

AMENDMENTS TO TAX PROVISIONS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill makes changes to sales and use taxes imposed on certain accommodations and services.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ makes changes related to the taxation and collection of taxes imposed on hotel accommodations and services if a transaction involves a room remarketer;
- ▶ grants rulemaking authority to the State Tax Commission; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

AMENDS:

59-12-102, as last amended by Laws of Utah 2010, Chapters 88, 142, 234, and 263

59-12-103, as last amended by Laws of Utah 2010, Chapter 412

ENACTS:

59-12-104.6, Utah Code Annotated 1953



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

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

59-12-102. Definitions.

As used in this chapter:

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

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

(b) is typically marketed:

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

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

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

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

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

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

Federal Communications Commission.

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

(i) a subscriber purchases;

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

(A) prerecorded announcement; or

(B) live service; and

(iii) is typically marketed:

(A) under the name 900 service; or

(B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal

Communications Commission.

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

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

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

(A) a product; or

(B) a service.

- 59 (3) (a) "Admission or user fees" includes season passes.
- 60 (b) "Admission or user fees" does not include annual membership dues to private
- 61 organizations.
- 62 (4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on
- 63 November 12, 2002, including amendments made to the Streamlined Sales and Use Tax
- 64 Agreement after November 12, 2002.
- 65 (5) "Agreement combined tax rate" means the sum of the tax rates:
- 66 (a) listed under Subsection (6); and
- 67 (b) that are imposed within a local taxing jurisdiction.
- 68 (6) "Agreement sales and use tax" means a tax imposed under:
- 69 (a) Subsection 59-12-103(2)(a)(i)(A);
- 70 (b) Subsection 59-12-103(2)(b)(i);
- 71 (c) Subsection 59-12-103(2)(c)(i);
- 72 (d) Subsection 59-12-103(2)(d)(i)(A)(I);
- 73 (e) Section 59-12-204;
- 74 (f) Section 59-12-401;
- 75 (g) Section 59-12-402;
- 76 (h) Section 59-12-703;
- 77 (i) Section 59-12-802;
- 78 (j) Section 59-12-804;
- 79 (k) Section 59-12-1102;
- 80 (l) Section 59-12-1302;
- 81 (m) Section 59-12-1402;
- 82 (n) Section 59-12-1802;
- 83 (o) Section 59-12-2003;
- 84 (p) Section 59-12-2103;
- 85 (q) Section 59-12-2213;
- 86 (r) Section 59-12-2214;
- 87 (s) Section 59-12-2215;
- 88 (t) Section 59-12-2216;
- 89 (u) Section 59-12-2217; or

- 90 (v) Section 59-12-2218.
- 91 (7) "Aircraft" is as defined in Section 72-10-102.
- 92 (8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:
 - 93 (a) except for an airline as defined in Section 59-2-102 or an affiliated group as defined
 - 94 in Subsection 59-12-107(1)(f) of an airline; and
 - 95 (b) that has the workers, expertise, and facilities to perform the following, regardless of
 - 96 whether the business entity performs the following in this state:
 - 97 (i) check, diagnose, overhaul, and repair:
 - 98 (A) an onboard system of a fixed wing turbine powered aircraft; and
 - 99 (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;
 - 100 (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft
 - 101 engine;
 - 102 (iii) perform at least the following maintenance on a fixed wing turbine powered
 - 103 aircraft:
 - 104 (A) an inspection;
 - 105 (B) a repair, including a structural repair or modification;
 - 106 (C) changing landing gear; and
 - 107 (D) addressing issues related to an aging fixed wing turbine powered aircraft;
 - 108 (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and
 - 109 completely apply new paint to the fixed wing turbine powered aircraft; and
 - 110 (v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that
 - 111 results in a change in the fixed wing turbine powered aircraft's certification requirements by the
 - 112 authority that certifies the fixed wing turbine powered aircraft.
 - 113 (9) "Alcoholic beverage" means a beverage that:
 - 114 (a) is suitable for human consumption; and
 - 115 (b) contains .5% or more alcohol by volume.
 - 116 (10) (a) "Ancillary service" means a service associated with, or incidental to, the
 - 117 provision of telecommunications service.
 - 118 (b) "Ancillary service" includes:
 - 119 (i) a conference bridging service;
 - 120 (ii) a detailed communications billing service;

121 (iii) directory assistance;

122 (iv) a vertical service; or

123 (v) a voice mail service.

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

125 (12) "Assisted amusement device" means an amusement device, skill device, or ride
126 device that is started and stopped by an individual:

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

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

131 (13) "Assisted cleaning or washing of tangible personal property" means cleaning or
132 washing of tangible personal property if the cleaning or washing labor is primarily performed
133 by an individual:

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

136 (b) at the direction of the seller of the cleaning or washing of the tangible personal
137 property.

138 (14) "Authorized carrier" means:

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

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

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

146 (15) (a) Except as provided in Subsection (15)(b), "biomass energy" means any of the
147 following that is used as the primary source of energy to produce fuel or electricity:

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

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

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

151 (B) animal waste;

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

183 taxation under this chapter and tangible personal property or a product that is not subject to
184 taxation under this chapter if the:

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

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

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

191 (A) that retail sale includes:

192 (I) food and food ingredients;

193 (II) a drug;

194 (III) durable medical equipment;

195 (IV) mobility enhancing equipment;

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

197 (VI) a prosthetic device; or

198 (VII) a medical supply; and

199 (B) subject to Subsection (16)(f):

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

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

204 (c) (i) For purposes of Subsection (16)(a)(i), tangible personal property, a product, or a
205 service that is distinct and identifiable does not include:

206 (A) packaging that:

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

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

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

212 (C) an item of tangible personal property, a product, or a service included in the
213 definition of "purchase price."

214 (ii) For purposes of Subsection (16)(c)(i)(B), an item of tangible personal property, a
215 product, or a service is provided free of charge with the purchase of another item of tangible
216 personal property, a product, or a service if the sales price of the purchased item of tangible
217 personal property, product, or service does not vary depending on the inclusion of the tangible
218 personal property, product, or service provided free of charge.

219 (d) (i) For purposes of Subsection (16)(a)(ii), property sold for one nonitemized price
220 does not include a price that is separately identified by tangible personal property, product, or
221 service on the following, regardless of whether the following is in paper format or electronic
222 format:

223 (A) a binding sales document; or

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

225 (ii) For purposes of Subsection (16)(d)(i), a binding sales document or another
226 supporting sales-related document that is available to a purchaser includes:

227 (A) a bill of sale;

228 (B) a contract;

229 (C) an invoice;

230 (D) a lease agreement;

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

232 (F) a price list;

233 (G) a rate card;

234 (H) a receipt; or

235 (I) a service agreement.

236 (e) (i) For purposes of Subsection (16)(b)(vi), the sales price of tangible personal
237 property or a product subject to taxation under this chapter is de minimis if:

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

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

242 (ii) For purposes of Subsection (16)(b)(vi), a seller:

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

245 under this chapter is de minimis; and

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

249 (iii) For purposes of Subsection (16)(b)(vi), a seller shall use the full term of a service
250 contract to determine if the sales price of tangible personal property or a product is de minimis.

251 (f) For purposes of Subsection (16)(b)(vii)(B), a seller may not use a combination of
252 the seller's purchase price and the seller's sales price to determine if tangible personal property
253 subject to taxation under this chapter is 50% or less of the seller's total purchase price or sales
254 price of that retail sale.

255 (17) "Certified automated system" means software certified by the governing board of
256 the agreement that:

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

259 (i) on a transaction; and

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

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

263 (c) maintains a record of the transaction described in Subsection (17)(a)(i).

264 (18) "Certified service provider" means an agent certified:

265 (a) by the governing board of the agreement; and

266 (b) to perform all of a seller's sales and use tax functions for an agreement sales and
267 use tax other than the seller's obligation under Section 59-12-124 to remit a tax on the seller's
268 own purchases.

269 (19) (a) Subject to Subsection (19)(b), "clothing" means all human wearing apparel
270 suitable for general use.

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

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

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

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

277 (21) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
278 fuels that does not constitute industrial use under Subsection (48) or residential use under
279 Subsection (94).

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

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

285 (ii) For purposes of Subsection (22)(b)(i), in accordance with Title 63G, Chapter 3,
286 Utah Administrative Rulemaking Act, the commission may make rules defining what
287 constitutes a person's place of employment.

288 (23) "Component part" includes:

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

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

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

294 (d) feed, seeds, and seedlings.

295 (24) "Computer" means an electronic device that accepts information:

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

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

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

299 (25) "Computer software" means a set of coded instructions designed to cause:

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

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

302 (26) (a) "Conference bridging service" means an ancillary service that links two or
303 more participants of an audio conference call or video conference call.

304 (b) "Conference bridging service" includes providing a telephone number as part of the
305 ancillary service described in Subsection (26)(a).

306 (c) "Conference bridging service" does not include a telecommunications service used

307 to reach the ancillary service described in Subsection (26)(a).

308 (27) "Construction materials" means any tangible personal property that will be
309 converted into real property.

310 (28) "Delivered electronically" means delivered to a purchaser by means other than
311 tangible storage media.

312 (29) (a) "Delivery charge" means a charge:

313 (i) by a seller of:

314 (A) tangible personal property;

315 (B) a product transferred electronically; or

316 (C) services; and

317 (ii) for preparation and delivery of the tangible personal property, product transferred
318 electronically, or services described in Subsection (29)(a)(i) to a location designated by the
319 purchaser.

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

321 (i) transportation;

322 (ii) shipping;

323 (iii) postage;

324 (iv) handling;

325 (v) crating; or

326 (vi) packing.

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

329 (31) "Dietary supplement" means a product, other than tobacco, that:

330 (a) is intended to supplement the diet;

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

332 (i) a vitamin;

333 (ii) a mineral;

334 (iii) an herb or other botanical;

335 (iv) an amino acid;

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

338 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
339 described in Subsections (31)(b)(i) through (v);

340 (c) (i) except as provided in Subsection (31)(c)(ii), is intended for ingestion in:

341 (A) tablet form;

342 (B) capsule form;

343 (C) powder form;

344 (D) softgel form;

345 (E) gelcap form; or

346 (F) liquid form; or

347 (ii) notwithstanding Subsection (31)(c)(i), if the product is not intended for ingestion in
348 a form described in Subsections (31)(c)(i)(A) through (F), is not represented:

349 (A) as conventional food; and

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

351 (I) a meal; or

352 (II) the diet; and

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

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

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

356 (32) (a) "Direct mail" means printed material delivered or distributed by United States
357 mail or other delivery service:

358 (i) to:

359 (A) a mass audience; or

360 (B) addressees on a mailing list provided:

361 (I) by a purchaser of the mailing list; or

362 (II) at the discretion of the purchaser of the mailing list; and

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

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

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

368 (33) "Directory assistance" means an ancillary service of providing:

- 369 (a) address information; or
- 370 (b) telephone number information.

371 (34) (a) "Disposable home medical equipment or supplies" means medical equipment
372 or supplies that:

- 373 (i) cannot withstand repeated use; and
- 374 (ii) are purchased by, for, or on behalf of a person other than:
 - 375 (A) a health care facility as defined in Section 26-21-2;
 - 376 (B) a health care provider as defined in Section 78B-3-403;
 - 377 (C) an office of a health care provider described in Subsection (34)(a)(ii)(B); or
 - 378 (D) a person similar to a person described in Subsections (34)(a)(ii)(A) through (C).

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

- 380 (i) a drug;
- 381 (ii) durable medical equipment;
- 382 (iii) a hearing aid;
- 383 (iv) a hearing aid accessory;
- 384 (v) mobility enhancing equipment; or
- 385 (vi) tangible personal property used to correct impaired vision, including:
 - 386 (A) eyeglasses; or
 - 387 (B) contact lenses.

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

390 (35) (a) "Drug" means a compound, substance, or preparation, or a component of a
391 compound, substance, or preparation that is:

- 392 (i) recognized in:
 - 393 (A) the official United States Pharmacopoeia;
 - 394 (B) the official Homeopathic Pharmacopoeia of the United States;
 - 395 (C) the official National Formulary; or
 - 396 (D) a supplement to a publication listed in Subsections (35)(a)(i)(A) through (C);
- 397 (ii) intended for use in the:
 - 398 (A) diagnosis of disease;
 - 399 (B) cure of disease;

- 400 (C) mitigation of disease;
- 401 (D) treatment of disease; or
- 402 (E) prevention of disease; or
- 403 (iii) intended to affect:
 - 404 (A) the structure of the body; or
 - 405 (B) any function of the body.
- 406 (b) "Drug" does not include:
 - 407 (i) food and food ingredients;
 - 408 (ii) a dietary supplement;
 - 409 (iii) an alcoholic beverage; or
 - 410 (iv) a prosthetic device.
- 411 (36) (a) Except as provided in Subsection (36)(c), "durable medical equipment" means
- 412 equipment that:
 - 413 (i) can withstand repeated use;
 - 414 (ii) is primarily and customarily used to serve a medical purpose;
 - 415 (iii) generally is not useful to a person in the absence of illness or injury; and
 - 416 (iv) is not worn in or on the body.
- 417 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 418 equipment described in Subsection (36)(a).
- 419 (c) Notwithstanding Subsection (36)(a), "durable medical equipment" does not include
- 420 mobility enhancing equipment.
- 421 (37) "Electronic" means:
 - 422 (a) relating to technology; and
 - 423 (b) having:
 - 424 (i) electrical capabilities;
 - 425 (ii) digital capabilities;
 - 426 (iii) magnetic capabilities;
 - 427 (iv) wireless capabilities;
 - 428 (v) optical capabilities;
 - 429 (vi) electromagnetic capabilities; or
 - 430 (vii) capabilities similar to Subsections (37)(b)(i) through (vi).

- 431 (38) "Employee" is as defined in Section 59-10-401.
- 432 (39) "Fixed guideway" means a public transit facility that uses and occupies:
 - 433 (a) rail for the use of public transit; or
 - 434 (b) a separate right-of-way for the use of public transit.
- 435 (40) "Fixed wing turbine powered aircraft" means an aircraft that:
 - 436 (a) is powered by turbine engines;
 - 437 (b) operates on jet fuel; and
 - 438 (c) has wings that are permanently attached to the fuselage of the aircraft.
- 439 (41) "Fixed wireless service" means a telecommunications service that provides radio
440 communication between fixed points.
- 441 (42) (a) "Food and food ingredients" means substances:
 - 442 (i) regardless of whether the substances are in:
 - 443 (A) liquid form;
 - 444 (B) concentrated form;
 - 445 (C) solid form;
 - 446 (D) frozen form;
 - 447 (E) dried form; or
 - 448 (F) dehydrated form; and
 - 449 (ii) that are:
 - 450 (A) sold for:
 - 451 (I) ingestion by humans; or
 - 452 (II) chewing by humans; and
 - 453 (B) consumed for the substance's:
 - 454 (I) taste; or
 - 455 (II) nutritional value.
- 456 (b) "Food and food ingredients" includes an item described in Subsection (78)(b)(iii).
- 457 (c) "Food and food ingredients" does not include:
 - 458 (i) an alcoholic beverage;
 - 459 (ii) tobacco; or
 - 460 (iii) prepared food.
- 461 (43) (a) "Fundraising sales" means sales:

- 462 (i) (A) made by a school; or
- 463 (B) made by a school student;
- 464 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 465 materials, or provide transportation; and
- 466 (iii) that are part of an officially sanctioned school activity.
- 467 (b) For purposes of Subsection (43)(a)(iii), "officially sanctioned school activity"
- 468 means a school activity:
 - 469 (i) that is conducted in accordance with a formal policy adopted by the school or school
 - 470 district governing the authorization and supervision of fundraising activities;
 - 471 (ii) that does not directly or indirectly compensate an individual teacher or other
 - 472 educational personnel by direct payment, commissions, or payment in kind; and
 - 473 (iii) the net or gross revenues from which are deposited in a dedicated account
 - 474 controlled by the school or school district.
- 475 (44) "Geothermal energy" means energy contained in heat that continuously flows
- 476 outward from the earth that is used as the sole source of energy to produce electricity.
- 477 (45) "Governing board of the agreement" means the governing board of the agreement
- 478 that is:
 - 479 (a) authorized to administer the agreement; and
 - 480 (b) established in accordance with the agreement.
- 481 (46) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:
 - 482 (i) the executive branch of the state, including all departments, institutions, boards,
 - 483 divisions, bureaus, offices, commissions, and committees;
 - 484 (ii) the judicial branch of the state, including the courts, the Judicial Council, the
 - 485 Office of the Court Administrator, and similar administrative units in the judicial branch;
 - 486 (iii) the legislative branch of the state, including the House of Representatives, the
 - 487 Senate, the Legislative Printing Office, the Office of Legislative Research and General
 - 488 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal
 - 489 Analyst;
 - 490 (iv) the National Guard;
 - 491 (v) an independent entity as defined in Section 63E-1-102; or
 - 492 (vi) a political subdivision as defined in Section 17B-1-102.

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

- 495 (i) a college campus of the Utah College of Applied Technology;
- 496 (ii) a school;
- 497 (iii) the State Board of Education;
- 498 (iv) the State Board of Regents; or
- 499 (v) a state institution of higher education as defined in Section 53B-3-102.

500 (47) "Hydroelectric energy" means water used as the sole source of energy to produce
501 electricity.

502 (48) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
503 other fuels:

- 504 (a) in mining or extraction of minerals;
- 505 (b) in agricultural operations to produce an agricultural product up to the time of
506 harvest or placing the agricultural product into a storage facility, including:

- 507 (i) commercial greenhouses;
- 508 (ii) irrigation pumps;
- 509 (iii) farm machinery;
- 510 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
511 registered under Title 41, Chapter 1a, Part 2, Registration; and
- 512 (v) other farming activities;

513 (c) in manufacturing tangible personal property at an establishment described in SIC
514 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
515 Executive Office of the President, Office of Management and Budget;

516 (d) by a scrap recycler if:

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

- 520 (A) iron;
- 521 (B) steel;
- 522 (C) nonferrous metal;
- 523 (D) paper;

524 (E) glass;
525 (F) plastic;
526 (G) textile; or
527 (H) rubber; and
528 (ii) the new products under Subsection (48)(d)(i) would otherwise be made with
529 nonrecycled materials; or

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

532 (49) (a) Except as provided in Subsection (49)(b), "installation charge" means a charge
533 for installing:

534 (i) tangible personal property; or
535 (ii) a product transferred electronically.

536 (b) "Installation charge" does not include a charge for repairs or renovations of:

537 (i) tangible personal property; or
538 (ii) a product transferred electronically.

539 (50) (a) "Lease" or "rental" means a transfer of possession or control of tangible
540 personal property or a product transferred electronically for:

541 (i) (A) a fixed term; or
542 (B) an indeterminate term; and
543 (ii) consideration.

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

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

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

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

554 (A) upon completion of required payments; and

- 555 (B) if the payment of an option price does not exceed the greater of:
- 556 (I) \$100; or
- 557 (II) 1% of the total required payments; or
- 558 (iii) providing tangible personal property along with an operator for a fixed period of
- 559 time or an indeterminate period of time if the operator is necessary for equipment to perform as
- 560 designed.
- 561 (d) For purposes of Subsection (50)(c)(iii), an operator is necessary for equipment to
- 562 perform as designed if the operator's duties exceed the:
- 563 (i) set-up of tangible personal property;
- 564 (ii) maintenance of tangible personal property; or
- 565 (iii) inspection of tangible personal property.
- 566 (51) "Load and leave" means delivery to a purchaser by use of a tangible storage media
- 567 if the tangible storage media is not physically transferred to the purchaser.
- 568 (52) "Local taxing jurisdiction" means a:
- 569 (a) county that is authorized to impose an agreement sales and use tax;
- 570 (b) city that is authorized to impose an agreement sales and use tax; or
- 571 (c) town that is authorized to impose an agreement sales and use tax.
- 572 (53) "Manufactured home" is as defined in Section 58-56-3.
- 573 (54) For purposes of Section 59-12-104, "manufacturing facility" means:
- 574 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
- 575 Industrial Classification Manual of the federal Executive Office of the President, Office of
- 576 Management and Budget;
- 577 (b) a scrap recycler if:
- 578 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 579 one or more of the following items into prepared grades of processed materials for use in new
- 580 products:
- 581 (A) iron;
- 582 (B) steel;
- 583 (C) nonferrous metal;
- 584 (D) paper;
- 585 (E) glass;

- 586 (F) plastic;
- 587 (G) textile; or
- 588 (H) rubber; and
- 589 (ii) the new products under Subsection (54)(b)(i) would otherwise be made with
- 590 nonrecycled materials; or
- 591 (c) a cogeneration facility as defined in Section 54-2-1.
- 592 (55) "Member of the immediate family of the producer" means a person who is related
- 593 to a producer described in Subsection 59-12-104(20)(a) as a:
- 594 (a) child or stepchild, regardless of whether the child or stepchild is:
- 595 (i) an adopted child or adopted stepchild; or
- 596 (ii) a foster child or foster stepchild;
- 597 (b) grandchild or stepgrandchild;
- 598 (c) grandparent or stepgrandparent;
- 599 (d) nephew or stepnephew;
- 600 (e) niece or stepniece;
- 601 (f) parent or stepparent;
- 602 (g) sibling or stepsibling;
- 603 (h) spouse;
- 604 (i) person who is the spouse of a person described in Subsections (55)(a) through (g);
- 605 or
- 606 (j) person similar to a person described in Subsections (55)(a) through (i) as
- 607 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
- 608 Administrative Rulemaking Act.
- 609 (56) "Mobile home" is as defined in Section 58-56-3.
- 610 (57) "Mobile telecommunications service" is as defined in the Mobile
- 611 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
- 612 (58) (a) "Mobile wireless service" means a telecommunications service, regardless of
- 613 the technology used, if:
- 614 (i) the origination point of the conveyance, routing, or transmission is not fixed;
- 615 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or
- 616 (iii) the origination point described in Subsection (58)(a)(i) and the termination point

617 described in Subsection (58)(a)(ii) are not fixed.

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

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

622 (59) (a) Except as provided in Subsection (59)(c), "mobility enhancing equipment"
623 means equipment that is:

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

626 (ii) appropriate for use in a:

627 (A) home; or

628 (B) motor vehicle; and

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

630 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
631 the equipment described in Subsection (59)(a).

632 (c) Notwithstanding Subsection (59)(a), "mobility enhancing equipment" does not
633 include:

634 (i) a motor vehicle;

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

637 (iii) durable medical equipment; or

638 (iv) a prosthetic device.

639 (60) "Model 1 seller" means a seller registered under the agreement that has selected a
640 certified service provider as the seller's agent to perform all of the seller's sales and use tax
641 functions for agreement sales and use taxes other than the seller's obligation under Section
642 59-12-124 to remit a tax on the seller's own purchases.

643 (61) "Model 2 seller" means a seller registered under the agreement that:

644 (a) except as provided in Subsection (61)(b), has selected a certified automated system
645 to perform the seller's sales tax functions for agreement sales and use taxes; and

646 (b) notwithstanding Subsection (61)(a), retains responsibility for remitting all of the
647 sales tax:

- 648 (i) collected by the seller; and
- 649 (ii) to the appropriate local taxing jurisdiction.
- 650 (62) (a) Subject to Subsection (62)(b), "model 3 seller" means a seller registered under
- 651 the agreement that has:
 - 652 (i) sales in at least five states that are members of the agreement;
 - 653 (ii) total annual sales revenues of at least \$500,000,000;
 - 654 (iii) a proprietary system that calculates the amount of tax:
 - 655 (A) for an agreement sales and use tax; and
 - 656 (B) due to each local taxing jurisdiction; and
 - 657 (iv) entered into a performance agreement with the governing board of the agreement.
- 658 (b) For purposes of Subsection (62)(a), "model 3 seller" includes an affiliated group of
- 659 sellers using the same proprietary system.
- 660 (63) "Model 4 seller" means a seller that is registered under the agreement and is not a
- 661 model 1 seller, model 2 seller, or model 3 seller.
- 662 (64) "Modular home" means a modular unit as defined in Section 58-56-3.
- 663 (65) "Motor vehicle" is as defined in Section 41-1a-102.
- 664 (66) "Oil shale" means a group of fine black to dark brown shales containing
- 665 bituminous material that yields petroleum upon distillation.
- 666 (67) (a) "Other fuels" means products that burn independently to produce heat or
- 667 energy.
- 668 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible
- 669 personal property.
- 670 (68) (a) "Paging service" means a telecommunications service that provides
- 671 transmission of a coded radio signal for the purpose of activating a specific pager.
- 672 (b) For purposes of Subsection (68)(a), the transmission of a coded radio signal
- 673 includes a transmission by message or sound.
- 674 (69) "Pawnbroker" is as defined in Section 13-32a-102.
- 675 (70) "Pawn transaction" is as defined in Section 13-32a-102.
- 676 (71) (a) "Permanently attached to real property" means that for tangible personal
- 677 property attached to real property:
 - 678 (i) the attachment of the tangible personal property to the real property:

- 679 (A) is essential to the use of the tangible personal property; and
- 680 (B) suggests that the tangible personal property will remain attached to the real
- 681 property in the same place over the useful life of the tangible personal property; or
- 682 (ii) if the tangible personal property is detached from the real property, the detachment
- 683 would:
 - 684 (A) cause substantial damage to the tangible personal property; or
 - 685 (B) require substantial alteration or repair of the real property to which the tangible
 - 686 personal property is attached.
- 687 (b) "Permanently attached to real property" includes:
 - 688 (i) the attachment of an accessory to the tangible personal property if the accessory is:
 - 689 (A) essential to the operation of the tangible personal property; and
 - 690 (B) attached only to facilitate the operation of the tangible personal property;
 - 691 (ii) a temporary detachment of tangible personal property from real property for a
 - 692 repair or renovation if the repair or renovation is performed where the tangible personal
 - 693 property and real property are located; or
 - 694 (iii) property attached to oil, gas, or water pipelines, except for the property listed in
 - 695 Subsection (71)(c)(iii) or (iv).
- 696 (c) "Permanently attached to real property" does not include:
 - 697 (i) the attachment of portable or movable tangible personal property to real property if
 - 698 that portable or movable tangible personal property is attached to real property only for:
 - 699 (A) convenience;
 - 700 (B) stability; or
 - 701 (C) for an obvious temporary purpose;
 - 702 (ii) the detachment of tangible personal property from real property except for the
 - 703 detachment described in Subsection (71)(b)(ii);
 - 704 (iii) an attachment of the following tangible personal property to real property if the
 - 705 attachment to real property is only through a line that supplies water, electricity, gas,
 - 706 telecommunications, cable, or supplies a similar item as determined by the commission by rule
 - 707 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
 - 708 (A) a computer;
 - 709 (B) a telephone;

710 (C) a television; or

711 (D) tangible personal property similar to Subsections (71)(c)(iii)(A) through (C) as
712 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
713 Administrative Rulemaking Act; or

714 (iv) an item listed in Subsection [~~(114)~~] (114)(c).

715 (72) "Person" includes any individual, firm, partnership, joint venture, association,
716 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
717 municipality, district, or other local governmental entity of the state, or any group or
718 combination acting as a unit.

719 (73) "Place of primary use":

720 (a) for telecommunications service other than mobile telecommunications service,
721 means the street address representative of where the customer's use of the telecommunications
722 service primarily occurs, which shall be:

723 (i) the residential street address of the customer; or

724 (ii) the primary business street address of the customer; or

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

727 (74) (a) "Postpaid calling service" means a telecommunications service a person
728 obtains by making a payment on a call-by-call basis:

729 (i) through the use of a:

730 (A) bank card;

731 (B) credit card;

732 (C) debit card; or

733 (D) travel card; or

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

736 (b) "Postpaid calling service" includes a service, except for a prepaid wireless calling
737 service, that would be a prepaid wireless calling service if the service were exclusively a
738 telecommunications service.

739 (75) "Postproduction" means an activity related to the finishing or duplication of a
740 medium described in Subsection 59-12-104(54)(a).

- 741 (76) "Prepaid calling service" means a telecommunications service:
- 742 (a) that allows a purchaser access to telecommunications service that is exclusively
- 743 telecommunications service;
- 744 (b) that:
- 745 (i) is paid for in advance; and
- 746 (ii) enables the origination of a call using an:
- 747 (A) access number; or
- 748 (B) authorization code;
- 749 (c) that is dialed:
- 750 (i) manually; or
- 751 (ii) electronically; and
- 752 (d) sold in predetermined units or dollars that decline:
- 753 (i) by a known amount; and
- 754 (ii) with use.
- 755 (77) "Prepaid wireless calling service" means a telecommunications service:
- 756 (a) that provides the right to utilize:
- 757 (i) mobile wireless service; and
- 758 (ii) other service that is not a telecommunications service, including:
- 759 (A) the download of a product transferred electronically;
- 760 (B) a content service; or
- 761 (C) an ancillary service;
- 762 (b) that:
- 763 (i) is paid for in advance; and
- 764 (ii) enables the origination of a call using an:
- 765 (A) access number; or
- 766 (B) authorization code;
- 767 (c) that is dialed:
- 768 (i) manually; or
- 769 (ii) electronically; and
- 770 (d) sold in predetermined units or dollars that decline:
- 771 (i) by a known amount; and

772 (ii) with use.
773 (78) (a) "Prepared food" means:
774 (i) food:
775 (A) sold in a heated state; or
776 (B) heated by a seller;
777 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
778 item; or
779 (iii) except as provided in Subsection (78)(c), food sold with an eating utensil provided
780 by the seller, including a:
781 (A) plate;
782 (B) knife;
783 (C) fork;
784 (D) spoon;
785 (E) glass;
786 (F) cup;
787 (G) napkin; or
788 (H) straw.
789 (b) "Prepared food" does not include:
790 (i) food that a seller only:
791 (A) cuts;
792 (B) repackages; or
793 (C) pasteurizes; or
794 (ii) (A) the following:
795 (I) raw egg;
796 (II) raw fish;
797 (III) raw meat;
798 (IV) raw poultry; or
799 (V) a food containing an item described in Subsections (78)(b)(ii)(A)(I) through (IV);
800 and
801 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
802 Food and Drug Administration's Food Code that a consumer cook the items described in

803 Subsection (78)(b)(ii)(A) to prevent food borne illness; or
804 (iii) the following if sold without eating utensils provided by the seller:
805 (A) food and food ingredients sold by a seller if the seller's proper primary
806 classification under the 2002 North American Industry Classification System of the federal
807 Executive Office of the President, Office of Management and Budget, is manufacturing in
808 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
809 Manufacturing;
810 (B) food and food ingredients sold in an unheated state:
811 (I) by weight or volume; and
812 (II) as a single item; or
813 (C) a bakery item, including:
814 (I) a bagel;
815 (II) a bar;
816 (III) a biscuit;
817 (IV) bread;
818 (V) a bun;
819 (VI) a cake;
820 (VII) a cookie;
821 (VIII) a croissant;
822 (IX) a danish;
823 (X) a donut;
824 (XI) a muffin;
825 (XII) a pastry;
826 (XIII) a pie;
827 (XIV) a roll;
828 (XV) a tart;
829 (XVI) a torte; or
830 (XVII) a tortilla.
831 (c) Notwithstanding Subsection (78)(a)(iii), an eating utensil provided by the seller
832 does not include the following used to transport the food:
833 (i) a container; or

834 (ii) packaging.

835 (79) "Prescription" means an order, formula, or recipe that is issued:

836 (a) (i) orally;

837 (ii) in writing;

838 (iii) electronically; or

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

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

841 (80) (a) Except as provided in Subsection (80)(b)(ii) or (iii), "prewritten computer

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

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

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

845 (b) "Prewritten computer software" includes:

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

847 software is not designed and developed:

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

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

850 (ii) notwithstanding Subsection (80)(a), computer software designed and developed by

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

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

853 (iii) notwithstanding Subsection (80)(a) and except as provided in Subsection (80)(c),

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

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

856 (B) if the modification or enhancement described in Subsection (80)(b)(iii)(A) is

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

858 (c) Notwithstanding Subsection (80)(b)(iii), "prewritten computer software" does not

859 include a modification or enhancement described in Subsection (80)(b)(iii) if the charges for

860 the modification or enhancement are:

861 (i) reasonable; and

862 (ii) separately stated on the invoice or other statement of price provided to the

863 purchaser.

864 (81) (a) "Private communication service" means a telecommunications service:

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

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

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

871 (i) an extension line;

872 (ii) a station;

873 (iii) switching capacity; or

874 (iv) another associated service that is provided in connection with the use of one or
875 more communications channels as defined in Section 59-12-215.

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

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

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

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

880 (b) "Prosthetic device" includes:

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

882 (ii) replacement parts for a prosthetic device;

883 (iii) a dental prosthesis; or

884 (iv) a hearing aid.

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

886 (i) corrective eyeglasses; or

887 (ii) contact lenses.

888 (83) (a) "Protective equipment" means an item:

889 (i) for human wear; and

890 (ii) that is:

891 (A) designed as protection:

892 (I) to the wearer against injury or disease; or

893 (II) against damage or injury of other persons or property; and

894 (B) not suitable for general use.

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

896 commission shall make rules:

897 (i) listing the items that constitute "protective equipment"; and

898 (ii) that are consistent with the list of items that constitute "protective equipment"

899 under the agreement.

900 (84) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or
901 printed matter, other than a photocopy:

902 (i) regardless of:

903 (A) characteristics;

904 (B) copyright;

905 (C) form;

906 (D) format;

907 (E) method of reproduction; or

908 (F) source; and

909 (ii) made available in printed or electronic format.

910 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
911 commission may by rule define the term "photocopy."

912 (85) (a) "Purchase price" and "sales price" mean the total amount of consideration:

913 (i) valued in money; and

914 (ii) for which tangible personal property, a product transferred electronically, or
915 services are:

916 (A) sold;

917 (B) leased; or

918 (C) rented.

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

920 (i) the seller's cost of the tangible personal property, a product transferred
921 electronically, or services sold;

922 (ii) expenses of the seller, including:

923 (A) the cost of materials used;

924 (B) a labor cost;

925 (C) a service cost;

926 (D) interest;

- 927 (E) a loss;
- 928 (F) the cost of transportation to the seller; or
- 929 (G) a tax imposed on the seller;
- 930 (iii) a charge by the seller for any service necessary to complete the sale; or
- 931 (iv) consideration a seller receives from a person other than the purchaser if:
 - 932 (A) (I) the seller actually receives consideration from a person other than the purchaser;
 - 933 and
 - 934 (II) the consideration described in Subsection (85)(b)(iv)(A)(I) is directly related to a
 - 935 price reduction or discount on the sale;
 - 936 (B) the seller has an obligation to pass the price reduction or discount through to the
 - 937 purchaser;
 - 938 (C) the amount of the consideration attributable to the sale is fixed and determinable by
 - 939 the seller at the time of the sale to the purchaser; and
 - 940 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the
 - 941 seller to claim a price reduction or discount; and
 - 942 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,
 - 943 coupon, or other documentation with the understanding that the person other than the seller
 - 944 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;
 - 945 (II) the purchaser identifies that purchaser to the seller as a member of a group or
 - 946 organization allowed a price reduction or discount, except that a preferred customer card that is
 - 947 available to any patron of a seller does not constitute membership in a group or organization
 - 948 allowed a price reduction or discount; or
 - 949 (III) the price reduction or discount is identified as a third party price reduction or
 - 950 discount on the:
 - 951 (Aa) invoice the purchaser receives; or
 - 952 (Bb) certificate, coupon, or other documentation the purchaser presents.
 - 953 (c) "Purchase price" and "sales price" do not include:
 - 954 (i) a discount:
 - 955 (A) in a form including:
 - 956 (I) cash;
 - 957 (II) term; or

- 958 (III) coupon;
- 959 (B) that is allowed by a seller;
- 960 (C) taken by a purchaser on a sale; and
- 961 (D) that is not reimbursed by a third party; or
- 962 (ii) the following if separately stated on an invoice, bill of sale, or similar document
- 963 provided to the purchaser:
 - 964 (A) the following from credit extended on the sale of tangible personal property or
 - 965 services:
 - 966 (I) a carrying charge;
 - 967 (II) a financing charge; or
 - 968 (III) an interest charge;
 - 969 (B) a delivery charge;
 - 970 (C) an installation charge;
 - 971 (D) a manufacturer rebate on a motor vehicle; or
 - 972 (E) a tax or fee legally imposed directly on the consumer.
 - 973 (86) "Purchaser" means a person to whom:
 - 974 (a) a sale of tangible personal property is made;
 - 975 (b) a product is transferred electronically; or
 - 976 (c) a service is furnished.
 - 977 (87) "Regularly rented" means:
 - 978 (a) rented to a guest for value three or more times during a calendar year; or
 - 979 (b) advertised or held out to the public as a place that is regularly rented to guests for
 - 980 value.
 - 981 (88) "Renewable energy" means:
 - 982 (a) biomass energy;
 - 983 (b) hydroelectric energy;
 - 984 (c) geothermal energy;
 - 985 (d) solar energy; or
 - 986 (e) wind energy.
 - 987 (89) (a) "Renewable energy production facility" means a facility that:
 - 988 (i) uses renewable energy to produce electricity; and

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

990 (b) A facility is a renewable energy production facility regardless of whether the
991 facility is:

992 (i) connected to an electric grid; or

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

994 (90) "Rental" is as defined in Subsection (50).

995 (91) "Repairs or renovations of tangible personal property" means:

996 (a) a repair or renovation of tangible personal property that is not permanently attached
997 to real property; or

998 (b) attaching tangible personal property or a product that is transferred electronically to
999 other tangible personal property if the other tangible personal property to which the tangible
1000 personal property or product that is transferred electronically is attached is not permanently
1001 attached to real property.

1002 (92) "Research and development" means the process of inquiry or experimentation
1003 aimed at the discovery of facts, devices, technologies, or applications and the process of
1004 preparing those devices, technologies, or applications for marketing.

1005 (93) (a) "Residential telecommunications services" means a telecommunications
1006 service or an ancillary service that is provided to an individual for personal use:

1007 (i) at a residential address; or

1008 (ii) at an institution, including a nursing home or a school, if the telecommunications
1009 service or ancillary service is provided to and paid for by the individual residing at the
1010 institution rather than the institution.

1011 (b) For purposes of Subsection (93)(a), a residential address includes an:

1012 (i) apartment; or

1013 (ii) other individual dwelling unit.

1014 (94) "Residential use" means the use in or around a home, apartment building, sleeping
1015 quarters, and similar facilities or accommodations.

1016 (95) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
1017 than:

1018 (a) resale;

1019 (b) sublease; or

1020 (c) subrent.

1021 (96) (a) "Retailer" means any person engaged in a regularly organized business in
1022 tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and
1023 who is selling to the user or consumer and not for resale.

1024 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
1025 engaged in the business of selling to users or consumers within the state.

1026 (97) "Room additional charge" means the difference between:

1027 (a) the amount received by a room remarketer from a purchaser for the purchase of
1028 accommodations and services described in Subsection 59-12-103(1)(i); and

1029 (b) the room net charge.

1030 (98) "Room net charge" means the amount received by an owner or operator of
1031 accommodations and services described in Subsection 59-12-103(1)(i) from a room remarketer.

1032 (99) (a) Except as provided in Subsection (99)(b), "room remarketer" means a person
1033 that has an ability, access, authority, or a right, through an Internet transaction or other means,
1034 to arrange for, book, broker, distribute, facilitate, offer, remarket, resell, or reserve the transfer
1035 of accommodations and services described in Subsection 59-12-103(1)(i) that are subject to a
1036 tax under this chapter.

1037 (b) "Room remarketer" does not include an owner or operator of accommodations and
1038 services described in Subsection 59-12-103(1)(i).

1039 [~~97~~] (100) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
1040 otherwise, in any manner, of tangible personal property or any other taxable transaction under
1041 Subsection 59-12-103(1), for consideration.

1042 (b) "Sale" includes:

1043 (i) installment and credit sales;

1044 (ii) any closed transaction constituting a sale;

1045 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
1046 chapter;

1047 (iv) any transaction if the possession of property is transferred but the seller retains the
1048 title as security for the payment of the price; and

1049 (v) any transaction under which right to possession, operation, or use of any article of
1050 tangible personal property is granted under a lease or contract and the transfer of possession

1051 would be taxable if an outright sale were made.

1052 [~~98~~] (101) "Sale at retail" is as defined in Subsection (95).

1053 [~~99~~] (102) "Sale-leaseback transaction" means a transaction by which title to tangible

1054 personal property or a product transferred electronically that is subject to a tax under this

1055 chapter is transferred:

1056 (a) by a purchaser-lessee;

1057 (b) to a lessor;

1058 (c) for consideration; and

1059 (d) if:

1060 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase

1061 of the tangible personal property or product transferred electronically;

1062 (ii) the sale of the tangible personal property or product transferred electronically to the

1063 lessor is intended as a form of financing:

1064 (A) for the tangible personal property or product transferred electronically; and

1065 (B) to the purchaser-lessee; and

1066 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee

1067 is required to:

1068 (A) capitalize the tangible personal property or product transferred electronically for

1069 financial reporting purposes; and

1070 (B) account for the lease payments as payments made under a financing arrangement.

1071 [~~100~~] (103) "Sales price" is as defined in Subsection (85).

1072 [~~101~~] (104) (a) "Sales relating to schools" means the following sales by, amounts

1073 paid to, or amounts charged by a school:

1074 (i) sales that are directly related to the school's educational functions or activities

1075 including:

1076 (A) the sale of:

1077 (I) textbooks;

1078 (II) textbook fees;

1079 (III) laboratory fees;

1080 (IV) laboratory supplies; or

1081 (V) safety equipment;

1082 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
1083 that:

1084 (I) a student is specifically required to wear as a condition of participation in a
1085 school-related event or school-related activity; and

1086 (II) is not readily adaptable to general or continued usage to the extent that it takes the
1087 place of ordinary clothing;

1088 (C) sales of the following if the net or gross revenues generated by the sales are
1089 deposited into a school district fund or school fund dedicated to school meals:

1090 (I) food and food ingredients; or

1091 (II) prepared food; or

1092 (D) transportation charges for official school activities; or

1093 (ii) amounts paid to or amounts charged by a school for admission to a school-related
1094 event or school-related activity.

1095 (b) "Sales relating to schools" does not include:

1096 (i) bookstore sales of items that are not educational materials or supplies;

1097 (ii) except as provided in Subsection [~~(104)~~] (104)(a)(i)(B):

1098 (A) clothing;

1099 (B) clothing accessories or equipment;

1100 (C) protective equipment; or

1101 (D) sports or recreational equipment; or

1102 (iii) amounts paid to or amounts charged by a school for admission to a school-related
1103 event or school-related activity if the amounts paid or charged are passed through to a person:

1104 (A) other than a:

1105 (I) school;

1106 (II) nonprofit organization authorized by a school board or a governing body of a
1107 private school to organize and direct a competitive secondary school activity; or

1108 (III) nonprofit association authorized by a school board or a governing body of a
1109 private school to organize and direct a competitive secondary school activity; and

1110 (B) that is required to collect sales and use taxes under this chapter.

1111 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1112 commission may make rules defining the term "passed through."

- 1113 [~~(102)~~] (105) For purposes of this section and Section 59-12-104, "school":
- 1114 (a) means:
- 1115 (i) an elementary school or a secondary school that:
- 1116 (A) is a:
- 1117 (I) public school; or
- 1118 (II) private school; and
- 1119 (B) provides instruction for one or more grades kindergarten through 12; or
- 1120 (ii) a public school district; and
- 1121 (b) includes the Electronic High School as defined in Section 53A-15-1002.
- 1122 [~~(103)~~] (106) "Seller" means a person that makes a sale, lease, or rental of:
- 1123 (a) tangible personal property;
- 1124 (b) a product transferred electronically; or
- 1125 (c) a service.
- 1126 [~~(104)~~] (107) (a) "Semiconductor fabricating, processing, research, or development
- 1127 materials" means tangible personal property or a product transferred electronically if the
- 1128 tangible personal property or product transferred electronically is:
- 1129 (i) used primarily in the process of:
- 1130 (A) (I) manufacturing a semiconductor;
- 1131 (II) fabricating a semiconductor; or
- 1132 (III) research or development of a:
- 1133 (Aa) semiconductor; or
- 1134 (Bb) semiconductor manufacturing process; or
- 1135 (B) maintaining an environment suitable for a semiconductor; or
- 1136 (ii) consumed primarily in the process of:
- 1137 (A) (I) manufacturing a semiconductor;
- 1138 (II) fabricating a semiconductor; or
- 1139 (III) research or development of a:
- 1140 (Aa) semiconductor; or
- 1141 (Bb) semiconductor manufacturing process; or
- 1142 (B) maintaining an environment suitable for a semiconductor.
- 1143 (b) "Semiconductor fabricating, processing, research, or development materials"

1144 includes:

1145 (i) parts used in the repairs or renovations of tangible personal property or a product
1146 transferred electronically described in Subsection [~~(104)~~] (107)(a); or

1147 (ii) a chemical, catalyst, or other material used to:

1148 (A) produce or induce in a semiconductor a:

1149 (I) chemical change; or

1150 (II) physical change;

1151 (B) remove impurities from a semiconductor; or

1152 (C) improve the marketable condition of a semiconductor.

1153 [~~(105)~~] (108) "Senior citizen center" means a facility having the primary purpose of
1154 providing services to the aged as defined in Section 62A-3-101.

1155 [~~(106)~~] (109) "Simplified electronic return" means the electronic return:

1156 (a) described in Section 318(C) of the agreement; and

1157 (b) approved by the governing board of the agreement.

1158 [~~(107)~~] (110) "Solar energy" means the sun used as the sole source of energy for
1159 producing electricity.

1160 [~~(108)~~] (111) (a) "Sports or recreational equipment" means an item:

1161 (i) designed for human use; and

1162 (ii) that is:

1163 (A) worn in conjunction with:

1164 (I) an athletic activity; or

1165 (II) a recreational activity; and

1166 (B) not suitable for general use.

1167 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1168 commission shall make rules:

1169 (i) listing the items that constitute "sports or recreational equipment"; and

1170 (ii) that are consistent with the list of items that constitute "sports or recreational
1171 equipment" under the agreement.

1172 [~~(109)~~] (112) "State" means the state of Utah, its departments, and agencies.

1173 [~~(110)~~] (113) "Storage" means any keeping or retention of tangible personal property or
1174 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose

1175 except sale in the regular course of business.

1176 ~~[(114)]~~ (114) (a) Except as provided in Subsection ~~[(114)]~~ (114)(d) or (e), "tangible
1177 personal property" means personal property that:

1178 (i) may be:

1179 (A) seen;

1180 (B) weighed;

1181 (C) measured;

1182 (D) felt; or

1183 (E) touched; or

1184 (ii) is in any manner perceptible to the senses.

1185 (b) "Tangible personal property" includes:

1186 (i) electricity;

1187 (ii) water;

1188 (iii) gas;

1189 (iv) steam; or

1190 (v) prewritten computer software.

1191 (c) "Tangible personal property" includes the following regardless of whether the item
1192 is attached to real property:

1193 (i) a dishwasher;

1194 (ii) a dryer;

1195 (iii) a freezer;

1196 (iv) a microwave;

1197 (v) a refrigerator;

1198 (vi) a stove;

1199 (vii) a washer; or

1200 (viii) an item similar to Subsections ~~[(114)]~~ (114)(c)(i) through (vii) as determined by
1201 the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1202 Rulemaking Act.

1203 (d) "Tangible personal property" does not include a product that is transferred
1204 electronically.

1205 (e) "Tangible personal property" does not include the following if attached to real

1206 property, regardless of whether the attachment to real property is only through a line that
1207 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
1208 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1209 Rulemaking Act:

- 1210 (i) a hot water heater;
- 1211 (ii) a water filtration system; or
- 1212 (iii) a water softener system.

1213 [~~(H2)~~] (115) "Tar sands" means impregnated sands that yield mixtures of liquid
1214 hydrocarbon and require further processing other than mechanical blending before becoming
1215 finished petroleum products.

1216 [~~(H3)~~] (116) (a) "Telecommunications enabling or facilitating equipment, machinery,
1217 or software" means an item listed in Subsection [~~(H3)~~] (116)(b) if that item is purchased or
1218 leased primarily to enable or facilitate one or more of the following to function:

- 1219 (i) telecommunications switching or routing equipment, machinery, or software; or
- 1220 (ii) telecommunications transmission equipment, machinery, or software.

1221 (b) The following apply to Subsection [~~(H3)~~] (116)(a):

- 1222 (i) a pole;
- 1223 (ii) software;
- 1224 (iii) a supplementary power supply;
- 1225 (iv) temperature or environmental equipment or machinery;
- 1226 (v) test equipment;
- 1227 (vi) a tower; or
- 1228 (vii) equipment, machinery, or software that functions similarly to an item listed in

1229 Subsections [~~(H3)~~] (116)(b)(i) through (vi) as determined by the commission by rule made in
1230 accordance with Subsection [~~(H3)~~] (116)(c).

1231 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1232 commission may by rule define what constitutes equipment, machinery, or software that
1233 functions similarly to an item listed in Subsections [~~(H3)~~] (116)(b)(i) through (vi).

1234 [~~(H4)~~] (117) "Telecommunications equipment, machinery, or software required for
1235 911 service" means equipment, machinery, or software that is required to comply with 47
1236 C.F.R. Sec. 20.18.

1237 [~~(H5)~~] (118) "Telecommunications maintenance or repair equipment, machinery, or
1238 software" means equipment, machinery, or software purchased or leased primarily to maintain
1239 or repair one or more of the following, regardless of whether the equipment, machinery, or
1240 software is purchased or leased as a spare part or as an upgrade or modification to one or more
1241 of the following:

- 1242 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 1243 (b) telecommunications switching or routing equipment, machinery, or software; or
- 1244 (c) telecommunications transmission equipment, machinery, or software.

1245 [~~(H6)~~] (119) (a) "Telecommunications service" means the electronic conveyance,
1246 routing, or transmission of audio, data, video, voice, or any other information or signal to a
1247 point, or among or between points.

1248 (b) "Telecommunications service" includes:

1249 (i) an electronic conveyance, routing, or transmission with respect to which a computer
1250 processing application is used to act:

1251 (A) on the code, form, or protocol of the content;

1252 (B) for the purpose of electronic conveyance, routing, or transmission; and

1253 (C) regardless of whether the service:

1254 (I) is referred to as voice over Internet protocol service; or

1255 (II) is classified by the Federal Communications Commission as enhanced or value
1256 added;

1257 (ii) an 800 service;

1258 (iii) a 900 service;

1259 (iv) a fixed wireless service;

1260 (v) a mobile wireless service;

1261 (vi) a postpaid calling service;

1262 (vii) a prepaid calling service;

1263 (viii) a prepaid wireless calling service; or

1264 (ix) a private communications service.

1265 (c) "Telecommunications service" does not include:

1266 (i) advertising, including directory advertising;

1267 (ii) an ancillary service;

- 1268 (iii) a billing and collection service provided to a third party;
- 1269 (iv) a data processing and information service if:
- 1270 (A) the data processing and information service allows data to be:
- 1271 (I) (Aa) acquired;
- 1272 (Bb) generated;
- 1273 (Cc) processed;
- 1274 (Dd) retrieved; or
- 1275 (Ee) stored; and
- 1276 (II) delivered by an electronic transmission to a purchaser; and
- 1277 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 1278 or information;
- 1279 (v) installation or maintenance of the following on a customer's premises:
- 1280 (A) equipment; or
- 1281 (B) wiring;
- 1282 (vi) Internet access service;
- 1283 (vii) a paging service;
- 1284 (viii) a product transferred electronically, including:
- 1285 (A) music;
- 1286 (B) reading material;
- 1287 (C) a ring tone;
- 1288 (D) software; or
- 1289 (E) video;
- 1290 (ix) a radio and television audio and video programming service:
- 1291 (A) regardless of the medium; and
- 1292 (B) including:
- 1293 (I) furnishing conveyance, routing, or transmission of a television audio and video
- 1294 programming service by a programming service provider;
- 1295 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
- 1296 (III) audio and video programming services delivered by a commercial mobile radio
- 1297 service provider as defined in 47 C.F.R. Sec. 20.3;
- 1298 (x) a value-added nonvoice data service; or

- 1299 (xi) tangible personal property.
- 1300 [~~(117)~~] (120) (a) "Telecommunications service provider" means a person that:
- 1301 (i) owns, controls, operates, or manages a telecommunications service; and
- 1302 (ii) engages in an activity described in Subsection [~~(117)~~] (120)(a)(i) for the shared use
- 1303 with or resale to any person of the telecommunications service.
- 1304 (b) A person described in Subsection [~~(117)~~] (120)(a) is a telecommunications service
- 1305 provider whether or not the Public Service Commission of Utah regulates:
- 1306 (i) that person; or
- 1307 (ii) the telecommunications service that the person owns, controls, operates, or
- 1308 manages.
- 1309 [~~(118)~~] (121) (a) "Telecommunications switching or routing equipment, machinery, or
- 1310 software" means an item listed in Subsection [~~(118)~~] (121)(b) if that item is purchased or
- 1311 leased primarily for switching or routing:
- 1312 (i) an ancillary service;
- 1313 (ii) data communications;
- 1314 (iii) voice communications; or
- 1315 (iv) telecommunications service.
- 1316 (b) The following apply to Subsection [~~(118)~~] (121)(a):
- 1317 (i) a bridge;
- 1318 (ii) a computer;
- 1319 (iii) a cross connect;
- 1320 (iv) a modem;
- 1321 (v) a multiplexer;
- 1322 (vi) plug in circuitry;
- 1323 (vii) a router;
- 1324 (viii) software;
- 1325 (ix) a switch; or
- 1326 (x) equipment, machinery, or software that functions similarly to an item listed in
- 1327 Subsections [~~(118)~~] (121)(b)(i) through (ix) as determined by the commission by rule made in
- 1328 accordance with Subsection [~~(118)~~] (121)(c).
- 1329 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1330 commission may by rule define what constitutes equipment, machinery, or software that
1331 functions similarly to an item listed in Subsections [~~(118)~~] (121)(b)(i) through (ix).

1332 [~~(119)~~] (122) (a) "Telecommunications transmission equipment, machinery, or
1333 software" means an item listed in Subsection [~~(119)~~] (122)(b) if that item is purchased or
1334 leased primarily for sending, receiving, or transporting:

- 1335 (i) an ancillary service;
- 1336 (ii) data communications;
- 1337 (iii) voice communications; or
- 1338 (iv) telecommunications service.

1339 (b) The following apply to Subsection [~~(119)~~] (122)(a):

- 1340 (i) an amplifier;
- 1341 (ii) a cable;
- 1342 (iii) a closure;
- 1343 (iv) a conduit;
- 1344 (v) a controller;
- 1345 (vi) a duplexer;
- 1346 (vii) a filter;
- 1347 (viii) an input device;
- 1348 (ix) an input/output device;
- 1349 (x) an insulator;
- 1350 (xi) microwave machinery or equipment;
- 1351 (xii) an oscillator;
- 1352 (xiii) an output device;
- 1353 (xiv) a pedestal;
- 1354 (xv) a power converter;
- 1355 (xvi) a power supply;
- 1356 (xvii) a radio channel;
- 1357 (xviii) a radio receiver;
- 1358 (xix) a radio transmitter;
- 1359 (xx) a repeater;
- 1360 (xxi) software;

1361 (xxii) a terminal;
1362 (xxiii) a timing unit;
1363 (xxiv) a transformer;
1364 (xxv) a wire; or
1365 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
1366 Subsections [~~(119)~~] (122)(b)(i) through (xxv) as determined by the commission by rule made in
1367 accordance with Subsection [~~(119)~~] (122)(c).

1368 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1369 commission may by rule define what constitutes equipment, machinery, or software that
1370 functions similarly to an item listed in Subsections [~~(119)~~] (122)(b)(i) through (xxv).

1371 [~~(120)~~] (123) "Tobacco" means:

- 1372 (a) a cigarette;
- 1373 (b) a cigar;
- 1374 (c) chewing tobacco;
- 1375 (d) pipe tobacco; or
- 1376 (e) any other item that contains tobacco.

1377 [~~(121)~~] (124) "Unassisted amusement device" means an amusement device, skill
1378 device, or ride device that is started and stopped by the purchaser or renter of the right to use or
1379 operate the amusement device, skill device, or ride device.

1380 [~~(122)~~] (125) (a) "Use" means the exercise of any right or power over tangible personal
1381 property, a product transferred electronically, or a service under Subsection 59-12-103(1),
1382 incident to the ownership or the leasing of that tangible personal property, product transferred
1383 electronically, or service.

1384 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal
1385 property, a product transferred electronically, or a service in the regular course of business and
1386 held for resale.

1387 [~~(123)~~] (126) "Value-added nonvoice data service" means a service:

1388 (a) that otherwise meets the definition of a telecommunications service except that a
1389 computer processing application is used to act primarily for a purpose other than conveyance,
1390 routing, or transmission; and

1391 (b) with respect to which a computer processing application is used to act on data or

1392 information:

- 1393 (i) code;
- 1394 (ii) content;
- 1395 (iii) form; or
- 1396 (iv) protocol.

1397 ~~[(124)]~~ (127) (a) Subject to Subsection ~~[(124)]~~ (127)(b), "vehicle" means the following
1398 that are required to be titled, registered, or titled and registered:

- 1399 (i) an aircraft as defined in Section 72-10-102;
- 1400 (ii) a vehicle as defined in Section 41-1a-102;
- 1401 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1402 (iv) a vessel as defined in Section 41-1a-102.

1403 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

- 1404 (i) a vehicle described in Subsection ~~[(124)]~~ (127)(a); or
- 1405 (ii) (A) a locomotive;
- 1406 (B) a freight car;
- 1407 (C) railroad work equipment; or
- 1408 (D) other railroad rolling stock.

1409 ~~[(125)]~~ (128) "Vehicle dealer" means a person engaged in the business of buying,
1410 selling, or exchanging a vehicle as defined in Subsection ~~[(124)]~~ (127).

1411 ~~[(126)]~~ (129) (a) "Vertical service" means an ancillary service that:

- 1412 (i) is offered in connection with one or more telecommunications services; and
- 1413 (ii) offers an advanced calling feature that allows a customer to:
 - 1414 (A) identify a caller; and
 - 1415 (B) manage multiple calls and call connections.

1416 (b) "Vertical service" includes an ancillary service that allows a customer to manage a
1417 conference bridging service.

1418 ~~[(127)]~~ (130) (a) "Voice mail service" means an ancillary service that enables a
1419 customer to receive, send, or store a recorded message.

1420 (b) "Voice mail service" does not include a vertical service that a customer is required
1421 to have in order to utilize a voice mail service.

1422 ~~[(128)]~~ (131) (a) Except as provided in Subsection ~~[(128)]~~ (131)(b), "waste energy

1423 facility" means a facility that generates electricity:

1424 (i) using as the primary source of energy waste materials that would be placed in a
1425 landfill or refuse pit if it were not used to generate electricity, including:

1426 (A) tires;

1427 (B) waste coal; or

1428 (C) oil shale; and

1429 (ii) in amounts greater than actually required for the operation of the facility.

1430 (b) "Waste energy facility" does not include a facility that incinerates:

1431 (i) municipal solid waste;

1432 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or

1433 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1434 [~~(129)~~] (132) "Watercraft" means a vessel as defined in Section 73-18-2.

1435 [~~(130)~~] (133) "Wind energy" means wind used as the sole source of energy to produce
1436 electricity.

1437 [~~(131)~~] (134) "ZIP Code" means a Zoning Improvement Plan Code assigned to a
1438 geographic location by the United States Postal Service.

1439 Section 2. Section **59-12-103** is amended to read:

1440 **59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use**
1441 **tax revenues.**

1442 (1) A tax is imposed on the purchaser as provided in this part for amounts paid or
1443 charged for the following transactions:

1444 (a) retail sales of tangible personal property made within the state;

1445 (b) amounts paid for:

1446 (i) telecommunications service, other than mobile telecommunications service, that
1447 originates and terminates within the boundaries of this state;

1448 (ii) mobile telecommunications service that originates and terminates within the
1449 boundaries of one state only to the extent permitted by the Mobile Telecommunications
1450 Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or

1451 (iii) an ancillary service associated with a:

1452 (A) telecommunications service described in Subsection (1)(b)(i); or

1453 (B) mobile telecommunications service described in Subsection (1)(b)(ii);

- 1454 (c) sales of the following for commercial use:
- 1455 (i) gas;
- 1456 (ii) electricity;
- 1457 (iii) heat;
- 1458 (iv) coal;
- 1459 (v) fuel oil; or
- 1460 (vi) other fuels;
- 1461 (d) sales of the following for residential use:
- 1462 (i) gas;
- 1463 (ii) electricity;
- 1464 (iii) heat;
- 1465 (iv) coal;
- 1466 (v) fuel oil; or
- 1467 (vi) other fuels;
- 1468 (e) sales of prepared food;
- 1469 (f) except as provided in Section 59-12-104, amounts paid or charged as admission or
- 1470 user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,
- 1471 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,
- 1472 fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit
- 1473 television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf
- 1474 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,
- 1475 tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises,
- 1476 horseback rides, sports activities, or any other amusement, entertainment, recreation,
- 1477 exhibition, cultural, or athletic activity;
- 1478 (g) amounts paid or charged for services for repairs or renovations of tangible personal
- 1479 property, unless Section 59-12-104 provides for an exemption from sales and use tax for:
- 1480 (i) the tangible personal property; and
- 1481 (ii) parts used in the repairs or renovations of the tangible personal property described
- 1482 in Subsection (1)(g)(i), whether or not any parts are actually used in the repairs or renovations
- 1483 of that tangible personal property;
- 1484 (h) except as provided in Subsection 59-12-104(7), amounts paid or charged for

1485 assisted cleaning or washing of tangible personal property;

1486 (i) subject to Section 59-12-104.6, amounts paid or charged for tourist home, hotel,

1487 motel, or trailer court accommodations and services that are regularly rented for less than 30

1488 consecutive days;

1489 (j) amounts paid or charged for laundry or dry cleaning services;

1490 (k) amounts paid or charged for leases or rentals of tangible personal property if within

1491 this state the tangible personal property is:

1492 (i) stored;

1493 (ii) used; or

1494 (iii) otherwise consumed;

1495 (l) amounts paid or charged for tangible personal property if within this state the

1496 tangible personal property is:

1497 (i) stored;

1498 (ii) used; or

1499 (iii) consumed; and

1500 (m) amounts paid or charged for a sale:

1501 (i) (A) of a product that:

1502 (I) is transferred electronically; and

1503 (II) would be subject to a tax under this chapter if the product was transferred in a

1504 manner other than electronically; or

1505 (B) of a repair or renovation of a product that:

1506 (I) is transferred electronically; and

1507 (II) would be subject to a tax under this chapter if the product was transferred in a

1508 manner other than electronically; and

1509 (ii) regardless of whether the sale provides:

1510 (A) a right of permanent use of the product; or

1511 (B) a right to use the product that is less than a permanent use, including a right:

1512 (I) for a definite or specified length of time; and

1513 (II) that terminates upon the occurrence of a condition.

1514 (2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax

1515 is imposed on a transaction described in Subsection (1) equal to the sum of:

1516 (i) a state tax imposed on the transaction at a tax rate equal to the sum of:
1517 (A) 4.70%; and
1518 (B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales
1519 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211
1520 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional
1521 State Sales and Use Tax Act; and

1522 (II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales
1523 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211
1524 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state
1525 imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

1526 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
1527 transaction under this chapter other than this part.

1528 (b) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed
1529 on a transaction described in Subsection (1)(d) equal to the sum of:

1530 (i) a state tax imposed on the transaction at a tax rate of 2%; and

1531 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
1532 transaction under this chapter other than this part.

1533 (c) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed
1534 on amounts paid or charged for food and food ingredients equal to the sum of:

1535 (i) a state tax imposed on the amounts paid or charged for food and food ingredients at
1536 a tax rate of 1.75%; and

1537 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
1538 amounts paid or charged for food and food ingredients under this chapter other than this part.

1539 (d) (i) For a bundled transaction that is attributable to food and food ingredients and
1540 tangible personal property other than food and food ingredients, a state tax and a local tax is
1541 imposed on the entire bundled transaction equal to the sum of:

1542 (A) a state tax imposed on the entire bundled transaction equal to the sum of:

1543 (I) the tax rate described in Subsection (2)(a)(i)(A); and

1544 (II) (Aa) the tax rate the state imposes in accordance with Part 18, Additional State
1545 Sales and Use Tax Act, if the location of the transaction as determined under Sections
1546 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18,

1547 Additional State Sales and Use Tax Act; and

1548 (Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State
1549 Sales and Use Tax Act, if the location of the transaction as determined under Sections
1550 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which
1551 the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

1552 (B) a local tax imposed on the entire bundled transaction at the sum of the tax rates
1553 described in Subsection (2)(a)(ii).

1554 (ii) Subject to Subsection (2)(d)(iii), for a bundled transaction other than a bundled
1555 transaction described in Subsection (2)(d)(i):

1556 (A) if the sales price of the bundled transaction is attributable to tangible personal
1557 property, a product, or a service that is subject to taxation under this chapter and tangible
1558 personal property, a product, or service that is not subject to taxation under this chapter, the
1559 entire bundled transaction is subject to taxation under this chapter unless:

1560 (I) the seller is able to identify by reasonable and verifiable standards the tangible
1561 personal property, product, or service that is not subject to taxation under this chapter from the
1562 books and records the seller keeps in the seller's regular course of business; or

1563 (II) state or federal law provides otherwise; or

1564 (B) if the sales price of a bundled transaction is attributable to two or more items of
1565 tangible personal property, products, or services that are subject to taxation under this chapter
1566 at different rates, the entire bundled transaction is subject to taxation under this chapter at the
1567 higher tax rate unless:

1568 (I) the seller is able to identify by reasonable and verifiable standards the tangible
1569 personal property, product, or service that is subject to taxation under this chapter at the lower
1570 tax rate from the books and records the seller keeps in the seller's regular course of business; or

1571 (II) state or federal law provides otherwise.

1572 (iii) For purposes of Subsection (2)(d)(ii), books and records that a seller keeps in the
1573 seller's regular course of business includes books and records the seller keeps in the regular
1574 course of business for nontax purposes.

1575 (e) Subject to Subsections (2)(f) and (g), a tax rate repeal or tax rate change for a tax
1576 rate imposed under the following shall take effect on the first day of a calendar quarter:

1577 (i) Subsection (2)(a)(i)(A);

- 1578 (ii) Subsection (2)(b)(i);
- 1579 (iii) Subsection (2)(c)(i); or
- 1580 (iv) Subsection (2)(d)(i)(A)(I).
- 1581 (f) (i) A tax rate increase shall take effect on the first day of the first billing period that
- 1582 begins after the effective date of the tax rate increase if the billing period for the transaction
- 1583 begins before the effective date of a tax rate increase imposed under:
 - 1584 (A) Subsection (2)(a)(i)(A);
 - 1585 (B) Subsection (2)(b)(i);
 - 1586 (C) Subsection (2)(c)(i); or
 - 1587 (D) Subsection (2)(d)(i)(A)(I).
- 1588 (ii) The repeal of a tax or a tax rate decrease shall take effect on the first day of the last
- 1589 billing period that began before the effective date of the repeal of the tax or the tax rate
- 1590 decrease if the billing period for the transaction begins before the effective date of the repeal of
- 1591 the tax or the tax rate decrease imposed under:
 - 1592 (A) Subsection (2)(a)(i)(A);
 - 1593 (B) Subsection (2)(b)(i);
 - 1594 (C) Subsection (2)(c)(i); or
 - 1595 (D) Subsection (2)(d)(i)(A)(I).
- 1596 (g) (i) For a tax rate described in Subsection (2)(g)(ii), if a tax due on a catalogue sale
- 1597 is computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal
- 1598 or change in a tax rate takes effect:
 - 1599 (A) on the first day of a calendar quarter; and
 - 1600 (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.
- 1601 (ii) Subsection (2)(g)(i) applies to the tax rates described in the following:
 - 1602 (A) Subsection (2)(a)(i)(A);
 - 1603 (B) Subsection (2)(b)(i);
 - 1604 (C) Subsection (2)(c)(i); or
 - 1605 (D) Subsection (2)(d)(i)(A)(I).
- 1606 (iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
- 1607 the commission may by rule define the term "catalogue sale."
- 1608 (3) (a) The following state taxes shall be deposited into the General Fund:

- 1609 (i) the tax imposed by Subsection (2)(a)(i)(A);
1610 (ii) the tax imposed by Subsection (2)(b)(i);
1611 (iii) the tax imposed by Subsection (2)(c)(i); or
1612 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).
- 1613 (b) The following local taxes shall be distributed to a county, city, or town as provided
1614 in this chapter:
- 1615 (i) the tax imposed by Subsection (2)(a)(ii);
1616 (ii) the tax imposed by Subsection (2)(b)(ii);
1617 (iii) the tax imposed by Subsection (2)(c)(ii); and
1618 (iv) the tax imposed by Subsection (2)(d)(i)(B).
- 1619 (4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
1620 2003, the lesser of the following amounts shall be used as provided in Subsections (4)(b)
1621 through (g):
- 1622 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:
1623 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and
1624 (B) for the fiscal year; or
1625 (ii) \$17,500,000.
- 1626 (b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount
1627 described in Subsection (4)(a) shall be transferred each year as dedicated credits to the
1628 Department of Natural Resources to:
- 1629 (A) implement the measures described in Subsections 79-2-303(3)(a) through (d) to
1630 protect sensitive plant and animal species; or
1631 (B) award grants, up to the amount authorized by the Legislature in an appropriations
1632 act, to political subdivisions of the state to implement the measures described in Subsections
1633 79-2-303(3)(a) through (d) to protect sensitive plant and animal species.
- 1634 (ii) Money transferred to the Department of Natural Resources under Subsection
1635 (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other
1636 person to list or attempt to have listed a species as threatened or endangered under the
1637 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.
- 1638 (iii) At the end of each fiscal year:
1639 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources

1640 Conservation and Development Fund created in Section 73-10-24;

1641 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan

1642 Program Subaccount created in Section 73-10c-5; and

1643 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan

1644 Program Subaccount created in Section 73-10c-5.

1645 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in

1646 Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund

1647 created in Section 4-18-6.

1648 (d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described

1649 in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water

1650 Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of

1651 water rights.

1652 (ii) At the end of each fiscal year:

1653 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources

1654 Conservation and Development Fund created in Section 73-10-24;

1655 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan

1656 Program Subaccount created in Section 73-10c-5; and

1657 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan

1658 Program Subaccount created in Section 73-10c-5.

1659 (e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described

1660 in Subsection (4)(a) shall be deposited in the Water Resources Conservation and Development

1661 Fund created in Section 73-10-24 for use by the Division of Water Resources.

1662 (ii) In addition to the uses allowed of the Water Resources Conservation and

1663 Development Fund under Section 73-10-24, the Water Resources Conservation and

1664 Development Fund may also be used to:

1665 (A) conduct hydrologic and geotechnical investigations by the Division of Water

1666 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of

1667 quantifying surface and ground water resources and describing the hydrologic systems of an

1668 area in sufficient detail so as to enable local and state resource managers to plan for and

1669 accommodate growth in water use without jeopardizing the resource;

1670 (B) fund state required dam safety improvements; and

1671 (C) protect the state's interest in interstate water compact allocations, including the
1672 hiring of technical and legal staff.

1673 (f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
1674 in Subsection (4)(a) shall be deposited in the Utah Wastewater Loan Program Subaccount
1675 created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

1676 (g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
1677 in Subsection (4)(a) shall be deposited in the Drinking Water Loan Program Subaccount
1678 created in Section 73-10c-5 for use by the Division of Drinking Water to:

1679 (i) provide for the installation and repair of collection, treatment, storage, and
1680 distribution facilities for any public water system, as defined in Section 19-4-102;

1681 (ii) develop underground sources of water, including springs and wells; and

1682 (iii) develop surface water sources.

1683 (5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
1684 2006, the difference between the following amounts shall be expended as provided in this
1685 Subsection (5), if that difference is greater than \$1:

1686 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the
1687 fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

1688 (ii) \$17,500,000.

1689 (b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:

1690 (A) transferred each fiscal year to the Department of Natural Resources as dedicated
1691 credits; and

1692 (B) expended by the Department of Natural Resources for watershed rehabilitation or
1693 restoration.

1694 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described
1695 in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund
1696 created in Section 73-10-24.

1697 (c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the
1698 remaining difference described in Subsection (5)(a) shall be:

1699 (A) transferred each fiscal year to the Division of Water Resources as dedicated
1700 credits; and

1701 (B) expended by the Division of Water Resources for cloud-seeding projects

1702 authorized by Title 73, Chapter 15, Modification of Weather.

1703 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described
1704 in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund
1705 created in Section 73-10-24.

1706 (d) After making the transfers required by Subsections (5)(b) and (c), 94% of the
1707 remaining difference described in Subsection (5)(a) shall be deposited into the Water
1708 Resources Conservation and Development Fund created in Section 73-10-24 for use by the
1709 Division of Water Resources for:

1710 (i) preconstruction costs:

1711 (A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter
1712 26, Bear River Development Act; and

1713 (B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project
1714 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

1715 (ii) the cost of employing a civil engineer to oversee any project authorized by Title 73,
1716 Chapter 26, Bear River Development Act;

1717 (iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project
1718 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

1719 (iv) other uses authorized under Sections 73-10-24, 73-10-25.1, 73-10-30, and
1720 Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

1721 (e) Any unexpended monies described in Subsection (5)(d) that remain in the Water
1722 Resources Conservation and Development Fund at the end of the fiscal year are nonlapsing.

1723 (f) After making the transfers required by Subsections (5)(b) and (c) and subject to
1724 Subsection (5)(g), 6% of the remaining difference described in Subsection (5)(a) shall be
1725 transferred each year as dedicated credits to the Division of Water Rights to cover the costs
1726 incurred for employing additional technical staff for the administration of water rights.

1727 (g) At the end of each fiscal year, any unexpended dedicated credits described in
1728 Subsection (5)(f) over \$150,000 lapse to the Water Resources Conservation and Development
1729 Fund created in Section 73-10-24.

1730 (6) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
1731 2003, and for taxes listed under Subsection (3)(a), the amount of revenue generated by a 1/16%
1732 tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited in

1733 the Transportation Fund created by Section 72-2-102.

1734 (7) (a) Notwithstanding Subsection (3)(a) and until Subsection (7)(b) applies,
1735 beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial
1736 Highway Fund Restricted Account created in Section 72-2-118 a portion of the taxes listed
1737 under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate on the taxable
1738 transactions under Subsection (1).

1739 (b) Notwithstanding Subsection (3)(a), when the highway general obligation bonds
1740 have been paid off and the highway projects completed that are intended to be paid from
1741 revenues deposited in the Centennial Highway Fund Restricted Account as determined by the
1742 Executive Appropriations Committee under Subsection 72-2-118(6)(d), the Division of
1743 Finance shall deposit into the Transportation Investment Fund of 2005 created by Section
1744 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated
1745 by a 1/64% tax rate on the taxable transactions under Subsection (1).

1746 (8) (a) Notwithstanding Subsection (3)(a) and in addition to the amount deposited in
1747 Subsection (7)(a), for the 2010-11 fiscal year only, the Division of Finance shall deposit into
1748 the Centennial Highway Fund Restricted Account created by Section 72-2-118 a portion of the
1749 taxes listed under Subsection (3)(a) equal to 1.93% of the revenues collected from the
1750 following taxes, which represents a portion of the approximately 17% of sales and use tax
1751 revenues generated annually by the sales and use tax on vehicles and vehicle-related products:

- 1752 (i) the tax imposed by Subsection (2)(a)(i)(A);
- 1753 (ii) the tax imposed by Subsection (2)(b)(i);
- 1754 (iii) the tax imposed by Subsection (2)(c)(i); and
- 1755 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

1756 (b) Notwithstanding Subsection (3)(a), in addition to the amount deposited in
1757 Subsection (7)(a), and until Subsection (8)(c) applies, for a fiscal year beginning on or after
1758 July 1, 2011, the Division of Finance shall deposit into the Centennial Highway Fund
1759 Restricted Account created by Section 72-2-118 a portion of the taxes listed under Subsection
1760 (3)(a) equal to 8.3% of the revenues collected from the following taxes, which represents a
1761 portion of the approximately 17% of sales and use tax revenues generated annually by the sales
1762 and use tax on vehicles and vehicle-related products:

- 1763 (i) the tax imposed by Subsection (2)(a)(i)(A);

- 1764 (ii) the tax imposed by Subsection (2)(b)(i);
- 1765 (iii) the tax imposed by Subsection (2)(c)(i); and
- 1766 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

1767 (c) Notwithstanding Subsection (3)(a) and in addition to the amounts deposited under
1768 Subsection (7)(b), when the highway general obligation bonds have been paid off and the
1769 highway projects completed that are intended to be paid from revenues deposited in the
1770 Centennial Highway Fund Restricted Account as determined by the Executive Appropriations
1771 Committee under Subsection 72-2-118(6)(d), the Division of Finance shall deposit into the
1772 Transportation Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes
1773 listed under Subsection (3)(a) equal to 8.3% of the revenues collected from the following taxes,
1774 which represents a portion of the approximately 17% of sales and use tax revenues generated
1775 annually by the sales and use tax on vehicles and vehicle-related products:

- 1776 (i) the tax imposed by Subsection (2)(a)(i)(A);
- 1777 (ii) the tax imposed by Subsection (2)(b)(i);
- 1778 (iii) the tax imposed by Subsection (2)(c)(i); and
- 1779 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

1780 (9) (a) Notwithstanding Subsection (3)(a) and for the fiscal year 2008-09 only, the
1781 Division of Finance shall deposit \$55,000,000 of the revenues generated by the taxes listed
1782 under Subsection (3)(a) into the Critical Highway Needs Fund created by Section 72-2-125.

1783 (b) Notwithstanding Subsection (3)(a) and until Subsection (9)(c) applies, for a fiscal
1784 year beginning on or after July 1, 2009, the Division of Finance shall annually deposit
1785 \$90,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the
1786 Critical Highway Needs Fund created by Section 72-2-125.

1787 (c) Notwithstanding Subsection (3)(a) and in addition to any amounts deposited under
1788 Subsections (7) and (8), when the general obligation bonds authorized by Section 63B-16-101
1789 have been paid off and the highway projects completed that are included in the prioritized
1790 project list under Subsection 72-2-125(4) as determined in accordance with Subsection
1791 72-2-125(6), the Division of Finance shall annually deposit \$90,000,000 of the revenues
1792 generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund
1793 of 2005 created by Section 72-2-124.

1794 (10) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year

1795 2009-10, \$533,750 shall be deposited into the Qualified Emergency Food Agencies Fund
1796 created by Section 9-4-1409 and expended as provided in Section 9-4-1409.

1797 (11) (a) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection
1798 (11)(a)(ii), and until Subsection (11)(b) applies, beginning on January 1, 2009, the Division of
1799 Finance shall deposit into the Critical Highway Needs Fund created by Section 72-2-125 the
1800 amount of tax revenue generated by a .025% tax rate on the transactions described in
1801 Subsection (1).

1802 (ii) For purposes of Subsection (11)(a)(i), the Division of Finance may not deposit into
1803 the Critical Highway Needs Fund any tax revenue generated by amounts paid or charged for
1804 food and food ingredients, except for tax revenue generated by a bundled transaction
1805 attributable to food and food ingredients and tangible personal property other than food and
1806 food ingredients described in Subsection (2)(e).

1807 (b) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection (11)(b)(ii),
1808 and in addition to any amounts deposited under Subsections (7), (9), and (10), when the general
1809 obligation bonds authorized by Section 63B-16-101 have been paid off and the highway
1810 projects completed that are included in the prioritized project list under Subsection 72-2-125(4)
1811 as determined in accordance with Subsection 72-2-125(6), the Division of Finance shall
1812 deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the
1813 amount of tax revenue generated by a .025% tax rate on the transactions described in
1814 Subsection (1).

1815 (ii) For purposes of Subsection (11)(b)(i), the Division of Finance may not deposit into
1816 the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or
1817 charged for food and food ingredients, except for tax revenue generated by a bundled
1818 transaction attributable to food and food ingredients and tangible personal property other than
1819 food and food ingredients described in Subsection (2)(e).

1820 (12) (a) Notwithstanding Subsection (3)(a), and except as provided in Subsection
1821 (12)(b), beginning on January 1, 2009, the Division of Finance shall deposit into the
1822 Transportation Fund created by Section 72-2-102 the amount of tax revenue generated by a
1823 .025% tax rate on the transactions described in Subsection (1) to be expended to address
1824 chokepoints in construction management.

1825 (b) For purposes of Subsection (12)(a), the Division of Finance may not deposit into

1826 the Transportation Fund any tax revenue generated by amounts paid or charged for food and
1827 food ingredients, except for tax revenue generated by a bundled transaction attributable to food
1828 and food ingredients and tangible personal property other than food and food ingredients
1829 described in Subsection (2)(e).

1830 Section 3. Section **59-12-104.6** is enacted to read:

1831 **59-12-104.6. Amounts paid or charged for certain accommodations and services if**
1832 **transaction involves a room remarketer.**

1833 (1) If amounts paid or charged for accommodations and services described in
1834 Subsection 59-12-103(1)(i) are paid to or charged by a room remarketer, the amount subject to
1835 a tax under this chapter includes the:

1836 (a) room net charge; and

1837 (b) room additional charge.

1838 (2) A room remarketer shall collect from a purchaser:

1839 (a) the portion of the tax under this chapter that is imposed upon the room net charge;

1840 and

1841 (b) the portion of the tax under this chapter that is imposed upon the room additional
1842 charge.

1843 (3) A room remarketer shall remit to the owner or operator of the accommodations and
1844 services described in Subsection 59-12-103(1)(i) the amount the room remarketer collects
1845 under Subsection (2)(a).

1846 (4) (a) Except as provided in Subsection (4)(c), an owner or operator shall remit to the
1847 commission the amount the owner or operator receives under Subsection (3).

1848 (b) Except as provided in Subsection (4)(c), a room remarketer shall remit to the
1849 commission the amount the room remarketer collects under Subsection (2)(b).

1850 (c) If a county or municipality collects a tax under Part 3, Transient Room Tax, or Part
1851 3A, Municipality Transient Room Tax, and does not remit the tax to the commission:

1852 (i) an owner or operator shall remit to the county or municipality the amount the owner
1853 or operator receives under Subsection (3); and

1854 (ii) a room remarketer shall remit to the county or municipality the amount the room
1855 remarketer collects under Subsection (2)(b).

1856 (5) (a) This Subsection (5) applies to a bundled transaction that is attributable to

1857 accommodations and services described in Subsection 59-12-103(1)(i) and tangible personal
1858 property or a service other than accommodations and services described in Subsection
1859 59-12-103(1)(i).

1860 (b) If a room remarketer is able to determine the portion of the purchase price of a
1861 bundled transaction that is attributable to accommodations and services described in
1862 Subsection 59-12-103(1)(i), the room remarketer shall determine the room additional charge on
1863 that portion of the purchase price.

1864 (c) If a room remarketer is unable to determine the portion of the purchase price of a
1865 bundled transaction that is attributable to accommodations and services described in
1866 Subsection 59-12-103(1)(i), the room remarketer shall determine the room additional charge on
1867 the basis of 70% of the average retail rate of similar accommodations and services, plus 15%.

1868 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
1869 Act, the commission may make rules providing for the collection of a tax under this chapter on
1870 a transaction involving amounts paid or charged to two or more room remarketers.

1871 Section 4. **Effective date.**

1872 This bill takes effect on July 1, 2011.

Legislative Review Note
as of 2-18-11 7:57 AM

Office of Legislative Research and General Counsel

FISCAL NOTE

S.B. 296

SHORT TITLE: Amendments to Tax Provisions

SPONSOR: Bramble, C.

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

By increasing the sales tax paid by online travel agencies, this bill increases revenue to the General Fund by \$1,436,700 in FY 2012 and \$1,542,400 in FY 2013.

STATE BUDGET DETAIL TABLE	FY 2011	FY 2012	FY 2013
Revenue:			
General Fund	\$0	\$1,542,400	\$1,542,400
General Fund, One-Time	\$0	(\$105,700)	\$0
Total Revenue	\$0	\$1,436,700	\$1,542,400
Expenditure			
	\$0	\$0	\$0
Net Impact, All Funds (Rev.-Exp.)	\$0	\$1,436,700	\$1,542,400
Net Impact, General/Education Funds	\$0	\$1,436,700	\$1,542,400

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

By increasing the transient room tax, local sales tax, and county option sales tax on online travel agencies, this bill increases revenue to local governments by \$1,278,600 in FY 2012 and \$1,372,700 in FY 2013.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Individuals and businesses are expected to see an increase in tax paid of \$2,715,300 in FY 2012 and \$2,915,100 in FY 2013.