bb) research; or
- 2718 (Cc) transportation; or
- 2719 (iii) a vehicle required to be registered by the laws of this state during the period
- 2720 ending two years after the date of the vehicle's purchase;
- 2721 (19) sales of hay;
- 2722 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or

2723 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or
2724 garden, farm, or other agricultural produce is sold by:

2725 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other
2726 agricultural produce;

2727 (b) an employee of the producer described in Subsection (20)(a); or
2728 (c) a member of the immediate family of the producer described in Subsection (20)(a);

2729 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
2730 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

2731 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
2732 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
2733 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
2734 manufacturer, processor, wholesaler, or retailer;

2735 (23) a product stored in the state for resale;

2736 (24) (a) purchases of a product if:

2737 (i) the product is:

2738 (A) purchased outside of this state;

2739 (B) brought into this state:

2740 (I) at any time after the purchase described in Subsection (24)(a)(i)(A); and
2741 (II) by a nonresident person who is not living or working in this state at the time of the
2742 purchase;

2743 (C) used for the personal use or enjoyment of the nonresident person described in
2744 Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and

2745 (D) not used in conducting business in this state; and

2746 (ii) for:

2747 (A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of
2748 the product for a purpose for which the product is designed occurs outside of this state;

2749 (B) a boat, the boat is registered outside of this state; or

2750 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
2751 outside of this state;

2752 (b) the exemption provided for in Subsection (24)(a) does not apply to:

2753 (i) a lease or rental of a product; or

- 2754 (ii) a sale of a vehicle exempt under Subsection (33); and
2755 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
2756 purposes of Subsection (24)(a), the commission may by rule define what constitutes the
2757 following:
- 2758 (i) conducting business in this state if that phrase has the same meaning in this
2759 Subsection (24) as in Subsection [~~(64)~~] (63);
 - 2760 (ii) the first use of a product if that phrase has the same meaning in this Subsection (24)
2761 as in Subsection [~~(64)~~] (63); or
 - 2762 (iii) a purpose for which a product is designed if that phrase has the same meaning in
2763 this Subsection (24) as in Subsection [~~(64)~~] (63);
- 2764 (25) a product purchased for resale in this state, in the regular course of business, either
2765 in its original form or as an ingredient or component part of a manufactured or compounded
2766 product;
- 2767 (26) a product upon which a sales or use tax was paid to some other state, or one of its
2768 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
2769 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if
2770 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax
2771 Act;
- 2772 (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a
2773 person for use in compounding a service taxable under the subsections;
- 2774 (28) purchases made in accordance with the special supplemental nutrition program for
2775 women, infants, and children established in 42 U.S.C. Sec. 1786;
- 2776 (29) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers,
2777 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens
2778 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification
2779 Manual of the federal Executive Office of the President, Office of Management and Budget;
- 2780 (30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State
2781 Boating Act, a boat trailer, or an outboard motor if the boat, boat trailer, or outboard motor is:
- 2782 (a) not registered in this state; and
 - 2783 (b) (i) not used in this state; or
 - 2784 (ii) used in this state:

- 2785 (A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a
2786 time period that does not exceed the longer of:
2787 (I) 30 days in any calendar year; or
2788 (II) the time period necessary to transport the boat, boat trailer, or outboard motor to
2789 the borders of this state; or
2790 (B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time
2791 period necessary to transport the boat, boat trailer, or outboard motor to the borders of this
2792 state;
- 2793 (31) sales of aircraft manufactured in Utah;
2794 (32) amounts paid for the purchase of telecommunications service for purposes of
2795 providing telecommunications service;
2796 (33) sales, leases, or uses of the following:
2797 (a) a vehicle by an authorized carrier; or
2798 (b) tangible personal property that is installed on a vehicle:
2799 (i) sold or leased to or used by an authorized carrier; and
2800 (ii) before the vehicle is placed in service for the first time;
2801 (34) (a) 45% of the sales price of any new manufactured home; and
2802 (b) 100% of the sales price of any used manufactured home;
2803 (35) sales relating to schools and fundraising sales;
2804 (36) sales or rentals of durable medical equipment if:
2805 (a) a person presents a prescription for the durable medical equipment; and
2806 (b) the durable medical equipment is used for home use only;
2807 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
2808 Section 72-11-102; and
2809 (b) the commission shall by rule determine the method for calculating sales exempt
2810 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;
2811 (38) sales to a ski resort of:
2812 (a) snowmaking equipment;
2813 (b) ski slope grooming equipment;
2814 (c) passenger ropeways as defined in Section 72-11-102; or
2815 (d) parts used in the repairs or renovations of equipment or passenger ropeways

2816 described in Subsections (38)(a) through (c);

2817 (39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

2818 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for
2819 amusement, entertainment, or recreation an unassisted amusement device as defined in Section
2820 59-12-102;

2821 (b) if a seller that sells or rents at the same business location the right to use or operate
2822 for amusement, entertainment, or recreation one or more unassisted amusement devices and
2823 one or more assisted amusement devices, the exemption described in Subsection (40)(a)
2824 applies if the seller separately accounts for the sales or rentals of the right to use or operate for
2825 amusement, entertainment, or recreation for the assisted amusement devices; and

2826 (c) for purposes of Subsection (40)(b) and in accordance with Title 63G, Chapter 3,
2827 Utah Administrative Rulemaking Act, the commission may make rules:

2828 (i) governing the circumstances under which sales are at the same business location;
2829 and

2830 (ii) establishing the procedures and requirements for a seller to separately account for
2831 the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for
2832 assisted amusement devices;

2833 (41) (a) sales of photocopies by:

2834 (i) a governmental entity; or

2835 (ii) an entity within the state system of public education, including:

2836 (A) a school; or

2837 (B) the State Board of Education; or

2838 (b) sales of publications by a governmental entity;

2839 (42) amounts paid for admission to an athletic event at an institution of higher
2840 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
2841 20 U.S.C. Sec. 1681 et seq.;

2842 [~~(43) sales of telecommunications service charged to a prepaid telephone calling card;~~]

2843 [~~(44)~~] (43) (a) sales made to or by:

2844 (i) an area agency on aging; or

2845 (ii) a senior citizen center owned by a county, city, or town; or

2846 (b) sales made by a senior citizen center that contracts with an area agency on aging;

2847 [~~(45)~~] (44) sales or leases of semiconductor fabricating, processing, research, or
2848 development materials regardless of whether the semiconductor fabricating, processing,
2849 research, or development materials:
2850 (a) actually come into contact with a semiconductor; or
2851 (b) ultimately become incorporated into real property;
2852 [~~(46)~~] (45) an amount paid by or charged to a purchaser for accommodations and
2853 services described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under
2854 Section 59-12-104.2;
2855 [~~(47)~~] (46) beginning on September 1, 2001, the lease or use of a vehicle issued a
2856 temporary sports event registration certificate in accordance with Section 41-3-306 for the
2857 event period specified on the temporary sports event registration certificate;
2858 [~~(48)~~] (47) sales or uses of electricity, if the sales or uses are:
2859 (a) made under a tariff adopted by the Public Service Commission of Utah only for
2860 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy
2861 source, as designated in the tariff by the Public Service Commission of Utah; and
2862 (b) for an amount of electricity that is:
2863 (i) unrelated to the amount of electricity used by the person purchasing the electricity
2864 under the tariff described in Subsection [~~(48)~~] (47)(a); and
2865 (ii) equivalent to the number of kilowatthours specified in the tariff described in
2866 Subsection [~~(48)~~] (47)(a) that may be purchased under the tariff described in Subsection [~~(48)~~]
2867 (47)(a);
2868 [~~(49)~~] (48) sales or rentals of mobility enhancing equipment if a person presents a
2869 prescription for the mobility enhancing equipment;
2870 [~~(50)~~] (49) sales of water in a:
2871 (a) pipe;
2872 (b) conduit;
2873 (c) ditch; or
2874 (d) reservoir;
2875 [~~(51)~~] (50) sales of currency or coinage that constitute legal tender of the United States
2876 or of a foreign nation;
2877 [~~(52)~~] (51) (a) sales of an item described in Subsection [~~(52)~~] (51)(b) if the item:

- 2878 (i) does not constitute legal tender of any nation; and
2879 (ii) has a gold, silver, or platinum content of 80% or more; and
2880 (b) Subsection [~~(52)~~] (51)(a) applies to a gold, silver, or platinum:
2881 (i) ingot;
2882 (ii) bar;
2883 (iii) medallion; or
2884 (iv) decorative coin;
2885 [~~(53)~~] (52) amounts paid on a sale-leaseback transaction;
2886 [~~(54)~~] (53) sales of a prosthetic device:
2887 (a) for use on or in a human; and
2888 (b) (i) for which a prescription is required; or
2889 (ii) if the prosthetic device is purchased by a hospital or other medical facility;
2890 [~~(55)~~] (54) (a) except as provided in Subsection [~~(55)~~] (54)(b), purchases, leases, or
2891 rentals of machinery or equipment by an establishment described in Subsection [~~(55)~~] (54)(c) if
2892 the machinery or equipment is primarily used in the production or postproduction of the
2893 following media for commercial distribution:
2894 (i) a motion picture;
2895 (ii) a television program;
2896 (iii) a movie made for television;
2897 (iv) a music video;
2898 (v) a commercial;
2899 (vi) a documentary; or
2900 (vii) a medium similar to Subsections [~~(55)~~] (54)(a)(i) through (vi) as determined by
2901 the commission by administrative rule made in accordance with Subsection [~~(55)~~] (54)(d); or
2902 (b) notwithstanding Subsection [~~(55)~~] (54)(a), purchases, leases, or rentals of
2903 machinery or equipment by an establishment described in Subsection [~~(55)~~] (54)(c) that is used
2904 for the production or postproduction of the following are subject to the taxes imposed by this
2905 chapter:
2906 (i) a live musical performance;
2907 (ii) a live news program; or
2908 (iii) a live sporting event;

2909 (c) the following establishments listed in the 1997 North American Industry
2910 Classification System of the federal Executive Office of the President, Office of Management
2911 and Budget, apply to Subsections [~~55~~] (54)(a) and (b):

- 2912 (i) NAICS Code 512110; or
- 2913 (ii) NAICS Code 51219; and

2914 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2915 commission may by rule:

- 2916 (i) prescribe what constitutes a medium similar to Subsections [~~55~~] (54)(a)(i) through
2917 (vi); or
- 2918 (ii) define:
 - 2919 (A) "commercial distribution";
 - 2920 (B) "live musical performance";
 - 2921 (C) "live news program"; or
 - 2922 (D) "live sporting event";

2923 [~~56~~] (55) (a) leases of seven or more years or purchases made on or after July 1, 2004
2924 but on or before June 30, 2019, of machinery or equipment that:

- 2925 (i) is leased or purchased for or by a facility that:
 - 2926 (A) is a renewable energy production facility;
 - 2927 (B) is located in the state; and
 - 2928 (C) (I) becomes operational on or after July 1, 2004; or
 - 2929 (II) has its generation capacity increased by one or more megawatts on or after July 1,
2930 2004 as a result of the use of the machinery or equipment;
- 2931 (ii) has an economic life of five or more years; and
- 2932 (iii) is used to make the facility or the increase in capacity of the facility described in
2933 Subsection [~~56~~] (55)(a)(i) operational up to the point of interconnection with an existing
2934 transmission grid including:
 - 2935 (A) a wind turbine;
 - 2936 (B) generating equipment;
 - 2937 (C) a control and monitoring system;
 - 2938 (D) a power line;
 - 2939 (E) substation equipment;

- 2940 (F) lighting;
- 2941 (G) fencing;
- 2942 (H) pipes; or
- 2943 (I) other equipment used for locating a power line or pole; and
- 2944 (b) this Subsection [~~(56)~~] (55) does not apply to:
 - 2945 (i) machinery or equipment used in construction of:
 - 2946 (A) a new renewable energy production facility; or
 - 2947 (B) the increase in the capacity of a renewable energy production facility;
 - 2948 (ii) contracted services required for construction and routine maintenance activities;
- 2949 and
 - 2950 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
 - 2951 of the facility described in Subsection [~~(56)~~] (55)(a)(i)(C)(II), machinery or equipment used or
 - 2952 acquired after:
 - 2953 (A) the renewable energy production facility described in Subsection [~~(56)~~] (55)(a)(i) is
 - 2954 operational as described in Subsection [~~(56)~~] (55)(a)(iii); or
 - 2955 (B) the increased capacity described in Subsection [~~(56)~~] (55)(a)(i) is operational as
 - 2956 described in Subsection [~~(56)~~] (55)(a)(iii);
 - 2957 [~~(57)~~] (56) (a) leases of seven or more years or purchases made on or after July 1, 2004
 - 2958 but on or before June 30, 2019, of machinery or equipment that:
 - 2959 (i) is leased or purchased for or by a facility that:
 - 2960 (A) is a waste energy production facility;
 - 2961 (B) is located in the state; and
 - 2962 (C) (I) becomes operational on or after July 1, 2004; or
 - 2963 (II) has its generation capacity increased by one or more megawatts on or after July 1,
 - 2964 2004 as a result of the use of the machinery or equipment;
 - 2965 (ii) has an economic life of five or more years; and
 - 2966 (iii) is used to make the facility or the increase in capacity of the facility described in
 - 2967 Subsection [~~(57)~~] (56)(a)(i) operational up to the point of interconnection with an existing
 - 2968 transmission grid including:
 - 2969 (A) generating equipment;
 - 2970 (B) a control and monitoring system;

- 2971 (C) a power line;
- 2972 (D) substation equipment;
- 2973 (E) lighting;
- 2974 (F) fencing;
- 2975 (G) pipes; or
- 2976 (H) other equipment used for locating a power line or pole; and
- 2977 (b) this Subsection [~~(57)~~] (56) does not apply to:
- 2978 (i) machinery or equipment used in construction of:
- 2979 (A) a new waste energy facility; or
- 2980 (B) the increase in the capacity of a waste energy facility;
- 2981 (ii) contracted services required for construction and routine maintenance activities;
- 2982 and
- 2983 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
- 2984 described in Subsection [~~(57)~~] (56)(a)(i)(C)(II), machinery or equipment used or acquired after:
- 2985 (A) the waste energy facility described in Subsection [~~(57)~~] (56)(a)(i) is operational as
- 2986 described in Subsection [~~(57)~~] (56)(a)(iii); or
- 2987 (B) the increased capacity described in Subsection [~~(57)~~] (56)(a)(i) is operational as
- 2988 described in Subsection [~~(57)~~] (56)(a)(iii);
- 2989 [~~(58)~~] (57) (a) leases of five or more years or purchases made on or after July 1, 2004
- 2990 but on or before June 30, 2019, of machinery or equipment that:
- 2991 (i) is leased or purchased for or by a facility that:
- 2992 (A) is located in the state;
- 2993 (B) produces fuel from biomass energy including:
- 2994 (I) methanol; or
- 2995 (II) ethanol; and
- 2996 (C) (I) becomes operational on or after July 1, 2004; or
- 2997 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004 as
- 2998 a result of the installation of the machinery or equipment;
- 2999 (ii) has an economic life of five or more years; and
- 3000 (iii) is installed on the facility described in Subsection [~~(58)~~] (57)(a)(i);
- 3001 (b) this Subsection [~~(58)~~] (57) does not apply to:

3002 (i) machinery or equipment used in construction of:
3003 (A) a new facility described in Subsection [~~(58)~~] (57)(a)(i); or
3004 (B) the increase in capacity of the facility described in Subsection [~~(58)~~] (57)(a)(i); or
3005 (ii) contracted services required for construction and routine maintenance activities;
3006 and
3007 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
3008 described in Subsection [~~(58)~~] (57)(a)(i)(C)(II), machinery or equipment used or acquired after:
3009 (A) the facility described in Subsection [~~(58)~~] (57)(a)(i) is operational; or
3010 (B) the increased capacity described in Subsection [~~(58)~~] (57)(a)(i) is operational;
3011 [~~(59)~~] (58) (a) subject to Subsection [~~(59)~~] (58)(b) or (c), sales of tangible personal
3012 property or a product transferred electronically to a person within this state if that tangible
3013 personal property or product transferred electronically is subsequently shipped outside the state
3014 and incorporated pursuant to contract into and becomes a part of real property located outside
3015 of this state;
3016 (b) the exemption under Subsection [~~(59)~~] (58)(a) is not allowed to the extent that the
3017 other state or political entity to which the tangible personal property is shipped imposes a sales,
3018 use, gross receipts, or other similar transaction excise tax on the transaction against which the
3019 other state or political entity allows a credit for sales and use taxes imposed by this chapter; and
3020 (c) notwithstanding the time period of Subsection 59-12-110(2)(b) for filing for a
3021 refund, a person may claim the exemption allowed by this Subsection [~~(59)~~] (58) for a sale by
3022 filing for a refund:
3023 (i) if the sale is made on or after July 1, 2004, but on or before June 30, 2008;
3024 (ii) as if this Subsection [~~(59)~~] (58) as in effect on July 1, 2008, were in effect on the
3025 day on which the sale is made;
3026 (iii) if the person did not claim the exemption allowed by this Subsection [~~(59)~~] (58)
3027 for the sale prior to filing for the refund;
3028 (iv) for sales and use taxes paid under this chapter on the sale;
3029 (v) in accordance with Section 59-12-110; and
3030 (vi) subject to any extension allowed for filing for a refund under Section 59-12-110, if
3031 the person files for the refund on or before June 30, 2011;
3032 [~~(60)~~] (59) purchases:

3033 (a) of one or more of the following items in printed or electronic format:
3034 (i) a list containing information that includes one or more:
3035 (A) names; or
3036 (B) addresses; or
3037 (ii) a database containing information that includes one or more:
3038 (A) names; or
3039 (B) addresses; and
3040 (b) used to send direct mail;
3041 [~~(61)~~] (60) redemptions or repurchases of a product by a person if that product was:
3042 (a) delivered to a pawnbroker as part of a pawn transaction; and
3043 (b) redeemed or repurchased within the time period established in a written agreement
3044 between the person and the pawnbroker for redeeming or repurchasing the product;
3045 [~~(62)~~] (61) (a) purchases or leases of an item described in Subsection [~~(62)~~] (61)(b) if
3046 the item:
3047 (i) is purchased or leased by, or on behalf of, a telecommunications service provider;
3048 and
3049 (ii) has a useful economic life of one or more years; and
3050 (b) the following apply to Subsection [~~(62)~~] (61)(a):
3051 (i) telecommunications enabling or facilitating equipment, machinery, or software;
3052 (ii) telecommunications equipment, machinery, or software required for 911 service;
3053 (iii) telecommunications maintenance or repair equipment, machinery, or software;
3054 (iv) telecommunications switching or routing equipment, machinery, or software; or
3055 (v) telecommunications transmission equipment, machinery, or software;
3056 [~~(63)~~] (62) (a) beginning on July 1, 2006, and ending on June 30, 2016, purchases of
3057 tangible personal property or a product transferred electronically that are used in the research
3058 and development of coal-to-liquids, oil shale, or tar sands technology; and
3059 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3060 commission may, for purposes of Subsection [~~(63)~~] (62)(a), make rules defining what
3061 constitutes purchases of tangible personal property or a product transferred electronically that
3062 are used in the research and development of coal-to-liquids, oil shale, and tar sands technology;
3063 [~~(64)~~] (63) (a) purchases of tangible personal property or a product transferred

3064 electronically if:

3065 (i) the tangible personal property or product transferred electronically is:

3066 (A) purchased outside of this state;

3067 (B) brought into this state at any time after the purchase described in Subsection [~~(64)~~

3068 (63)(a)(i)(A); and

3069 (C) used in conducting business in this state; and

3070 (ii) for:

3071 (A) tangible personal property or a product transferred electronically other than the

3072 tangible personal property described in Subsection [~~(64)~~ (63)(a)(ii)(B), the first use of the

3073 property for a purpose for which the property is designed occurs outside of this state; or

3074 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered

3075 outside of this state;

3076 (b) the exemption provided for in Subsection [~~(64)~~ (63)(a) does not apply to:

3077 (i) a lease or rental of tangible personal property or a product transferred electronically;

3078 or

3079 (ii) a sale of a vehicle exempt under Subsection (33); and

3080 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for

3081 purposes of Subsection [~~(64)~~ (63)(a), the commission may by rule define what constitutes the

3082 following:

3083 (i) conducting business in this state if that phrase has the same meaning in this

3084 Subsection [~~(64)~~ (63) as in Subsection (24);

3085 (ii) the first use of tangible personal property or a product transferred electronically if

3086 that phrase has the same meaning in this Subsection [~~(64)~~ (63) as in Subsection (24); or

3087 (iii) a purpose for which tangible personal property or a product transferred

3088 electronically is designed if that phrase has the same meaning in this Subsection [~~(64)~~ (63) as

3089 in Subsection (24);

3090 [~~(65)~~ (64) sales of disposable home medical equipment or supplies if:

3091 (a) a person presents a prescription for the disposable home medical equipment or

3092 supplies;

3093 (b) the disposable home medical equipment or supplies are used exclusively by the

3094 person to whom the prescription described in Subsection [~~(65)~~ (64)(a) is issued; and

- 3095 (c) the disposable home medical equipment and supplies are listed as eligible for
3096 payment under:
- 3097 (i) Title XVIII, federal Social Security Act; or
3098 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;
3099 [~~66~~] (65) sales:
- 3100 (a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit
3101 District Act; or
- 3102 (b) of tangible personal property to a subcontractor of a public transit district, if the
3103 tangible personal property is:
- 3104 (i) clearly identified; and
3105 (ii) installed or converted to real property owned by the public transit district;
3106 [~~67~~] (66) sales of construction materials:
- 3107 (a) purchased on or after July 1, 2010;
3108 (b) purchased by, on behalf of, or for the benefit of an international airport:
- 3109 (i) located within a county of the first class; and
3110 (ii) that has a United States customs office on its premises; and
3111 (c) if the construction materials are:
- 3112 (i) clearly identified;
3113 (ii) segregated; and
3114 (iii) installed or converted to real property:
- 3115 (A) owned or operated by the international airport described in Subsection [~~67~~]
3116 (66)(b); and
- 3117 (B) located at the international airport described in Subsection [~~67~~] (66)(b);
3118 [~~68~~] (67) sales of construction materials:
- 3119 (a) purchased on or after July 1, 2008;
3120 (b) purchased by, on behalf of, or for the benefit of a new airport:
- 3121 (i) located within a county of the second class; and
3122 (ii) that is owned or operated by a city in which an airline as defined in Section
3123 59-2-102 is headquartered; and
- 3124 (c) if the construction materials are:
- 3125 (i) clearly identified;

- 3126 (ii) segregated; and
- 3127 (iii) installed or converted to real property:
- 3128 (A) owned or operated by the new airport described in Subsection [~~(68)~~] (67)(b);
- 3129 (B) located at the new airport described in Subsection [~~(68)~~] (67)(b); and
- 3130 (C) as part of the construction of the new airport described in Subsection [~~(68)~~]
- 3131 (67)(b); and
- 3132 [~~(69)~~] (68) sales of fuel to a common carrier that is a railroad for use in a locomotive
- 3133 engine.

3134 Section 6. Section **59-12-104.2** is amended to read:

3135 **59-12-104.2. Exemption for accommodations and services taxed by the Navajo**
3136 **Nation.**

3137 (1) As used in this section "tribal taxing area" means the geographical area that:

- 3138 (a) is subject to the taxing authority of the Navajo Nation; and
- 3139 (b) consists of:

3140 (i) notwithstanding the issuance of a patent, all land:

3141 (A) within the limits of an Indian reservation under the jurisdiction of the federal
3142 government; and

3143 (B) including any rights-of-way running through the reservation; and

3144 (ii) all Indian allotments the Indian titles to which have not been extinguished,
3145 including any rights-of-way running through an Indian allotment.

3146 (2) (a) Beginning July 1, 2001, amounts paid by or charged to a purchaser for
3147 accommodations and services described in Subsection 59-12-103(1)(i) are exempt from the tax
3148 imposed by Subsection 59-12-103(2)(a)(i)(A) or (2)(d)(i)(A)(I) to the extent permitted under
3149 Subsection (2)(b) if:

3150 (i) the accommodations and services described in Subsection 59-12-103(1)(i) are
3151 provided within:

3152 (A) the state; and

3153 (B) a tribal taxing area;

3154 (ii) the Navajo Nation imposes and collects a tax on the amounts paid by or charged to
3155 the purchaser for the accommodations and services described in Subsection 59-12-103(1)(i);

3156 (iii) the Navajo Nation imposes the tax described in Subsection (2)(a)(ii) without

3157 regard to whether or not the purchaser that pays or is charged for the accommodations and
3158 services is an enrolled member of the Navajo Nation; and

3159 (iv) the requirements of Subsection (4) are met.

3160 (b) If but for Subsection (2)(a) the amounts paid by or charged to a purchaser for
3161 accommodations and services described in Subsection (2)(a) are subject to a tax imposed by
3162 Subsection 59-12-103(2)(a)(i)(A) or (2)(d)(i)(A)(I):

3163 (i) the seller shall collect and pay to the state the difference described in Subsection (3)
3164 if that difference is greater than \$0; and

3165 (ii) a person may not require the state to provide a refund, a credit, or similar tax relief
3166 if the difference described in Subsection (3) is equal to or less than \$0.

3167 (3) The difference described in Subsection (2)(b) is equal to the difference between:

3168 (a) the amount of tax imposed by Subsection 59-12-103(2)(a)(i)(A) or (2)(d)(i)(A)(I)
3169 on the amounts paid by or charged to a purchaser for accommodations and services described
3170 in Subsection 59-12-103(1)(i); less

3171 (b) the tax imposed and collected by the Navajo Nation on the amounts paid by or
3172 charged to a purchaser for the accommodations and services described in Subsection
3173 59-12-103(1)(i).

3174 (4) (a) If, on or after July 1, 2001, the Navajo Nation changes the tax rate of a tax
3175 imposed on amounts paid by or charged to a purchaser for accommodations and services
3176 described in Subsection 59-12-103(1)(i), any change in the amount of the exemption under
3177 Subsection (2) as a result of the change in the tax rate is not effective until the first day of the
3178 calendar quarter after a 90-day period beginning on the date the commission receives notice
3179 meeting the requirements of Subsection (4)(b) from the Navajo Nation.

3180 (b) The notice described in Subsection (4)(a) shall state:

3181 (i) that the Navajo Nation has changed or will change the tax rate of a tax imposed on
3182 amounts paid by or charged to a purchaser for accommodations and services described in
3183 Subsection 59-12-103(1)(i);

3184 (ii) the effective date of the rate change on the tax described in Subsection (4)(b)(i);
3185 and

3186 (iii) the new rate of the tax described in Subsection (4)(b)(i).

3187 (5) Beginning with the 2006 interim, the Revenue and Taxation Interim Committee:

3188 (a) shall review the exemption provided for in this section one or more times every five
3189 years;

3190 (b) shall determine on or before the November interim meeting of the year in which the
3191 Revenue and Taxation Interim Committee reviews the exemption provided for in this section
3192 whether the exemption should be:

3193 (i) continued;

3194 (ii) modified; or

3195 (iii) repealed; and

3196 (c) may review any other issue related to the exemption provided for in this section as
3197 determined by the Revenue and Taxation Interim Committee.

3198 Section 7. Section **59-12-104.5** is amended to read:

3199 **59-12-104.5. Utah Tax Review Commission review of sales and use tax system.**

3200 (1) The Utah Tax Review Commission, in cooperation with the governor's office and
3201 the commission, shall review the sales and use tax system of the state as provided in this
3202 section.

3203 (2) (a) Beginning with the 2009 interim, and one or more times every ten years after
3204 the 2009 interim, the Utah Tax Review Commission shall make findings and recommendations
3205 as to whether:

3206 (i) the sales and use tax is broadly based;

3207 (ii) the sales and use tax base reflects the overall economy;

3208 (iii) the sales and use tax mitigates regressive impacts;

3209 (iv) the sales and use tax is administratively simple; and

3210 (v) the sales and use tax promotes compliance.

3211 (b) On or before the November interim meeting of the year in which the Utah Tax
3212 Review Commission makes the findings and recommendations required by Subsection (2)(a),
3213 the Utah Tax Review Commission shall report its findings and recommendations made in
3214 accordance with Subsection (2)(a) to:

3215 (i) the governor; and

3216 (ii) the Revenue and Taxation Interim Committee.

3217 (3) Notwithstanding Subsection (2):

3218 (a) the Utah Tax Review Commission shall review Subsection 59-12-104(28) before

3219 October 1 of the year after the year in which Congress permits a state to participate in the
3220 special supplemental nutrition program under 42 U.S.C. Sec. 1786 even if state or local sales
3221 taxes are collected within the state on purchases of food under that program;

3222 (b) the Utah Tax Review Commission shall review Subsection 59-12-104(21) before
3223 October 1 of the year after the year in which Congress permits a state to participate in the food
3224 stamp program under the Food Stamp Act, 7 U.S.C. Sec. 2011 et seq., even if state or local
3225 sales taxes are collected within the state on purchases of food under that program; and

3226 (c) the Utah Tax Review Commission shall review Subsection 59-12-104[~~(63)~~](62)
3227 before the October 2011 interim meeting.

3228 Section 8. Section **59-12-105** is amended to read:

3229 **59-12-105. Certain exempt sales to be reported -- Penalties.**

3230 (1) An owner or purchaser shall report to the commission the amount of sales or uses
3231 exempt under Subsection 59-12-104(14) or [~~(45)~~](44).

3232 (2) A report required by Subsection (1) shall be filed:

3233 (a) with the commission; and

3234 (b) on a form prescribed by the commission.

3235 (3) (a) Notwithstanding Section 59-1-401, and except as provided in Subsections (3)(b)
3236 and (4), if the owner or purchaser fails to report the full amount of the exemptions granted
3237 under Subsection 59-12-104(14) or [~~(45)~~](44) on the report required by Subsection (1), the
3238 commission shall impose a penalty equal to the lesser of:

3239 (i) 10% of the sales and use tax that would have been imposed if the exemption had not
3240 applied; or

3241 (ii) \$1,000.

3242 (b) Notwithstanding Subsection (3)(a)(i), the commission may not impose a penalty
3243 under Subsection (3)(a)(i) if the owner or purchaser files an amended report:

3244 (i) containing the amount of the exemption; and

3245 (ii) before the owner or purchaser receives a notice of audit from the commission.

3246 (4) (a) The commission may waive, reduce, or compromise a penalty imposed under
3247 this section if the commission finds there are reasonable grounds for the waiver, reduction, or
3248 compromise.

3249 (b) If the commission waives, reduces, or compromises a penalty under Subsection

3250 (4)(a), the commission shall make a record of the grounds for waiving, reducing, or
3251 compromising the penalty.

3252 Section 9. Section **59-12-110** is amended to read:

3253 **59-12-110. Overpayments, deficiencies, and refunds procedures.**

3254 (1) (a) As soon as practicable after a return is filed, the commission shall examine the
3255 return.

3256 (b) If the commission determines that the correct amount of tax to be remitted is
3257 greater or less than the amount shown to be due on the return, the commission shall recompute
3258 the tax.

3259 (c) If the amount paid exceeds the amount due, the excess, plus interest as provided in
3260 Section 59-1-402, shall be credited or refunded to the taxpayer as provided in Subsection (2).

3261 (d) The commission may not credit or refund to the taxpayer interest on an
3262 overpayment under Subsection (1)(c) if the commission determines that the overpayment was
3263 made for the purpose of investment.

3264 (2) (a) If a taxpayer pays a tax, penalty, or interest more than once or the commission
3265 erroneously receives, collects, or computes any tax, penalty, or interest, including an
3266 overpayment described in Subsection (1)(c), the commission shall:

3267 (i) credit the amount of tax, penalty, or interest paid by the taxpayer against any
3268 amounts of tax, penalties, or interest the taxpayer owes; and

3269 (ii) refund any balance to the taxpayer or the taxpayer's successors, administrators,
3270 executors, or assigns.

3271 (b) Except as provided in Subsections (2)(c) and (d) or Section 19-2-124, a taxpayer
3272 shall file a claim with the commission to obtain a refund or credit under this Subsection (2)
3273 within three years from the day on which the taxpayer overpaid the tax, penalty, or interest.

3274 (c) Notwithstanding Subsection (2)(b), beginning on July 1, 1998, the commission
3275 shall extend the period for a taxpayer to file a claim under Subsection (2)(b) if:

3276 (i) the three-year period under Subsection (2)(b) has not expired; and

3277 (ii) the commission and the taxpayer sign a written agreement:

3278 (A) authorizing the extension; and

3279 (B) providing for the length of the extension.

3280 (d) Notwithstanding Subsection (2)(b), a seller that files a claim for a refund under

3281 Subsection 59-12-107(9)(c) for bad debt shall file the claim with the commission within three
3282 years from the date on which the seller could first claim the refund for the bad debt.

3283 (e) A taxpayer may file a claim to obtain a refund or credit under this Subsection (2)
3284 regardless of whether the taxpayer received or objected to a notice of deficiency or a notice of
3285 assessment as provided in Subsection 59-12-114(1).

3286 (f) A taxpayer may obtain a refund under this Subsection (2) of a tax paid under this
3287 chapter on a transaction that is taxable under ~~[Section]~~ Subsection 59-12-103(1) if:

3288 (i) the sale or use was exempt from sales and use taxes under Section 59-12-104 on the
3289 date of purchase; and

3290 (ii) except as provided in Subsection (2)(c), the taxpayer files a claim for a refund with
3291 the commission as provided in Subsections (2)(b) through (e).

3292 (g) If the commission denies a claim for a refund or credit under this Subsection (2),
3293 the taxpayer may request a redetermination of the denial by filing a petition or request for
3294 agency action with the commission as provided in Title 63G, Chapter 4, Administrative
3295 Procedures Act.

3296 (3) If the commission erroneously determines an amount to be due from a taxpayer, the
3297 commission shall authorize the amounts to be cancelled upon its records.

3298 (4) (a) Subject to the provisions of Subsection (4)(b), the commission may impose on a
3299 deficiency under this section:

3300 (i) a penalty as provided in Section 59-1-401; and

3301 (ii) interest as provided in Section 59-1-402.

3302 (b) The commission may impose a penalty and interest on the entire deficiency if any
3303 part of the deficiency is due to:

3304 (i) negligence;

3305 (ii) intentional disregard of law or rule; or

3306 (iii) fraud with intent to evade the tax.

3307 (5) (a) Except as provided in Subsection (5)(b), a taxpayer shall pay a tax deficiency,
3308 including penalties or interest under this section, within ten days after the commission provides
3309 the taxpayer notice and demand of the deficiency, penalty, or interest.

3310 (b) Notwithstanding Subsection (5)(a), a taxpayer may pay a tax deficiency, penalty, or
3311 interest within 30 days after the commission provides the taxpayer notice and demand of the

3312 deficiency, penalty, or interest if the commission determines:

3313 (i) that a greater amount was due than was shown on the return; and

3314 (ii) the tax is not in jeopardy.

3315 (6) (a) Except as provided in Subsections (6)(c) through (f), the commission shall
3316 assess the amount of taxes imposed by this chapter, and any penalties and interest, within three
3317 years after a taxpayer files a return.

3318 (b) Except as provided in Subsections (6)(c) through (f), if the commission does not
3319 make an assessment under Subsection (6)(a) within three years, the commission may not
3320 commence a proceeding for the collection of the taxes after the expiration of the three-year
3321 period.

3322 (c) Notwithstanding Subsections (6)(a) and (b), the commission may make an
3323 assessment or commence a proceeding to collect a tax at any time if a deficiency is due to:

3324 (i) fraud; or

3325 (ii) failure to file a return.

3326 (d) Notwithstanding Subsections (6)(a) and (b), beginning on July 1, 1998, the
3327 commission may extend the period to make an assessment or to commence a proceeding to
3328 collect the tax under this chapter if:

3329 (i) the three-year period under this Subsection (6) has not expired; and

3330 (ii) the commission and the taxpayer sign a written agreement:

3331 (A) authorizing the extension; and

3332 (B) providing for the length of the extension.

3333 (e) If the commission delays an audit at the request of a taxpayer, the commission may
3334 make an assessment as provided in Subsection (6)(f) if:

3335 (i) the taxpayer subsequently refuses to agree to an extension request by the
3336 commission; and

3337 (ii) the three-year period under this Subsection (6) expires before the commission
3338 completes the audit.

3339 (f) An assessment under Subsection (6)(e) shall be:

3340 (i) for the time period for which the commission could not make an assessment
3341 because of the expiration of the three-year period; and

3342 (ii) in an amount equal to the difference between:

3343 (A) the commission's estimate of the amount of taxes the taxpayer would have been
3344 assessed for the time period described in Subsection (6)(f)(i); and

3345 (B) the amount of taxes the taxpayer actually paid for the time period described in
3346 Subsection (6)(f)(i).

3347 Section 10. Section **59-12-125** is amended to read:

3348 **59-12-125. Seller or certified service provider reliance on commission**
3349 **information.**

3350 A seller or certified service provider is not liable for failing to collect a tax at a tax rate
3351 imposed under this part if[:(1) the tax rate at which the seller or certified service provider
3352 collects the tax is derived from a database created by the commission containing tax rates; and
3353 (2)] the seller's or certified service provider's failure to collect the tax is as a result of the
3354 seller's or certified service provider's reliance on incorrect data provided by the commission in
3355 [the] a database created by the commission:

3356 (1) containing tax rates, boundaries, or local taxing jurisdiction assignments; or
3357 (2) indicating the taxability of tangible personal property, a product transferred
3358 electronically, or a service.

3359 Section 11. Section **59-12-204** is amended to read:

3360 **59-12-204. Sales and use tax ordinance provisions -- Tax rate -- Distribution of**
3361 **tax revenues.**

3362 (1) The tax ordinance adopted pursuant to this part shall impose a tax upon those
3363 transactions listed in Subsection 59-12-103(1).

3364 (2) (a) The tax ordinance under Subsection (1) shall include a provision imposing a tax
3365 upon every transaction listed in Subsection 59-12-103(1) made within a county, including areas
3366 contained within the cities and towns located in the county:

3367 (i) at the rate of 1% of the purchase price paid or charged; and

3368 (ii) if the transaction is consummated within the county in accordance with Section
3369 59-12-205.

3370 (b) Notwithstanding Subsection (2)(a), a tax ordinance under this Subsection (2) shall
3371 include a provision prohibiting a county, city, or town from imposing a tax under this section
3372 on[:(1)] the sales and uses described in Section 59-12-104 to the extent the sales and uses are
3373 exempt from taxation under Section 59-12-104[; and].

3374 ~~[(ii) any amounts paid or charged by a seller that collects a tax in accordance with~~
3375 ~~Subsection 59-12-107(1)(b) unless all of the counties, cities, and towns in the state impose the~~
3376 ~~tax under this section.]~~

3377 (3) Such tax ordinance shall include provisions substantially the same as those
3378 contained in Part 1, Tax Collection, insofar as they relate to sales or use tax, except that the
3379 name of the county as the taxing agency shall be substituted for that of the state where
3380 necessary for the purpose of this part and that an additional license is not required if one has
3381 been or is issued under Section 59-12-106.

3382 (4) Such tax ordinance shall include a provision that the county shall contract, prior to
3383 the effective date of the ordinance, with the commission to perform all functions incident to the
3384 administration or operation of the ordinance.

3385 (5) Such tax ordinance shall include a provision that the sale, storage, use, or other
3386 consumption of tangible personal property, the purchase price or the cost of which has been
3387 subject to sales or use tax under a sales and use tax ordinance enacted in accordance with this
3388 part by any county, city, or town in any other county in this state, shall be exempt from the tax
3389 due under this ordinance.

3390 (6) Such tax ordinance shall include a provision that any person subject to the
3391 provisions of a city or town sales and use tax shall be exempt from the county sales and use tax
3392 if the city or town sales and use tax is levied under an ordinance including provisions in
3393 substance as follows:

3394 (a) a provision imposing a tax upon every transaction listed in ~~[Section]~~ Subsection
3395 59-12-103(1) made within the city or town at the rate imposed by the county in which it is
3396 situated pursuant to Subsection (2);

3397 (b) notwithstanding Subsection (2)(a), a provision prohibiting the city or town from
3398 imposing a tax under this section on ~~[any amounts paid or charged by a seller that collects a tax~~
3399 ~~in accordance with Subsection 59-12-107(1)(b) unless all of the counties, cities, and towns in~~
3400 ~~the state impose a tax under this section]~~ the sales and uses described in Section 59-12-104 to
3401 the extent the sales and uses are exempt from taxation under Section 59-12-104;

3402 (c) provisions substantially the same as those contained in Part 1, Tax Collection,
3403 insofar as they relate to sales and use taxes, except that the name of the city or town as the
3404 taxing agency shall be substituted for that of the state where necessary for the purposes of this

3405 part;

3406 (d) a provision that the city or town shall contract prior to the effective date of the city
3407 or town sales and use tax ordinance with the commission to perform all functions incident to
3408 the administration or operation of the sales and use tax ordinance of the city or town;

3409 (e) a provision that the sale, storage, use, or other consumption of tangible personal
3410 property, the gross receipts from the sale of or the cost of which has been subject to sales or use
3411 tax under a sales and use tax ordinance enacted in accordance with this part by any county
3412 other than the county in which the city or town is located, or city or town in this state, shall be
3413 exempt from the tax; and

3414 (f) a provision that the amount of any tax paid under Part 1, Tax Collection, shall not
3415 be included as a part of the purchase price paid or charged for a taxable item.

3416 (7) Notwithstanding any other provision of this section, beginning July 1, 2000, the
3417 commission shall:

3418 (a) determine and retain the portion of sales and use tax imposed under this section:

3419 (i) by each county and by each city and town within that county whose legislative body
3420 consents by resolution to the commission's retaining and depositing sales and use tax revenues
3421 as provided in this Subsection (7); and

3422 (ii) that is equal to the revenues generated by a 1/64% tax rate;

3423 (b) deposit the revenues described in Subsection (7)(a) into a special fund of the
3424 county, or a city, town, or other political subdivision of the state located within that county, that
3425 has issued bonds to finance sports or recreational facilities or that is leasing sports or
3426 recreational facilities, in order to repay those bonds or to pay the lease payments; and

3427 (c) continue to deposit those revenues into the special fund only as long as the bonds or
3428 leases are outstanding.

3429 Section 12. Section **59-12-205** is amended to read:

3430 **59-12-205. Ordinances to conform with statutory amendments -- Distribution of**
3431 **tax revenues -- Determination of population.**

3432 (1) Each county, city, and town, in order to maintain in effect sales and use tax
3433 ordinances adopted pursuant to Section 59-12-204, shall, within 30 days of any amendment of
3434 any applicable provisions of Part 1, Tax Collection, adopt amendments of their respective sales
3435 and use tax ordinances to conform with the amendments to Part 1, Tax Collection, insofar as

3436 they relate to sales and use taxes.

3437 (2) Except as provided in Subsections (3) through (5):

3438 (a) 50% of each dollar collected from the sales and use tax authorized by this part shall
3439 be paid to each county, city, and town on the basis of the percentage that the population of the
3440 county, city, or town bears to the total population of all counties, cities, and towns in the state;
3441 and

3442 (b) 50% of each dollar collected from the sales and use tax authorized by this part shall
3443 be paid to each county, city, and town on the basis of the location where the transaction is
3444 consummated as determined under Sections 59-12-211 through ~~59-12-214~~ 59-12-215.

3445 (3) (a) For fiscal years beginning with fiscal year 1983-84 and ending with fiscal year
3446 2005-06, a county, city, or town may not receive a tax revenue distribution less than .75% of
3447 the taxable sales within the boundaries of the county, city, or town.

3448 (b) The commission shall proportionally reduce monthly distributions to any county,
3449 city, or town that, but for the reduction, would receive a distribution in excess of 1% of the
3450 sales and use tax revenue collected within the boundaries of the county, city, or town.

3451 (4) (a) As used in this Subsection (4):

3452 (i) "Eligible county, city, or town" means a county, city, or town that receives \$2,000 or
3453 more in tax revenue distributions in accordance with Subsection (3) for each of the following
3454 fiscal years:

3455 (A) fiscal year 2002-03;

3456 (B) fiscal year 2003-04; and

3457 (C) fiscal year 2004-05.

3458 (ii) "Minimum tax revenue distribution" means the greater of:

3459 (A) the total amount of tax revenue distributions an eligible county, city, or town
3460 receives from a tax imposed in accordance with this part for fiscal year 2000-01; or

3461 (B) the total amount of tax revenue distributions an eligible county, city, or town
3462 receives from a tax imposed in accordance with this part for fiscal year 2004-05.

3463 (b) (i) Notwithstanding Subsection (2) and except as provided in Subsection (4)(b)(ii),
3464 beginning with fiscal year 2006-07 and ending with fiscal year 2012-13, an eligible county,
3465 city, or town shall receive a tax revenue distribution for a tax imposed in accordance with this
3466 part equal to the greater of:

3467 (A) the payment required by Subsection (2); or

3468 (B) the minimum tax revenue distribution.

3469 (ii) If the tax revenue distribution required by Subsection (4)(b)(i) for an eligible
3470 county, city, or town is equal to the amount described in Subsection (4)(b)(i)(A) for three
3471 consecutive fiscal years, for fiscal years beginning with the fiscal year immediately following
3472 that three consecutive fiscal year period, the eligible county, city, or town shall receive the tax
3473 revenue distribution equal to the payment required by Subsection (2).

3474 (c) For a fiscal year beginning with fiscal year 2013-14 and ending with fiscal year
3475 2015-16, an eligible county, city, or town shall receive the minimum tax revenue distribution
3476 for that fiscal year if for fiscal year 2012-13 the payment required by Subsection (2) to that
3477 eligible county, city, or town is less than or equal to the product of:

3478 (i) the minimum tax revenue distribution; and

3479 (ii) .90.

3480 (5) (a) Population figures for purposes of this section shall be based on the most recent
3481 official census or census estimate of the United States Census Bureau.

3482 (b) If a needed population estimate is not available from the United States Census
3483 Bureau, population figures shall be derived from the estimate from the Utah Population
3484 Estimates Committee created by executive order of the governor.

3485 (6) The population of a county for purposes of this section shall be determined solely
3486 from the unincorporated area of the county.

3487 Section 13. Section **59-12-215** is amended to read:

3488 **59-12-215. Location of transaction involving telecommunications service or other**
3489 **related service.**

3490 (1) As used in this section:

3491 (a) "Air-to-ground radiotelephone service" means a radio service:

3492 (i) as defined in 47 C.F.R. Sec. 22.99; and

3493 (ii) for which a common carrier is authorized to offer and provide radio
3494 telecommunications service:

3495 (A) for hire; and

3496 (B) to a subscriber in an aircraft.

3497 (b) "Call-by-call basis" means a method of charging for telecommunications service

3498 that is measured by individual calls.

3499 (c) "Communications channel" means a physical or virtual path of communications
3500 over which a signal is transmitted between or among customer channel termination points.

3501 (d) (i) Subject to Subsection (1)(d)(ii), "customer" means:

3502 (A) a person that is obligated under a contract with a telecommunications service
3503 provider to pay for telecommunications service received under the contract; or

3504 (B) if the end user is not the person described in Subsection (1)(d)(i)(A), the end user
3505 of telecommunications service.

3506 (ii) "Customer" does not include a reseller:

3507 (A) of telecommunications service; or

3508 (B) for mobile telecommunications service, of a serving carrier under an agreement to
3509 serve a customer outside the home service provider's licensed service area.

3510 (e) "Customer channel termination point" means the location where a customer:

3511 (i) inputs communications; or

3512 (ii) receives communications.

3513 (f) "End user" means:

3514 (i) an individual who uses a telecommunications service; or

3515 (ii) for a telecommunications service provided to a person who is not an individual, an
3516 individual who uses a telecommunications service on behalf of the person who is provided the
3517 telecommunications service.

3518 (g) "Home service provider" is as defined in the Mobile Telecommunications Sourcing
3519 Act, 4 U.S.C. Sec. 124.

3520 ~~[(h) "Mobile telecommunications service" is as defined in the Mobile
3521 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.]~~

3522 ~~[(i) "Place of primary use":]~~

3523 ~~[(i) for telecommunications service other than mobile telecommunications service,
3524 means the street address representative of where a customer's use of the telecommunications
3525 service primarily occurs, which shall be:]~~

3526 ~~[(A) the residential street address of the customer; or]~~

3527 ~~[(B) the primary business street address of the customer; or]~~

3528 ~~[(ii) for mobile telecommunications service, is as defined in the Mobile~~

3529 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.]

3530 [(j)] (h) [Notwithstanding where a call is billed or paid, "service] "Service address"

3531 means:

3532 (i) [if the location] regardless of where a call is billed or paid [is known], the location
3533 of the telecommunications equipment:

3534 (A) to which a customer's call is charged; and

3535 (B) from which the call:

3536 (I) originates; or

3537 (II) terminates;

3538 (ii) if the location [of where a call is billed or paid is not known but the location of the

3539 origination point of the signal of the telecommunications service is] described in Subsection

3540 (1)(h)(i) is not known, the location of the origination point of the signal of the

3541 telecommunications service first identified by:

3542 (A) the telecommunications system of the telecommunications service provider; or

3543 (B) if the system used to transport the signal of the telecommunications service is not a

3544 system of the telecommunications service provider, information received by the

3545 telecommunications service provider from the telecommunications service provider's

3546 telecommunications service provider; or

3547 (iii) if the [following] locations described in Subsections (1)(h)(i) and (ii) are not

3548 known, the location of a customer's place of primary use[?].

3549 [(A) the location of where a call is billed or paid; and]

3550 [(B) the location of the origination point of the signal of the telecommunications

3551 service.]

3552 (2) Except as provided in Subsection (4), the location of a sale of a

3553 telecommunications service sold on a call-by-call basis is:

3554 (a) the location at which the call originates and terminates; or

3555 (b) the location at which:

3556 (i) the call:

3557 (A) originates; or

3558 (B) terminates; and

3559 (ii) the service address is located.

3560 (3) Except as provided in Subsection (4), the location of a sale of a
3561 telecommunications service sold on a basis other than a call-by-call basis is the customer's
3562 place of primary use.

3563 (4) Notwithstanding Subsection (2) or (3):

3564 (a) the location of a sale of a mobile telecommunications service, other than an
3565 air-to-ground radiotelephone service or a prepaid calling service, is the location required by the
3566 Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.;

3567 (b) the location of a sale of a postpaid calling service is the origination point of the
3568 telecommunications signal as first identified by:

3569 (i) the seller's telecommunications system; or

3570 (ii) if the system used to transport the telecommunications signal is not that of the
3571 seller, information received by the seller from the seller's telephone service provider;

3572 (c) the location of a sale of a prepaid calling service is the location determined under
3573 Section 59-12-211; and

3574 (d) (i) subject to Subsection (4)(d)(ii), the location of a sale of a prepaid wireless
3575 calling service is the location determined under Section 59-12-211; and

3576 (ii) for purposes of Subsection (4)(d)(i), the location of a transaction determined under
3577 Subsection 59-12-211(6) is considered to include the location associated with the mobile
3578 telephone number.

3579 (5) The location of a sale of a private communication service is:

3580 (a) if all of the customer channel termination points are located entirely within one
3581 county, city, or town, the location of the sale is the county, city, or town in which all of the
3582 customer channel termination points are located;

3583 (b) if a charge for a service related to a customer channel termination point is
3584 separately stated, the location of the sale is the location in which the customer channel
3585 termination point is located;

3586 (c) if a charge for service for a segment of a channel between two customer channel
3587 termination points located in different counties, cities, or towns is separately stated, the
3588 location of the sale is each county, city, or town:

3589 (i) in which the customer channel termination points are located; and

3590 (ii) in equal proportions; and

3591 (d) if a charge for service for a segment of a channel located in more than one county,
3592 city, or town is not separately stated, the location of the sale is:

- 3593 (i) each county, city, or town in which a segment of the channel is located; and
3594 (ii) in proportion to the percentage of customer channel termination points in each
3595 county, city, or town compared to the total customer channel termination points in all counties,
3596 cities, and towns.

3597 (6) The location of a sale of Internet access service is the customer's place of primary
3598 use.

3599 (7) The location of a sale of an ancillary service is the customer's place of primary use.

3600 Section 14. Section **59-12-216** is amended to read:

3601 **59-12-216. Seller or certified service provider reliance on commission**
3602 **information.**

3603 A seller or certified service provider is not liable for failing to collect a tax at a tax rate
3604 imposed under this part if[: (1) ~~the tax rate at which the seller or certified service provider~~
3605 ~~collects the tax is derived from a database created by the commission containing tax rates; and~~
3606 (2)] the seller's or certified service provider's failure to collect the tax is as a result of the
3607 seller's or certified service provider's reliance on incorrect data provided by the commission in
3608 [~~the~~] a database created by the commission:

3609 (1) containing tax rates, boundaries, or local taxing jurisdiction assignments; or

3610 (2) indicating the taxability of tangible personal property, a product transferred
3611 electronically, or a service.

3612 Section 15. Section **59-12-304** is amended to read:

3613 **59-12-304. Seller or certified service provider reliance on commission**
3614 **information.**

3615 A seller or certified service provider is not liable for failing to collect a tax at a tax rate
3616 imposed under this part if[: (1) ~~the tax rate at which the seller or certified service provider~~
3617 ~~collects the tax is derived from a database created by the commission containing tax rates; and~~
3618 (2)] the seller's or certified service provider's failure to collect the tax is as a result of the
3619 seller's or certified service provider's reliance on incorrect data provided by the commission in
3620 [~~the~~] a database created by the commission:

3621 (1) containing tax rates, boundaries, or local taxing jurisdiction assignments; or

3622 (2) indicating the taxability of tangible personal property, a product transferred
3623 electronically, or a service.

3624 Section 16. Section **59-12-357** is amended to read:

3625 **59-12-357. Seller or certified service provider reliance on commission**
3626 **information.**

3627 A seller or certified service provider is not liable for failing to collect a tax at a tax rate
3628 imposed under this part if[: ~~(1) the tax rate at which the seller or certified service provider~~
3629 ~~collects the tax is derived from a database created by the commission containing tax rates; and~~
3630 ~~(2)] the seller's or certified service provider's failure to collect the tax is as a result of the~~
3631 ~~seller's or certified service provider's reliance on incorrect data provided by the commission in~~
3632 ~~[the] a database created by the commission;~~

3633 (1) containing tax rates, boundaries, or local taxing jurisdiction assignments; or
3634 (2) indicating the taxability of tangible personal property, a product transferred
3635 electronically, or a service.

3636 Section 17. Section **59-12-406** is amended to read:

3637 **59-12-406. Seller or certified service provider reliance on commission**
3638 **information.**

3639 A seller or certified service provider is not liable for failing to collect a tax at a tax rate
3640 imposed under this part if[: ~~(1) the tax rate at which the seller or certified service provider~~
3641 ~~collects the tax is derived from a database created by the commission containing tax rates; and~~
3642 ~~(2)] the seller's or certified service provider's failure to collect the tax is as a result of the~~
3643 ~~seller's or certified service provider's reliance on incorrect data provided by the commission in~~
3644 ~~[the] a database created by the commission;~~

3645 (1) containing tax rates, boundaries, or local taxing jurisdiction assignments; or
3646 (2) indicating the taxability of tangible personal property, a product transferred
3647 electronically, or a service.

3648 Section 18. Section **59-12-506** is amended to read:

3649 **59-12-506. Seller or certified service provider reliance on commission**
3650 **information.**

3651 A seller or certified service provider is not liable for failing to collect a tax at a tax rate
3652 imposed under this part if[: ~~(1) the tax rate at which the seller or certified service provider~~

3653 ~~collects the tax is derived from a database created by the commission containing tax rates; and~~
 3654 ~~(2)] the seller's or certified service provider's failure to collect the tax is as a result of the~~
 3655 ~~seller's or certified service provider's reliance on incorrect data provided by the commission in~~
 3656 ~~[the] a database created by the commission;~~

- 3657 (1) containing tax rates, boundaries, or local taxing jurisdiction assignments; or
- 3658 (2) indicating the taxability of tangible personal property, a product transferred
- 3659 electronically, or a service.

3660 Section 19. Section **59-12-605** is amended to read:

3661 **59-12-605. Seller or certified service provider reliance on commission**
 3662 **information.**

3663 A seller or certified service provider is not liable for failing to collect a tax at a tax rate
 3664 imposed under this part if[: ~~(1) the tax rate at which the seller or certified service provider~~
 3665 ~~collects the tax is derived from a database created by the commission containing tax rates; and~~
 3666 ~~(2)] the seller's or certified service provider's failure to collect the tax is as a result of the~~
 3667 ~~seller's or certified service provider's reliance on incorrect data provided by the commission in~~
 3668 ~~[the] a database created by the commission;~~

- 3669 (1) containing tax rates, boundaries, or local taxing jurisdiction assignments; or
- 3670 (2) indicating the taxability of tangible personal property, a product transferred
- 3671 electronically, or a service.

3672 Section 20. Section **59-12-707** is amended to read:

3673 **59-12-707. Seller or certified service provider reliance on commission**
 3674 **information.**

3675 A seller or certified service provider is not liable for failing to collect a tax at a tax rate
 3676 imposed under this part if[: ~~(1) the tax rate at which the seller or certified service provider~~
 3677 ~~collects the tax is derived from a database created by the commission containing tax rates; and~~
 3678 ~~(2)] the seller's or certified service provider's failure to collect the tax is as a result of the~~
 3679 ~~seller's or certified service provider's reliance on incorrect data provided by the commission in~~
 3680 ~~[the] a database created by the commission;~~

- 3681 (1) containing tax rates, boundaries, or local taxing jurisdiction assignments; or
- 3682 (2) indicating the taxability of tangible personal property, a product transferred
- 3683 electronically, or a service.

3684 Section 21. Section **59-12-808** is amended to read:

3685 **59-12-808. Seller or certified service provider reliance on commission**
3686 **information.**

3687 A seller or certified service provider is not liable for failing to collect a tax at a tax rate
3688 imposed under this part if[: ~~(1) the tax rate at which the seller or certified service provider~~
3689 ~~collects the tax is derived from a database created by the commission containing tax rates; and~~
3690 ~~(2)] the seller's or certified service provider's failure to collect the tax is as a result of the~~
3691 ~~seller's or certified service provider's reliance on incorrect data provided by the commission in~~
3692 ~~[the] a database created by the commission;~~

3693 (1) containing tax rates, boundaries, or local taxing jurisdiction assignments; or
3694 (2) indicating the taxability of tangible personal property, a product transferred
3695 electronically, or a service.

3696 Section 22. Section **59-12-1004** is amended to read:

3697 **59-12-1004. Seller or certified service provider reliance on commission**
3698 **information.**

3699 A seller or certified service provider is not liable for failing to collect a tax at a tax rate
3700 imposed under this part if[: ~~(1) the tax rate at which the seller or certified service provider~~
3701 ~~collects the tax is derived from a database created by the commission containing tax rates; and~~
3702 ~~(2)] the seller's or certified service provider's failure to collect the tax is as a result of the~~
3703 ~~seller's or certified service provider's reliance on incorrect data provided by the commission in~~
3704 ~~[the] a database created by the commission;~~

3705 (1) containing tax rates, boundaries, or local taxing jurisdiction assignments; or
3706 (2) indicating the taxability of tangible personal property, a product transferred
3707 electronically, or a service.

3708 Section 23. Section **59-12-1104** is amended to read:

3709 **59-12-1104. Seller or certified service provider reliance on commission**
3710 **information.**

3711 A seller or certified service provider is not liable for failing to collect a tax at a tax rate
3712 imposed under this part if[: ~~(1) the tax rate at which the seller or certified service provider~~
3713 ~~collects the tax is derived from a database created by the commission containing tax rates; and~~
3714 ~~(2)] the seller's or certified service provider's failure to collect the tax is as a result of the~~

3715 seller's or certified service provider's reliance on incorrect data provided by the commission in
3716 ~~the~~ a database created by the commission;

3717 (1) containing tax rates, boundaries, or local taxing jurisdiction assignments; or

3718 (2) indicating the taxability of tangible personal property, a product transferred

3719 electronically, or a service.

3720 Section 24. Section **59-12-1201** is amended to read:

3721 **59-12-1201. Motor vehicle rental tax -- Rate -- Exemptions -- Administration,**
3722 **collection, and enforcement of tax -- Administrative fee -- Deposits.**

3723 (1) (a) Except as provided in Subsection (3), there is imposed a tax of 2.5% on all
3724 short-term leases and rentals of motor vehicles not exceeding 30 days.

3725 (b) The tax imposed in this section is in addition to all other state, county, or municipal
3726 fees and taxes imposed on rentals of motor vehicles.

3727 (2) (a) Subject to Subsection (2)(b), a tax rate repeal or tax rate change for the tax
3728 imposed under Subsection (1) shall take effect on the first day of a calendar quarter.

3729 (b) (i) For a transaction subject to a tax under Subsection (1), a tax rate increase shall
3730 take effect on the first day of the first billing period:

3731 (A) that begins after the effective date of the tax rate increase; and

3732 (B) if the billing period for the transaction begins before the effective date of a tax rate
3733 increase imposed under Subsection (1).

3734 (ii) For a transaction subject to a tax under Subsection (1), the repeal of a tax or a tax
3735 rate decrease shall take effect on the first day of the last billing period:

3736 (A) that began before the effective date of the repeal of the tax or the tax rate decrease;
3737 and

3738 (B) if the billing period for the transaction begins before the effective date of the repeal
3739 of the tax or the tax rate decrease imposed under Subsection (1).

3740 (3) A motor vehicle is exempt from the tax imposed under Subsection (1) if:

3741 (a) the motor vehicle is registered for a gross laden weight of 12,001 or more pounds;

3742 (b) the motor vehicle is rented as a personal household goods moving van; or

3743 (c) the lease or rental of the motor vehicle is made for the purpose of temporarily
3744 replacing a person's motor vehicle that is being repaired pursuant to a repair agreement or an
3745 insurance agreement.

3746 (4) (a) (i) The tax authorized under this section shall be administered, collected, and
3747 enforced in accordance with:

3748 (A) the same procedures used to administer, collect, and enforce the tax under Part 1,
3749 Tax Collection; and

3750 (B) Chapter 1, General Taxation Policies.

3751 (ii) Notwithstanding Subsection (4)(a)(i), a tax under this part is not subject to
3752 Subsections 59-12-103(4) through [~~(9)~~] (12) or Section 59-12-107.1 or 59-12-123.

3753 (b) The commission may retain a maximum of 1-1/2% of the tax collected under this
3754 section for the costs of rendering its services under this section.

3755 (c) Except as provided under Subsection (4)(b), all revenue received by the
3756 commission under this section shall be deposited daily with the state treasurer and credited
3757 monthly to the Transportation Corridor Preservation Revolving Loan Fund under Section
3758 72-2-117.

3759 Section 25. Section **59-12-1202** is amended to read:

3760 **59-12-1202. Seller or certified service provider reliance on commission**
3761 **information.**

3762 A seller or certified service provider is not liable for failing to collect a tax at a tax rate
3763 imposed under this part if[: ~~(1) the tax rate at which the seller or certified service provider~~
3764 ~~collects the tax is derived from a database created by the commission containing tax rates; and~~
3765 ~~(2)] the seller's or certified service provider's failure to collect the tax is as a result of the~~
3766 ~~seller's or certified service provider's reliance on incorrect data provided by the commission in~~
3767 ~~[the] a database created by the commission;~~

3768 (1) containing tax rates, boundaries, or local taxing jurisdiction assignments; or

3769 (2) indicating the taxability of tangible personal property, a product transferred

3770 electronically, or a service.

3771 Section 26. Section **59-12-1304** is amended to read:

3772 **59-12-1304. Seller or certified service provider reliance on commission**
3773 **information.**

3774 A seller or certified service provider is not liable for failing to collect a tax at a tax rate
3775 imposed under this part if[: ~~(1) the tax rate at which the seller or certified service provider~~
3776 ~~collects the tax is derived from a database created by the commission containing tax rates; and~~

3777 ~~(2)]~~ the seller's or certified service provider's failure to collect the tax is as a result of the
3778 seller's or certified service provider's reliance on incorrect data provided by the commission in
3779 ~~[the]~~ a database created by the commission;

3780 (1) containing tax rates, boundaries, or local taxing jurisdiction assignments; or
3781 (2) indicating the taxability of tangible personal property, a product transferred
3782 electronically, or a service.

3783 Section 27. Section **59-12-1405** is amended to read:

3784 **59-12-1405. Seller or certified service provider reliance on commission**
3785 **information.**

3786 A seller or certified service provider is not liable for failing to collect a tax at a tax rate
3787 imposed under this part if~~[(1) the tax rate at which the seller or certified service provider~~
3788 ~~collects the tax is derived from a database created by the commission containing tax rates; and~~
3789 ~~(2)]~~ the seller's or certified service provider's failure to collect the tax is as a result of the
3790 seller's or certified service provider's reliance on incorrect data provided by the commission in
3791 ~~[the]~~ a database created by the commission;

3792 (1) containing tax rates, boundaries, or local taxing jurisdiction assignments; or
3793 (2) indicating the taxability of tangible personal property, a product transferred
3794 electronically, or a service.

3795 Section 28. Section **59-12-1505** is amended to read:

3796 **59-12-1505. Seller or certified service provider reliance on commission**
3797 **information.**

3798 A seller or certified service provider is not liable for failing to collect a tax at a tax rate
3799 imposed under this part if~~[(1) the tax rate at which the seller or certified service provider~~
3800 ~~collects the tax is derived from a database created by the commission containing tax rates; and~~
3801 ~~(2)]~~ the seller's or certified service provider's failure to collect the tax is as a result of the
3802 seller's or certified service provider's reliance on incorrect data provided by the commission in
3803 ~~[the]~~ a database created by the commission;

3804 (1) containing tax rates, boundaries, or local taxing jurisdiction assignments; or
3805 (2) indicating the taxability of tangible personal property, a product transferred
3806 electronically, or a service.

3807 Section 29. Section **59-12-1706** is amended to read:

3808 **59-12-1706. Seller or certified service provider reliance on commission**
3809 **information.**

3810 A seller or certified service provider is not liable for failing to collect a tax at a tax rate
3811 imposed under this part if[: ~~(1) the tax rate at which the seller or certified service provider~~
3812 ~~collects the tax is derived from a database created by the commission containing tax rates; and~~
3813 ~~(2)] the seller's or certified service provider's failure to collect the tax is as a result of the~~
3814 seller's or certified service provider's reliance on incorrect data provided by the commission in
3815 [~~the~~] a database created by the commission:

3816 (1) containing tax rates, boundaries, or local taxing jurisdiction assignments; or
3817 (2) indicating the taxability of tangible personal property, a product transferred
3818 electronically, or a service.

3819 Section 30. Section **59-12-1804** is amended to read:

3820 **59-12-1804. Seller or certified service provider reliance on commission**
3821 **information.**

3822 A seller or certified service provider is not liable for failing to collect a tax at a tax rate
3823 imposed under this part if[: ~~(1) the tax rate at which the seller or certified service provider~~
3824 ~~collects the tax is derived from a database created by the commission containing tax rates; and~~
3825 ~~(2)] the seller's or certified service provider's failure to collect the tax is as a result of the~~
3826 seller's or certified service provider's reliance on incorrect data provided by the commission in
3827 [~~the~~] a database created by the commission:

3828 (1) containing tax rates, boundaries, or local taxing jurisdiction assignments; or
3829 (2) indicating the taxability of tangible personal property, a product transferred
3830 electronically, or a service.

3831 Section 31. Section **59-12-1904** is amended to read:

3832 **59-12-1904. Seller or certified service provider reliance on commission**
3833 **information.**

3834 A seller or certified service provider is not liable for failing to collect a tax at a tax rate
3835 imposed under this part if[: ~~(1) the tax rate at which the seller or certified service provider~~
3836 ~~collects the tax is derived from a database created by the commission containing tax rates; and~~
3837 ~~(2)] the seller's or certified service provider's failure to collect the tax is as a result of the~~
3838 seller's or certified service provider's reliance on incorrect data provided by the commission in

3839 [the] a database created by the commission;

3840 (1) containing tax rates, boundaries, or local taxing jurisdiction assignments; or

3841 (2) indicating the taxability of tangible personal property, a product transferred

3842 electronically, or a service.

3843 Section 32. Section **59-12-2005** is amended to read:

3844 **59-12-2005. Seller or certified service provider reliance on commission**
3845 **information.**

3846 A seller or certified service provider is not liable for failing to collect a tax at a tax rate
3847 imposed under this part if[:(1) ~~the tax rate at which the seller or certified service provider~~

3848 ~~collects the tax is derived from a database created by the commission containing tax rates; and~~

3849 (2)] the seller's or certified service provider's failure to collect the tax is as a result of the

3850 seller's or certified service provider's reliance on incorrect data provided by the commission in

3851 [the] a database created by the commission;

3852 (1) containing tax rates, boundaries, or local taxing jurisdiction assignments; or

3853 (2) indicating the taxability of tangible personal property, a product transferred

3854 electronically, or a service.

3855 Section 33. Section **59-12-2104** is amended to read:

3856 **59-12-2104. Seller or certified service provider reliance on commission**
3857 **information.**

3858 A seller or certified service provider is not liable for failing to collect a tax at a tax rate
3859 imposed under this part if[:(1) ~~the tax rate at which the seller or certified service provider~~

3860 ~~collects the tax is derived from a database created by the commission containing tax rates; and~~

3861 (2)] the seller's or certified service provider's failure to collect the tax is as a result of the

3862 seller's or certified service provider's reliance on incorrect data provided by the commission in

3863 [the] a database created by the commission;

3864 (1) containing tax rates, boundaries, or local taxing jurisdiction assignments; or

3865 (2) indicating the taxability of tangible personal property, a product transferred

3866 electronically, or a service.

3867 Section 34. Section **69-2-5** is amended to read:

3868 **69-2-5. Funding for 911 emergency telecommunications service.**

3869 (1) In providing funding of 911 emergency telecommunications service, any public

3870 agency establishing a 911 emergency telecommunications service may:

3871 (a) seek assistance from the federal or state government, to the extent constitutionally
3872 permissible, in the form of loans, advances, grants, subsidies, and otherwise, directly or
3873 indirectly;

3874 (b) seek funds appropriated by local governmental taxing authorities for the funding of
3875 public safety agencies; and

3876 (c) seek gifts, donations, or grants from individuals, corporations, or other private
3877 entities.

3878 (2) For purposes of providing funding of 911 emergency telecommunications service,
3879 special service districts may raise funds as provided in Section 17D-1-105 and may borrow
3880 money and incur indebtedness as provided in Section 17D-1-103.

3881 (3) (a) Except as provided in Subsection (3)(b) and subject to the other provisions of
3882 this Subsection (3) a county, city, or town within which 911 emergency telecommunications
3883 service is provided may levy monthly an emergency services telecommunications charge on:

3884 (i) each local exchange service switched access line within the boundaries of the
3885 county, city, or town;

3886 (ii) each revenue producing radio communications access line with a billing address
3887 within the boundaries of the county, city, or town; and

3888 (iii) any other service, including voice over Internet protocol, provided to a user within
3889 the boundaries of the county, city, or town that allows the user to make calls to and receive
3890 calls from the public switched telecommunications network, including commercial mobile
3891 radio service networks.

3892 (b) Notwithstanding Subsection (3)(a), an access line provided for public coin
3893 telecommunications service is exempt from emergency telecommunications charges.

3894 (c) The amount of the charge levied under this section may not exceed:

3895 (i) 61 cents per month for each local exchange service switched access line;

3896 (ii) 61 cents per month for each radio communications access line; and

3897 (iii) 61 cents per month for each service under Subsection (3)(a)(iii).

3898 (d) (i) For purposes of this Subsection (3)(d) the following terms shall be defined as
3899 provided in Section 59-12-102 or 59-12-215:

3900 (A) "mobile telecommunications service";

- 3901 (B) "[primary] place of primary use";
- 3902 (C) "service address"; and
- 3903 (D) "telecommunications service."
- 3904 (ii) An access line described in Subsection (3)(a) is considered to be within the
- 3905 boundaries of a county, city, or town if the telecommunications services provided over the
- 3906 access line are located within the county, city, or town:
- 3907 (A) for purposes of sales and use taxes under Title 59, Chapter 12, Sales and Use Tax
- 3908 Act; and
- 3909 (B) determined in accordance with Section 59-12-215.
- 3910 (iii) The rate imposed on an access line under this section shall be determined in
- 3911 accordance with Subsection (3)(d)(iv) if the location of an access line described in Subsection
- 3912 (3)(a) is determined under Subsection (3)(d)(ii) to be a county, city, or town other than county,
- 3913 city, or town in which is located:
- 3914 (A) for a telecommunications service, the purchaser's service address; or
- 3915 (B) for mobile telecommunications service, the purchaser's [primary] place of primary
- 3916 use.
- 3917 (iv) The rate imposed on an access line under this section shall be the lower of:
- 3918 (A) the rate imposed by the county, city, or town in which the access line is located
- 3919 under Subsection (3)(d)(ii); or
- 3920 (B) the rate imposed by the county, city, or town in which it is located:
- 3921 (I) for telecommunications service, the purchaser's service address; or
- 3922 (II) for mobile telecommunications service, the purchaser's [primary] place of primary
- 3923 use.
- 3924 (e) (i) A county, city, or town shall notify the Public Service Commission of the intent
- 3925 to levy the charge under this Subsection (3) at least 30 days before the effective date of the
- 3926 charge being levied.
- 3927 (ii) For purposes of this Subsection (3)(e):
- 3928 (A) "Annexation" means an annexation to:
- 3929 (I) a city or town under Title 10, Chapter 2, Part 4, Annexation; or
- 3930 (II) a county under Title 17, Chapter 2, Annexation to County.
- 3931 (B) "Annexing area" means an area that is annexed into a county, city, or town.

3932 (iii) (A) Except as provided in Subsection (3)(e)(iii)(C) or (D), if on or after July 1,
3933 2003, a county, city, or town enacts or repeals a charge or changes the amount of the charge
3934 under this section, the enactment, repeal, or change shall take effect:

3935 (I) on the first day of a calendar quarter; and

3936 (II) after a 90-day period beginning on the date the State Tax Commission receives
3937 notice meeting the requirements of Subsection (3)(e)(iii)(B) from the county, city, or town.

3938 (B) The notice described in Subsection (3)(e)(iii)(A) shall state:

3939 (I) that the county, city, or town will enact or repeal a charge or change the amount of
3940 the charge under this section;

3941 (II) the statutory authority for the charge described in Subsection (3)(e)(iii)(B)(I);

3942 (III) the effective date of the charge described in Subsection (3)(e)(iii)(B)(I); and

3943 (IV) if the county, city, or town enacts the charge or changes the amount of the charge
3944 described in Subsection (3)(e)(iii)(B)(I), the amount of the charge.

3945 (C) Notwithstanding Subsection (3)(e)(iii)(A), the enactment of a charge or a charge
3946 increase under this section shall take effect on the first day of the first billing period:

3947 (I) that begins after the effective date of the enactment of the charge or the charge
3948 increase; and

3949 (II) if the billing period for the charge begins before the effective date of the enactment
3950 of the charge or the charge increase imposed under this section.

3951 (D) Notwithstanding Subsection (3)(e)(iii)(A), the repeal of a charge or a charge
3952 decrease under this section shall take effect on the first day of the last billing period:

3953 (I) that began before the effective date of the repeal of the charge or the charge
3954 decrease; and

3955 (II) if the billing period for the charge begins before the effective date of the repeal of
3956 the charge or the charge decrease imposed under this section.

3957 (iv) (A) Except as provided in Subsection (3)(e)(iv)(C) or (D), if for an annexation
3958 that occurs on or after July 1, 2003, the annexation will result in the enactment, repeal, or a
3959 change in the amount of a charge imposed under this section for an annexing area, the
3960 enactment, repeal, or change shall take effect:

3961 (I) on the first day of a calendar quarter; and

3962 (II) after a 90-day period beginning on the date the State Tax Commission receives

3963 notice meeting the requirements of Subsection (3)(e)(iv)(B) from the county, city, or town that
3964 annexes the annexing area.

3965 (B) The notice described in Subsection (3)(e)(iv)(A) shall state:

3966 (I) that the annexation described in Subsection (3)(e)(iv)(A) will result in an
3967 enactment, repeal, or a change in the charge being imposed under this section for the annexing
3968 area;

3969 (II) the statutory authority for the charge described in Subsection (3)(e)(iv)(B)(I);

3970 (III) the effective date of the charge described in Subsection (3)(e)(iv)(B)(I); and

3971 (IV) if the county, city, or town enacts the charge or changes the amount of the charge
3972 described in Subsection (3)(e)(iv)(B)(I), the amount of the charge.

3973 (C) Notwithstanding Subsection (3)(e)(iv)(A), the enactment of a charge or a charge
3974 increase under this section shall take effect on the first day of the first billing period:

3975 (I) that begins after the effective date of the enactment of the charge or the charge
3976 increase; and

3977 (II) if the billing period for the charge begins before the effective date of the enactment
3978 of the charge or the charge increase imposed under this section.

3979 (D) Notwithstanding Subsection (3)(e)(iv)(A), the repeal of a charge or a charge
3980 decrease under this section shall take effect on the first day of the last billing period:

3981 (I) that began before the effective date of the repeal of the charge or the charge
3982 decrease; and

3983 (II) if the billing period for the charge begins before the effective date of the repeal of
3984 the charge or the charge decrease imposed under this section.

3985 (f) Subject to Subsection (3)(g), an emergency services telecommunications charge
3986 levied under this section shall:

3987 (i) be billed and collected by the person that provides the:

3988 (A) local exchange service switched access line services; or

3989 (B) radio communications access line services; and

3990 (ii) except for costs retained under Subsection (3)(h), remitted to the State Tax
3991 Commission.

3992 (g) An emergency services telecommunications charge on a mobile

3993 telecommunications service may be levied, billed, and collected only to the extent permitted by

3994 the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

3995 (h) The person that bills and collects the charges levied under Subsection (3)(f) may:

3996 (i) bill the charge imposed by this section in combination with the charge levied under

3997 Section 69-2-5.6 as one line item charge; and

3998 (ii) retain an amount not to exceed 1.5% of the levy collected under this section as

3999 reimbursement for the cost of billing, collecting, and remitting the levy.

4000 (i) The State Tax Commission shall:

4001 (i) collect, enforce, and administer the charge imposed under this Subsection (3) using

4002 the same procedures used in the administration, collection, and enforcement of the state sales

4003 and use taxes under:

4004 (A) Title 59, Chapter 1, General Taxation Policies; and

4005 (B) Title 59, Chapter 12, Part 1, Tax Collection, except for:

4006 (I) Section 59-12-104;

4007 (II) Section 59-12-104.1;

4008 (III) Section 59-12-104.2;

4009 (IV) Section 59-12-107.1; and

4010 (V) Section [~~59-12-107.3~~] 59-12-123;

4011 (ii) transmit monies collected under this Subsection (3):

4012 (A) monthly; and

4013 (B) by electronic funds transfer by the commission to the county, city, or town that

4014 imposes the charge; and

4015 (iii) charge the county, city, or town for the State Tax Commission's services under this

4016 Subsection (3) in an amount:

4017 (A) sufficient to reimburse the State Tax Commission for the cost to the State Tax

4018 Commission in rendering the services; and

4019 (B) that may not exceed an amount equal to 1.5% of the charges imposed under this

4020 Subsection (3).

4021 (4) (a) Any money received by a public agency for the provision of 911 emergency

4022 telecommunications service shall be deposited in a special emergency telecommunications

4023 service fund.

4024 (b) (i) Except as provided in Subsection (5), the money in the emergency

4025 telecommunications service fund shall be expended by the public agency to pay the costs of
4026 establishing, installing, maintaining, and operating a 911 emergency telecommunications
4027 system or integrating a 911 system into an established public safety dispatch center, including
4028 contracting with the providers of local exchange service, radio communications service, and
4029 vendors of appropriate terminal equipment as necessary to implement the 911 emergency
4030 telecommunications service.

4031 (ii) Revenues derived for the funding of 911 emergency telecommunications service
4032 may only be used for that portion of costs related to the operation of the 911 emergency
4033 telecommunications system when such a system is integrated with any public safety dispatch
4034 system.

4035 (c) Any unexpended money in the emergency telecommunications service fund at the
4036 end of a fiscal year does not lapse, and must be carried forward to be used for the purposes
4037 described in this section.

4038 (5) (a) Revenue received by a local entity from an increase in the levy imposed under
4039 Subsection (3) after the 2004 Annual General Session, or from grants from the Utah 911
4040 Committee pursuant to Section 53-10-605:

4041 (i) shall be deposited into the special emergency telecommunications service fund
4042 described in Subsection (4)(a); and

4043 (ii) shall only be used for that portion of the costs related to the development and
4044 operation of wireless and land-based enhanced 911 emergency telecommunications service and
4045 the implementation of wireless E-911 Phase I and Phase II services as provided in Subsection
4046 (5)(b).

4047 (b) The costs allowed under Subsection (5)(a)(ii) shall include the public service
4048 answering point's or local entity's costs for:

4049 (i) acquisition, upgrade, modification, maintenance, and operation of public service
4050 answering point equipment capable of receiving E-911 information;

4051 (ii) database development, operation, and maintenance; and

4052 (iii) personnel costs associated with establishing, installing, maintaining, and operating
4053 wireless E-911 Phase I and Phase II services, including training emergency service personnel
4054 regarding receipt and use of E-911 wireless service information and educating consumers
4055 regarding the appropriate and responsible use of E-911 wireless service.

4056 (6) A local entity that increases the levy it imposes under Subsection (3)(c) after the
4057 2004 Annual General Session shall increase the levy to the maximum amount permitted by
4058 Subsection (3)(c).

4059 Section 35. **Effective date.**

4060 This bill takes effect on July 1, 2009.

S.B. 36 1st Sub. (Green) - Sales and Use Tax Amendments

Fiscal Note

2009 General Session
State of Utah

State Impact

Enactment of this bill increases taxes on certain companies and decreases taxes on other companies. As a result, revenue to the General Fund could increase by \$28,200 annually and revenue to the Critical Highway Needs Fund and the Transportation Investment Fund could increase by \$300 annually.

	<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	\$28,200	\$28,200
Transportation Fund Restricted	\$0	\$0	\$0	\$0	\$300	\$300
Total	\$0	\$0	\$0	\$0	\$28,500	\$28,500

Individual, Business and/or Local Impact

This bill affects different industries. Certain businesses that purchase equipment exempt from sales tax, but do not use the equipment in the state will be required to pay sales tax. These businesses will experience an increase in sales tax of \$65,000 in FY 2010 and \$67,000 in FY 2011.

Telecommunications companies that purchase plastic used in making certain calling cards will be subject to use tax. The expected amount is \$1,200. Individuals that recharge a prepaid calling card for exclusive international or interstate calls will be exempt from sales tax. The expected amount of this exemption is \$38,000 in FY 2010 and \$40,000 in FY 2011. Local governments could experience increased revenue of \$12,000 annually.