

TAX AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory S. Bell

House Sponsor: _____

LONG TITLE

General Description:

This bill amends the Resort Communities Tax part to enact a supplemental resort communities sales and use tax and address certain filing and notice requirements related to the resort communities tax and additional resort communities tax.

Highlighted Provisions:

This bill:

- ▶ enacts a supplemental resort communities sales and use tax, including:
 - providing and modifying definitions;
 - addressing the imposition of the tax;
 - addressing the tax base and tax rate;
 - addressing the determination of the location of a transaction;
 - addressing the expenditure of revenues collected from the tax;
 - addressing an administrative fee for the State Tax Commission to collect the tax;
 - addressing provisions relating to the enactment, repeal, or change in the rate of the tax; and
 - addressing the administration, collection, and enforcement of the tax;
- ▶ addresses certain reporting and notice requirements related to the resort communities tax and additional resort communities tax; and
- ▶ makes technical changes.



28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **59-12-102**, as last amended by Laws of Utah 2008, Chapters 3, 28, 286, 323, 382, and
35 384

36 **59-12-211**, as enacted by Laws of Utah 2008, Chapter 384

37 **59-12-405**, as enacted by Laws of Utah 2004, Chapter 224

38 ENACTS:

39 **59-12-402.1**, Utah Code Annotated 1953



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

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

43 **59-12-102. Definitions.**

44 As used in this chapter:

45 (1) "800 service" means a telecommunications service that:

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

47 (b) is typically marketed:

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

49 (ii) under the name 855 toll-free calling;

50 (iii) under the name 866 toll-free calling;

51 (iv) under the name 877 toll-free calling;

52 (v) under the name 888 toll-free calling; or

53 (vi) under a name similar to Subsections (1)(b)(i) through (v) as designated by the

54 Federal Communications Commission.

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

56 (i) a subscriber purchases;

57 (ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to

58 the subscriber's:

- 59 (A) prerecorded announcement; or
60 (B) live service; and
61 (iii) is typically marketed:
62 (A) under the name 900 service; or
63 (B) under a name similar to Subsection (2)~~(c)~~(a)(iii)(A) as designated by the Federal
64 Communications Commission.
- 65 (b) "900 service" does not include a charge for:
66 (i) a collection service a seller of a telecommunications service provides to a
67 subscriber; or
68 (ii) the following a subscriber sells to the subscriber's customer:
69 (A) a product; or
70 (B) a service.
- 71 (3) (a) "Admission or user fees" includes season passes.
72 (b) "Admission or user fees" does not include annual membership dues to private
73 organizations.
- 74 (4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on
75 November 12, 2002, including amendments made to the Streamlined Sales and Use Tax
76 Agreement after November 12, 2002.
- 77 (5) "Agreement combined tax rate" means the sum of the tax rates:
78 (a) listed under Subsection (6); and
79 (b) that are imposed within a local taxing jurisdiction.
- 80 (6) "Agreement sales and use tax" means a tax imposed under:
81 (a) Subsection 59-12-103(2)(a)(i)(A);
82 (b) Subsection 59-12-103(2)(b)(i);
83 (c) Subsection 59-12-103(2)(c)(i);
84 (d) Subsection 59-12-103(2)(d)(i)(A)(I);
85 (e) Section 59-12-204;
86 (f) Section 59-12-401;
87 (g) Section 59-12-402;
88 (h) Section 59-12-402.1;
89 ~~(h)~~ (i) Section 59-12-501;

- 90 [~~(i)~~] (j) Section 59-12-502;
- 91 [~~(j)~~] (k) Section 59-12-703;
- 92 [~~(k)~~] (l) Section 59-12-802;
- 93 [~~(l)~~] (m) Section 59-12-804;
- 94 [~~(m)~~] (n) Section 59-12-1001;
- 95 [~~(n)~~] (o) Section 59-12-1102;
- 96 [~~(o)~~] (p) Section 59-12-1302;
- 97 [~~(p)~~] (q) Section 59-12-1402;
- 98 [~~(q)~~] (r) Section 59-12-1503;
- 99 [~~(r)~~] (s) Section 59-12-1703;
- 100 [~~(s)~~] (t) Section 59-12-1802;
- 101 [~~(t)~~] (u) Section 59-12-1903;
- 102 [~~(u)~~] (v) Section 59-12-2003; or
- 103 [~~(v)~~] (w) Section 59-12-2103.

104 (7) "Aircraft" is as defined in Section 72-10-102.

105 (8) "Alcoholic beverage" means a beverage that:

- 106 (a) is suitable for human consumption; and
- 107 (b) contains .5% or more alcohol by volume.

108 (9) (a) "Ancillary service" means a service associated with, or incidental to, the
109 provision of telecommunications service.

110 (b) "Ancillary service" includes:

- 111 (i) a conference bridging service;
- 112 (ii) a detailed communications billing service;
- 113 (iii) directory assistance;
- 114 (iv) a vertical service; or
- 115 (v) a voice mail service.

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

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

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

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

123 (12) "Assisted cleaning or washing of tangible personal property" means cleaning or
124 washing of tangible personal property if the cleaning or washing labor is primarily performed
125 by an individual:

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

128 (b) at the direction of the seller of the cleaning or washing of the tangible personal
129 property.

130 (13) "Authorized carrier" means:

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

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

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

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

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

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

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

143 (B) animal waste;

144 (C) methane produced:

145 (I) at landfills; or

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

147 (D) aquatic plants; and

148 (E) agricultural products.

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

150 (i) black liquor;

151 (ii) treated woods; or

- 152 (iii) biomass from municipal solid waste other than methane produced:
- 153 (A) at landfills; or
- 154 (B) as a byproduct of the treatment of wastewater residuals.
- 155 (15) (a) "Bundled transaction" means the sale of two or more items of tangible personal
- 156 property, products, or services if the tangible personal property, products, or services are:
- 157 (i) distinct and identifiable; and
- 158 (ii) sold for one nonitemized price.
- 159 (b) "Bundled transaction" does not include:
- 160 (i) the sale of tangible personal property if the sales price varies, or is negotiable, on
- 161 the basis of the selection by the purchaser of the items of tangible personal property included in
- 162 the transaction;
- 163 (ii) the sale of real property;
- 164 (iii) the sale of services to real property;
- 165 (iv) the retail sale of tangible personal property and a service if:
- 166 (A) the tangible personal property:
- 167 (I) is essential to the use of the service; and
- 168 (II) is provided exclusively in connection with the service; and
- 169 (B) the service is the true object of the transaction;
- 170 (v) the retail sale of two services if:
- 171 (A) one service is provided that is essential to the use or receipt of a second service;
- 172 (B) the first service is provided exclusively in connection with the second service; and
- 173 (C) the second service is the true object of the transaction;
- 174 (vi) a transaction that includes tangible personal property or a product subject to
- 175 taxation under this chapter and tangible personal property or a product that is not subject to
- 176 taxation under this chapter if the:
- 177 (A) seller's purchase price of the tangible personal property or product subject to
- 178 taxation under this chapter is de minimis; or
- 179 (B) seller's sales price of the tangible personal property or product subject to taxation
- 180 under this chapter is de minimis; and
- 181 (vii) the retail sale of tangible personal property that is not subject to taxation under
- 182 this chapter and tangible personal property that is subject to taxation under this chapter if:

183 (A) that retail sale includes:
184 (I) food and food ingredients;
185 (II) a drug;
186 (III) durable medical equipment;
187 (IV) mobility enhancing equipment;
188 (V) an over-the-counter drug;
189 (VI) a prosthetic device; or
190 (VII) a medical supply; and
191 (B) subject to Subsection (15)(f):
192 (I) the seller's purchase price of the tangible personal property subject to taxation under
193 this chapter is 50% or less of the seller's total purchase price of that retail sale; or
194 (II) the seller's sales price of the tangible personal property subject to taxation under
195 this chapter is 50% or less of the seller's total sales price of that retail sale.
196 (c) (i) For purposes of Subsection (15)(a) (i), tangible personal property, a product, or a
197 service that is distinct and identifiable does not include:
198 (A) packaging that:
199 (I) accompanies the sale of the tangible personal property, product, or service; and
200 (II) is incidental or immaterial to the sale of the tangible personal property, product, or
201 service;
202 (B) tangible personal property, a product, or a service provided free of charge with the
203 purchase of another item of tangible personal property, a product, or a service; or
204 (C) an item of tangible personal property, a product, or a service included in the
205 definition of "purchase price."
206 (ii) For purposes of Subsection (15)(c)(i)(B), an item of tangible personal property, a
207 product, or a service is provided free of charge with the purchase of another item of tangible
208 personal property, a product, or a service if the sales price of the purchased item of tangible
209 personal property, product, or service does not vary depending on the inclusion of the tangible
210 personal property, product, or service provided free of charge.
211 (d) (i) For purposes of Subsection (15)(a)(ii), property sold for one nonitemized price
212 does not include a price that is separately identified by product on the following, regardless of
213 whether the following is in paper format or electronic format:

- 214 (A) a binding sales document; or
- 215 (B) another supporting sales-related document that is available to a purchaser.
- 216 (ii) For purposes of Subsection (15)(d)(i), a binding sales document or another
- 217 supporting sales-related document that is available to a purchaser includes:
 - 218 (A) a bill of sale;
 - 219 (B) a contract;
 - 220 (C) an invoice;
 - 221 (D) a lease agreement;
 - 222 (E) a periodic notice of rates and services;
 - 223 (F) a price list;
 - 224 (G) a rate card;
 - 225 (H) a receipt; or
 - 226 (I) a service agreement.
- 227 (e) (i) For purposes of Subsection (15)(b)(vi), the sales price of tangible personal
- 228 property or a product subject to taxation under this chapter is de minimis if:
 - 229 (A) the seller's purchase price of the tangible personal property or product is 10% or
 - 230 less of the seller's total purchase price of the bundled transaction; or
 - 231 (B) the seller's sales price of the tangible personal property or product is 10% or less of
 - 232 the seller's total sales price of the bundled transaction.
- 233 (ii) For purposes of Subsection (15)(b)(vi), a seller:
 - 234 (A) shall use the seller's purchase price or the seller's sales price to determine if the
 - 235 purchase price or sales price of the tangible personal property or product subject to taxation
 - 236 under this chapter is de minimis; and
 - 237 (B) may not use a combination of the seller's purchase price and the seller's sales price
 - 238 to determine if the purchase price or sales price of the tangible personal property or product
 - 239 subject to taxation under this chapter is de minimis.
- 240 (iii) For purposes of Subsection (15)(b)(vi), a seller shall use the full term of a service
- 241 contract to determine if the sales price of tangible personal property or a product is de minimis.
- 242 (f) For purposes of Subsection (15)(b)(vii)(B), a seller may not use a combination of
- 243 the seller's purchase price and the seller's sales price to determine if tangible personal property
- 244 subject to taxation under this chapter is 50% or less of the seller's total purchase price or sales

245 price of that retail sale.

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

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

250 (i) on a transaction; and

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

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

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

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

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

257 and

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

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

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

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

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

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

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

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

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

276 passenger's place of employment.

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

280 (22) "Component part" includes:

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

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

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

286 (d) feed, seeds, and seedlings.

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

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

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

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

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

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

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

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

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

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

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

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

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

305 (i) by a seller of:

306 (A) tangible personal property;

307 (B) a product transferred electronically; or
308 (C) services; and
309 (ii) for preparation and delivery of the tangible personal property, product transferred
310 electronically, or services described in Subsection (28)(a)(i) to a location designated by the
311 purchaser.

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

313 (i) transportation;

314 (ii) shipping;

315 (iii) postage;

316 (iv) handling;

317 (v) crating; or

318 (vi) packing.

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

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

322 (a) is intended to supplement the diet;

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

324 (i) a vitamin;

325 (ii) a mineral;

326 (iii) an herb or other botanical;

327 (iv) an amino acid;

328 (v) a dietary substance for use by humans to supplement the diet by increasing the total
329 dietary intake; or

330 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
331 described in Subsections (30)(b)(i) through (v);

332 (c) (i) except as provided in Subsection (30)(c)(ii), is intended for ingestion in:

333 (A) tablet form;

334 (B) capsule form;

335 (C) powder form;

336 (D) softgel form;

337 (E) gelcap form; or

- 338 (F) liquid form; or
- 339 (ii) notwithstanding Subsection (30)(c)(i), if the product is not intended for ingestion in
- 340 a form described in Subsections (30)(c)(i)(A) through (F), is not represented:
- 341 (A) as conventional food; and
- 342 (B) for use as a sole item of:
- 343 (I) a meal; or
- 344 (II) the diet; and
- 345 (d) is required to be labeled as a dietary supplement:
- 346 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 347 (ii) as required by 21 C.F.R. Sec. 101.36.
- 348 (31) (a) "Direct mail" means printed material delivered or distributed by United States
- 349 mail or other delivery service:
- 350 (i) to:
- 351 (A) a mass audience; or
- 352 (B) addressees on a mailing list provided by a purchaser of the mailing list; and
- 353 (ii) if the cost of the printed material is not billed directly to the recipients.
- 354 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
- 355 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 356 (c) "Direct mail" does not include multiple items of printed material delivered to a
- 357 single address.
- 358 (32) "Directory assistance" means an ancillary service of providing:
- 359 (a) address information; or
- 360 (b) telephone number information.
- 361 (33) (a) "Disposable home medical equipment or supplies" means medical equipment
- 362 or supplies that:
- 363 (i) cannot withstand repeated use; and
- 364 (ii) are purchased by, for, or on behalf of a person other than:
- 365 (A) a health care facility as defined in Section 26-21-2;
- 366 (B) a health care provider as defined in Section 78B-3-403;
- 367 (C) an office of a health care provider described in Subsection (33)(a)(ii)(B); or
- 368 (D) a person similar to a person described in Subsections (33)(a)(ii)(A) through (C).

- 369 (b) "Disposable home medical equipment or supplies" does not include:
- 370 (i) a drug;
- 371 (ii) durable medical equipment;
- 372 (iii) a hearing aid;
- 373 (iv) a hearing aid accessory;
- 374 (v) mobility enhancing equipment; or
- 375 (vi) tangible personal property used to correct impaired vision, including:
- 376 (A) eyeglasses; or
- 377 (B) contact lenses.
- 378 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 379 commission may by rule define what constitutes medical equipment or supplies.
- 380 (34) (a) "Drug" means a compound, substance, or preparation, or a component of a
- 381 compound, substance, or preparation that is:
- 382 (i) recognized in:
- 383 (A) the official United States Pharmacopoeia;
- 384 (B) the official Homeopathic Pharmacopoeia of the United States;
- 385 (C) the official National Formulary; or
- 386 (D) a supplement to a publication listed in Subsections (34)(a)(i)(A) through (C);
- 387 (ii) intended for use in the:
- 388 (A) diagnosis of disease;
- 389 (B) cure of disease;
- 390 (C) mitigation of disease;
- 391 (D) treatment of disease; or
- 392 (E) prevention of disease; or
- 393 (iii) intended to affect:
- 394 (A) the structure of the body; or
- 395 (B) any function of the body.
- 396 (b) "Drug" does not include:
- 397 (i) food and food ingredients;
- 398 (ii) a dietary supplement;
- 399 (iii) an alcoholic beverage; or

400 (iv) a prosthetic device.

401 (35) (a) Except as provided in Subsection (35)(c), "durable medical equipment" means
402 equipment that:

403 (i) can withstand repeated use;

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

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

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

407 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
408 equipment described in Subsection (35)(a).

409 (c) Notwithstanding Subsection (35)(a), "durable medical equipment" does not include
410 mobility enhancing equipment.

411 (36) "Electronic" means:

412 (a) relating to technology; and

413 (b) having:

414 (i) electrical capabilities;

415 (ii) digital capabilities;

416 (iii) magnetic capabilities;

417 (iv) wireless capabilities;

418 (v) optical capabilities;

419 (vi) electromagnetic capabilities; or

420 (vii) capabilities similar to Subsections (36)(b)(i) through (vi).

421 (37) "Employee" is as defined in Section 59-10-401.

422 (38) "Fixed guideway" means a public transit facility that uses and occupies:

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

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

425 (39) "Fixed wireless service" means a telecommunications service that provides radio
426 communication between fixed points.

427 (40) (a) "Food and food ingredients" means substances:

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

429 (A) liquid form;

430 (B) concentrated form;

- 431 (C) solid form;
- 432 (D) frozen form;
- 433 (E) dried form; or
- 434 (F) dehydrated form; and
- 435 (ii) that are:
- 436 (A) sold for:
- 437 (I) ingestion by humans; or
- 438 (II) chewing by humans; and
- 439 (B) consumed for the substance's:
- 440 (I) taste; or
- 441 (II) nutritional value.
- 442 (b) "Food and food ingredients" includes an item described in Subsection (75)(b)(iii).
- 443 (c) "Food and food ingredients" does not include:
- 444 (i) an alcoholic beverage;
- 445 (ii) tobacco; or
- 446 (iii) prepared food.
- 447 (41) (a) "Fundraising sales" means sales:
- 448 (i) (A) made by a school; or
- 449 (B) made by a school student;
- 450 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 451 materials, or provide transportation; and
- 452 (iii) that are part of an officially sanctioned school activity.
- 453 (b) For purposes of Subsection (41)(a)(iii), "officially sanctioned school activity"
- 454 means a school activity:
- 455 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 456 district governing the authorization and supervision of fundraising activities;
- 457 (ii) that does not directly or indirectly compensate an individual teacher or other
- 458 educational personnel by direct payment, commissions, or payment in kind; and
- 459 (iii) the net or gross revenues from which are deposited in a dedicated account
- 460 controlled by the school or school district.
- 461 (42) "Geothermal energy" means energy contained in heat that continuously flows

462 outward from the earth that is used as the sole source of energy to produce electricity.

463 (43) "Governing board of the agreement" means the governing board of the agreement
464 that is:

465 (a) authorized to administer the agreement; and

466 (b) established in accordance with the agreement.

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

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

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

472 (iii) the legislative branch of the state, including the House of Representatives, the
473 Senate, the Legislative Printing Office, the Office of Legislative Research and General
474 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal
475 Analyst;

476 (iv) the National Guard;

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

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

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

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

482 (ii) a school;

483 (iii) the State Board of Education;

484 (iv) the State Board of Regents; or

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

486 (45) "Hydroelectric energy" means water used as the sole source of energy to produce
487 electricity.

488 (46) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
489 other fuels:

490 (a) in mining or extraction of minerals;

491 (b) in agricultural operations to produce an agricultural product up to the time of
492 harvest or placing the agricultural product into a storage facility, including:

- 493 (i) commercial greenhouses;
- 494 (ii) irrigation pumps;
- 495 (iii) farm machinery;
- 496 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
- 497 registered under Title 41, Chapter 1a, Part 2, Registration; and
- 498 (v) other farming activities;
- 499 (c) in manufacturing tangible personal property at an establishment described in SIC
- 500 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
- 501 Executive Office of the President, Office of Management and Budget;
- 502 (d) by a scrap recycler if:
- 503 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 504 one or more of the following items into prepared grades of processed materials for use in new
- 505 products:
- 506 (A) iron;
- 507 (B) steel;
- 508 (C) nonferrous metal;
- 509 (D) paper;
- 510 (E) glass;
- 511 (F) plastic;
- 512 (G) textile; or
- 513 (H) rubber; and
- 514 (ii) the new products under Subsection (46)(d)(i) would otherwise be made with
- 515 nonrecycled materials; or
- 516 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a
- 517 cogeneration facility as defined in Section 54-2-1.
- 518 (47) (a) Except as provided in Subsection (47)(b), "installation charge" means a charge
- 519 for installing:
- 520 (i) tangible personal property; or
- 521 (ii) a product transferred electronically.
- 522 (b) "Installation charge" does not include a charge for repairs or renovations of:
- 523 (i) tangible personal property; or

524 (ii) a product transferred electronically.

525 (48) (a) "Lease" or "rental" means a transfer of possession or control of tangible
526 personal property or a product transferred electronically for:

527 (i) (A) a fixed term; or
528 (B) an indeterminate term; and
529 (ii) consideration.

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

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

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

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

540 (A) upon completion of required payments; and
541 (B) if the payment of an option price does not exceed the greater of:

542 (I) \$100; or
543 (II) 1% of the total required payments; or
544 (iii) providing tangible personal property along with an operator for a fixed period of
545 time or an indeterminate period of time if the operator is necessary for equipment to perform as
546 designed.

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

549 (i) set-up of tangible personal property;
550 (ii) maintenance of tangible personal property; or
551 (iii) inspection of tangible personal property.

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

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

- 555 (a) county that is authorized to impose an agreement sales and use tax;
- 556 (b) city that is authorized to impose an agreement sales and use tax; or
- 557 (c) town that is authorized to impose an agreement sales and use tax.
- 558 (51) "Manufactured home" is as defined in Section 58-56-3.
- 559 (52) For purposes of Section 59-12-104, "manufacturing facility" means:
- 560 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
- 561 Industrial Classification Manual of the federal Executive Office of the President, Office of
- 562 Management and Budget;
- 563 (b) a scrap recycler if:
- 564 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 565 one or more of the following items into prepared grades of processed materials for use in new
- 566 products:
- 567 (A) iron;
- 568 (B) steel;
- 569 (C) nonferrous metal;
- 570 (D) paper;
- 571 (E) glass;
- 572 (F) plastic;
- 573 (G) textile; or
- 574 (H) rubber; and
- 575 (ii) the new products under Subsection (52)(b)(i) would otherwise be made with
- 576 nonrecycled materials; or
- 577 (c) a cogeneration facility as defined in Section 54-2-1.
- 578 (53) "Member of the immediate family of the producer" means a person who is related
- 579 to a producer described in Subsection 59-12-104(20)(a) as a:
- 580 (a) child or stepchild, regardless of whether the child or stepchild is:
- 581 (i) an adopted child or adopted stepchild; or
- 582 (ii) a foster child or foster stepchild;
- 583 (b) grandchild or stepgrandchild;
- 584 (c) grandparent or stepgrandparent;
- 585 (d) nephew or stepnephew;

- 586 (e) niece or stepniece;
- 587 (f) parent or stepparent;
- 588 (g) sibling or stepsibling;
- 589 (h) spouse;
- 590 (i) person who is the spouse of a person described in Subsections (53)(a) through (g);

591 or

- 592 (j) person similar to a person described in Subsections (53)(a) through (i) as
- 593 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
- 594 Administrative Rulemaking Act.

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

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

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

- 600 (i) the origination point of the conveyance, routing, or transmission is not fixed;
- 601 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or
- 602 (iii) the origination point described in Subsection (56)(a)(i) and the termination point
603 described in Subsection (56)(a)(ii) are not fixed.

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

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

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

- 610 (i) primarily and customarily used to provide or increase the ability to move from one
611 place to another;
- 612 (ii) appropriate for use in a:
 - 613 (A) home; or
 - 614 (B) motor vehicle; and
- 615 (iii) not generally used by persons with normal mobility.

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

617 the equipment described in Subsection (57)(a).

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

620 (i) a motor vehicle;

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

623 (iii) durable medical equipment; or

624 (iv) a prosthetic device.

625 (58) "Model 1 seller" means a seller that has selected a certified service provider as the
626 seller's agent to perform all of the seller's sales and use tax functions for agreement sales and
627 use taxes other than the seller's obligation under Section 59-12-107.4 to remit a tax on the
628 seller's own purchases.

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

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

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

634 (i) collected by the seller; and

635 (ii) to the appropriate local taxing jurisdiction.

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

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

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

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

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

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

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

643 (b) For purposes of Subsection (60)(a), "model 3 seller" includes an affiliated group of
644 sellers using the same proprietary system.

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

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

647 (63) "Oil shale" means a group of fine black to dark brown shales containing

648 bituminous material that yields petroleum upon distillation.

649 (64) (a) "Other fuels" means products that burn independently to produce heat or
650 energy.

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

653 (65) (a) "Paging service" means a telecommunications service that provides
654 transmission of a coded radio signal for the purpose of activating a specific pager.

655 (b) For purposes of Subsection (65)(a), the transmission of a coded radio signal
656 includes a transmission by message or sound.

657 (66) "Pawnbroker" is as defined in Section 13-32a-102.

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

659 (68) (a) "Permanently attached to real property" means that for tangible personal
660 property attached to real property:

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

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

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

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

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

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

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

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

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

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

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

676 property and real property are located; or

677 (iii) property attached to oil, gas, or water pipelines, other than the property listed in
678 Subsection (68)(c)(iii).

- 679 (c) "Permanently attached to real property" does not include:
- 680 (i) the attachment of portable or movable tangible personal property to real property if
- 681 that portable or movable tangible personal property is attached to real property only for:
- 682 (A) convenience;
- 683 (B) stability; or
- 684 (C) for an obvious temporary purpose;
- 685 (ii) the detachment of tangible personal property from real property other than the
- 686 detachment described in Subsection (68)(b)(ii);
- 687 (iii) an attachment of the following tangible personal property to real property if the
- 688 attachment to real property is only through a line that supplies water, electricity, gas,
- 689 telecommunications, cable, or supplies a similar item as determined by the commission by rule
- 690 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
- 691 (A) a refrigerator;
- 692 (B) a washer;
- 693 (C) a dryer;
- 694 (D) a stove;
- 695 (E) a television;
- 696 (F) a computer;
- 697 (G) a telephone; or
- 698 (H) tangible personal property similar to Subsections (68)(c)(iii)(A) through (G) as
- 699 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
- 700 Administrative Rulemaking Act; or
- 701 (iv) the following if attached to real property, regardless of whether the attachment to
- 702 real property is only through a line that supplies water, electricity, gas, telephone, cable, or
- 703 supplies a similar item as determined by the commission by rule made in accordance with Title
- 704 63G, Chapter 3, Utah Administrative Rulemaking Act:
- 705 (A) a hot water heater;
- 706 (B) a water softener system; or
- 707 (C) a water filtration system.
- 708 (69) "Person" includes any individual, firm, partnership, joint venture, association,
- 709 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,

710 municipality, district, or other local governmental entity of the state, or any group or
711 combination acting as a unit.

712 (70) "Place of primary use":

713 (a) for telecommunications service other than mobile telecommunications service,
714 means the street address representative of where the purchaser's use of the telecommunications
715 service primarily occurs, which shall be:

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

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

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

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

722 (i) through the use of a:

723 (A) bank card;

724 (B) credit card;

725 (C) debit card; or

726 (D) travel card; or

727 (ii) by a charge made to a telephone number that is not associated with the origination
728 or termination of the telecommunications service.

729 (b) "Postpaid calling service" includes a service that would be a prepaid wireless
730 calling service if the service were exclusively a telecommunications service.

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

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

734 (a) that allows a purchaser access to telecommunications service that is exclusively
735 telecommunications service;

736 (b) that:

737 (i) is paid for in advance; and

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

739 (A) access number; or

740 (B) authorization code;

- 741 (c) that is dialed:
- 742 (i) manually; or
- 743 (ii) electronically; and
- 744 (d) sold in predetermined units or dollars that decline:
- 745 (i) by a known amount; and
- 746 (ii) with use.
- 747 (74) "Prepaid wireless calling service" means a telecommunications service:
- 748 (a) that provides the right to utilize:
- 749 (i) mobile wireless service; and
- 750 (ii) other service that is not a telecommunications service, including:
- 751 (A) the download of a product transferred electronically;
- 752 (B) a content service; or
- 753 (C) an ancillary service;
- 754 (b) that:
- 755 (i) is paid for in advance; and
- 756 (ii) enables the origination of a call using an:
- 757 (A) access number; or
- 758 (B) authorization code;
- 759 (c) that is dialed:
- 760 (i) manually; or
- 761 (ii) electronically; and
- 762 (d) sold in predetermined units or dollars that decline:
- 763 (i) by a known amount; and
- 764 (ii) with use.
- 765 (75) (a) "Prepared food" means:
- 766 (i) food:
- 767 (A) sold in a heated state; or
- 768 (B) heated by a seller;
- 769 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 770 item; or
- 771 (iii) except as provided in Subsection (75)(c), food sold with an eating utensil provided

772 by the seller, including a:

773 (A) plate;

774 (B) knife;

775 (C) fork;

776 (D) spoon;

777 (E) glass;

778 (F) cup;

779 (G) napkin; or

780 (H) straw.

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

782 (i) food that a seller only:

783 (A) cuts;

784 (B) repackages; or

785 (C) pasteurizes; or

786 (ii) (A) the following:

787 (I) raw egg;

788 (II) raw fish;

789 (III) raw meat;

790 (IV) raw poultry; or

791 (V) a food containing an item described in Subsections (75)(b)(ii)(A)(I) through (IV);

792 and

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

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

795 Subsection (75)(b)(ii)(A) to prevent food borne illness; or

796 (iii) the following if sold without eating utensils provided by the seller:

797 (A) food and food ingredients sold by a seller if the seller's proper primary

798 classification under the 2002 North American Industry Classification System of the federal

799 Executive Office of the President, Office of Management and Budget, is manufacturing in

800 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla

801 Manufacturing;

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

803 (I) by weight or volume; and

804 (II) as a single item; or

805 (C) a bakery item, including:

806 (I) a bagel;

807 (II) a bar;

808 (III) a biscuit;

809 (IV) bread;

810 (V) a bun;

811 (VI) a cake;

812 (VII) a cookie;

813 (VIII) a croissant;

814 (IX) a danish;

815 (X) a donut;

816 (XI) a muffin;

817 (XII) a pastry;

818 (XIII) a pie;

819 (XIV) a roll;

820 (XV) a tart;

821 (XVI) a torte; or

822 (XVII) a tortilla.

823 (c) Notwithstanding Subsection (75)(a)(iii), an eating utensil provided by the seller
824 does not include the following used to transport the food:

825 (i) a container; or

826 (ii) packaging.

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

828 (a) (i) orally;

829 (ii) in writing;

830 (iii) electronically; or

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

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

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

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

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

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

837 (b) "Prewritten computer software" includes:

838 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
839 software is not designed and developed:

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

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

842 (ii) notwithstanding Subsection (77)(a), computer software designed and developed by
843 the author or other creator of the computer software to the specifications of a specific purchaser
844 if the computer software is sold to a person other than the purchaser; or

845 (iii) notwithstanding Subsection (77)(a) and except as provided in Subsection (77)(c),
846 prewritten computer software or a prewritten portion of prewritten computer software:

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

848 (B) if the modification or enhancement described in Subsection (77)(b)(iii)(A) is
849 designed and developed to the specifications of a specific purchaser.

850 (c) Notwithstanding Subsection (77)(b)(iii), "prewritten computer software" does not
851 include a modification or enhancement described in Subsection (77)(b)(iii) if the charges for
852 the modification or enhancement are:

853 (i) reasonable; and

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

856 (78) (a) "Private communication service" means a telecommunications service:

857 (i) that entitles a customer to exclusive or priority use of one or more communications
858 channels between or among termination points; and

859 (ii) regardless of the manner in which the one or more communications channels are
860 connected.

861 (b) "Private communications service" includes the following provided in connection
862 with the use of one or more communications channels:

863 (i) an extension line;

864 (ii) a station; or

- 865 (iii) switching capacity.
- 866 (79) (a) "Prosthetic device" means a device that is worn on or in the body to:
- 867 (i) artificially replace a missing portion of the body;
- 868 (ii) prevent or correct a physical deformity or physical malfunction; or
- 869 (iii) support a weak or deformed portion of the body.
- 870 (b) "Prosthetic device" includes:
- 871 (i) parts used in the repairs or renovation of a prosthetic device;
- 872 (ii) replacement parts for a prosthetic device;
- 873 (iii) a dental prosthesis; or
- 874 (iv) a hearing aid.
- 875 (c) "Prosthetic device" does not include:
- 876 (i) corrective eyeglasses; or
- 877 (ii) contact lenses.
- 878 (80) (a) "Protective equipment" means an item:
- 879 (i) for human wear; and
- 880 (ii) that is:
- 881 (A) designed as protection:
- 882 (I) to the wearer against injury or disease; or
- 883 (II) against damage or injury of other persons or property; and
- 884 (B) not suitable for general use.
- 885 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 886 commission shall make rules:
- 887 (i) listing the items that constitute "protective equipment"; and
- 888 (ii) that are consistent with the list of items that constitute "protective equipment"
- 889 under the agreement.
- 890 (81) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or
- 891 printed matter, other than a photocopy:
- 892 (i) regardless of:
- 893 (A) characteristics;
- 894 (B) copyright;
- 895 (C) form;

- 896 (D) format;
- 897 (E) method of reproduction; or
- 898 (F) source; and
- 899 (ii) made available in printed or electronic format.
- 900 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 901 commission may by rule define the term "photocopy."
- 902 (82) (a) "Purchase price" and "sales price" mean the total amount of consideration:
- 903 (i) valued in money; and
- 904 (ii) for which tangible personal property, a product transferred electronically, or
- 905 services are:
 - 906 (A) sold;
 - 907 (B) leased; or
 - 908 (C) rented.
- 909 (b) "Purchase price" and "sales price" include:
- 910 (i) the seller's cost of the tangible personal property, a product transferred
- 911 electronically, or services sold;
- 912 (ii) expenses of the seller, including:
 - 913 (A) the cost of materials used;
 - 914 (B) a labor cost;
 - 915 (C) a service cost;
 - 916 (D) interest;
 - 917 (E) a loss;
 - 918 (F) the cost of transportation to the seller; or
 - 919 (G) a tax imposed on the seller;
- 920 (iii) a charge by the seller for any service necessary to complete the sale; or
- 921 (iv) consideration a seller receives from a person other than the purchaser if:
 - 922 (A) (I) the seller actually receives consideration from a person other than the purchaser;
 - 923 and
 - 924 (II) the consideration described in Subsection (82)(b)(iv)(A)(I) is directly related to a
 - 925 price reduction or discount on the sale;
 - 926 (B) the seller has an obligation to pass the price reduction or discount through to the

927 purchaser;

928 (C) the amount of the consideration attributable to the sale is fixed and determinable by
929 the seller at the time of the sale to the purchaser; and

930 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the
931 seller to claim a price reduction or discount; and

932 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,
933 coupon, or other documentation with the understanding that the person other than the seller
934 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;

935 (II) the purchaser identifies that purchaser to the seller as a member of a group or
936 organization allowed a price reduction or discount, except that a preferred customer card that is
937 available to any patron of a seller does not constitute membership in a group or organization
938 allowed a price reduction or discount; or

939 (III) the price reduction or discount is identified as a third party price reduction or
940 discount on the:

941 (Aa) invoice the purchaser receives; or

942 (Bb) certificate, coupon, or other documentation the purchaser presents.

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

944 (i) a discount:

945 (A) in a form including:

946 (I) cash;

947 (II) term; or

948 (III) coupon;

949 (B) that is allowed by a seller;

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

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

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

954 (A) the following from credit extended on the sale of tangible personal property or
955 services:

956 (I) a carrying charge;

957 (II) a financing charge; or

- 958 (III) an interest charge;
- 959 (B) a delivery charge;
- 960 (C) an installation charge;
- 961 (D) a manufacturer rebate on a motor vehicle; or
- 962 (E) a tax or fee legally imposed directly on the consumer.
- 963 (83) "Purchaser" means a person to whom:
- 964 (a) a sale of tangible personal property is made;
- 965 (b) a product is transferred electronically; or
- 966 (c) a service is furnished.
- 967 (84) "Regularly rented" means:
- 968 (a) rented to a guest for value three or more times during a calendar year; or
- 969 (b) advertised or held out to the public as a place that is regularly rented to guests for
- 970 value.
- 971 (85) "Renewable energy" means:
- 972 (a) biomass energy;
- 973 (b) hydroelectric energy;
- 974 (c) geothermal energy;
- 975 (d) solar energy; or
- 976 (e) wind energy.
- 977 (86) (a) "Renewable energy production facility" means a facility that:
- 978 (i) uses renewable energy to produce electricity; and
- 979 (ii) has a production capacity of 20 kilowatts or greater.
- 980 (b) A facility is a renewable energy production facility regardless of whether the
- 981 facility is:
- 982 (i) connected to an electric grid; or
- 983 (ii) located on the premises of an electricity consumer.
- 984 (87) "Rental" is as defined in Subsection (48).
- 985 (88) "Repairs or renovations of tangible personal property" means:
- 986 (a) a repair or renovation of tangible personal property that is not permanently attached
- 987 to real property; or
- 988 (b) attaching tangible personal property or a product that is transferred electronically to

989 other tangible personal property if the other tangible personal property to which the tangible
990 personal property or product that is transferred electronically is attached is not permanently
991 attached to real property.

992 (89) "Research and development" means the process of inquiry or experimentation
993 aimed at the discovery of facts, devices, technologies, or applications and the process of
994 preparing those devices, technologies, or applications for marketing.

995 (90) (a) "Residential telecommunications services" means a telecommunications
996 service or an ancillary service that is provided to an individual for personal use:

997 (i) at a residential address; or

998 (ii) at an institution, including a nursing home or a school, if the telecommunications
999 service or ancillary service is provided to and paid for by the individual residing at the
1000 institution rather than the institution.

1001 (b) For purposes of Subsection (90)(a), a residential address includes an:

1002 (i) apartment; or

1003 (ii) other individual dwelling unit.

1004 (91) "Residential use" means the use in or around a home, apartment building, sleeping
1005 quarters, and similar facilities or accommodations.

1006 (92) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
1007 than:

1008 (a) resale;

1009 (b) sublease; or

1010 (c) subrent.

1011 (93) (a) "Retailer" means any person engaged in a regularly organized business in
1012 tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and
1013 who is selling to the user or consumer and not for resale.

1014 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
1015 engaged in the business of selling to users or consumers within the state.

1016 (94) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
1017 otherwise, in any manner, of tangible personal property or any other taxable transaction under
1018 Subsection 59-12-103(1), for consideration.

1019 (b) "Sale" includes:

- 1020 (i) installment and credit sales;
- 1021 (ii) any closed transaction constituting a sale;
- 1022 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
- 1023 chapter;
- 1024 (iv) any transaction if the possession of property is transferred but the seller retains the
- 1025 title as security for the payment of the price; and
- 1026 (v) any transaction under which right to possession, operation, or use of any article of
- 1027 tangible personal property is granted under a lease or contract and the transfer of possession
- 1028 would be taxable if an outright sale were made.
- 1029 (95) "Sale at retail" is as defined in Subsection (92).
- 1030 (96) "Sale-leaseback transaction" means a transaction by which title to tangible
- 1031 personal property or a product transferred electronically that is subject to a tax under this
- 1032 chapter is transferred:
- 1033 (a) by a purchaser-lessee;
- 1034 (b) to a lessor;
- 1035 (c) for consideration; and
- 1036 (d) if:
- 1037 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
- 1038 of the tangible personal property or product transferred electronically;
- 1039 (ii) the sale of the tangible personal property or product transferred electronically to the
- 1040 lessor is intended as a form of financing:
- 1041 (A) for the tangible personal property or product transferred electronically; and
- 1042 (B) to the purchaser-lessee; and
- 1043 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
- 1044 is required to:
- 1045 (A) capitalize the tangible personal property or product transferred electronically for
- 1046 financial reporting purposes; and
- 1047 (B) account for the lease payments as payments made under a financing arrangement.
- 1048 (97) "Sales price" is as defined in Subsection (82).
- 1049 (98) (a) "Sales relating to schools" means the following sales by, amounts paid to, or
- 1050 amounts charged by a school:

- 1051 (i) sales that are directly related to the school's educational functions or activities
- 1052 including:
- 1053 (A) the sale of:
- 1054 (I) textbooks;
- 1055 (II) textbook fees;
- 1056 (III) laboratory fees;
- 1057 (IV) laboratory supplies; or
- 1058 (V) safety equipment;
- 1059 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
- 1060 that:
- 1061 (I) a student is specifically required to wear as a condition of participation in a
- 1062 school-related event or school-related activity; and
- 1063 (II) is not readily adaptable to general or continued usage to the extent that it takes the
- 1064 place of ordinary clothing;
- 1065 (C) sales of the following if the net or gross revenues generated by the sales are
- 1066 deposited into a school district fund or school fund dedicated to school meals:
- 1067 (I) food and food ingredients; or
- 1068 (II) prepared food; or
- 1069 (D) transportation charges for official school activities; or
- 1070 (ii) amounts paid to or amounts charged by a school for admission to a school-related
- 1071 event or school-related activity.
- 1072 (b) "Sales relating to schools" does not include:
- 1073 (i) bookstore sales of items that are not educational materials or supplies;
- 1074 (ii) except as provided in Subsection (98)(a)(i)(B):
- 1075 (A) clothing;
- 1076 (B) clothing accessories or equipment;
- 1077 (C) protective equipment; or
- 1078 (D) sports or recreational equipment; or
- 1079 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 1080 event or school-related activity if the amounts paid or charged are passed through to a person:
- 1081 (A) other than a:

- 1082 (I) school;
- 1083 (II) nonprofit organization authorized by a school board or a governing body of a
- 1084 private school to organize and direct a competitive secondary school activity; or
- 1085 (III) nonprofit association authorized by a school board or a governing body of a
- 1086 private school to organize and direct a competitive secondary school activity; and
- 1087 (B) that is required to collect sales and use taxes under this chapter.
- 1088 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1089 commission may make rules defining the term "passed through."
- 1090 (99) For purposes of this section and Section 59-12-104, "school":
- 1091 (a) means:
- 1092 (i) an elementary school or a secondary school that:
- 1093 (A) is a:
- 1094 (I) public school; or
- 1095 (II) private school; and
- 1096 (B) provides instruction for one or more grades kindergarten through 12; or
- 1097 (ii) a public school district; and
- 1098 (b) includes the Electronic High School as defined in Section 53A-15-1002.
- 1099 (100) "Seller" means a person that makes a sale, lease, or rental of:
- 1100 (a) tangible personal property;
- 1101 (b) a product transferred electronically; or
- 1102 (c) a service.
- 1103 (101) (a) "Semiconductor fabricating, processing, research, or development materials"
- 1104 means tangible personal property or a product transferred electronically if the tangible personal
- 1105 property or product transferred electronically is:
- 1106 (i) used primarily in the process of:
- 1107 (A) (I) manufacturing a semiconductor;
- 1108 (II) fabricating a semiconductor; or
- 1109 (III) research or development of a:
- 1110 (Aa) semiconductor; or
- 1111 (Bb) semiconductor manufacturing process; or
- 1112 (B) maintaining an environment suitable for a semiconductor; or

- 1113 (ii) consumed primarily in the process of:
- 1114 (A) (I) manufacturing a semiconductor;
- 1115 (II) fabricating a semiconductor; or
- 1116 (III) research or development of a:
- 1117 (Aa) semiconductor; or
- 1118 (Bb) semiconductor manufacturing process; or
- 1119 (B) maintaining an environment suitable for a semiconductor.
- 1120 (b) "Semiconductor fabricating, processing, research, or development materials"
- 1121 includes:
- 1122 (i) parts used in the repairs or renovations of tangible personal property or a product
- 1123 transferred electronically described in Subsection (101)(a); or
- 1124 (ii) a chemical, catalyst, or other material used to:
- 1125 (A) produce or induce in a semiconductor a:
- 1126 (I) chemical change; or
- 1127 (II) physical change;
- 1128 (B) remove impurities from a semiconductor; or
- 1129 (C) improve the marketable condition of a semiconductor.
- 1130 (102) "Senior citizen center" means a facility having the primary purpose of providing
- 1131 services to the aged as defined in Section 62A-3-101.
- 1132 (103) "Simplified electronic return" means the electronic return:
- 1133 (a) described in Section 318(C) of the agreement; and
- 1134 (b) approved by the governing board of the agreement.
- 1135 (104) "Solar energy" means the sun used as the sole source of energy for producing
- 1136 electricity.
- 1137 (105) (a) "Sports or recreational equipment" means an item:
- 1138 (i) designed for human use; and
- 1139 (ii) that is:
- 1140 (A) worn in conjunction with:
- 1141 (I) an athletic activity; or
- 1142 (II) a recreational activity; and
- 1143 (B) not suitable for general use.

1144 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1145 commission shall make rules:

- 1146 (i) listing the items that constitute "sports or recreational equipment"; and
- 1147 (ii) that are consistent with the list of items that constitute "sports or recreational
1148 equipment" under the agreement.

1149 (106) "State" means the state of Utah, its departments, and agencies.

1150 (107) "Storage" means any keeping or retention of tangible personal property or any
1151 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except
1152 sale in the regular course of business.

1153 (108) (a) Except as provided in Subsection (108)(c), "tangible personal property"
1154 means personal property that:

- 1155 (i) may be:
 - 1156 (A) seen;
 - 1157 (B) weighed;
 - 1158 (C) measured;
 - 1159 (D) felt; or
 - 1160 (E) touched; or
- 1161 (ii) is in any manner perceptible to the senses.

1162 (b) "Tangible personal property" includes:

- 1163 (i) electricity;
- 1164 (ii) water;
- 1165 (iii) gas;
- 1166 (iv) steam; or
- 1167 (v) prewritten computer software.

1168 (c) "Tangible personal property" does not include a product that is transferred
1169 electronically.

1170 (d) "Tangible personal property" does not include the following if attached to real
1171 property, regardless of whether the attachment to real property is only through a line that
1172 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
1173 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1174 Rulemaking Act:

- 1175 (i) a hot water heater;
- 1176 (ii) a water softener system; or
- 1177 (iii) a water filtration system.

1178 (109) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon
1179 and require further processing other than mechanical blending before becoming finished
1180 petroleum products.

1181 (110) (a) "Telecommunications enabling or facilitating equipment, machinery, or
1182 software" means an item listed in Subsection (110)(b) if that item is purchased or leased
1183 primarily to enable or facilitate one or more of the following to function:

- 1184 (i) telecommunications switching or routing equipment, machinery, or software; or
- 1185 (ii) telecommunications transmission equipment, machinery, or software.

1186 (b) The following apply to Subsection (110)(a):

- 1187 (i) a pole;
- 1188 (ii) software;
- 1189 (iii) a supplementary power supply;
- 1190 (iv) temperature or environmental equipment or machinery;
- 1191 (v) test equipment;
- 1192 (vi) a tower; or

1193 (vii) equipment, machinery, or software that functions similarly to an item listed in
1194 Subsections (110)(b)(i) through (vi) as determined by the commission by rule made in
1195 accordance with Subsection (110)(c).

1196 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1197 commission may by rule define what constitutes equipment, machinery, or software that
1198 functions similarly to an item listed in Subsections (110)(b)(i) through (vi).

1199 (111) "Telecommunications equipment, machinery, or software required for 911
1200 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.
1201 Sec. 20.18.

1202 (112) "Telecommunications maintenance or repair equipment, machinery, or software"
1203 means equipment, machinery, or software purchased or leased primarily to maintain or repair
1204 one or more of the following, regardless of whether the equipment, machinery, or software is
1205 purchased or leased as a spare part or as an upgrade or modification to one or more of the

1206 following:

1207 (a) telecommunications enabling or facilitating equipment, machinery, or software;

1208 (b) telecommunications switching or routing equipment, machinery, or software; or

1209 (c) telecommunications transmission equipment, machinery, or software.

1210 (113) (a) "Telecommunications service" means the electronic conveyance, routing, or
1211 transmission of audio, data, video, voice, or any other information or signal to a point, or
1212 among or between points.

1213 (b) "Telecommunications service" includes:

1214 (i) an electronic conveyance, routing, or transmission with respect to which a computer
1215 processing application is used to act:

1216 (A) on the code, form, or protocol of the content;

1217 (B) for the purpose of electronic conveyance, routing, or transmission; and

1218 (C) regardless of whether the service:

1219 (I) is referred to as voice over Internet protocol service; or

1220 (II) is classified by the Federal Communications Commission as enhanced or value
1221 added;

1222 (ii) an 800 service;

1223 (iii) a 900 service;

1224 (iv) a fixed wireless service;

1225 (v) a mobile wireless service;

1226 (vi) a postpaid calling service;

1227 (vii) a prepaid calling service;

1228 (viii) a prepaid wireless calling service; or

1229 (ix) a private communications service.

1230 (c) "Telecommunications service" does not include:

1231 (i) advertising, including directory advertising;

1232 (ii) an ancillary service;

1233 (iii) a billing and collection service provided to a third party;

1234 (iv) a data processing and information service if:

1235 (A) the data processing and information service allows data to be:

1236 (I) (Aa) acquired;

- 1237 (Bb) generated;
- 1238 (Cc) processed;
- 1239 (Dd) retrieved; or
- 1240 (Ee) stored; and
- 1241 (II) delivered by an electronic transmission to a purchaser; and
- 1242 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 1243 or information;
- 1244 (v) installation or maintenance of the following on a customer's premises:
- 1245 (A) equipment; or
- 1246 (B) wiring;
- 1247 (vi) Internet access service;
- 1248 (vii) a paging service;
- 1249 (viii) a product transferred electronically, including:
- 1250 (A) music;
- 1251 (B) reading material;
- 1252 (C) a ring tone;
- 1253 (D) software; or
- 1254 (E) video;
- 1255 (ix) a radio and television audio and video programming service:
- 1256 (A) regardless of the medium; and
- 1257 (B) including:
- 1258 (I) furnishing conveyance, routing, or transmission of a television audio and video
- 1259 programming service by a programming service provider;
- 1260 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
- 1261 (III) audio and video programming services delivered by a commercial mobile radio
- 1262 service provider as defined in 47 C.F.R. Sec. 20.3;
- 1263 (x) a value-added nonvoice data service; or
- 1264 (xi) tangible personal property.
- 1265 (114) (a) " Telecommunications service provider" means a person that:
- 1266 (i) owns, controls, operates, or manages a telecommunications service; and
- 1267 (ii) engages in an activity described in Subsection (114)(a)(i) for the shared use with or

1268 resale to any person of the telecommunications service.

1269 (b) A person described in Subsection (114)(a) is a telecommunications service provider
1270 whether or not the Public Service Commission of Utah regulates:

1271 (i) that person; or

1272 (ii) the telecommunications service that the person owns, controls, operates, or
1273 manages.

1274 (115) (a) "Telecommunications switching or routing equipment, machinery, or
1275 software" means an item listed in Subsection (115)(b) if that item is purchased or leased
1276 primarily for switching or routing:

1277 (i) an ancillary service;

1278 (ii) data communications;

1279 (iii) voice communications; or

1280 (iv) telecommunications service.

1281 (b) The following apply to Subsection (115)(a):

1282 (i) a bridge;

1283 (ii) a computer;

1284 (iii) a cross connect;

1285 (iv) a modem;

1286 (v) a multiplexer;

1287 (vi) plug in circuitry;

1288 (vii) a router;

1289 (viii) software;

1290 (ix) a switch; or

1291 (x) equipment, machinery, or software that functions similarly to an item listed in
1292 Subsections (115)(b)(i) through (ix) as determined by the commission by rule made in
1293 accordance with Subsection (115)(c).

1294 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1295 commission may by rule define what constitutes equipment, machinery, or software that
1296 functions similarly to an item listed in Subsections (115)(b)(i) through (ix).

1297 (116) (a) "Telecommunications transmission equipment, machinery, or software"
1298 means an item listed in Subsection (116)(b) if that item is purchased or leased primarily for

- 1299 sending, receiving, or transporting:
- 1300 (i) an ancillary service;
- 1301 (ii) data communications;
- 1302 (iii) voice communications; or
- 1303 (iv) telecommunications service.
- 1304 (b) The following apply to Subsection (116)(a):
- 1305 (i) an amplifier;
- 1306 (ii) a cable;
- 1307 (iii) a closure;
- 1308 (iv) a conduit;
- 1309 (v) a controller;
- 1310 (vi) a duplexer;
- 1311 (vii) a filter;
- 1312 (viii) an input device;
- 1313 (ix) an input/output device;
- 1314 (x) an insulator;
- 1315 (xi) microwave machinery or equipment;
- 1316 (xii) an oscillator;
- 1317 (xiii) an output device;
- 1318 (xiv) a pedestal;
- 1319 (xv) a power converter;
- 1320 (xvi) a power supply;
- 1321 (xvii) a radio channel;
- 1322 (xviii) a radio receiver;
- 1323 (xix) a radio transmitter;
- 1324 (xx) a repeater;
- 1325 (xxi) software;
- 1326 (xxii) a terminal;
- 1327 (xxiii) a timing unit;
- 1328 (xxiv) a transformer;
- 1329 (xxv) a wire; or

1330 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
1331 Subsections (116)(b)(i) through (xxv) as determined by the commission by rule made in
1332 accordance with Subsection (116)(c).

1333 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1334 commission may by rule define what constitutes equipment, machinery, or software that
1335 functions similarly to an item listed in Subsections (116)(b)(i) through (xxv).

1336 (117) "Tobacco" means:

1337 (a) a cigarette;

1338 (b) a cigar;

1339 (c) chewing tobacco;

1340 (d) pipe tobacco; or

1341 (e) any other item that contains tobacco.

1342 (118) "Unassisted amusement device" means an amusement device, skill device, or
1343 ride device that is started and stopped by the purchaser or renter of the right to use or operate
1344 the amusement device, skill device, or ride device.

1345 (119) (a) "Use" means the exercise of any right or power over tangible personal
1346 property, a product transferred electronically, or a service under Subsection 59-12-103(1),
1347 incident to the ownership or the leasing of that tangible personal property, product transferred
1348 electronically, or service.

1349 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal
1350 property, a product transferred electronically, or a service in the regular course of business and
1351 held for resale.

1352 (120) "Value-added nonvoice data service" means a service:

1353 (a) that otherwise meets the definition of a telecommunications service except that a
1354 computer processing application is used to act primarily for a purpose other than conveyance,
1355 routing, or transmission; and

1356 (b) with respect to which a computer processing application is used to act on data or
1357 information:

1358 (i) code;

1359 (ii) content;

1360 (iii) form; or

- 1361 (iv) protocol.
- 1362 (121) (a) Subject to Subsection (121)(b), "vehicle" means the following that are
- 1363 required to be titled, registered, or titled and registered:
- 1364 (i) an aircraft as defined in Section 72-10-102;
- 1365 (ii) a vehicle as defined in Section 41-1a-102;
- 1366 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1367 (iv) a vessel as defined in Section 41-1a-102.
- 1368 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:
- 1369 (i) a vehicle described in Subsection (121)(a); or
- 1370 (ii) (A) a locomotive;
- 1371 (B) a freight car;
- 1372 (C) railroad work equipment; or
- 1373 (D) other railroad rolling stock.
- 1374 (122) "Vehicle dealer" means a person engaged in the business of buying, selling, or
- 1375 exchanging a vehicle as defined in Subsection (121).
- 1376 (123) (a) "Vertical service" means an ancillary service that:
- 1377 (i) is offered in connection with one or more telecommunications services; and
- 1378 (ii) offers an advanced calling feature that allows a customer to:
- 1379 (A) identify a caller; and
- 1380 (B) manage multiple calls and call connections.
- 1381 (b) "Vertical service" includes an ancillary service that allows a customer to manage a
- 1382 conference bridging service.
- 1383 (124) (a) "Voice mail service" means an ancillary service that enables a customer to
- 1384 receive, send, or store a recorded message.
- 1385 (b) "Voice mail service" does not include a vertical service that a customer is required
- 1386 to have in order to utilize a voice mail service.
- 1387 (125) (a) Except as provided in Subsection (125)(b), "waste energy facility" means a
- 1388 facility that generates electricity:
- 1389 (i) using as the primary source of energy waste materials that would be placed in a
- 1390 landfill or refuse pit if it were not used to generate electricity, including:
- 1391 (A) tires;

- 1392 (B) waste coal; or
- 1393 (C) oil shale; and
- 1394 (ii) in amounts greater than actually required for the operation of the facility.
- 1395 (b) "Waste energy facility" does not include a facility that incinerates:
- 1396 (i) municipal solid waste;
- 1397 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or
- 1398 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.
- 1399 (126) "Watercraft" means a vessel as defined in Section 73-18-2.
- 1400 (127) "Wind energy" means wind used as the sole source of energy to produce
- 1401 electricity.
- 1402 (128) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
- 1403 location by the United States Postal Service.
- 1404 Section 2. Section **59-12-211** is amended to read:
- 1405 **59-12-211. Definitions -- Location of certain transactions -- Reports to**
- 1406 **commission -- Direct payment provision for a seller making certain purchases --**
- 1407 **Exceptions.**
- 1408 (1) As used in this section:
- 1409 (a) (i) "Receipt" and "receive" mean:
- 1410 (A) taking possession of tangible personal property;
- 1411 (B) making first use of a service; or
- 1412 (C) for a product transferred electronically, the earlier of:
- 1413 (I) taking possession of the product transferred electronically; or
- 1414 (II) making first use of the product transferred electronically.
- 1415 (ii) "Receipt" and "receive" do not include possession by a shipping company on behalf
- 1416 of a purchaser.
- 1417 (b) "Transportation equipment" means:
- 1418 (i) a locomotive or rail car that is used to carry a person or property in interstate
- 1419 commerce;
- 1420 (ii) a truck or truck-tractor:
- 1421 (A) with a gross vehicle weight rating of 10,001 pounds or more;
- 1422 (B) registered under Section 41-1a-301; and

- 1423 (C) operated under the authority of a carrier authorized and certificated:
1424 (I) by the United States Department of Transportation or another federal authority; and
1425 (II) to engage in carrying a person or property in interstate commerce;
1426 (iii) a trailer, semitrailer, or passenger bus that is:
1427 (A) registered under Section 41-1a-301; and
1428 (B) operated under the authority of a carrier authorized and certificated:
1429 (I) by the United States Department of Transportation or another federal authority; and
1430 (II) to engage in carrying a person or property in interstate commerce;
1431 (iv) an aircraft that is operated by an air carrier authorized and certificated:
1432 (A) by the United States Department of Transportation or another federal or foreign
1433 authority; and
1434 (B) to engage in carrying a person or property in interstate commerce; or
1435 (v) a container designed for use on, or a component part attached or secured on an item
1436 of equipment listed in, Subsections (1)(b)(i) through (iv).
1437 (2) Except as provided in Subsections (8) and (13), if tangible personal property, a
1438 product transferred electronically, or a service that is subject to taxation under this chapter is
1439 received by a purchaser at a business location of a seller, the location of the transaction is the
1440 business location of the seller.
1441 (3) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
1442 and (13), if tangible personal property, a product transferred electronically, or a service that is
1443 subject to taxation under this chapter is not received by a purchaser at a business location of a
1444 seller, the location of the transaction is the location where the purchaser takes receipt of the
1445 tangible personal property or service.
1446 (4) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
1447 and (13), if Subsection (2) or (3) does not apply, the location of the transaction is the location
1448 indicated by an address for or other information on the purchaser if:
1449 (a) the address or other information is available from the seller's business records; and
1450 (b) use of the address or other information from the seller's records does not constitute
1451 bad faith.
1452 (5) (a) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9),
1453 (11), and (13), if Subsection (2), (3), or (4) does not apply, the location of the transaction is the

1454 location indicated by an address for the purchaser if:

- 1455 (i) the address is obtained during the consummation of the transaction; and
- 1456 (ii) use of the address described in Subsection (5)(a)(i) does not constitute bad faith.

1457 (b) An address used under Subsection (5)(a) includes the address of a purchaser's
1458 payment instrument if no other address is available.

1459 (6) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
1460 and (13), if Subsection (2), (3), (4), or (5) does not apply or if a seller does not have sufficient
1461 information to apply Subsection (2), (3), (4), or (5), the location of the transaction is the
1462 location indicated by the address from which:

1463 (a) except as provided in Subsection (6)(b), for tangible personal property that is
1464 subject to taxation under this chapter, the tangible personal property is shipped;

1465 (b) for computer software delivered electronically or for a product transferred
1466 electronically that is subject to taxation under this chapter, the computer software or product
1467 transferred electronically is first available for transmission by the seller; or

1468 (c) for a service that is subject to taxation under this chapter, the service is provided.

1469 (7) (a) For purposes of this Subsection (7), "shared ZIP Code" means a nine-digit ZIP
1470 Code that is located within two or more local taxing jurisdictions.

1471 (b) If the location of a transaction determined under Subsections (3) through (6) is in a
1472 shared ZIP Code, the location of the transaction is:

1473 (i) if there is only one local taxing jurisdiction that imposes the lowest agreement
1474 combined tax rate for the shared ZIP Code, the local taxing jurisdiction that imposes the lowest
1475 agreement combined tax rate; or

1476 (ii) if two or more local taxing jurisdictions impose the lowest agreement combined tax
1477 rate for the shared ZIP Code, the local taxing jurisdiction that:

1478 (A) imposes the lowest agreement combined tax rate for the shared ZIP Code; and

1479 (B) has located within the local taxing jurisdiction the largest number of street
1480 addresses within the shared ZIP Code.

1481 (c) For purposes of Subsection (7)(b), a seller shall collect a tax imposed under this
1482 chapter at the lowest agreement combined tax rate imposed within the local taxing jurisdiction
1483 in which the transaction is located under Subsection (7)(b) notwithstanding:

1484 (i) Section 59-12-204;

- 1485 (ii) Section 59-12-401;
- 1486 (iii) Section 59-12-402;
- 1487 (iv) Section 59-12-402.1;
- 1488 [~~(iv)~~] (v) Section 59-12-501;
- 1489 [~~(v)~~] (vi) Section 59-12-502;
- 1490 [~~(vi)~~] (vii) Section 59-12-703;
- 1491 [~~(vii)~~] (viii) Section 59-12-802;
- 1492 [~~(viii)~~] (ix) Section 59-12-804;
- 1493 [~~(ix)~~] (x) Section 59-12-1001;
- 1494 [~~(x)~~] (xi) Section 59-12-1102;
- 1495 [~~(xi)~~] (xii) Section 59-12-1302;
- 1496 [~~(xii)~~] (xiii) Section 59-12-1402;
- 1497 [~~(xiii)~~] (xiv) Section 59-12-1503;
- 1498 [~~(xiv)~~] (xv) Section 59-12-1703; or
- 1499 [~~(xv)~~] (xvi) Section 59-12-1802.
- 1500 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1501 commission may make rules:
 - 1502 (i) providing for the circumstances under which a seller has exercised due diligence in
 - 1503 determining the nine-digit ZIP Code for an address; or
 - 1504 (ii) notwithstanding Subsection (7)(b), for determining the local taxing jurisdiction
 - 1505 within which a transaction is located if a seller is unable to determine the local taxing
 - 1506 jurisdiction within which the transaction is located under Subsection (7)(b).
 - 1507 (8) The location of a transaction made with a direct payment permit described in
 - 1508 Section 59-12-107.1 is the location where receipt of the tangible personal property, product, or
 - 1509 service by the purchaser occurs.
 - 1510 (9) The location of a purchase of direct mail is the location described in Subsection (6),
 - 1511 if the purchaser of the direct mail:
 - 1512 (a) has not been issued a direct payment permit under Section 59-12-107.1; and
 - 1513 (b) does not provide the seller the form or information described in Subsection
 - 1514 59-12-123(1).
 - 1515 (10) (a) Except as provided in Subsection (10)(b), the location of a transaction

1516 determined under Subsections (3) through (6), (8), or (9), is the local taxing jurisdiction within
1517 which:

1518 (i) the nine-digit ZIP Code assigned to the location determined under Subsections (3)
1519 through (6), (8), or (9) is located; or

1520 (ii) the five-digit ZIP Code assigned to the location determined under Subsections (3)
1521 through (6), (8), or (9) is located if:

1522 (A) a nine-digit ZIP Code is not available for the location determined under
1523 Subsections (3) through (6), (8), or (9); or

1524 (B) after exercising due diligence, a seller or certified service provider is unable to
1525 determine a nine-digit ZIP Code for the location determined under Subsections (3) through (6),
1526 (8), or (9).

1527 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1528 commission may make rules for determining the local taxing jurisdiction within which a
1529 transaction is located if a seller or certified service provider is unable to determine the local
1530 taxing jurisdiction within which the transaction is located under Subsection (10)(a).

1531 (11) (a) As used in this Subsection (11), "florist delivery transaction" means a
1532 transaction commenced by a florist that transmits an order:

1533 (i) by:

1534 (A) telegraph;

1535 (B) telephone; or

1536 (C) a means of communication similar to Subsection (11)(a)(i)(A) or (B); and

1537 (ii) for delivery to another place:

1538 (A) in this state; or

1539 (B) outside this state.

1540 (b) Notwithstanding Subsections (3) through (6), beginning on January 1, 2009, and
1541 ending on December 31, 2009, the location of a florist delivery transaction is the business
1542 location of the florist that commences the florist delivery transaction.

1543 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1544 commission may by rule:

1545 (i) define:

1546 (A) "business location"; and

- 1547 (B) "florist";
- 1548 (ii) define what constitutes a means of communication similar to Subsection
- 1549 (11)(a)(i)(A) or (B); and
- 1550 (iii) provide procedures for determining when a transaction is commenced.
- 1551 (12) (a) A tax collected under this chapter shall be reported to the commission on a
- 1552 form that identifies the location of each transaction that occurs during the return filing period.
- 1553 (b) The form described in Subsection (12)(a) shall be filed with the commission as
- 1554 required under this chapter.
- 1555 (13) This section does not apply to:
- 1556 (a) amounts charged by a seller for:
- 1557 (i) telecommunications service; or
- 1558 (ii) the retail sale or transfer of:
- 1559 (A) a motor vehicle other than a motor vehicle that is transportation equipment;
- 1560 (B) an aircraft other than an aircraft that is transportation equipment;
- 1561 (C) a watercraft;
- 1562 (D) a modular home;
- 1563 (E) a manufactured home; or
- 1564 (F) a mobile home; or
- 1565 (iii) except as provided in Section 59-12-214, the lease or rental of tangible personal
- 1566 property other than tangible personal property that is transportation equipment;
- 1567 (b) a tax paid under this chapter:
- 1568 (i) by a seller; and
- 1569 (ii) for the seller's purchases; or
- 1570 (c) a retail sale of tangible personal property or a product transferred electronically if:
- 1571 (i) the seller receives the order for the tangible personal property or product transferred
- 1572 electronically in this state;
- 1573 (ii) receipt of the tangible personal property or product transferred electronically by the
- 1574 purchaser or the purchaser's donee occurs in this state;
- 1575 (iii) the location where receipt of the tangible personal property or product transferred
- 1576 electronically by the purchaser occurs is determined in accordance with Subsections (3)
- 1577 through (5); and

1578 (iv) at the time the seller receives the order, the record keeping system that the seller
1579 uses to calculate the proper amount of tax imposed under this chapter captures the location
1580 where the order is received.

1581 Section 3. Section **59-12-402.1** is enacted to read:

1582 **59-12-402.1. Definitions -- Supplemental resort communities sales and use tax --**
1583 **Base -- Rate -- Determining the location of a transaction -- Expenditure of revenues**
1584 **collected from the tax -- Administrative fee.**

1585 (1) As used in this section:

1586 (a) "Airline" is as defined in Section 59-2-102.

1587 (b) "Local highway of regional significance" is as defined in Section 59-12-1902.

1588 (c) "Public transit" is as defined in Section 17B-2a-802.

1589 (d) "Qualifying airport" means an airport at which one or more airlines operate.

1590 (2) Subject to the other provisions of this section, beginning on October 1, 2009, the
1591 city legislative body of a city of the first or second class that has a qualifying airport located
1592 within that city of the first or second class may, in addition to any other sales and use tax
1593 imposed within the city of the first or second class, impose a supplemental resort communities
1594 sales and use tax in an amount that does not exceed .70%.

1595 (3) (a) Except as provided in Subsection (3)(b), a supplemental resort communities
1596 sales and use tax under this section shall be imposed on the transactions described in
1597 Subsection 59-12-103(1) located within the city of the first or second class that imposes the
1598 tax.

1599 (b) A supplemental resort communities sales and use tax under this section may not be
1600 imposed on:

1601 (i) the sale of:

1602 (A) an aircraft;

1603 (B) a manufactured home;

1604 (C) a mobile home;

1605 (D) a modular home;

1606 (E) a motor vehicle; or

1607 (F) a watercraft;

1608 (ii) the sales and uses described in Section 59-12-104 to the extent the sales and uses

1609 are exempt from taxation under Section 59-12-104; and

1610 (iii) except as provided in Subsection (3)(d), amounts paid or charged for food and
1611 food ingredients.

1612 (c) For purposes of this Subsection (3), the location of a transaction shall be
1613 determined in accordance with Sections 59-12-211 through 59-12-215.

1614 (d) A city legislative body of a city of the first or second class imposing a supplemental
1615 resort communities sales and use tax under this section shall impose the tax on amounts paid or
1616 charged for food and food ingredients if the food and food ingredients are sold as part of a
1617 bundled transaction attributable to food and food ingredients and tangible personal property
1618 other than food and food ingredients.

1619 (4) To impose a supplemental resort communities sales and use tax under this section,
1620 a city legislative body of a city of the first or second class shall obtain approval from a majority
1621 of the members of the city legislative body.

1622 (5) The city legislative body of a city of the first or second class that imposes a
1623 supplemental resort communities sales and use tax under this section may expend the revenues
1624 collected from the tax for one or more of the following purposes:

1625 (a) to fund a system for public transit as determined by the city legislative body;

1626 (b) to fund a facility or infrastructure that benefits persons who reside in and persons
1627 who travel to the city of the first or second class as determined by the city legislative body; or

1628 (c) to fund a local highway of regional significance as determined by the city legislative
1629 body.

1630 (6) (a) Subject to the other provisions of this Subsection (6), the city legislative body of
1631 a city of the first or second class may pledge revenues from a supplemental resort communities
1632 sales and use tax under this section as security for a bond, note, or other evidence of
1633 indebtedness to fund a purpose described in Subsection (5).

1634 (b) A city legislative body of a city of the first or second class may not:

1635 (i) pledge revenues from a supplemental resort communities sales and use tax under
1636 this section as security for a bond, note, or other evidence of indebtedness if that bond, note, or
1637 other evidence of indebtedness is issued on or after September 30, 2024; or

1638 (ii) on or after September 30, 2024, do any of the following with respect to a bond,
1639 note, or other evidence of indebtedness issued before September 30, 2024:

1640 (A) increase the face value of the bond, note, or other evidence of indebtedness; or

1641 (B) increase the term for repayment of the bond, note, or other evidence of

1642 indebtedness.

1643 (7) The commission shall transmit revenues collected from a supplemental resort

1644 communities sales and use tax under this section within a city of the first or second class:

1645 (a) to the city of the first or second class within which the supplemental resort

1646 communities sales and use tax is imposed;

1647 (b) monthly; and

1648 (c) by electronic funds transfer.

1649 (8) (a) The commission may retain an amount of supplemental resort communities

1650 sales and use tax collected under this section of not to exceed the lesser of:

1651 (i) 1.50%; or

1652 (ii) an amount equal to the cost to the commission of administering this section.

1653 (b) Any amount the commission retains under Subsection (8)(a) shall be:

1654 (i) deposited into the Sales and Use Tax Administrative Fees Account; and

1655 (ii) used as provided in Subsection 59-12-206(2).

1656 Section 4. Section **59-12-405** is amended to read:

1657 **59-12-405. Definitions -- Municipality filing requirements for lodging unit**

1658 **capacity -- Failure to meet eligibility requirements -- Notice to municipality --**

1659 **Municipality authority to impose tax.**

1660 (1) As used in this section:

1661 (a) "High-occupancy lodging unit" means each bedroom in a:

1662 (i) hostel; or

1663 (ii) a unit similar to a hostel as determined by the commission by rule[?].

1664 (b) "High-occupancy lodging unit capacity of a municipality" means the product of:

1665 (i) the total number of high-occupancy lodging units within the incorporated

1666 boundaries of a municipality on the first day of the calendar quarter during which the

1667 municipality files the form described in Subsection (3); and

1668 (ii) four[?].

1669 (c) "Recreational lodging unit" means each site in a:

1670 (i) campground that:

- 1671 (A) is issued a business license by the municipality in which the campground is
1672 located; and
- 1673 (B) provides the following hookups:
- 1674 (I) water;
- 1675 (II) sewer; and
- 1676 (III) electricity; or
- 1677 (ii) recreational vehicle park that provides the following hookups:
- 1678 (A) water;
- 1679 (B) sewer; and
- 1680 (C) electricity; or
- 1681 (iii) unit similar to Subsection (1)(c)(i) or (ii) as determined by the commission by
1682 rule[?].
- 1683 (d) "Recreational lodging unit capacity of a municipality" means the product of:
- 1684 (i) the total number of recreational lodging units within the incorporated boundaries of
1685 a municipality on the first day of the calendar quarter during which the municipality files the
1686 form described in Subsection (3); and
- 1687 (ii) four[?].
- 1688 (e) "Special lodging unit" means a lodging unit:
- 1689 (i) that is a:
- 1690 (A) high-occupancy lodging unit;
- 1691 (B) recreational lodging unit; or
- 1692 (C) standard lodging unit;
- 1693 (ii) for which the commission finds that in determining the capacity of the lodging unit
1694 the lodging unit should be multiplied by a number other than a number described in:
- 1695 (A) for a high-occupancy lodging unit, Subsection (1)(b)(ii);
- 1696 (B) for a recreational lodging unit, Subsection (1)(d)(ii); or
- 1697 (C) for a standard lodging unit, Subsection (1)(i)(ii); and
- 1698 (iii) for which the municipality in which the lodging unit is located files a written
1699 request with the commission for the finding described in Subsection (1)(e)(ii)[?].
- 1700 (f) "Special lodging unit capacity of a municipality" means the sum of the special
1701 lodging unit numbers for all of the special lodging units within the incorporated boundaries of

1702 a municipality on the first day of the calendar quarter during which the municipality files the
1703 form described in Subsection (3)[;].

1704 (g) "Special lodging unit number" means the number by which the commission finds
1705 that a special lodging unit should be multiplied in determining the capacity of the special
1706 lodging unit[;].

1707 (h) "Standard lodging unit" means each bedroom in:

1708 (i) a hotel;

1709 (ii) a motel;

1710 (iii) a bed and breakfast establishment;

1711 (iv) an inn;

1712 (v) a condominium that is:

1713 (A) part of a rental pool; or

1714 (B) regularly rented out for a time period of less than 30 consecutive days;

1715 (vi) a property used as a residence that is:

1716 (A) part of a rental pool; or

1717 (B) regularly rented out for a time period of less than 30 consecutive days; or

1718 (vii) a unit similar to Subsections (1)(h)(i) through (vi) as determined by the
1719 commission by rule[;].

1720 (i) "Standard lodging unit capacity of a municipality" means the product of:

1721 (i) the total number of standard lodging units within the incorporated boundaries of a
1722 municipality on the first day of the calendar quarter during which the municipality files the
1723 form described in Subsection (3); and

1724 (ii) three[; ~~and~~].

1725 (j) "Transient room capacity" means the sum of:

1726 (i) the high-occupancy lodging unit capacity of a municipality;

1727 (ii) the recreational lodging unit capacity of a municipality;

1728 (iii) the special lodging unit capacity of a municipality; and

1729 (iv) the standard lodging unit capacity of a municipality.

1730 (2) A municipality that imposes a tax under [~~this part~~] Section 59-12-401 or 59-12-402
1731 shall provide the commission the following information as provided in this section:

1732 (a) the high-occupancy lodging unit capacity of the municipality;

- 1733 (b) the recreational lodging unit capacity of the municipality;
- 1734 (c) the special lodging unit capacity of the municipality; and
- 1735 (d) the standard lodging unit capacity of the municipality.
- 1736 (3) A municipality that imposes a tax under Section 59-12-401 or 59-12-402 shall file
- 1737 with the commission the information required by Subsection (1):
- 1738 (a) on a form provided by the commission; and
- 1739 (b) on or before:
- 1740 (i) for a municipality that is required by Section 59-12-403 to provide notice to the
- 1741 commission, the day on which the municipality provides the notice required by Section
- 1742 59-12-403 to the commission; or
- 1743 (ii) for a municipality that is not required by Section 59-12-403 to provide notice to the
- 1744 commission, July 1 of each year.
- 1745 (4) If the commission determines that a municipality that files the form described in
- 1746 Subsection (3) has a transient room capacity that is less than 66% of the municipality's
- 1747 permanent census population, the commission shall notify the municipality in writing:
- 1748 (a) that the municipality's transient room capacity is less than 66% of the municipality's
- 1749 permanent census population; and
- 1750 (b) (i) for a municipality that is required by Section 59-12-403 to provide notice to the
- 1751 commission, within 30 days after the day on which the municipality provides the notice to the
- 1752 commission; or
- 1753 (ii) for a municipality that is not required by Section 59-12-403 to provide notice to the
- 1754 commission, on or before September 1.
- 1755 (5) (a) For a municipality that does not impose a tax under Section 59-12-401 on the
- 1756 day on which the municipality files the form described in Subsection (3), if the commission
- 1757 provides written notice described in Subsection (4) to the municipality, the municipality may
- 1758 not impose a tax under ~~[this part]~~ Section 59-12-401 until the municipality meets the
- 1759 requirements of this part to enact the tax.
- 1760 (b) For a municipality that does not impose a tax under Section 59-12-402 on the day
- 1761 on which the municipality files the form described in Subsection (3), if the commission
- 1762 provides written notice described in Subsection (4) to the municipality, the municipality may
- 1763 not impose a tax under Section 59-12-402 until the municipality meets the requirements of this

1764 part to enact the tax.

1765 ~~(b)~~ (c) For a municipality that is not required by Section 59-12-403 to provide notice
1766 to the commission, if the commission provides written notice described in Subsection (4) to the
1767 municipality for two consecutive calendar years, the municipality may not impose a tax under
1768 ~~this part~~ Section 59-12-401 or 59-12-402:

1769 (i) beginning on July 1 of the year after the year during which the commission provided
1770 written notice described in Subsection (4):

1771 (A) to the municipality; and

1772 (B) for the second consecutive calendar year; and

1773 (ii) until the municipality meets the requirements of this part to enact the tax.

Legislative Review Note
as of 2-26-09 12:23 PM

Office of Legislative Research and General Counsel

S.B. 248 - Tax Amendments

Fiscal Note

2009 General Session
State of Utah

State Impact

Enactment of this bill allows the Tax Commission to keep up to 1.5% of the amount collected to cover costs of collection. Currently, the amount kept for administration is 0.8%. This would increase revenue to the Sales & Use Tax Administration Fee Account by \$310,400 in FY 2010 and \$313,400 in FY 2011.

	<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 Restricted	\$0	\$310,400	\$313,400	\$0	\$0	\$0
Total	\$0	\$310,400	\$313,400	\$0	\$0	\$0

Individual, Business and/or Local Impact

Individuals and businesses residing within the boundaries of eligible taxing entities will experience a sales tax increase of \$38,800,000 in FY 2010 and \$39,200,000 in FY 2011. There will be increased sales tax revenue to local taxing entities that may be used for highways, facilities or infrastructure, or a system of public transit.