

**SALES AND USE TAX EXEMPTION FOR TEXTBOOKS FOR
HIGHER EDUCATION**

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Johnny Anderson

LONG TITLE

General Description:

This bill amends the Sales and Use Tax Act to provide an exemption for certain sales of a textbook for a higher education course.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides an exemption for certain sales of a textbook for a higher education course;
- ▶ addresses seller recordkeeping requirements for purposes of the exemption;
- ▶ 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

59-12-104, as last amended by Laws of Utah 2010, Chapters 88, 209, and 364

ENACTS:



28 **59-12-104.4**, Utah Code Annotated 1953



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

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

32 **59-12-102. Definitions.**

33 As used in this chapter:

34 (1) "800 service" means a telecommunications service that:

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

36 (b) is typically marketed:

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

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

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

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

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

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

43 Federal Communications Commission.

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

45 (i) a subscriber purchases;

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

47 the subscriber's:

48 (A) prerecorded announcement; or

49 (B) live service; and

50 (iii) is typically marketed:

51 (A) under the name 900 service; or

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

53 Communications Commission.

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

55 (i) a collection service a seller of a telecommunications service provides to a

56 subscriber; or

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

58 (A) a product; or

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

- 90 (u) Section 59-12-2217; or
- 91 (v) Section 59-12-2218.
- 92 (7) "Aircraft" is as defined in Section 72-10-102.
- 93 (8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:
- 94 (a) except for an airline as defined in Section 59-2-102 or an affiliated group as defined
- 95 in Subsection 59-12-107(1)(f) of an airline; and
- 96 (b) that has the workers, expertise, and facilities to perform the following, regardless of
- 97 whether the business entity performs the following in this state:
- 98 (i) check, diagnose, overhaul, and repair:
- 99 (A) an onboard system of a fixed wing turbine powered aircraft; and
- 100 (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;
- 101 (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft
- 102 engine;
- 103 (iii) perform at least the following maintenance on a fixed wing turbine powered
- 104 aircraft:
- 105 (A) an inspection;
- 106 (B) a repair, including a structural repair or modification;
- 107 (C) changing landing gear; and
- 108 (D) addressing issues related to an aging fixed wing turbine powered aircraft;
- 109 (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and
- 110 completely apply new paint to the fixed wing turbine powered aircraft; and
- 111 (v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that
- 112 results in a change in the fixed wing turbine powered aircraft's certification requirements by the
- 113 authority that certifies the fixed wing turbine powered aircraft.
- 114 (9) "Alcoholic beverage" means a beverage that:
- 115 (a) is suitable for human consumption; and
- 116 (b) contains .5% or more alcohol by volume.
- 117 (10) (a) "Ancillary service" means a service associated with, or incidental to, the
- 118 provision of telecommunications service.
- 119 (b) "Ancillary service" includes:
- 120 (i) a conference bridging service;

121 (ii) a detailed communications billing service;

122 (iii) directory assistance;

123 (iv) a vertical service; or

124 (v) a voice mail service.

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

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

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

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

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

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

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

139 (14) "Authorized carrier" means:

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

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

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

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

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

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

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

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

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

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

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

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

192 (A) that retail sale includes:

193 (I) food and food ingredients;

194 (II) a drug;

195 (III) durable medical equipment;

196 (IV) mobility enhancing equipment;

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

198 (VI) a prosthetic device; or

199 (VII) a medical supply; and

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

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

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

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

207 (A) packaging that:

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

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

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

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

214 definition of "purchase price."

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

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

224 (A) a binding sales document; or

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

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

228 (A) a bill of sale;

229 (B) a contract;

230 (C) an invoice;

231 (D) a lease agreement;

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

233 (F) a price list;

234 (G) a rate card;

235 (H) a receipt; or

236 (I) a service agreement.

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

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

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

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

244 (A) shall use the seller's purchase price or the seller's sales price to determine if the

245 purchase price or sales price of the tangible personal property or product subject to taxation
246 under this chapter is de minimis; and

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

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

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

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

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

260 (i) on a transaction; and

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

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

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

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

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

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

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

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

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

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

276 agreement.

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

278 (21) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
279 fuels that does not constitute industrial use under Subsection (48) or residential use under
280 Subsection [~~94~~] (95).

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

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

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

289 (23) "Component part" includes:

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

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

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

295 (d) feed, seeds, and seedlings.

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

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

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

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

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

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

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

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

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

307 (c) "Conference bridging service" does not include a telecommunications service used
308 to reach the ancillary service described in Subsection (26)(a).

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

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

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

314 (i) by a seller of:

315 (A) tangible personal property;

316 (B) a product transferred electronically; or

317 (C) services; and

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

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

322 (i) transportation;

323 (ii) shipping;

324 (iii) postage;

325 (iv) handling;

326 (v) crating; or

327 (vi) packing.

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

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

331 (a) is intended to supplement the diet;

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

333 (i) a vitamin;

334 (ii) a mineral;

335 (iii) an herb or other botanical;

336 (iv) an amino acid;

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

338 dietary intake; or

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

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

342 (A) tablet form;

343 (B) capsule form;

344 (C) powder form;

345 (D) softgel form;

346 (E) gelcap form; or

347 (F) liquid form; or

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

350 (A) as conventional food; and

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

352 (I) a meal; or

353 (II) the diet; and

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

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

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

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

359 (i) to:

360 (A) a mass audience; or

361 (B) addressees on a mailing list provided:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 400 (B) cure of disease;
- 401 (C) mitigation of disease;
- 402 (D) treatment of disease; or
- 403 (E) prevention of disease; or
- 404 (iii) intended to affect:
 - 405 (A) the structure of the body; or
 - 406 (B) any function of the body.

- 407 (b) "Drug" does not include:
 - 408 (i) food and food ingredients;
 - 409 (ii) a dietary supplement;
 - 410 (iii) an alcoholic beverage; or
 - 411 (iv) a prosthetic device.

412 (36) (a) Except as provided in Subsection (36)(c), "durable medical equipment" means
413 equipment that:

- 414 (i) can withstand repeated use;
- 415 (ii) is primarily and customarily used to serve a medical purpose;
- 416 (iii) generally is not useful to a person in the absence of illness or injury; and
- 417 (iv) is not worn in or on the body.

418 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
419 equipment described in Subsection (36)(a).

420 (c) Notwithstanding Subsection (36)(a), "durable medical equipment" does not include
421 mobility enhancing equipment.

422 (37) "Electronic" means:

- 423 (a) relating to technology; and
- 424 (b) having:
 - 425 (i) electrical capabilities;
 - 426 (ii) digital capabilities;
 - 427 (iii) magnetic capabilities;
 - 428 (iv) wireless capabilities;
 - 429 (v) optical capabilities;
 - 430 (vi) electromagnetic capabilities; or

- 431 (vii) capabilities similar to Subsections (37)(b)(i) through (vi).
- 432 (38) "Employee" is as defined in Section 59-10-401.
- 433 (39) "Fixed guideway" means a public transit facility that uses and occupies:
 - 434 (a) rail for the use of public transit; or
 - 435 (b) a separate right-of-way for the use of public transit.
- 436 (40) "Fixed wing turbine powered aircraft" means an aircraft that:
 - 437 (a) is powered by turbine engines;
 - 438 (b) operates on jet fuel; and
 - 439 (c) has wings that are permanently attached to the fuselage of the aircraft.
- 440 (41) "Fixed wireless service" means a telecommunications service that provides radio
- 441 communication between fixed points.
- 442 (42) (a) "Food and food ingredients" means substances:
 - 443 (i) regardless of whether the substances are in:
 - 444 (A) liquid form;
 - 445 (B) concentrated form;
 - 446 (C) solid form;
 - 447 (D) frozen form;
 - 448 (E) dried form; or
 - 449 (F) dehydrated form; and
 - 450 (ii) that are:
 - 451 (A) sold for:
 - 452 (I) ingestion by humans; or
 - 453 (II) chewing by humans; and
 - 454 (B) consumed for the substance's:
 - 455 (I) taste; or
 - 456 (II) nutritional value.
- 457 (b) "Food and food ingredients" includes an item described in Subsection [~~(78)~~]
- 458 (79)(b)(iii).
- 459 (c) "Food and food ingredients" does not include:
 - 460 (i) an alcoholic beverage;
 - 461 (ii) tobacco; or

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

- 493 (v) an independent entity as defined in Section 63E-1-102; or
- 494 (vi) a political subdivision as defined in Section 17B-1-102.
- 495 (b) "Governmental entity" does not include the state systems of public and higher
- 496 education, including:
 - 497 (i) a college campus of the Utah College of Applied Technology;
 - 498 (ii) a school;
 - 499 (iii) the State Board of Education;
 - 500 (iv) the State Board of Regents; or
 - 501 (v) ~~[a state]~~ an institution of higher education ~~[as defined in Section 53B-3-102]~~.
- 502 (47) "Hydroelectric energy" means water used as the sole source of energy to produce
- 503 electricity.
- 504 (48) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
- 505 other fuels:
 - 506 (a) in mining or extraction of minerals;
 - 507 (b) in agricultural operations to produce an agricultural product up to the time of
 - 508 harvest or placing the agricultural product into a storage facility, including:
 - 509 (i) commercial greenhouses;
 - 510 (ii) irrigation pumps;
 - 511 (iii) farm machinery;
 - 512 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
 - 513 registered under Title 41, Chapter 1a, Part 2, Registration; and
 - 514 (v) other farming activities;
 - 515 (c) in manufacturing tangible personal property at an establishment described in SIC
 - 516 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
 - 517 Executive Office of the President, Office of Management and Budget;
 - 518 (d) by a scrap recycler if:
 - 519 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
 - 520 one or more of the following items into prepared grades of processed materials for use in new
 - 521 products:
 - 522 (A) iron;
 - 523 (B) steel;

524 (C) nonferrous metal;

525 (D) paper;

526 (E) glass;

527 (F) plastic;

528 (G) textile; or

529 (H) rubber; and

530 (ii) the new products under Subsection (48)(d)(i) would otherwise be made with
531 nonrecycled materials; or

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

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

536 (i) tangible personal property; or

537 (ii) a product transferred electronically.

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

539 (i) tangible personal property; or

540 (ii) a product transferred electronically.

541 (50) "Institution of higher education" means an institution of higher education listed in
542 Section 53B-2-101.

543 [~~50~~] (51) (a) "Lease" or "rental" means a transfer of possession or control of tangible
544 personal property or a product transferred electronically for:

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

546 (B) an indeterminate term; and

547 (ii) consideration.

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

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

553 (i) a transfer of possession or control of property under a security agreement or
554 deferred payment plan that requires the transfer of title upon completion of the required

555 payments;

556 (ii) a transfer of possession or control of property under an agreement that requires the

557 transfer of title:

558 (A) upon completion of required payments; and

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

560 (I) \$100; or

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

562 (iii) providing tangible personal property along with an operator for a fixed period of

563 time or an indeterminate period of time if the operator is necessary for equipment to perform as

564 designed.

565 (d) For purposes of Subsection [~~50~~](51)(c)(iii), an operator is necessary for

566 equipment to perform as designed if the operator's duties exceed the:

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

568 (ii) maintenance of tangible personal property; or

569 (iii) inspection of tangible personal property.

570 [~~51~~] (52) "Load and leave" means delivery to a purchaser by use of a tangible storage

571 media if the tangible storage media is not physically transferred to the purchaser.

572 [~~52~~] (53) "Local taxing jurisdiction" means a:

573 (a) county that is authorized to impose an agreement sales and use tax;

574 (b) city that is authorized to impose an agreement sales and use tax; or

575 (c) town that is authorized to impose an agreement sales and use tax.

576 [~~53~~] (54) "Manufactured home" is as defined in Section 58-56-3.

577 [~~54~~] (55) For purposes of Section 59-12-104, "manufacturing facility" means:

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

579 Industrial Classification Manual of the federal Executive Office of the President, Office of

580 Management and Budget;

581 (b) a scrap recycler if:

582 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process

583 one or more of the following items into prepared grades of processed materials for use in new

584 products:

585 (A) iron;

- 586 (B) steel;
- 587 (C) nonferrous metal;
- 588 (D) paper;
- 589 (E) glass;
- 590 (F) plastic;
- 591 (G) textile; or
- 592 (H) rubber; and
- 593 (ii) the new products under Subsection [~~(54)~~] (55)(b)(i) would otherwise be made with
- 594 nonrecycled materials; or
- 595 (c) a cogeneration facility as defined in Section 54-2-1.
- 596 [~~(55)~~] (56) "Member of the immediate family of the producer" means a person who is
- 597 related to a producer described in Subsection 59-12-104(20)(a) as a:
- 598 (a) child or stepchild, regardless of whether the child or stepchild is:
- 599 (i) an adopted child or adopted stepchild; or
- 600 (ii) a foster child or foster stepchild;
- 601 (b) grandchild or stepgrandchild;
- 602 (c) grandparent or stepgrandparent;
- 603 (d) nephew or stepnephew;
- 604 (e) niece or stepniece;
- 605 (f) parent or stepparent;
- 606 (g) sibling or stepsibling;
- 607 (h) spouse;
- 608 (i) person who is the spouse of a person described in Subsections [~~(55)~~] (56)(a) through
- 609 (g); or
- 610 (j) person similar to a person described in Subsections [~~(55)~~] (56)(a) through (i) as
- 611 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
- 612 Administrative Rulemaking Act.
- 613 [~~(56)~~] (57) "Mobile home" is as defined in Section 58-56-3.
- 614 [~~(57)~~] (58) "Mobile telecommunications service" is as defined in the Mobile
- 615 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
- 616 [~~(58)~~] (59) (a) "Mobile wireless service" means a telecommunications service,

617 regardless of the technology used, if:

- 618 (i) the origination point of the conveyance, routing, or transmission is not fixed;
619 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or
620 (iii) the origination point described in Subsection [~~(58)~~] (59)(a)(i) and the termination
621 point described in Subsection [~~(58)~~] (59)(a)(ii) are not fixed.

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

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

626 [~~(59)~~] (60) (a) Except as provided in Subsection [~~(59)~~] (60)(c), "mobility enhancing
627 equipment" means equipment that is:

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

630 (ii) appropriate for use in a:

631 (A) home; or

632 (B) motor vehicle; and

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

634 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
635 the equipment described in Subsection [~~(59)~~] (60)(a).

636 (c) Notwithstanding Subsection [~~(59)~~] (60)(a), "mobility enhancing equipment" does
637 not include:

638 (i) a motor vehicle;

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

641 (iii) durable medical equipment; or

642 (iv) a prosthetic device.

643 [~~(60)~~] (61) "Model 1 seller" means a seller registered under the agreement that has
644 selected a certified service provider as the seller's agent to perform all of the seller's sales and
645 use tax functions for agreement sales and use taxes other than the seller's obligation under
646 Section 59-12-124 to remit a tax on the seller's own purchases.

647 [~~(61)~~] (62) "Model 2 seller" means a seller registered under the agreement that:

648 (a) except as provided in Subsection [~~(61)~~] (62)(b), has selected a certified automated
649 system to perform the seller's sales tax functions for agreement sales and use taxes; and

650 (b) notwithstanding Subsection [~~(61)~~] (62)(a), retains responsibility for remitting all of
651 the sales tax:

- 652 (i) collected by the seller; and
- 653 (ii) to the appropriate local taxing jurisdiction.

654 [~~(62)~~] (63) (a) Subject to Subsection [~~(62)~~] (63)(b), "model 3 seller" means a seller
655 registered under the agreement that has:

- 656 (i) sales in at least five states that are members of the agreement;
- 657 (ii) total annual sales revenues of at least \$500,000,000;
- 658 (iii) a proprietary system that calculates the amount of tax:
 - 659 (A) for an agreement sales and use tax; and
 - 660 (B) due to each local taxing jurisdiction; and
- 661 (iv) entered into a performance agreement with the governing board of the agreement.

662 (b) For purposes of Subsection [~~(62)~~] (63)(a), "model 3 seller" includes an affiliated
663 group of sellers using the same proprietary system.

664 [~~(63)~~] (64) "Model 4 seller" means a seller that is registered under the agreement and is
665 not a model 1 seller, model 2 seller, or model 3 seller.

666 [~~(64)~~] (65) "Modular home" means a modular unit as defined in Section 58-56-3.

667 [~~(65)~~] (66) "Motor vehicle" is as defined in Section 41-1a-102.

668 [~~(66)~~] (67) "Oil shale" means a group of fine black to dark brown shales containing
669 bituminous material that yields petroleum upon distillation.

670 [~~(67)~~] (68) (a) "Other fuels" means products that burn independently to produce heat or
671 energy.

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

674 [~~(68)~~] (69) (a) "Paging service" means a telecommunications service that provides
675 transmission of a coded radio signal for the purpose of activating a specific pager.

676 (b) For purposes of Subsection [~~(68)~~] (69)(a), the transmission of a coded radio signal
677 includes a transmission by message or sound.

678 [~~(69)~~] (70) "Pawnbroker" is as defined in Section 13-32a-102.

679 [~~(70)~~] (71) "Pawn transaction" is as defined in Section 13-32a-102.
680 [~~(71)~~] (72) (a) "Permanently attached to real property" means that for tangible personal
681 property attached to real property:
682 (i) the attachment of the tangible personal property to the real property:
683 (A) is essential to the use of the tangible personal property; and
684 (B) suggests that the tangible personal property will remain attached to the real
685 property in the same place over the useful life of the tangible personal property; or
686 (ii) if the tangible personal property is detached from the real property, the detachment
687 would:
688 (A) cause substantial damage to the tangible personal property; or
689 (B) require substantial alteration or repair of the real property to which the tangible
690 personal property is attached.
691 (b) "Permanently attached to real property" includes:
692 (i) the attachment of an accessory to the tangible personal property if the accessory is:
693 (A) essential to the operation of the tangible personal property; and
694 (B) attached only to facilitate the operation of the tangible personal property;
695 (ii) a temporary detachment of tangible personal property from real property for a
696 repair or renovation if the repair or renovation is performed where the tangible personal
697 property and real property are located; or
698 (iii) property attached to oil, gas, or water pipelines, except for the property listed in
699 Subsection [~~(71)~~] (72)(c)(iii) or (iv).
700 (c) "Permanently attached to real property" does not include:
701 (i) the attachment of portable or movable tangible personal property to real property if
702 that portable or movable tangible personal property is attached to real property only for:
703 (A) convenience;
704 (B) stability; or
705 (C) for an obvious temporary purpose;
706 (ii) the detachment of tangible personal property from real property except for the
707 detachment described in Subsection [~~(71)~~] (72)(b)(ii);
708 (iii) an attachment of the following tangible personal property to real property if the
709 attachment to real property is only through a line that supplies water, electricity, gas,

710 telecommunications, cable, or supplies a similar item as determined by the commission by rule
711 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

- 712 (A) a computer;
- 713 (B) a telephone;
- 714 (C) a television; or
- 715 (D) tangible personal property similar to Subsections [~~(71)~~] (72)(c)(iii)(A) through (C)
716 as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
717 Administrative Rulemaking Act; or

718 (iv) an item listed in Subsection [~~(111)~~] (112)(c).

719 [~~(72)~~] (73) "Person" includes any individual, firm, partnership, joint venture,
720 association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county,
721 city, municipality, district, or other local governmental entity of the state, or any group or
722 combination acting as a unit.

723 [~~(73)~~] (74) "Place of primary use":

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

- 727 (i) the residential street address of the customer; or
- 728 (ii) the primary business street address of the customer; or
- 729 (b) for mobile telecommunications service, is as defined in the Mobile
730 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

731 [~~(74)~~] (75) (a) "Postpaid calling service" means a telecommunications service a person
732 obtains by making a payment on a call-by-call basis:

- 733 (i) through the use of a:
 - 734 (A) bank card;
 - 735 (B) credit card;
 - 736 (C) debit card; or
 - 737 (D) travel card; or
- 738 (ii) by a charge made to a telephone number that is not associated with the origination
739 or termination of the telecommunications service.

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

741 service, that would be a prepaid wireless calling service if the service were exclusively a
742 telecommunications service.

743 ~~[(75)]~~ (76) "Postproduction" means an activity related to the finishing or duplication of
744 a medium described in Subsection 59-12-104(54)(a).

745 ~~[(76)]~~ (77) "Prepaid calling service" means a telecommunications service:

746 (a) that allows a purchaser access to telecommunications service that is exclusively
747 telecommunications service;

748 (b) that:

749 (i) is paid for in advance; and

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

751 (A) access number; or

752 (B) authorization code;

753 (c) that is dialed:

754 (i) manually; or

755 (ii) electronically; and

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

757 (i) by a known amount; and

758 (ii) with use.

759 ~~[(77)]~~ (78) "Prepaid wireless calling service" means a telecommunications service:

760 (a) that provides the right to utilize:

761 (i) mobile wireless service; and

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

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

764 (B) a content service; or

765 (C) an ancillary service;

766 (b) that:

767 (i) is paid for in advance; and

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

769 (A) access number; or

770 (B) authorization code;

771 (c) that is dialed:

- 772 (i) manually; or
- 773 (ii) electronically; and
- 774 (d) sold in predetermined units or dollars that decline:
- 775 (i) by a known amount; and
- 776 (ii) with use.
- 777 [~~(78)~~] (79) (a) "Prepared food" means:
- 778 (i) food:
- 779 (A) sold in a heated state; or
- 780 (B) heated by a seller;
- 781 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 782 item; or
- 783 (iii) except as provided in Subsection [~~(78)~~] (79)(c), food sold with an eating utensil
- 784 provided by the seller, including a:
- 785 (A) plate;
- 786 (B) knife;
- 787 (C) fork;
- 788 (D) spoon;
- 789 (E) glass;
- 790 (F) cup;
- 791 (G) napkin; or
- 792 (H) straw.
- 793 (b) "Prepared food" does not include:
- 794 (i) food that a seller only:
- 795 (A) cuts;
- 796 (B) repackages; or
- 797 (C) pasteurizes; or
- 798 (ii) (A) the following:
- 799 (I) raw egg;
- 800 (II) raw fish;
- 801 (III) raw meat;
- 802 (IV) raw poultry; or

803 (V) a food containing an item described in Subsections [~~(78)~~] (79)(b)(ii)(A)(I) through
804 (IV); and

805 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
806 Food and Drug Administration's Food Code that a consumer cook the items described in
807 Subsection [~~(78)~~] (79)(b)(ii)(A) to prevent food borne illness; or

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

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

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

815 (I) by weight or volume; and

816 (II) as a single item; or

817 (C) a bakery item, including:

818 (I) a bagel;

819 (II) a bar;

820 (III) a biscuit;

821 (IV) bread;

822 (V) a bun;

823 (VI) a cake;

824 (VII) a cookie;

825 (VIII) a croissant;

826 (IX) a danish;

827 (X) a donut;

828 (XI) a muffin;

829 (XII) a pastry;

830 (XIII) a pie;

831 (XIV) a roll;

832 (XV) a tart;

833 (XVI) a torte; or

834 (XVII) a tortilla.

835 (c) Notwithstanding Subsection [~~(78)~~] (79)(a)(iii), an eating utensil provided by the
836 seller does not include the following used to transport the food:

837 (i) a container; or

838 (ii) packaging.

839 [~~(79)~~] (80) "Prescription" means an order, formula, or recipe that is issued:

840 (a) (i) orally;

841 (ii) in writing;

842 (iii) electronically; or

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

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

845 [~~(80)~~] (81) (a) Except as provided in Subsection [~~(80)~~] (81)(b)(ii) or (iii), "prewritten
846 computer software" means computer software that is not designed and developed:

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

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

849 (b) "Prewritten computer software" includes:

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

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

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

854 (ii) notwithstanding Subsection [~~(80)~~] (81)(a), computer software designed and
855 developed by the author or other creator of the computer software to the specifications of a
856 specific purchaser if the computer software is sold to a person other than the purchaser; or

857 (iii) notwithstanding Subsection [~~(80)~~] (81)(a) and except as provided in Subsection
858 [~~(80)~~] (81)(c), prewritten computer software or a prewritten portion of prewritten computer
859 software:

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

861 (B) if the modification or enhancement described in Subsection [~~(80)~~] (81)(b)(iii)(A) is
862 designed and developed to the specifications of a specific purchaser.

863 (c) Notwithstanding Subsection [~~(80)~~] (81)(b)(iii), "prewritten computer software"
864 does not include a modification or enhancement described in Subsection [~~(80)~~] (81)(b)(iii) if

865 the charges for the modification or enhancement are:

866 (i) reasonable; and

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

869 ~~[(81)]~~ (82) (a) "Private communication service" means a telecommunications service:

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

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

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

876 (i) an extension line;

877 (ii) a station;

878 (iii) switching capacity; or

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

881 ~~[(82)]~~ (83) (a) "Prosthetic device" means a device that is worn on or in the body to:

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

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

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

885 (b) "Prosthetic device" includes:

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

887 (ii) replacement parts for a prosthetic device;

888 (iii) a dental prosthesis; or

889 (iv) a hearing aid.

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

891 (i) corrective eyeglasses; or

892 (ii) contact lenses.

893 ~~[(83)]~~ (84) (a) "Protective equipment" means an item:

894 (i) for human wear; and

895 (ii) that is:

- 896 (A) designed as protection:
- 897 (I) to the wearer against injury or disease; or
- 898 (II) against damage or injury of other persons or property; and
- 899 (B) not suitable for general use.
- 900 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 901 commission shall make rules:
- 902 (i) listing the items that constitute "protective equipment"; and
- 903 (ii) that are consistent with the list of items that constitute "protective equipment"
- 904 under the agreement.
- 905 [~~84~~] (85) (a) For purposes of Subsection 59-12-104(41), "publication" means any
- 906 written or printed matter, other than a photocopy:
- 907 (i) regardless of:
- 908 (A) characteristics;
- 909 (B) copyright;
- 910 (C) form;
- 911 (D) format;
- 912 (E) method of reproduction; or
- 913 (F) source; and
- 914 (ii) made available in printed or electronic format.
- 915 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 916 commission may by rule define the term "photocopy."
- 917 [~~85~~] (86) (a) "Purchase price" and "sales price" mean the total amount of
- 918 consideration:
- 919 (i) valued in money; and
- 920 (ii) for which tangible personal property, a product transferred electronically, or
- 921 services are:
- 922 (A) sold;
- 923 (B) leased; or
- 924 (C) rented.
- 925 (b) "Purchase price" and "sales price" include:
- 926 (i) the seller's cost of the tangible personal property, a product transferred

- 927 electronically, or services sold;
- 928 (ii) expenses of the seller, including:
 - 929 (A) the cost of materials used;
 - 930 (B) a labor cost;
 - 931 (C) a service cost;
 - 932 (D) interest;
 - 933 (E) a loss;
 - 934 (F) the cost of transportation to the seller; or
 - 935 (G) a tax imposed on the seller;
- 936 (iii) a charge by the seller for any service necessary to complete the sale; or
- 937 (iv) consideration a seller receives from a person other than the purchaser if:
 - 938 (A) (I) the seller actually receives consideration from a person other than the purchaser;
 - 939 and
 - 940 (II) the consideration described in Subsection [~~85~~] (86)(b)(iv)(A)(I) is directly related
 - 941 to a price reduction or discount on the sale;
 - 942 (B) the seller has an obligation to pass the price reduction or discount through to the
 - 943 purchaser;
 - 944 (C) the amount of the consideration attributable to the sale is fixed and determinable by
 - 945 the seller at the time of the sale to the purchaser; and
 - 946 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the
 - 947 seller to claim a price reduction or discount; and
 - 948 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,
 - 949 coupon, or other documentation with the understanding that the person other than the seller
 - 950 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;
 - 951 (II) the purchaser identifies that purchaser to the seller as a member of a group or
 - 952 organization allowed a price reduction or discount, except that a preferred customer card that is
 - 953 available to any patron of a seller does not constitute membership in a group or organization
 - 954 allowed a price reduction or discount; or
 - 955 (III) the price reduction or discount is identified as a third party price reduction or
 - 956 discount on the:
 - 957 (Aa) invoice the purchaser receives; or

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

989 (b) hydroelectric energy;

990 (c) geothermal energy;

991 (d) solar energy; or

992 (e) wind energy.

993 [~~89~~] (90) (a) "Renewable energy production facility" means a facility that:

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

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

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

997 facility is:

998 (i) connected to an electric grid; or

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

1000 [~~90~~] (91) "Rental" is as defined in Subsection [~~50~~] (51).

1001 [~~91~~] (92) "Repairs or renovations of tangible personal property" means:

1002 (a) a repair or renovation of tangible personal property that is not permanently attached
1003 to real property; or

1004 (b) attaching tangible personal property or a product that is transferred electronically to
1005 other tangible personal property if the other tangible personal property to which the tangible
1006 personal property or product that is transferred electronically is attached is not permanently
1007 attached to real property.

1008 [~~92~~] (93) "Research and development" means the process of inquiry or
1009 experimentation aimed at the discovery of facts, devices, technologies, or applications and the
1010 process of preparing those devices, technologies, or applications for marketing.

1011 [~~93~~] (94) (a) "Residential telecommunications services" means a telecommunications
1012 service or an ancillary service that is provided to an individual for personal use:

1013 (i) at a residential address; or

1014 (ii) at an institution, including a nursing home or a school, if the telecommunications
1015 service or ancillary service is provided to and paid for by the individual residing at the
1016 institution rather than the institution.

1017 (b) For purposes of Subsection [~~93~~] (94)(a), a residential address includes an:

1018 (i) apartment; or

1019 (ii) other individual dwelling unit.

1020 [~~(94)~~] (95) "Residential use" means the use in or around a home, apartment building,
1021 sleeping quarters, and similar facilities or accommodations.

1022 [~~(95)~~] (96) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose
1023 other than:

1024 (a) resale;

1025 (b) sublease; or

1026 (c) subrent.

1027 [~~(96)~~] (97) (a) "Retailer" means any person engaged in a regularly organized business
1028 in tangible personal property or any other taxable transaction under Subsection 59-12-103(1),
1029 and who is selling to the user or consumer and not for resale.

1030 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
1031 engaged in the business of selling to users or consumers within the state.

1032 [~~(97)~~] (98) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
1033 otherwise, in any manner, of tangible personal property or any other taxable transaction under
1034 Subsection 59-12-103(1), for consideration.

1035 (b) "Sale" includes:

1036 (i) installment and credit sales;

1037 (ii) any closed transaction constituting a sale;

1038 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
1039 chapter;

1040 (iv) any transaction if the possession of property is transferred but the seller retains the
1041 title as security for the payment of the price; and

1042 (v) any transaction under which right to possession, operation, or use of any article of
1043 tangible personal property is granted under a lease or contract and the transfer of possession
1044 would be taxable if an outright sale were made.

1045 [~~(98)~~] (99) "Sale at retail" is as defined in Subsection [~~(95)~~] (96).

1046 [~~(99)~~] (100) "Sale-leaseback transaction" means a transaction by which title to tangible
1047 personal property or a product transferred electronically that is subject to a tax under this
1048 chapter is transferred:

1049 (a) by a purchaser-lessee;

1050 (b) to a lessor;

- 1051 (c) for consideration; and
- 1052 (d) if:
- 1053 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
- 1054 of the tangible personal property or product transferred electronically;
- 1055 (ii) the sale of the tangible personal property or product transferred electronically to the
- 1056 lessor is intended as a form of financing:
- 1057 (A) for the tangible personal property or product transferred electronically; and
- 1058 (B) to the purchaser-lessee; and
- 1059 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
- 1060 is required to:
- 1061 (A) capitalize the tangible personal property or product transferred electronically for
- 1062 financial reporting purposes; and
- 1063 (B) account for the lease payments as payments made under a financing arrangement.
- 1064 [~~(100)~~] (101) "Sales price" is as defined in Subsection [~~(85)~~] (86).
- 1065 [~~(101)~~] (102) (a) "Sales relating to schools" means the following sales by, amounts
- 1066 paid to, or amounts charged by a school:
- 1067 (i) sales that are directly related to the school's educational functions or activities
- 1068 including:
- 1069 (A) the sale of:
- 1070 (I) textbooks;
- 1071 (II) textbook fees;
- 1072 (III) laboratory fees;
- 1073 (IV) laboratory supplies; or
- 1074 (V) safety equipment;
- 1075 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
- 1076 that:
- 1077 (I) a student is specifically required to wear as a condition of participation in a
- 1078 school-related event or school-related activity; and
- 1079 (II) is not readily adaptable to general or continued usage to the extent that it takes the
- 1080 place of ordinary clothing;
- 1081 (C) sales of the following if the net or gross revenues generated by the sales are

1082 deposited into a school district fund or school fund dedicated to school meals:

1083 (I) food and food ingredients; or

1084 (II) prepared food; or

1085 (D) transportation charges for official school activities; or

1086 (ii) amounts paid to or amounts charged by a school for admission to a school-related

1087 event or school-related activity.

1088 (b) "Sales relating to schools" does not include:

1089 (i) bookstore sales of items that are not educational materials or supplies;

1090 (ii) except as provided in Subsection [~~(101)~~] (102)(a)(i)(B):

1091 (A) clothing;

1092 (B) clothing accessories or equipment;

1093 (C) protective equipment; or

1094 (D) sports or recreational equipment; or

1095 (iii) amounts paid to or amounts charged by a school for admission to a school-related

1096 event or school-related activity if the amounts paid or charged are passed through to a person:

1097 (A) other than a:

1098 (I) school;

1099 (II) nonprofit organization authorized by a school board or a governing body of a

1100 private school to organize and direct a competitive secondary school activity; or

1101 (III) nonprofit association authorized by a school board or a governing body of a

1102 private school to organize and direct a competitive secondary school activity; and

1103 (B) that is required to collect sales and use taxes under this chapter.

1104 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1105 commission may make rules defining the term "passed through."

1106 [~~(102)~~] (103) For purposes of this section and Section 59-12-104, "school":

1107 (a) means:

1108 (i) an elementary school or a secondary school that:

1109 (A) is a:

1110 (I) public school; or

1111 (II) private school; and

1112 (B) provides instruction for one or more grades kindergarten through 12; or

- 1113 (ii) a public school district; and
- 1114 (b) includes the Electronic High School as defined in Section 53A-15-1002.
- 1115 [~~(103)~~] (104) "Seller" means a person that makes a sale, lease, or rental of:
- 1116 (a) tangible personal property;
- 1117 (b) a product transferred electronically; or
- 1118 (c) a service.
- 1119 [~~(104)~~] (105) (a) "Semiconductor fabricating, processing, research, or development
- 1120 materials" means tangible personal property or a product transferred electronically if the
- 1121 tangible personal property or product transferred electronically is:
- 1122 (i) used primarily in the process of:
- 1123 (A) (I) manufacturing a semiconductor;
- 1124 (II) fabricating a semiconductor; or
- 1125 (III) research or development of a:
- 1126 (Aa) semiconductor; or
- 1127 (Bb) semiconductor manufacturing process; or
- 1128 (B) maintaining an environment suitable for a semiconductor; or
- 1129 (ii) consumed 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.
- 1136 (b) "Semiconductor fabricating, processing, research, or development materials"
- 1137 includes:
- 1138 (i) parts used in the repairs or renovations of tangible personal property or a product
- 1139 transferred electronically described in Subsection [~~(104)~~] (105)(a); or
- 1140 (ii) a chemical, catalyst, or other material used to:
- 1141 (A) produce or induce in a semiconductor a:
- 1142 (I) chemical change; or
- 1143 (II) physical change;

- 1144 (B) remove impurities from a semiconductor; or
- 1145 (C) improve the marketable condition of a semiconductor.
- 1146 [~~(105)~~] (106) "Senior citizen center" means a facility having the primary purpose of
- 1147 providing services to the aged as defined in Section 62A-3-101.
- 1148 [~~(106)~~] (107) "Simplified electronic return" means the electronic return:
- 1149 (a) described in Section 318(C) of the agreement; and
- 1150 (b) approved by the governing board of the agreement.
- 1151 [~~(107)~~] (108) "Solar energy" means the sun used as the sole source of energy for
- 1152 producing electricity.
- 1153 [~~(108)~~] (109) (a) "Sports or recreational equipment" means an item:
- 1154 (i) designed for human use; and
- 1155 (ii) that is:
- 1156 (A) worn in conjunction with:
- 1157 (I) an athletic activity; or
- 1158 (II) a recreational activity; and
- 1159 (B) not suitable for general use.
- 1160 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1161 commission shall make rules:
- 1162 (i) listing the items that constitute "sports or recreational equipment"; and
- 1163 (ii) that are consistent with the list of items that constitute "sports or recreational
- 1164 equipment" under the agreement.
- 1165 [~~(109)~~] (110) "State" means the state of Utah, its departments, and agencies.
- 1166 [~~(110)~~] (111) "Storage" means any keeping or retention of tangible personal property or
- 1167 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose
- 1168 except sale in the regular course of business.
- 1169 [~~(111)~~] (112) (a) Except as provided in Subsection [~~(111)~~] (112)(d) or (e), "tangible
- 1170 personal property" means personal property that:
- 1171 (i) may be:
- 1172 (A) seen;
- 1173 (B) weighed;
- 1174 (C) measured;

- 1175 (D) felt; or
- 1176 (E) touched; or
- 1177 (ii) is in any manner perceptible to the senses.
- 1178 (b) "Tangible personal property" includes:
- 1179 (i) electricity;
- 1180 (ii) water;
- 1181 (iii) gas;
- 1182 (iv) steam; or
- 1183 (v) prewritten computer software.
- 1184 (c) "Tangible personal property" includes the following regardless of whether the item
- 1185 is attached to real property:
- 1186 (i) a dishwasher;
- 1187 (ii) a dryer;
- 1188 (iii) a freezer;
- 1189 (iv) a microwave;
- 1190 (v) a refrigerator;
- 1191 (vi) a stove;
- 1192 (vii) a washer; or
- 1193 (viii) an item similar to Subsections [~~(111)~~] (112)(c)(i) through (vii) as determined by
- 1194 the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 1195 Rulemaking Act.
- 1196 (d) "Tangible personal property" does not include a product that is transferred
- 1197 electronically.
- 1198 (e) "Tangible personal property" does not include the following if attached to real
- 1199 property, regardless of whether the attachment to real property is only through a line that
- 1200 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
- 1201 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 1202 Rulemaking Act:
- 1203 (i) a hot water heater;
- 1204 (ii) a water filtration system; or
- 1205 (iii) a water softener system.

1206 [~~(H2)~~] (113) "Tar sands" means impregnated sands that yield mixtures of liquid
1207 hydrocarbon and require further processing other than mechanical blending before becoming
1208 finished petroleum products.

1209 [~~(H3)~~] (114) (a) "Telecommunications enabling or facilitating equipment, machinery,
1210 or software" means an item listed in Subsection [~~(H3)~~] (114)(b) if that item is purchased or
1211 leased primarily to enable or facilitate one or more of the following to function:

1212 (i) telecommunications switching or routing equipment, machinery, or software; or

1213 (ii) telecommunications transmission equipment, machinery, or software.

1214 (b) The following apply to Subsection [~~(H3)~~] (114)(a):

1215 (i) a pole;

1216 (ii) software;

1217 (iii) a supplementary power supply;

1218 (iv) temperature or environmental equipment or machinery;

1219 (v) test equipment;

1220 (vi) a tower; or

1221 (vii) equipment, machinery, or software that functions similarly to an item listed in
1222 Subsections [~~(H3)~~] (114)(b)(i) through (vi) as determined by the commission by rule made in
1223 accordance with Subsection [~~(H3)~~] (114)(c).

1224 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1225 commission may by rule define what constitutes equipment, machinery, or software that
1226 functions similarly to an item listed in Subsections [~~(H3)~~] (114)(b)(i) through (vi).

1227 [~~(H4)~~] (115) "Telecommunications equipment, machinery, or software required for
1228 911 service" means equipment, machinery, or software that is required to comply with 47
1229 C.F.R. Sec. 20.18.

1230 [~~(H5)~~] (116) "Telecommunications maintenance or repair equipment, machinery, or
1231 software" means equipment, machinery, or software purchased or leased primarily to maintain
1232 or repair one or more of the following, regardless of whether the equipment, machinery, or
1233 software is purchased or leased as a spare part or as an upgrade or modification to one or more
1234 of the following:

1235 (a) telecommunications enabling or facilitating equipment, machinery, or software;

1236 (b) telecommunications switching or routing equipment, machinery, or software; or

- 1237 (c) telecommunications transmission equipment, machinery, or software.
- 1238 [~~(H6)~~] (117) (a) "Telecommunications service" means the electronic conveyance,
- 1239 routing, or transmission of audio, data, video, voice, or any other information or signal to a
- 1240 point, or among or between points.
- 1241 (b) "Telecommunications service" includes:
- 1242 (i) an electronic conveyance, routing, or transmission with respect to which a computer
- 1243 processing application is used to act:
- 1244 (A) on the code, form, or protocol of the content;
- 1245 (B) for the purpose of electronic conveyance, routing, or transmission; and
- 1246 (C) regardless of whether the service:
- 1247 (I) is referred to as voice over Internet protocol service; or
- 1248 (II) is classified by the Federal Communications Commission as enhanced or value
- 1249 added;
- 1250 (ii) an 800 service;
- 1251 (iii) a 900 service;
- 1252 (iv) a fixed wireless service;
- 1253 (v) a mobile wireless service;
- 1254 (vi) a postpaid calling service;
- 1255 (vii) a prepaid calling service;
- 1256 (viii) a prepaid wireless calling service; or
- 1257 (ix) a private communications service.
- 1258 (c) "Telecommunications service" does not include:
- 1259 (i) advertising, including directory advertising;
- 1260 (ii) an ancillary service;
- 1261 (iii) a billing and collection service provided to a third party;
- 1262 (iv) a data processing and information service if:
- 1263 (A) the data processing and information service allows data to be:
- 1264 (I) (Aa) acquired;
- 1265 (Bb) generated;
- 1266 (Cc) processed;
- 1267 (Dd) retrieved; or

1268 (Ee) stored; and
1269 (II) delivered by an electronic transmission to a purchaser; and
1270 (B) the purchaser's primary purpose for the underlying transaction is the processed data
1271 or information;
1272 (v) installation or maintenance of the following on a customer's premises:
1273 (A) equipment; or
1274 (B) wiring;
1275 (vi) Internet access service;
1276 (vii) a paging service;
1277 (viii) a product transferred electronically, including:
1278 (A) music;
1279 (B) reading material;
1280 (C) a ring tone;
1281 (D) software; or
1282 (E) video;
1283 (ix) a radio and television audio and video programming service:
1284 (A) regardless of the medium; and
1285 (B) including:
1286 (I) furnishing conveyance, routing, or transmission of a television audio and video
1287 programming service by a programming service provider;
1288 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
1289 (III) audio and video programming services delivered by a commercial mobile radio
1290 service provider as defined in 47 C.F.R. Sec. 20.3;
1291 (x) a value-added nonvoice data service; or
1292 (xi) tangible personal property.
1293 [(H7)] (118) (a) "Telecommunications service provider" means a person that:
1294 (i) owns, controls, operates, or manages a telecommunications service; and
1295 (ii) engages in an activity described in Subsection [(H7)] (118)(a)(i) for the shared use
1296 with or resale to any person of the telecommunications service.
1297 (b) A person described in Subsection [(H7)] (118)(a) is a telecommunications service
1298 provider whether or not the Public Service Commission of Utah regulates:

- 1299 (i) that person; or
- 1300 (ii) the telecommunications service that the person owns, controls, operates, or
- 1301 manages.

1302 [~~(118)~~] (119) (a) "Telecommunications switching or routing equipment, machinery, or

1303 software" means an item listed in Subsection [~~(118)~~] (119)(b) if that item is purchased or

1304 leased primarily for switching or routing:

- 1305 (i) an ancillary service;
- 1306 (ii) data communications;
- 1307 (iii) voice communications; or
- 1308 (iv) telecommunications service.

1309 (b) The following apply to Subsection [~~(118)~~] (119)(a):

- 1310 (i) a bridge;
- 1311 (ii) a computer;
- 1312 (iii) a cross connect;
- 1313 (iv) a modem;
- 1314 (v) a multiplexer;
- 1315 (vi) plug in circuitry;
- 1316 (vii) a router;
- 1317 (viii) software;
- 1318 (ix) a switch; or
- 1319 (x) equipment, machinery, or software that functions similarly to an item listed in
- 1320 Subsections [~~(118)~~] (119)(b)(i) through (ix) as determined by the commission by rule made in
- 1321 accordance with Subsection [~~(118)~~] (119)(c).

1322 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1323 commission may by rule define what constitutes equipment, machinery, or software that

1324 functions similarly to an item listed in Subsections [~~(118)~~] (119)(b)(i) through (ix).

1325 [~~(119)~~] (120) (a) "Telecommunications transmission equipment, machinery, or

1326 software" means an item listed in Subsection [~~(119)~~] (120)(b) if that item is purchased or

1327 leased primarily for sending, receiving, or transporting:

- 1328 (i) an ancillary service;
- 1329 (ii) data communications;

- 1330 (iii) voice communications; or
- 1331 (iv) telecommunications service.
- 1332 (b) The following apply to Subsection [~~(119)~~] (120)(a):
- 1333 (i) an amplifier;
- 1334 (ii) a cable;
- 1335 (iii) a closure;
- 1336 (iv) a conduit;
- 1337 (v) a controller;
- 1338 (vi) a duplexer;
- 1339 (vii) a filter;
- 1340 (viii) an input device;
- 1341 (ix) an input/output device;
- 1342 (x) an insulator;
- 1343 (xi) microwave machinery or equipment;
- 1344 (xii) an oscillator;
- 1345 (xiii) an output device;
- 1346 (xiv) a pedestal;
- 1347 (xv) a power converter;
- 1348 (xvi) a power supply;
- 1349 (xvii) a radio channel;
- 1350 (xviii) a radio receiver;
- 1351 (xix) a radio transmitter;
- 1352 (xx) a repeater;
- 1353 (xxi) software;
- 1354 (xxii) a terminal;
- 1355 (xxiii) a timing unit;
- 1356 (xxiv) a transformer;
- 1357 (xxv) a wire; or
- 1358 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
- 1359 Subsections [~~(119)~~] (120)(b)(i) through (xxv) as determined by the commission by rule made in
- 1360 accordance with Subsection [~~(119)~~] (120)(c).

1361 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1362 commission may by rule define what constitutes equipment, machinery, or software that
1363 functions similarly to an item listed in Subsections [~~(119)~~] (120)(b)(i) through (xxv).

1364 (121) (a) "Textbook for a higher education course" means a textbook or other printed
1365 material that is required for a course:

1366 (i) offered by an institution of higher education; and

1367 (ii) that the purchaser of the textbook or other printed material attends or will attend.

1368 (b) "Textbook for a higher education course" includes a textbook in electronic format.

1369 [~~(120)~~] (122) "Tobacco" means:

1370 (a) a cigarette;

1371 (b) a cigar;

1372 (c) chewing tobacco;

1373 (d) pipe tobacco; or

1374 (e) any other item that contains tobacco.

1375 [~~(121)~~] (123) "Unassisted amusement device" means an amusement device, skill
1376 device, or ride device that is started and stopped by the purchaser or renter of the right to use or
1377 operate the amusement device, skill device, or ride device.

1378 [~~(122)~~] (124) (a) "Use" means the exercise of any right or power over tangible personal
1379 property, a product transferred electronically, or a service under Subsection 59-12-103(1),
1380 incident to the ownership or the leasing of that tangible personal property, product transferred
1381 electronically, or service.

1382 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal
1383 property, a product transferred electronically, or a service in the regular course of business and
1384 held for resale.

1385 [~~(123)~~] (125) "Value-added nonvoice data service" means a service:

1386 (a) that otherwise meets the definition of a telecommunications service except that a
1387 computer processing application is used to act primarily for a purpose other than conveyance,
1388 routing, or transmission; and

1389 (b) with respect to which a computer processing application is used to act on data or
1390 information:

- 1391 (i) code;
- 1392 (ii) content;
- 1393 (iii) form; or
- 1394 (iv) protocol.
- 1395 ~~[(124)]~~ (126) (a) Subject to Subsection ~~[(124)]~~ (126)(b), "vehicle" means the following
- 1396 that are required to be titled, registered, or titled and registered:
- 1397 (i) an aircraft as defined in Section 72-10-102;
- 1398 (ii) a vehicle as defined in Section 41-1a-102;
- 1399 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1400 (iv) a vessel as defined in Section 41-1a-102.
- 1401 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:
- 1402 (i) a vehicle described in Subsection ~~[(124)]~~ (126)(a); or
- 1403 (ii) (A) a locomotive;
- 1404 (B) a freight car;
- 1405 (C) railroad work equipment; or
- 1406 (D) other railroad rolling stock.
- 1407 ~~[(125)]~~ (127) "Vehicle dealer" means a person engaged in the business of buying,
- 1408 selling, or exchanging a vehicle as defined in Subsection ~~[(124)]~~ (126).
- 1409 ~~[(126)]~~ (128) (a) "Vertical service" means an ancillary service that:
- 1410 (i) is offered in connection with one or more telecommunications services; and
- 1411 (ii) offers an advanced calling feature that allows a customer to:
- 1412 (A) identify a caller; and
- 1413 (B) manage multiple calls and call connections.
- 1414 (b) "Vertical service" includes an ancillary service that allows a customer to manage a
- 1415 conference bridging service.
- 1416 ~~[(127)]~~ (129) (a) "Voice mail service" means an ancillary service that enables a
- 1417 customer to receive, send, or store a recorded message.
- 1418 (b) "Voice mail service" does not include a vertical service that a customer is required
- 1419 to have in order to utilize a voice mail service.
- 1420 ~~[(128)]~~ (130) (a) Except as provided in Subsection ~~[(128)]~~ (130)(b), "waste energy
- 1421 facility" means a facility that generates electricity:

1422 (i) using as the primary source of energy waste materials that would be placed in a
1423 landfill or refuse pit if it were not used to generate electricity, including:

1424 (A) tires;

1425 (B) waste coal; or

1426 (C) oil shale; and

1427 (ii) in amounts greater than actually required for the operation of the facility.

1428 (b) "Waste energy facility" does not include a facility that incinerates:

1429 (i) municipal solid waste;

1430 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or

1431 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1432 [~~(129)~~] (131) "Watercraft" means a vessel as defined in Section 73-18-2.

1433 [~~(130)~~] (132) "Wind energy" means wind used as the sole source of energy to produce
1434 electricity.

1435 [~~(131)~~] (133) "ZIP Code" means a Zoning Improvement Plan Code assigned to a
1436 geographic location by the United States Postal Service.

1437 Section 2. Section **59-12-104** is amended to read:

1438 **59-12-104. Exemptions.**

1439 The following sales and uses are exempt from the taxes imposed by this chapter:

1440 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
1441 under Chapter 13, Motor and Special Fuel Tax Act;

1442 (2) sales to the state, its institutions, and its political subdivisions; however, this
1443 exemption does not apply to sales of:

1444 (a) construction materials except:

1445 (i) construction materials purchased by or on behalf of institutions of the public
1446 education system as defined in Utah Constitution Article X, Section 2, provided the
1447 construction materials are clearly identified and segregated and installed or converted to real
1448 property which is owned by institutions of the public education system; and

1449 (ii) construction materials purchased by the state, its institutions, or its political
1450 subdivisions which are installed or converted to real property by employees of the state, its
1451 institutions, or its political subdivisions; or

1452 (b) tangible personal property in connection with the construction, operation,

1453 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities
1454 providing additional project capacity, as defined in Section 11-13-103;

1455 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:

1456 (i) the proceeds of each sale do not exceed \$1; and

1457 (ii) the seller or operator of the vending machine reports an amount equal to 150% of
1458 the cost of the item described in Subsection (3)(b) as goods consumed; and

1459 (b) Subsection (3)(a) applies to:

1460 (i) food and food ingredients; or

1461 (ii) prepared food;

1462 (4) (a) sales of the following to a commercial airline carrier for in-flight consumption:

1463 (i) alcoholic beverages;

1464 (ii) food and food ingredients; or

1465 (iii) prepared food;

1466 (b) sales of tangible personal property or a product transferred electronically:

1467 (i) to a passenger;

1468 (ii) by a commercial airline carrier; and

1469 (iii) during a flight for in-flight consumption or in-flight use by the passenger; or

1470 (c) services related to Subsection (4)(a) or (b);

1471 (5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts
1472 and equipment:

1473 (A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002
1474 North American Industry Classification System of the federal Executive Office of the
1475 President, Office of Management and Budget; and

1476 (II) for:

1477 (Aa) installation in an aircraft, including services relating to the installation of parts or
1478 equipment in the aircraft;

1479 (Bb) renovation of an aircraft; or

1480 (Cc) repair of an aircraft; or

1481 (B) for installation in an aircraft operated by a common carrier in interstate or foreign
1482 commerce; or

1483 (ii) beginning on October 1, 2008, sales of parts and equipment for installation in an

1484 aircraft operated by a common carrier in interstate or foreign commerce; and
1485 (b) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,
1486 a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a
1487 refund:

- 1488 (i) if the sale is made on or after July 1, 2008, but on or before September 30, 2008;
- 1489 (ii) as if Subsection (5)(a)(i)(B) were in effect on the day on which the sale is made;
- 1490 (iii) if the person did not claim the exemption allowed by Subsection (5)(a)(i)(B) for
1491 the sale prior to filing for the refund;
- 1492 (iv) for sales and use taxes paid under this chapter on the sale;
- 1493 (v) in accordance with Section 59-1-1410; and
- 1494 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if
1495 the person files for the refund on or before September 30, 2011;

1496 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
1497 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
1498 exhibitor, distributor, or commercial television or radio broadcaster;

1499 (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal
1500 property if the cleaning or washing of the tangible personal property is not assisted cleaning or
1501 washing of tangible personal property;

1502 (b) if a seller that sells at the same business location assisted cleaning or washing of
1503 tangible personal property and cleaning or washing of tangible personal property that is not
1504 assisted cleaning or washing of tangible personal property, the exemption described in
1505 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning
1506 or washing of the tangible personal property; and

1507 (c) for purposes of Subsection (7)(b) and in accordance with Title 63G, Chapter 3,
1508 Utah Administrative Rulemaking Act, the commission may make rules:

- 1509 (i) governing the circumstances under which sales are at the same business location;
1510 and
- 1511 (ii) establishing the procedures and requirements for a seller to separately account for
1512 sales of assisted cleaning or washing of tangible personal property;

1513 (8) sales made to or by religious or charitable institutions in the conduct of their regular
1514 religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are

1515 fulfilled;

1516 (9) sales of a vehicle of a type required to be registered under the motor vehicle laws of
1517 this state if the vehicle is:

1518 (a) not registered in this state; and

1519 (b) (i) not used in this state; or

1520 (ii) used in this state:

1521 (A) if the vehicle is not used to conduct business, for a time period that does not
1522 exceed the longer of:

1523 (I) 30 days in any calendar year; or

1524 (II) the time period necessary to transport the vehicle to the borders of this state; or

1525 (B) if the vehicle is used to conduct business, for the time period necessary to transport
1526 the vehicle to the borders of this state;

1527 (10) (a) amounts paid for an item described in Subsection (10)(b) if:

1528 (i) the item is intended for human use; and

1529 (ii) (A) a prescription was issued for the item; or

1530 (B) the item was purchased by a hospital or other medical facility; and

1531 (b) (i) Subsection (10)(a) applies to:

1532 (A) a drug;

1533 (B) a syringe; or

1534 (C) a stoma supply; and

1535 (ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1536 commission may by rule define the terms:

1537 (A) "syringe"; or

1538 (B) "stoma supply";

1539 (11) sales or use of property, materials, or services used in the construction of or
1540 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

1541 (12) (a) sales of an item described in Subsection (12)(c) served by:

1542 (i) the following if the item described in Subsection (12)(c) is not available to the
1543 general public:

1544 (A) a church; or

1545 (B) a charitable institution;

- 1546 (ii) an institution of higher education if:
- 1547 (A) the item described in Subsection (12)(c) is not available to the general public; or
- 1548 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
- 1549 offered by the institution of higher education; or
- 1550 (b) sales of an item described in Subsection (12)(c) provided for a patient by:
- 1551 (i) a medical facility; or
- 1552 (ii) a nursing facility; and
- 1553 (c) Subsections (12)(a) and (b) apply to:
- 1554 (i) food and food ingredients;
- 1555 (ii) prepared food; or
- 1556 (iii) alcoholic beverages;
- 1557 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property
- 1558 or a product transferred electronically by a person:
- 1559 (i) regardless of the number of transactions involving the sale of that tangible personal
- 1560 property or product transferred electronically by that person; and
- 1561 (ii) not regularly engaged in the business of selling that type of tangible personal
- 1562 property or product transferred electronically;
- 1563 (b) this Subsection (13) does not apply if:
- 1564 (i) the sale is one of a series of sales of a character to indicate that the person is
- 1565 regularly engaged in the business of selling that type of tangible personal property or product
- 1566 transferred electronically;
- 1567 (ii) the person holds that person out as regularly engaged in the business of selling that
- 1568 type of tangible personal property or product transferred electronically;
- 1569 (iii) the person sells an item of tangible personal property or product transferred
- 1570 electronically that the person purchased as a sale that is exempt under Subsection (25); or
- 1571 (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of
- 1572 this state in which case the tax is based upon:
- 1573 (A) the bill of sale or other written evidence of value of the vehicle or vessel being
- 1574 sold; or
- 1575 (B) in the absence of a bill of sale or other written evidence of value, the fair market
- 1576 value of the vehicle or vessel being sold at the time of the sale as determined by the

1577 commission; and

1578 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1579 commission shall make rules establishing the circumstances under which:

1580 (i) a person is regularly engaged in the business of selling a type of tangible personal
1581 property or product transferred electronically;

1582 (ii) a sale of tangible personal property or a product transferred electronically is one of
1583 a series of sales of a character to indicate that a person is regularly engaged in the business of
1584 selling that type of tangible personal property or product transferred electronically; or

1585 (iii) a person holds that person out as regularly engaged in the business of selling a type
1586 of tangible personal property or product transferred electronically;

1587 (14) (a) except as provided in Subsection (14)(b), amounts paid or charged on or after
1588 July 1, 2006, for a purchase or lease by a manufacturing facility except for a cogeneration
1589 facility, of the following:

1590 (i) machinery and equipment that:

1591 (A) are used:

1592 (I) for a manufacturing facility except for a manufacturing facility that is a scrap
1593 recycler described in Subsection 59-12-102[(54)](55)(b):

1594 (Aa) in the manufacturing process;

1595 (Bb) to manufacture an item sold as tangible personal property; and

1596 (Cc) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
1597 (14)(a)(i)(A)(I) in the state; or

1598 (II) for a manufacturing facility that is a scrap recycler described in Subsection
1599 59-12-102[(54)](55)(b):

1600 (Aa) to process an item sold as tangible personal property; and

1601 (Bb) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
1602 (14)(a)(i)(A)(II) in the state; and

1603 (B) have an economic life of three or more years; and

1604 (ii) normal operating repair or replacement parts that:

1605 (A) have an economic life of three or more years; and

1606 (B) are used:

1607 (I) for a manufacturing facility except for a manufacturing facility that is a scrap

1608 recycler described in Subsection 59-12-102[(54)](55)(b):
1609 (Aa) in the manufacturing process; and
1610 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(I) in the
1611 state; or
1612 (II) for a manufacturing facility that is a scrap recycler described in Subsection
1613 59-12-102[(54)](55)(b):
1614 (Aa) to process an item sold as tangible personal property; and
1615 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(II) in the
1616 state;
1617 (b) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a
1618 manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006,
1619 of the following:
1620 (i) machinery and equipment that:
1621 (A) are used:
1622 (I) in the manufacturing process;
1623 (II) to manufacture an item sold as tangible personal property; and
1624 (III) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
1625 (14)(b) in the state; and
1626 (B) have an economic life of three or more years; and
1627 (ii) normal operating repair or replacement parts that:
1628 (A) are used:
1629 (I) in the manufacturing process; and
1630 (II) in a manufacturing facility described in this Subsection (14)(b) in the state; and
1631 (B) have an economic life of three or more years;
1632 (c) amounts paid or charged for a purchase or lease made on or after January 1, 2008,
1633 by an establishment described in NAICS Subsector 212, Mining (except Oil and Gas), or
1634 NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for
1635 Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining,
1636 of the 2002 North American Industry Classification System of the federal Executive Office of
1637 the President, Office of Management and Budget, of the following:
1638 (i) machinery and equipment that:

1639 (A) are used:
1640 (I) (Aa) in the production process, other than the production of real property; or
1641 (Bb) in research and development; and
1642 (II) beginning on July 1, 2009, in an establishment described in this Subsection (14)(c)
1643 in the state; and
1644 (B) have an economic life of three or more years; and
1645 (ii) normal operating repair or replacement parts that:
1646 (A) have an economic life of three or more years; and
1647 (B) are used in:
1648 (I) (Aa) the production process, except for the production of real property; and
1649 (Bb) an establishment described in this Subsection (14)(c) in the state; or
1650 (II) (Aa) research and development; and
1651 (Bb) in an establishment described in this Subsection (14)(c) in the state;
1652 (d) (i) amounts paid or charged for a purchase or lease made on or after July 1, 2010,
1653 but on or before June 30, 2014, by an establishment described in NAICS Code 518112, Web
1654 Search Portals, of the 2002 North American Industry Classification System of the federal
1655 Executive Office of the President, Office of Management and Budget, of the following:
1656 (A) machinery and equipment that:
1657 (I) are used in the operation of the web search portal;
1658 (II) have an economic life of three or more years; and
1659 (III) are used in a new or expanding establishment described in this Subsection (14)(d)
1660 in the state; and
1661 (B) normal operating repair or replacement parts that:
1662 (I) are used in the operation of the web search portal;
1663 (II) have an economic life of three or more years; and
1664 (III) are used in a new or expanding establishment described in this Subsection (14)(d)
1665 in the state; or
1666 (ii) amounts paid or charged for a purchase or lease made on or after July 1, 2014, by
1667 an establishment described in NAICS Code 518112, Web Search Portals, of the 2002 North
1668 American Industry Classification System of the federal Executive Office of the President,
1669 Office of Management and Budget, of the following:

- 1670 (A) machinery and equipment that:
- 1671 (I) are used in the operation of the web search portal; and
- 1672 (II) have an economic life of three or more years; and
- 1673 (B) normal operating repair or replacement parts that:
- 1674 (I) are used in the operation of the web search portal; and
- 1675 (II) have an economic life of three or more years;
- 1676 (e) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter 3,
- 1677 Utah Administrative Rulemaking Act, the commission:
- 1678 (i) shall by rule define the term "establishment"; and
- 1679 (ii) may by rule define what constitutes:
- 1680 (A) processing an item sold as tangible personal property;
- 1681 (B) the production process, except for the production of real property;
- 1682 (C) research and development; or
- 1683 (D) a new or expanding establishment described in Subsection (14)(d) in the state; and
- 1684 (f) on or before October 1, 2011, and every five years after October 1, 2011, the
- 1685 commission shall:
- 1686 (i) review the exemptions described in this Subsection (14) and make
- 1687 recommendations to the Revenue and Taxation Interim Committee concerning whether the
- 1688 exemptions should be continued, modified, or repealed; and
- 1689 (ii) include in its report:
- 1690 (A) an estimate of the cost of the exemptions;
- 1691 (B) the purpose and effectiveness of the exemptions; and
- 1692 (C) the benefits of the exemptions to the state;
- 1693 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:
- 1694 (i) tooling;
- 1695 (ii) special tooling;
- 1696 (iii) support equipment;
- 1697 (iv) special test equipment; or
- 1698 (v) parts used in the repairs or renovations of tooling or equipment described in
- 1699 Subsections (15)(a)(i) through (iv); and
- 1700 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:

1701 (i) the tooling, equipment, or parts are used or consumed exclusively in the
1702 performance of any aerospace or electronics industry contract with the United States
1703 government or any subcontract under that contract; and

1704 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
1705 title to the tooling, equipment, or parts is vested in the United States government as evidenced
1706 by:

1707 (A) a government identification tag placed on the tooling, equipment, or parts; or

1708 (B) listing on a government-approved property record if placing a government
1709 identification tag on the tooling, equipment, or parts is impractical;

1710 (16) sales of newspapers or newspaper subscriptions;

1711 (17) (a) except as provided in Subsection (17)(b), tangible personal property or a
1712 product transferred electronically traded in as full or part payment of the purchase price, except
1713 that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer,
1714 trade-ins are limited to other vehicles only, and the tax is based upon:

1715 (i) the bill of sale or other written evidence of value of the vehicle being sold and the
1716 vehicle being traded in; or

1717 (ii) in the absence of a bill of sale or other written evidence of value, the then existing
1718 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
1719 commission; and

1720 (b) notwithstanding Subsection (17)(a), Subsection (17)(a) does not apply to the
1721 following items of tangible personal property or products transferred electronically traded in as
1722 full or part payment of the purchase price:

1723 (i) money;

1724 (ii) electricity;

1725 (iii) water;

1726 (iv) gas; or

1727 (v) steam;

1728 (18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property
1729 or a product transferred electronically used or consumed primarily and directly in farming
1730 operations, regardless of whether the tangible personal property or product transferred
1731 electronically:

1732 (A) becomes part of real estate; or
1733 (B) is installed by a:
1734 (I) farmer;
1735 (II) contractor; or
1736 (III) subcontractor; or
1737 (ii) sales of parts used in the repairs or renovations of tangible personal property or a
1738 product transferred electronically if the tangible personal property or product transferred
1739 electronically is exempt under Subsection (18)(a)(i); and
1740 (b) notwithstanding Subsection (18)(a), amounts paid or charged for the following are
1741 subject to the taxes imposed by this chapter:
1742 (i) (A) subject to Subsection (18)(b)(i)(B), the following if used in a manner that is
1743 incidental to farming:
1744 (I) machinery;
1745 (II) equipment;
1746 (III) materials; or
1747 (IV) supplies; and
1748 (B) tangible personal property that is considered to be used in a manner that is
1749 incidental to farming includes:
1750 (I) hand tools; or
1751 (II) maintenance and janitorial equipment and supplies;
1752 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product
1753 transferred electronically if the tangible personal property or product transferred electronically
1754 is used in an activity other than farming; and
1755 (B) tangible personal property or a product transferred electronically that is considered
1756 to be used in an activity other than farming includes:
1757 (I) office equipment and supplies; or
1758 (II) equipment and supplies used in:
1759 (Aa) the sale or distribution of farm products;
1760 (Bb) research; or
1761 (Cc) transportation; or
1762 (iii) a vehicle required to be registered by the laws of this state during the period

1763 ending two years after the date of the vehicle's purchase;

1764 (19) sales of hay;

1765 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or
1766 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or
1767 garden, farm, or other agricultural produce is sold by:

1768 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other
1769 agricultural produce;

1770 (b) an employee of the producer described in Subsection (20)(a); or

1771 (c) a member of the immediate family of the producer described in Subsection (20)(a);

1772 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
1773 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

1774 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
1775 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
1776 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
1777 manufacturer, processor, wholesaler, or retailer;

1778 (23) a product stored in the state for resale;

1779 (24) (a) purchases of a product if:

1780 (i) the product is:

1781 (A) purchased outside of this state;

1782 (B) brought into this state:

1783 (I) at any time after the purchase described in Subsection (24)(a)(i)(A); and

1784 (II) by a nonresident person who is not living or working in this state at the time of the
1785 purchase;

1786 (C) used for the personal use or enjoyment of the nonresident person described in
1787 Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and

1788 (D) not used in conducting business in this state; and

1789 (ii) for:

1790 (A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of
1791 the product for a purpose for which the product is designed occurs outside of this state;

1792 (B) a boat, the boat is registered outside of this state; or

1793 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered

1794 outside of this state;

1795 (b) the exemption provided for in Subsection (24)(a) does not apply to:

1796 (i) a lease or rental of a product; or

1797 (ii) a sale of a vehicle exempt under Subsection (33); and

1798 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
1799 purposes of Subsection (24)(a), the commission may by rule define what constitutes the
1800 following:

1801 (i) conducting business in this state if that phrase has the same meaning in this
1802 Subsection (24) as in Subsection (63);

1803 (ii) the first use of a product if that phrase has the same meaning in this Subsection (24)
1804 as in Subsection (63); or

1805 (iii) a purpose for which a product is designed if that phrase has the same meaning in
1806 this Subsection (24) as in Subsection (63);

1807 (25) a product purchased for resale in this state, in the regular course of business, either
1808 in its original form or as an ingredient or component part of a manufactured or compounded
1809 product;

1810 (26) a product upon which a sales or use tax was paid to some other state, or one of its
1811 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
1812 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if
1813 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax
1814 Act;

1815 (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a
1816 person for use in compounding a service taxable under the subsections;

1817 (28) purchases made in accordance with the special supplemental nutrition program for
1818 women, infants, and children established in 42 U.S.C. Sec. 1786;

1819 (29) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers,
1820 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens
1821 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification
1822 Manual of the federal Executive Office of the President, Office of Management and Budget;

1823 (30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State
1824 Boating Act, a boat trailer, or an outboard motor if the boat, boat trailer, or outboard motor is:

- 1825 (a) not registered in this state; and
- 1826 (b) (i) not used in this state; or
- 1827 (ii) used in this state:
- 1828 (A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a
- 1829 time period that does not exceed the longer of:
- 1830 (I) 30 days in any calendar year; or
- 1831 (II) the time period necessary to transport the boat, boat trailer, or outboard motor to
- 1832 the borders of this state; or
- 1833 (B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time
- 1834 period necessary to transport the boat, boat trailer, or outboard motor to the borders of this
- 1835 state;
- 1836 (31) sales of aircraft manufactured in Utah;
- 1837 (32) amounts paid for the purchase of telecommunications service for purposes of
- 1838 providing telecommunications service;
- 1839 (33) sales, leases, or uses of the following:
- 1840 (a) a vehicle by an authorized carrier; or
- 1841 (b) tangible personal property that is installed on a vehicle:
- 1842 (i) sold or leased to or used by an authorized carrier; and
- 1843 (ii) before the vehicle is placed in service for the first time;
- 1844 (34) (a) 45% of the sales price of any new manufactured home; and
- 1845 (b) 100% of the sales price of any used manufactured home;
- 1846 (35) sales relating to schools and fundraising sales;
- 1847 (36) sales or rentals of durable medical equipment if:
- 1848 (a) a person presents a prescription for the durable medical equipment; and
- 1849 (b) the durable medical equipment is used for home use only;
- 1850 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
- 1851 Section 72-11-102; and
- 1852 (b) the commission shall by rule determine the method for calculating sales exempt
- 1853 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;
- 1854 (38) sales to a ski resort of:
- 1855 (a) snowmaking equipment;

- 1856 (b) ski slope grooming equipment;
- 1857 (c) passenger ropeways as defined in Section 72-11-102; or
- 1858 (d) parts used in the repairs or renovations of equipment or passenger ropeways
- 1859 described in Subsections (38)(a) through (c);
- 1860 (39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
- 1861 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for
- 1862 amusement, entertainment, or recreation an unassisted amusement device as defined in Section
- 1863 59-12-102;
- 1864 (b) if a seller that sells or rents at the same business location the right to use or operate
- 1865 for amusement, entertainment, or recreation one or more unassisted amusement devices and
- 1866 one or more assisted amusement devices, the exemption described in Subsection (40)(a)
- 1867 applies if the seller separately accounts for the sales or rentals of the right to use or operate for
- 1868 amusement, entertainment, or recreation for the assisted amusement devices; and
- 1869 (c) for purposes of Subsection (40)(b) and in accordance with Title 63G, Chapter 3,
- 1870 Utah Administrative Rulemaking Act, the commission may make rules:
- 1871 (i) governing the circumstances under which sales are at the same business location;
- 1872 and
- 1873 (ii) establishing the procedures and requirements for a seller to separately account for
- 1874 the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for
- 1875 assisted amusement devices;
- 1876 (41) (a) sales of photocopies by:
- 1877 (i) a governmental entity; or
- 1878 (ii) an entity within the state system of public education, including:
- 1879 (A) a school; or
- 1880 (B) the State Board of Education; or
- 1881 (b) sales of publications by a governmental entity;
- 1882 (42) amounts paid for admission to an athletic event at an institution of higher
- 1883 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
- 1884 20 U.S.C. Sec. 1681 et seq.;
- 1885 (43) (a) sales made to or by:
- 1886 (i) an area agency on aging; or

- 1887 (ii) a senior citizen center owned by a county, city, or town; or
- 1888 (b) sales made by a senior citizen center that contracts with an area agency on aging;
- 1889 (44) sales or leases of semiconductor fabricating, processing, research, or development
- 1890 materials regardless of whether the semiconductor fabricating, processing, research, or
- 1891 development materials:
 - 1892 (a) actually come into contact with a semiconductor; or
 - 1893 (b) ultimately become incorporated into real property;
- 1894 (45) an amount paid by or charged to a purchaser for accommodations and services
- 1895 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
- 1896 59-12-104.2;
- 1897 (46) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary
- 1898 sports event registration certificate in accordance with Section 41-3-306 for the event period
- 1899 specified on the temporary sports event registration certificate;
- 1900 (47) sales or uses of electricity, if the sales or uses are:
 - 1901 (a) made under a tariff adopted by the Public Service Commission of Utah only for
 - 1902 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy
 - 1903 source, as designated in the tariff by the Public Service Commission of Utah; and
 - 1904 (b) for an amount of electricity that is:
 - 1905 (i) unrelated to the amount of electricity used by the person purchasing the electricity
 - 1906 under the tariff described in Subsection (47)(a); and
 - 1907 (ii) equivalent to the number of kilowatthours specified in the tariff described in
 - 1908 Subsection (47)(a) that may be purchased under the tariff described in Subsection (47)(a);
 - 1909 (48) sales or rentals of mobility enhancing equipment if a person presents a
 - 1910 prescription for the mobility enhancing equipment;
 - 1911 (49) sales of water in a:
 - 1912 (a) pipe;
 - 1913 (b) conduit;
 - 1914 (c) ditch; or
 - 1915 (d) reservoir;
 - 1916 (50) sales of currency or coinage that constitute legal tender of the United States or of a
 - 1917 foreign nation;

- 1918 (51) (a) sales of an item described in Subsection (51)(b) if the item:
- 1919 (i) does not constitute legal tender of any nation; and
- 1920 (ii) has a gold, silver, or platinum content of 80% or more; and
- 1921 (b) Subsection (51)(a) applies to a gold, silver, or platinum:
- 1922 (i) ingot;
- 1923 (ii) bar;
- 1924 (iii) medallion; or
- 1925 (iv) decorative coin;
- 1926 (52) amounts paid on a sale-leaseback transaction;
- 1927 (53) sales of a prosthetic device:
- 1928 (a) for use on or in a human; and
- 1929 (b) (i) for which a prescription is required; or
- 1930 (ii) if the prosthetic device is purchased by a hospital or other medical facility;
- 1931 (54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of
- 1932 machinery or equipment by an establishment described in Subsection (54)(c) if the machinery
- 1933 or equipment is primarily used in the production or postproduction of the following media for
- 1934 commercial distribution:
- 1935 (i) a motion picture;
- 1936 (ii) a television program;
- 1937 (iii) a movie made for television;
- 1938 (iv) a music video;
- 1939 (v) a commercial;
- 1940 (vi) a documentary; or
- 1941 (vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the
- 1942 commission by administrative rule made in accordance with Subsection (54)(d); or
- 1943 (b) notwithstanding Subsection (54)(a), purchases, leases, or rentals of machinery or
- 1944 equipment by an establishment described in Subsection (54)(c) that is used for the production
- 1945 or postproduction of the following are subject to the taxes imposed by this chapter:
- 1946 (i) a live musical performance;
- 1947 (ii) a live news program; or
- 1948 (iii) a live sporting event;

1949 (c) the following establishments listed in the 1997 North American Industry
1950 Classification System of the federal Executive Office of the President, Office of Management
1951 and Budget, apply to Subsections (54)(a) and (b):
1952 (i) NAICS Code 512110; or
1953 (ii) NAICS Code 51219; and
1954 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1955 commission may by rule:
1956 (i) prescribe what constitutes a medium similar to Subsections (54)(a)(i) through (vi);
1957 or
1958 (ii) define:
1959 (A) "commercial distribution";
1960 (B) "live musical performance";
1961 (C) "live news program"; or
1962 (D) "live sporting event";
1963 (55) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
1964 on or before June 30, 2019, of machinery or equipment that:
1965 (i) is leased or purchased for or by a facility that:
1966 (A) is a renewable energy production facility;
1967 (B) is located in the state; and
1968 (C) (I) becomes operational on or after July 1, 2004; or
1969 (II) has its generation capacity increased by one or more megawatts on or after July 1,
1970 2004, as a result of the use of the machinery or equipment;
1971 (ii) has an economic life of five or more years; and
1972 (iii) is used to make the facility or the increase in capacity of the facility described in
1973 Subsection (55)(a)(i) operational up to the point of interconnection with an existing
1974 transmission grid including:
1975 (A) a wind turbine;
1976 (B) generating equipment;
1977 (C) a control and monitoring system;
1978 (D) a power line;
1979 (E) substation equipment;

1980 (F) lighting;

1981 (G) fencing;

1982 (H) pipes; or

1983 (I) other equipment used for locating a power line or pole; and

1984 (b) this Subsection (55) does not apply to:

1985 (i) machinery or equipment used in construction of:

1986 (A) a new renewable energy production facility; or

1987 (B) the increase in the capacity of a renewable energy production facility;

1988 (ii) contracted services required for construction and routine maintenance activities;

1989 and

1990 (iii) unless the machinery or equipment is used or acquired for an increase in capacity

1991 of the facility described in Subsection (55)(a)(i)(C)(II), machinery or equipment used or

1992 acquired after:

1993 (A) the renewable energy production facility described in Subsection (55)(a)(i) is

1994 operational as described in Subsection (55)(a)(iii); or

1995 (B) the increased capacity described in Subsection (55)(a)(i) is operational as described

1996 in Subsection (55)(a)(iii);

1997 (56) (a) leases of seven or more years or purchases made on or after July 1, 2004, but

1998 on or before June 30, 2019, of machinery or equipment that:

1999 (i) is leased or purchased for or by a facility that:

2000 (A) is a waste energy production facility;

2001 (B) is located in the state; and

2002 (C) (I) becomes operational on or after July 1, 2004; or

2003 (II) has its generation capacity increased by one or more megawatts on or after July 1,

2004 2004, as a result of the use of the machinery or equipment;

2005 (ii) has an economic life of five or more years; and

2006 (iii) is used to make the facility or the increase in capacity of the facility described in

2007 Subsection (56)(a)(i) operational up to the point of interconnection with an existing

2008 transmission grid including:

2009 (A) generating equipment;

2010 (B) a control and monitoring system;

- 2011 (C) a power line;
- 2012 (D) substation equipment;
- 2013 (E) lighting;
- 2014 (F) fencing;
- 2015 (G) pipes; or
- 2016 (H) other equipment used for locating a power line or pole; and
- 2017 (b) this Subsection (56) does not apply to:
- 2018 (i) machinery or equipment used in construction of:
- 2019 (A) a new waste energy facility; or
- 2020 (B) the increase in the capacity of a waste energy facility;
- 2021 (ii) contracted services required for construction and routine maintenance activities;
- 2022 and
- 2023 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
- 2024 described in Subsection (56)(a)(i)(C)(II), machinery or equipment used or acquired after:
- 2025 (A) the waste energy facility described in Subsection (56)(a)(i) is operational as
- 2026 described in Subsection (56)(a)(iii); or
- 2027 (B) the increased capacity described in Subsection (56)(a)(i) is operational as described
- 2028 in Subsection (56)(a)(iii);
- 2029 (57) (a) leases of five or more years or purchases made on or after July 1, 2004 but on
- 2030 or before June 30, 2019, of machinery or equipment that:
- 2031 (i) is leased or purchased for or by a facility that:
- 2032 (A) is located in the state;
- 2033 (B) produces fuel from biomass energy including:
- 2034 (I) methanol; or
- 2035 (II) ethanol; and
- 2036 (C) (I) becomes operational on or after July 1, 2004; or
- 2037 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004, as
- 2038 a result of the installation of the machinery or equipment;
- 2039 (ii) has an economic life of five or more years; and
- 2040 (iii) is installed on the facility described in Subsection (57)(a)(i);
- 2041 (b) this Subsection (57) does not apply to:

2042 (i) machinery or equipment used in construction of:
2043 (A) a new facility described in Subsection (57)(a)(i); or
2044 (B) the increase in capacity of the facility described in Subsection (57)(a)(i); or
2045 (ii) contracted services required for construction and routine maintenance activities;
2046 and
2047 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
2048 described in Subsection (57)(a)(i)(C)(II), machinery or equipment used or acquired after:
2049 (A) the facility described in Subsection (57)(a)(i) is operational; or
2050 (B) the increased capacity described in Subsection (57)(a)(i) is operational;
2051 (58) (a) subject to Subsection (58)(b) or (c), sales of tangible personal property or a
2052 product transferred electronically to a person within this state if that tangible personal property
2053 or product transferred electronically is subsequently shipped outside the state and incorporated
2054 pursuant to contract into and becomes a part of real property located outside of this state;
2055 (b) the exemption under Subsection (58)(a) is not allowed to the extent that the other
2056 state or political entity to which the tangible personal property is shipped imposes a sales, use,
2057 gross receipts, or other similar transaction excise tax on the transaction against which the other
2058 state or political entity allows a credit for sales and use taxes imposed by this chapter; and
2059 (c) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,
2060 a person may claim the exemption allowed by this Subsection (58) for a sale by filing for a
2061 refund:
2062 (i) if the sale is made on or after July 1, 2004, but on or before June 30, 2008;
2063 (ii) as if this Subsection (58) as in effect on July 1, 2008, were in effect on the day on
2064 which the sale is made;
2065 (iii) if the person did not claim the exemption allowed by this Subsection (58) for the
2066 sale prior to filing for the refund;
2067 (iv) for sales and use taxes paid under this chapter on the sale;
2068 (v) in accordance with Section 59-1-1410; and
2069 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if
2070 the person files for the refund on or before June 30, 2011;
2071 (59) purchases:
2072 (a) of one or more of the following items in printed or electronic format:

- 2073 (i) a list containing information that includes one or more:
- 2074 (A) names; or
- 2075 (B) addresses; or
- 2076 (ii) a database containing information that includes one or more:
- 2077 (A) names; or
- 2078 (B) addresses; and
- 2079 (b) used to send direct mail;
- 2080 (60) redemptions or repurchases of a product by a person if that product was:
- 2081 (a) delivered to a pawnbroker as part of a pawn transaction; and
- 2082 (b) redeemed or repurchased within the time period established in a written agreement
- 2083 between the person and the pawnbroker for redeeming or repurchasing the product;
- 2084 (61) (a) purchases or leases of an item described in Subsection (61)(b) if the item:
- 2085 (i) is purchased or leased by, or on behalf of, a telecommunications service provider;
- 2086 and
- 2087 (ii) has a useful economic life of one or more years; and
- 2088 (b) the following apply to Subsection (61)(a):
- 2089 (i) telecommunications enabling or facilitating equipment, machinery, or software;
- 2090 (ii) telecommunications equipment, machinery, or software required for 911 service;
- 2091 (iii) telecommunications maintenance or repair equipment, machinery, or software;
- 2092 (iv) telecommunications switching or routing equipment, machinery, or software; or
- 2093 (v) telecommunications transmission equipment, machinery, or software;
- 2094 (62) (a) beginning on July 1, 2006, and ending on June 30, 2016, purchases of tangible
- 2095 personal property or a product transferred electronically that are used in the research and
- 2096 development of coal-to-liquids, oil shale, or tar sands technology; and
- 2097 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 2098 commission may, for purposes of Subsection (62)(a), make rules defining what constitutes
- 2099 purchases of tangible personal property or a product transferred electronically that are used in
- 2100 the research and development of coal-to-liquids, oil shale, and tar sands technology;
- 2101 (63) (a) purchases of tangible personal property or a product transferred electronically
- 2102 if:
- 2103 (i) the tangible personal property or product transferred electronically is:

- 2104 (A) purchased outside of this state;
- 2105 (B) brought into this state at any time after the purchase described in Subsection
- 2106 (63)(a)(i)(A); and
- 2107 (C) used in conducting business in this state; and
- 2108 (ii) for:
- 2109 (A) tangible personal property or a product transferred electronically other than the
- 2110 tangible personal property described in Subsection (63)(a)(ii)(B), the first use of the property
- 2111 for a purpose for which the property is designed occurs outside of this state; or
- 2112 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
- 2113 outside of this state;
- 2114 (b) the exemption provided for in Subsection (63)(a) does not apply to:
- 2115 (i) a lease or rental of tangible personal property or a product transferred electronically;
- 2116 or
- 2117 (ii) a sale of a vehicle exempt under Subsection (33); and
- 2118 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
- 2119 purposes of Subsection (63)(a), the commission may by rule define what constitutes the
- 2120 following:
- 2121 (i) conducting business in this state if that phrase has the same meaning in this
- 2122 Subsection (63) as in Subsection (24);
- 2123 (ii) the first use of tangible personal property or a product transferred electronically if
- 2124 that phrase has the same meaning in this Subsection (63) as in Subsection (24); or
- 2125 (iii) a purpose for which tangible personal property or a product transferred
- 2126 electronically is designed if that phrase has the same meaning in this Subsection (63) as in
- 2127 Subsection (24);
- 2128 (64) sales of disposable home medical equipment or supplies if:
- 2129 (a) a person presents a prescription for the disposable home medical equipment or
- 2130 supplies;
- 2131 (b) the disposable home medical equipment or supplies are used exclusively by the
- 2132 person to whom the prescription described in Subsection (64)(a) is issued; and
- 2133 (c) the disposable home medical equipment and supplies are listed as eligible for
- 2134 payment under:

- 2135 (i) Title XVIII, federal Social Security Act; or
- 2136 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;
- 2137 (65) sales:
- 2138 (a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit
- 2139 District Act; or
- 2140 (b) of tangible personal property to a subcontractor of a public transit district, if the
- 2141 tangible personal property is:
- 2142 (i) clearly identified; and
- 2143 (ii) installed or converted to real property owned by the public transit district;
- 2144 (66) sales of construction materials:
- 2145 (a) purchased on or after July 1, 2010;
- 2146 (b) purchased by, on behalf of, or for the benefit of an international airport:
- 2147 (i) located within a county of the first class; and
- 2148 (ii) that has a United States customs office on its premises; and
- 2149 (c) if the construction materials are:
- 2150 (i) clearly identified;
- 2151 (ii) segregated; and
- 2152 (iii) installed or converted to real property:
- 2153 (A) owned or operated by the international airport described in Subsection (66)(b); and
- 2154 (B) located at the international airport described in Subsection (66)(b);
- 2155 (67) sales of construction materials:
- 2156 (a) purchased on or after July 1, 2008;
- 2157 (b) purchased by, on behalf of, or for the benefit of a new airport:
- 2158 (i) located within a county of the second class; and
- 2159 (ii) that is owned or operated by a city in which an airline as defined in Section
- 2160 59-2-102 is headquartered; and
- 2161 (c) if the construction materials are:
- 2162 (i) clearly identified;
- 2163 (ii) segregated; and
- 2164 (iii) installed or converted to real property:
- 2165 (A) owned or operated by the new airport described in Subsection (67)(b);

2166 (B) located at the new airport described in Subsection (67)(b); and
2167 (C) as part of the construction of the new airport described in Subsection (67)(b);
2168 (68) sales of fuel to a common carrier that is a railroad for use in a locomotive engine;
2169 (69) purchases and sales described in Section 9-3-511; [~~and~~]
2170 (70) (a) sales of tangible personal property to an aircraft maintenance, repair, and
2171 overhaul provider for use in the maintenance, repair, overhaul, or refurbishment in this state of
2172 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
2173 lists a state or country other than this state as the location of registry of the fixed wing turbine
2174 powered aircraft; or
2175 (b) sales of tangible personal property by an aircraft maintenance, repair, and overhaul
2176 provider in connection with the maintenance, repair, overhaul, or refurbishment in this state of
2177 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
2178 lists a state or country other than this state as the location of registry of the fixed wing turbine
2179 powered aircraft[~~;~~]; and
2180 (71) subject to Section 59-12-104.4, sales of a textbook for a higher education course:
2181 (a) to a person admitted to an institution of higher education; and
2182 (b) by a seller, other than a bookstore owned by an institution of higher education, if
2183 51% or more of that seller's sales for the previous calendar quarter are sales of a textbook for a
2184 higher education course.
2185 Section 3. Section **59-12-104.4** is enacted to read:
2186 **59-12-104.4. Seller recordkeeping for purposes of higher education textbook**
2187 **exemption -- Rulemaking authority.**
2188 (1) If a seller described in Subsection 59-12-104(71)(b) makes a sale of a textbook for
2189 a higher education course that is exempt under Subsection 59-12-104(71), the seller shall keep
2190 a record verifying that the textbook is a textbook for a higher education course.
2191 (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2192 commission may make rules:
2193 (a) prescribing the records a seller shall keep to verify that a textbook is a textbook for
2194 a higher education course; or
2195 (b) to verify that 51% or more of a seller's sales for the previous calendar quarter are
2196 sales of a textbook for a higher education course.

2197 Section 4. **Effective date.**

2198 This bill takes effect on July 1, 2011.

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Office of Legislative Research and General Counsel