

Representative Brad L. Dee proposes the following substitute bill:

AMENDMENTS TO REVENUE AND TAXATION TITLE

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Howard A. Stephenson

House Sponsor: Brad L. Dee

Cosponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends provisions in the Revenue and Taxation title to address certain issues related to the Utah Supreme Court case Ivory Homes v. Utah State Tax Commission.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ amends the circumstances under which a person who pays a tax, fee, or charge liability may receive a credit or refund;
- ▶ addresses the construction of a statute involving a tax, fee, or charge by the State Tax Commission or a court;
- ▶ addresses the taxability of a transaction consisting of taxable and nontaxable property, products, or services;
- ▶ addresses sales and use tax refund procedures; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None



25 **Other Special Clauses:**

26 This bill provides for retrospective operation.

27 This bill provides an effective date.

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **10-1-405**, as last amended by Laws of Utah 2011, Chapter 309

31 **59-1-1410**, as enacted by Laws of Utah 2009, Chapter 212

32 **59-1-1417**, as enacted by Laws of Utah 2009, Chapter 212

33 **59-12-102**, as last amended by Laws of Utah 2011, Chapters 14, 285, and 314

34 **59-12-103**, as last amended by Laws of Utah 2011, Chapters 285, 303, 342, and 441

35 **59-12-110**, as last amended by Laws of Utah 2009, Chapters 203 and 212



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

38 Section 1. Section **10-1-405** is amended to read:

39 **10-1-405. Collection of taxes by commission -- Uniform interlocal agreement --**

40 **Administrative charge -- Rulemaking authority.**

41 (1) Subject to the other provisions of this section, the commission shall collect,
42 enforce, and administer any municipal telecommunications license tax imposed under this part
43 pursuant to:

44 (a) the same procedures used in the administration, collection, and enforcement of the
45 state sales and use tax under:

46 (i) Title 59, Chapter 1, General Taxation Policies; and

47 (ii) Title 59, Chapter 12, Part 1, Tax Collection:

48 (A) except for:

49 (I) Subsection 59-12-103(2)(~~g~~)(i);

50 (II) Section 59-12-104;

51 (III) Section 59-12-104.1;

52 (IV) Section 59-12-104.2;

53 (V) Section 59-12-104.3;

54 (VI) Section 59-12-107.1; and

55 (VII) Section 59-12-123; and

56 (B) except that for purposes of Section 59-1-1410, the term "person" may include a
57 customer from whom a municipal telecommunications license tax is recovered in accordance
58 with Subsection 10-1-403(2); and

59 (b) a uniform interlocal agreement between the municipality that imposes the
60 municipal telecommunications license tax and the commission:

61 (i) that is executed under Title 11, Chapter 13, Interlocal Cooperation Act;

62 (ii) that complies with Subsection (2)(a); and

63 (iii) that is developed by rule in accordance with Subsection (2)(b).

64 (2) (a) The uniform interlocal agreement described in Subsection (1) shall provide that
65 the commission shall:

66 (i) transmit money collected under this part monthly by electronic funds transfer by the
67 commission to the municipality;

68 (ii) conduct audits of the municipal telecommunications license tax;

69 (iii) retain and deposit an administrative charge in accordance with Section 59-1-306
70 from revenues the commission collects from a tax under this part; and

71 (iv) collect, enforce, and administer the municipal telecommunications license tax
72 authorized under this part pursuant to the same procedures used in the administration,
73 collection, and enforcement of the state sales and use tax as provided in Subsection (1)(a).

74 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
75 commission shall develop a uniform interlocal agreement that meets the requirements of this
76 section.

77 (3) If a telecommunications provider pays a municipal telecommunications license tax
78 to the commission, the telecommunications provider shall pay the municipal
79 telecommunications license tax to the commission:

80 (a) monthly on or before the last day of the month immediately following the last day
81 of the previous month if:

82 (i) the telecommunications provider is required to file a sales and use tax return with
83 the commission monthly under Section 59-12-108; or

84 (ii) the telecommunications provider is not required to file a sales and use tax return
85 under Title 59, Chapter 12, Sales and Use Tax Act; or

86 (b) quarterly on or before the last day of the month immediately following the last day

87 of the previous quarter if the telecommunications provider is required to file a sales and use tax
88 return with the commission quarterly under Section 59-12-108.

89 (4) If, on July 1, 2007, a municipality has in effect an ordinance that levies a municipal
90 telecommunications license tax under this part at a rate that exceeds 3.5%:

91 (a) except as provided in Subsection (4)(b), beginning on July 1, 2007, the commission
92 shall collect the municipal telecommunications license tax:

93 (i) within the municipality;

94 (ii) at a rate of 3.5%; and

95 (iii) from a telecommunications provider required to pay the municipal
96 telecommunications license tax on or after July 1, 2007; and

97 (b) the commission shall collect a municipal telecommunications license tax within the
98 municipality at the rate imposed by the municipality if:

99 (i) after July 1, 2007, the municipality has in effect an ordinance that levies a municipal
100 telecommunications license tax under this part at a rate of up to 3.5%;

101 (ii) the municipality meets the requirements of Subsection 10-1-403(3)(b) in changing
102 the rate of the municipal telecommunications license tax; and

103 (iii) a telecommunications provider is required to pay the municipal
104 telecommunications license tax on or after the day on which the ordinance described in
105 Subsection (4)(b)(ii) takes effect.

106 Section 2. Section **59-1-1410** is amended to read:

107 **59-1-1410. Action for collection of tax, fee, or charge -- Action for refund or**
108 **credit of tax, fee, or charge -- Denial of refund claim under appeal -- Appeal of denied**
109 **refund claim.**

110 (1) (a) Except as provided in Subsections (3) through (7) and Sections 59-5-114,
111 59-7-519, 59-10-536, and 59-11-113, the commission shall assess a tax, fee, or charge within
112 three years after the day on which a person files a return.

113 (b) Except as provided in Subsections (3) through (7), if the commission does not
114 assess a tax, fee, or charge within the three-year period provided in Subsection (1)(a), the
115 commission may not commence a proceeding to collect the tax, fee, or charge.

116 (2) (a) Except as provided in Subsection (2)(b), for purposes of this part, a return filed
117 before the last day prescribed by statute or rule for filing the return is considered to be filed on

118 the last day for filing the return.

119 (b) A return of withholding tax under Chapter 10, Part 4, Withholding of Tax, is
120 considered to be filed on April 15 of the succeeding calendar year if the return:

121 (i) is for a period ending with or within a calendar year; and

122 (ii) is filed before April 15 of the succeeding calendar year.

123 (3) The commission may assess a tax, fee, or charge or commence a proceeding for the
124 collection of a tax, fee, or charge at any time if:

125 (a) a person:

126 (i) files a:

127 (A) false return with intent to evade; or

128 (B) fraudulent return with intent to evade; or

129 (ii) fails to file a return; or

130 (b) the commission estimates the amount of tax, fee, or charge due in accordance with
131 Subsection 59-1-1406(2).

132 (4) The commission may extend the period to make an assessment or to commence a
133 proceeding to collect a tax, fee, or charge if:

134 (a) the three-year period under Subsection (1) has not expired; and

135 (b) the commission and the person sign a written agreement:

136 (i) authorizing the extension; and

137 (ii) providing for the length of the extension.

138 (5) The commission may make an assessment as provided in Subsection (6) if:

139 (a) the commission delays an audit at the request of a person;

140 (b) the person subsequently refuses to agree to an extension request by the commission;

141 and

142 (c) the three-year period under Subsection (1) expires before the commission
143 completes the audit.

144 (6) An assessment under Subsection (5) shall be:

145 (a) for the time period for which the commission could not make the assessment
146 because of the expiration of the three-year period; and

147 (b) in an amount equal to the difference between:

148 (i) the commission's estimate of the amount of tax, fee, or charge the person would

149 have been assessed for the time period described in Subsection (6)(a); and

150 (ii) the amount of tax, fee, or charge the person actually paid for the time period
151 described in Subsection (6)(a).

152 (7) If a person erroneously pays a liability, overpays a liability, pays a liability more
153 than once, or the commission erroneously receives, collects, or computes a liability, the
154 commission shall:

155 (a) credit the liability against any amount of liability the person owes; and

156 (b) refund any balance to:

157 (i) the person; or

158 (ii) (A) the person's assign;

159 (B) the person's personal representative;

160 (C) the person's successor; or

161 (D) a person similar to Subsections (7)(b)(ii)(A) through (C) as determined by the
162 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
163 Rulemaking Act.

164 (8) (a) Except as provided in Subsection (8)(b) or Section 19-2-124, 59-7-522,
165 59-10-529, or 59-12-110, the commission may not make a credit or refund unless a person files
166 a claim with the commission within the later of:

167 (i) three years from the due date of the return, including the period of any extension of
168 time provided in statute for filing the return; or

169 (ii) two years from the date the tax was paid.

170 (b) The commission shall extend the time period for a person to file a claim under
171 Subsection (8)(a) if:

172 (i) the time period described in Subsection (8)(a) has not expired; and

173 (ii) the commission and the person sign a written agreement:

174 (A) authorizing the extension; and

175 (B) providing for the length of the extension.

176 (9) If the commission denies a claim for a credit or refund, a person may request a
177 redetermination of the denial by filing a petition or request for agency action with the
178 commission:

179 (a) (i) within a 30-day period after the day on which the commission mails a notice of

180 denial for the claim for credit or refund; or

181 (ii) within a 90-day period after the day on which the commission mails a notice of
182 denial for the claim for credit or refund, if the notice is addressed to a person outside the
183 United States or the District of Columbia; and

184 (b) in accordance with:

185 (i) Section 59-1-501; and

186 (ii) Title 63G, Chapter 4, Administrative Procedures Act.

187 (10) The action of the commission on a person's petition for redetermination of a denial
188 of a claim for credit or refund is final 30 days after the day on which the commission sends the
189 commission's decision or order, unless the person seeks judicial review.

190 Section 3. Section **59-1-1417** is amended to read:

191 **59-1-1417. Burden of proof -- Statutory construction.**

192 (1) In a proceeding before the commission, the burden of proof is on the petitioner
193 except for determining the following, in which the burden of proof is on the commission:

194 [~~(1)~~] (a) whether the petitioner committed fraud with intent to evade a tax, fee, or
195 charge;

196 [~~(2)~~] (b) whether the petitioner is obligated as the transferee of property of the person
197 that originally owes a liability or a preceding transferee, but not to show that the person that
198 originally owes a liability is obligated for the liability; and

199 [~~(3)~~] (c) whether the petitioner is liable for an increase in a deficiency if the increase is
200 asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405
201 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the
202 increase in the deficiency is the result of a change or correction of federal taxable income:

203 [~~(a)~~] (i) required to be reported; and

204 [~~(b)~~] (ii) of which the commission has no notice at the time the commission mails the
205 notice of deficiency.

206 (2) Regardless of whether a taxpayer has paid or remitted a tax, fee, or charge, the
207 commission or a court considering a case involving the tax, fee, or charge shall:

208 (a) construe a statute imposing the tax, fee, or charge strictly in favor of the taxpayer;
209 and

210 (b) construe a statute providing an exemption from or credit against the tax, fee, or

211 charge strictly against the taxpayer.

212 Section 4. Section **59-12-102** is amended to read:

213 **59-12-102. Definitions.**

214 As used in this chapter:

215 (1) "800 service" means a telecommunications service that:

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

217 (b) is typically marketed:

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

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

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

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

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

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

224 Federal Communications Commission.

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

226 (i) a subscriber purchases;

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

229 (A) prerecorded announcement; or

230 (B) live service; and

231 (iii) is typically marketed:

232 (A) under the name 900 service; or

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

234 Communications Commission.

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

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

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

239 (A) a product; or

240 (B) a service.

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

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

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

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

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

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

250 (6) "Agreement sales and use tax" means a tax imposed under:

251 (a) Subsection 59-12-103(2)(a)(i)(A);

252 (b) Subsection 59-12-103(2)(b)(i);

253 (c) Subsection 59-12-103(2)(c)(i);

254 (d) Subsection 59-12-103(2)(d)(i)(A)(I);

255 (e) Section 59-12-204;

256 (f) Section 59-12-401;

257 (g) Section 59-12-402;

258 (h) Section 59-12-703;

259 (i) Section 59-12-802;

260 (j) Section 59-12-804;

261 (k) Section 59-12-1102;

262 (l) Section 59-12-1302;

263 (m) Section 59-12-1402;

264 (n) Section 59-12-1802;

265 (o) Section 59-12-2003;

266 (p) Section 59-12-2103;

267 (q) Section 59-12-2213;

268 (r) Section 59-12-2214;

269 (s) Section 59-12-2215;

270 (t) Section 59-12-2216;

271 (u) Section 59-12-2217; or

272 (v) Section 59-12-2218.

- 273 (7) "Aircraft" is as defined in Section 72-10-102.
- 274 (8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:
- 275 (a) except for an airline as defined in Section 59-2-102 or an affiliated group as defined
- 276 in Subsection 59-12-107(1)(f) of an airline; and
- 277 (b) that has the workers, expertise, and facilities to perform the following, regardless of
- 278 whether the business entity performs the following in this state:
- 279 (i) check, diagnose, overhaul, and repair:
- 280 (A) an onboard system of a fixed wing turbine powered aircraft; and
- 281 (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;
- 282 (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft
- 283 engine;
- 284 (iii) perform at least the following maintenance on a fixed wing turbine powered
- 285 aircraft:
- 286 (A) an inspection;
- 287 (B) a repair, including a structural repair or modification;
- 288 (C) changing landing gear; and
- 289 (D) addressing issues related to an aging fixed wing turbine powered aircraft;
- 290 (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and
- 291 completely apply new paint to the fixed wing turbine powered aircraft; and
- 292 (v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that
- 293 results in a change in the fixed wing turbine powered aircraft's certification requirements by the
- 294 authority that certifies the fixed wing turbine powered aircraft.
- 295 (9) "Alcoholic beverage" means a beverage that:
- 296 (a) is suitable for human consumption; and
- 297 (b) contains .5% or more alcohol by volume.
- 298 (10) (a) "Ancillary service" means a service associated with, or incidental to, the
- 299 provision of telecommunications service.
- 300 (b) "Ancillary service" includes:
- 301 (i) a conference bridging service;
- 302 (ii) a detailed communications billing service;
- 303 (iii) directory assistance;

304 (iv) a vertical service; or

305 (v) a voice mail service.

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

307 (12) "Assisted amusement device" means an amusement device, skill device, or ride

308 device that is started and stopped by an individual:

309 (a) who is not the purchaser or renter of the right to use or operate the amusement

310 device, skill device, or ride device; and

311 (b) at the direction of the seller of the right to use the amusement device, skill device,

312 or ride device.

313 (13) "Assisted cleaning or washing of tangible personal property" means cleaning or

314 washing of tangible personal property if the cleaning or washing labor is primarily performed

315 by an individual:

316 (a) who is not the purchaser of the cleaning or washing of the tangible personal

317 property; and

318 (b) at the direction of the seller of the cleaning or washing of the tangible personal

319 property.

320 (14) "Authorized carrier" means:

321 (a) in the case of vehicles operated over public highways, the holder of credentials

322 indicating that the vehicle is or will be operated pursuant to both the International Registration

323 Plan and the International Fuel Tax Agreement;

324 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating

325 certificate or air carrier's operating certificate; or

326 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling

327 stock, the holder of a certificate issued by the United States Surface Transportation Board.

328 (15) (a) Except as provided in Subsection (15)(b), "biomass energy" means any of the

329 following that is used as the primary source of energy to produce fuel or electricity:

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

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

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

333 (B) animal waste;

334 (C) methane produced:

- 335 (I) at landfills; or
- 336 (II) as a byproduct of the treatment of wastewater residuals;
- 337 (D) aquatic plants; and
- 338 (E) agricultural products.
- 339 (b) "Biomass energy" does not include:
- 340 (i) black liquor;
- 341 (ii) treated woods; or
- 342 (iii) biomass from municipal solid waste other than methane produced:
- 343 (A) at landfills; or
- 344 (B) as a byproduct of the treatment of wastewater residuals.
- 345 (16) (a) "Bundled transaction" means the sale of two or more items of tangible personal
- 346 property, products, or services if the tangible personal property, products, or services are:
- 347 (i) distinct and identifiable; and
- 348 (ii) sold for one nonitemized price.
- 349 (b) "Bundled transaction" does not include:
- 350 (i) the sale of tangible personal property if the sales price varies, or is negotiable, on
- 351 the basis of the selection by the purchaser of the items of tangible personal property included in
- 352 the transaction;
- 353 (ii) the sale of real property;
- 354 (iii) the sale of services to real property;
- 355 (iv) the retail sale of tangible personal property and a service if:
- 356 (A) the tangible personal property:
- 357 (I) is essential to the use of the service; and
- 358 (II) is provided exclusively in connection with the service; and
- 359 (B) the service is the true object of the transaction;
- 360 (v) the retail sale of two services if:
- 361 (A) one service is provided that is essential to the use or receipt of a second service;
- 362 (B) the first service is provided exclusively in connection with the second service; and
- 363 (C) the second service is the true object of the transaction;
- 364 (vi) a transaction that includes tangible personal property or a product subject to
- 365 taxation under this chapter and tangible personal property or a product that is not subject to

366 taxation under this chapter if the:

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

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

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

373 (A) that retail sale includes:

374 (I) food and food ingredients;

375 (II) a drug;

376 (III) durable medical equipment;

377 (IV) mobility enhancing equipment;

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

379 (VI) a prosthetic device; or

380 (VII) a medical supply; and

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

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

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

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

388 (A) packaging that:

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

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

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

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

396 (ii) For purposes of Subsection (16)(c)(i)(B), an item of tangible personal property, a

397 product, or a service is provided free of charge with the purchase of another item of tangible
398 personal property, a product, or a service if the sales price of the purchased item of tangible
399 personal property, product, or service does not vary depending on the inclusion of the tangible
400 personal property, product, or service provided free of charge.

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

405 (A) a binding sales document; or

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

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

409 (A) a bill of sale;

410 (B) a contract;

411 (C) an invoice;

412 (D) a lease agreement;

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

414 (F) a price list;

415 (G) a rate card;

416 (H) a receipt; or

417 (I) a service agreement.

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

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

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

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

425 (A) shall use the seller's purchase price or the seller's sales price to determine if the
426 purchase price or sales price of the tangible personal property or product subject to taxation
427 under this chapter is de minimis; and

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

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

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

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

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

441 (i) on a transaction; and

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

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

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

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

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

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

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

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

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

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

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

459 (21) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
460 fuels that does not constitute industrial use under Subsection (48) or residential use under
461 Subsection (96).

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

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

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

470 (23) "Component part" includes:

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

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

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

476 (d) feed, seeds, and seedlings.

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

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

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

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

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

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

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

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

486 (b) "Conference bridging service" may include providing a telephone number as part of
487 the ancillary service described in Subsection (26)(a).

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

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

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

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

495 (i) by a seller of:

496 (A) tangible personal property;

497 (B) a product transferred electronically; or

498 (C) services; and

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

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

503 (i) transportation;

504 (ii) shipping;

505 (iii) postage;

506 (iv) handling;

507 (v) crating; or

508 (vi) packing.

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

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

512 (a) is intended to supplement the diet;

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

514 (i) a vitamin;

515 (ii) a mineral;

516 (iii) an herb or other botanical;

517 (iv) an amino acid;

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

520 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient

- 521 described in Subsections (31)(b)(i) through (v);
- 522 (c) (i) except as provided in Subsection (31)(c)(ii), is intended for ingestion in:
- 523 (A) tablet form;
- 524 (B) capsule form;
- 525 (C) powder form;
- 526 (D) softgel form;
- 527 (E) gelcap form; or
- 528 (F) liquid form; or
- 529 (ii) notwithstanding Subsection (31)(c)(i), if the product is not intended for ingestion in
- 530 a form described in Subsections (31)(c)(i)(A) through (F), is not represented:
- 531 (A) as conventional food; and
- 532 (B) for use as a sole item of:
- 533 (I) a meal; or
- 534 (II) the diet; and
- 535 (d) is required to be labeled as a dietary supplement:
- 536 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 537 (ii) as required by 21 C.F.R. Sec. 101.36.
- 538 (32) (a) "Direct mail" means printed material delivered or distributed by United States
- 539 mail or other delivery service:
- 540 (i) to:
- 541 (A) a mass audience; or
- 542 (B) addressees on a mailing list provided:
- 543 (I) by a purchaser of the mailing list; or
- 544 (II) at the discretion of the purchaser of the mailing list; and
- 545 (ii) if the cost of the printed material is not billed directly to the recipients.
- 546 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
- 547 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 548 (c) "Direct mail" does not include multiple items of printed material delivered to a
- 549 single address.
- 550 (33) "Directory assistance" means an ancillary service of providing:
- 551 (a) address information; or

552 (b) telephone number information.

553 (34) (a) "Disposable home medical equipment or supplies" means medical equipment
554 or supplies that:

555 (i) cannot withstand repeated use; and

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

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

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

559 (C) an office of a health care provider described in Subsection (34)(a)(ii)(B); or

560 (D) a person similar to a person described in Subsections (34)(a)(ii)(A) through (C).

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

562 (i) a drug;

563 (ii) durable medical equipment;

564 (iii) a hearing aid;

565 (iv) a hearing aid accessory;

566 (v) mobility enhancing equipment; or

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

568 (A) eyeglasses; or

569 (B) contact lenses.

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

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

574 (i) recognized in:

575 (A) the official United States Pharmacopoeia;

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

577 (C) the official National Formulary; or

578 (D) a supplement to a publication listed in Subsections (35)(a)(i)(A) through (C);

579 (ii) intended for use in the:

580 (A) diagnosis of disease;

581 (B) cure of disease;

582 (C) mitigation of disease;

- 583 (D) treatment of disease; or
584 (E) prevention of disease; or
585 (iii) intended to affect:
586 (A) the structure of the body; or
587 (B) any function of the body.
588 (b) "Drug" does not include:
589 (i) food and food ingredients;
590 (ii) a dietary supplement;
591 (iii) an alcoholic beverage; or
592 (iv) a prosthetic device.
593 (36) (a) Except as provided in Subsection (36)(c), "durable medical equipment" means
594 equipment that:
595 (i) can withstand repeated use;
596 (ii) is primarily and customarily used to serve a medical purpose;
597 (iii) generally is not useful to a person in the absence of illness or injury; and
598 (iv) is not worn in or on the body.
599 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
600 equipment described in Subsection (36)(a).
601 (c) Notwithstanding Subsection (36)(a), "durable medical equipment" does not include
602 mobility enhancing equipment.
603 (37) "Electronic" means:
604 (a) relating to technology; and
605 (b) having:
606 (i) electrical capabilities;
607 (ii) digital capabilities;
608 (iii) magnetic capabilities;
609 (iv) wireless capabilities;
610 (v) optical capabilities;
611 (vi) electromagnetic capabilities; or
612 (vii) capabilities similar to Subsections (37)(b)(i) through (vi).
613 (38) "Employee" is as defined in Section 59-10-401.

- 614 (39) "Fixed guideway" means a public transit facility that uses and occupies:
615 (a) rail for the use of public transit; or
616 (b) a separate right-of-way for the use of public transit.
- 617 (40) "Fixed wing turbine powered aircraft" means an aircraft that:
618 (a) is powered by turbine engines;
619 (b) operates on jet fuel; and
620 (c) has wings that are permanently attached to the fuselage of the aircraft.
- 621 (41) "Fixed wireless service" means a telecommunications service that provides radio
622 communication between fixed points.
- 623 (42) (a) "Food and food ingredients" means substances:
624 (i) regardless of whether the substances are in:
625 (A) liquid form;
626 (B) concentrated form;
627 (C) solid form;
628 (D) frozen form;
629 (E) dried form; or
630 (F) dehydrated form; and
631 (ii) that are:
632 (A) sold for:
633 (I) ingestion by humans; or
634 (II) chewing by humans; and
635 (B) consumed for the substance's:
636 (I) taste; or
637 (II) nutritional value.
- 638 (b) "Food and food ingredients" includes an item described in Subsection (79)(b)(iii).
639 (c) "Food and food ingredients" does not include:
640 (i) an alcoholic beverage;
641 (ii) tobacco; or
642 (iii) prepared food.
- 643 (43) (a) "Fundraising sales" means sales:
644 (i) (A) made by a school; or

645 (B) made by a school student;

646 (ii) that are for the purpose of raising funds for the school to purchase equipment,

647 materials, or provide transportation; and

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

649 (b) For purposes of Subsection (43)(a)(iii), "officially sanctioned school activity"

650 means a school activity:

651 (i) that is conducted in accordance with a formal policy adopted by the school or school

652 district governing the authorization and supervision of fundraising activities;

653 (ii) that does not directly or indirectly compensate an individual teacher or other

654 educational personnel by direct payment, commissions, or payment in kind; and

655 (iii) the net or gross revenues from which are deposited in a dedicated account

656 controlled by the school or school district.

657 (44) "Geothermal energy" means energy contained in heat that continuously flows

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

659 (45) "Governing board of the agreement" means the governing board of the agreement

660 that is:

661 (a) authorized to administer the agreement; and

662 (b) established in accordance with the agreement.

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

664 (i) the executive branch of the state, including all departments, institutions, boards,

665 divisions, bureaus, offices, commissions, and committees;

666 (ii) the judicial branch of the state, including the courts, the Judicial Council, the

667 Office of the Court Administrator, and similar administrative units in the judicial branch;

668 (iii) the legislative branch of the state, including the House of Representatives, the

669 Senate, the Legislative Printing Office, the Office of Legislative Research and General

670 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal

671 Analyst;

672 (iv) the National Guard;

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

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

675 (b) "Governmental entity" does not include the state systems of public and higher

676 education, including:

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

678 (ii) a school;

679 (iii) the State Board of Education;

680 (iv) the State Board of Regents; or

681 (v) an institution of higher education.

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

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

686 (a) in mining or extraction of minerals;

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

689 (i) commercial greenhouses;

690 (ii) irrigation pumps;

691 (iii) farm machinery;

692 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
693 registered under Title 41, Chapter 1a, Part 2, Registration; and

694 (v) other farming activities;

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

698 (d) by a scrap recycler if:

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

702 (A) iron;

703 (B) steel;

704 (C) nonferrous metal;

705 (D) paper;

706 (E) glass;

- 707 (F) plastic;
- 708 (G) textile; or
- 709 (H) rubber; and
- 710 (ii) the new products under Subsection (48)(d)(i) would otherwise be made with
- 711 nonrecycled materials; or
- 712 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a
- 713 cogeneration facility as defined in Section 54-2-1.
- 714 (49) (a) Except as provided in Subsection (49)(b), "installation charge" means a charge
- 715 for installing:
- 716 (i) tangible personal property; or
- 717 (ii) a product transferred electronically.
- 718 (b) "Installation charge" does not include a charge for:
- 719 (i) repairs or renovations of:
- 720 (A) tangible personal property; or
- 721 (B) a product transferred electronically; or
- 722 (ii) attaching tangible personal property or a product transferred electronically:
- 723 (A) to other tangible personal property; and
- 724 (B) as part of a manufacturing or fabrication process.
- 725 (50) "Institution of higher education" means an institution of higher education listed in
- 726 Section 53B-2-101.
- 727 (51) (a) "Lease" or "rental" means a transfer of possession or control of tangible
- 728 personal property or a product transferred electronically for:
- 729 (i) (A) a fixed term; or
- 730 (B) an indeterminate term; and
- 731 (ii) consideration.
- 732 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
- 733 amount of consideration may be increased or decreased by reference to the amount realized
- 734 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
- 735 Code.
- 736 (c) "Lease" or "rental" does not include:
- 737 (i) a transfer of possession or control of property under a security agreement or

738 deferred payment plan that requires the transfer of title upon completion of the required
739 payments;

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

742 (A) upon completion of required payments; and

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

744 (I) \$100; or

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

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

749 (d) For purposes of Subsection(51)(c)(iii), an operator is necessary for equipment to
750 perform as designed if the operator's duties exceed the:

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

752 (ii) maintenance of tangible personal property; or

753 (iii) inspection of tangible personal property.

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

756 (53) "Local taxing jurisdiction" means a:

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

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

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

760 (54) "Manufactured home" is as defined in Section 15A-1-302.

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

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

763 Industrial Classification Manual of the federal Executive Office of the President, Office of
764 Management and Budget;

765 (b) a scrap recycler if:

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

- 769 (A) iron;
- 770 (B) steel;
- 771 (C) nonferrous metal;
- 772 (D) paper;
- 773 (E) glass;
- 774 (F) plastic;
- 775 (G) textile; or
- 776 (H) rubber; and
- 777 (ii) the new products under Subsection (55)(b)(i) would otherwise be made with
- 778 nonrecycled materials; or
- 779 (c) a cogeneration facility as defined in Section 54-2-1.
- 780 (56) "Member of the immediate family of the producer" means a person who is related
- 781 to a producer described in Subsection 59-12-104(20)(a) as a:
- 782 (a) child or stepchild, regardless of whether the child or stepchild is:
- 783 (i) an adopted child or adopted stepchild; or
- 784 (ii) a foster child or foster stepchild;
- 785 (b) grandchild or stepgrandchild;
- 786 (c) grandparent or stepgrandparent;
- 787 (d) nephew or stepnephew;
- 788 (e) niece or stepniece;
- 789 (f) parent or stepparent;
- 790 (g) sibling or stepsibling;
- 791 (h) spouse;
- 792 (i) person who is the spouse of a person described in Subsections (56)(a) through (g);
- 793 or
- 794 (j) person similar to a person described in Subsections (56)(a) through (i) as
- 795 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
- 796 Administrative Rulemaking Act.
- 797 (57) "Mobile home" is as defined in Section 15A-1-302.
- 798 (58) "Mobile telecommunications service" is as defined in the Mobile
- 799 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

800 (59) (a) "Mobile wireless service" means a telecommunications service, regardless of
801 the technology used, if:

- 802 (i) the origination point of the conveyance, routing, or transmission is not fixed;
- 803 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or
- 804 (iii) the origination point described in Subsection (59)(a)(i) and the termination point
805 described in Subsection (59)(a)(ii) are not fixed.

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

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

810 (60) (a) Except as provided in Subsection (60)(c), "mobility enhancing equipment"
811 means equipment that is:

- 812 (i) primarily and customarily used to provide or increase the ability to move from one
813 place to another;
- 814 (ii) appropriate for use in a:
 - 815 (A) home; or
 - 816 (B) motor vehicle; and
- 817 (iii) not generally used by persons with normal mobility.

818 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
819 the equipment described in Subsection (60)(a).

820 (c) Notwithstanding Subsection (60)(a), "mobility enhancing equipment" does not
821 include:

- 822 (i) a motor vehicle;
- 823 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
824 vehicle manufacturer;
- 825 (iii) durable medical equipment; or
- 826 (iv) a prosthetic device.

827 (61) "Model 1 seller" means a seller registered under the agreement that has selected a
828 certified service provider as the seller's agent to perform all of the seller's sales and use tax
829 functions for agreement sales and use taxes other than the seller's obligation under Section
830 59-12-124 to remit a tax on the seller's own purchases.

831 (62) "Model 2 seller" means a seller registered under the agreement that:

832 (a) except as provided in Subsection (62)(b), has selected a certified automated system
833 to perform the seller's sales tax functions for agreement sales and use taxes; and

834 (b) notwithstanding Subsection (62)(a), retains responsibility for remitting all of the
835 sales tax:

836 (i) collected by the seller; and

837 (ii) to the appropriate local taxing jurisdiction.

838 (63) (a) Subject to Subsection (63)(b), "model 3 seller" means a seller registered under
839 the agreement that has:

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

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

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

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

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

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

846 (b) For purposes of Subsection (63)(a), "model 3 seller" includes an affiliated group of
847 sellers using the same proprietary system.

848 (64) "Model 4 seller" means a seller that is registered under the agreement and is not a
849 model 1 seller, model 2 seller, or model 3 seller.

850 (65) "Modular home" means a modular unit as defined in Section 15A-1-302.

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

852 (67) "Oil shale" means a group of fine black to dark brown shales containing
853 bituminous material that yields petroleum upon distillation.

854 (68) (a) "Other fuels" means products that burn independently to produce heat or
855 energy.

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

858 (69) (a) "Paging service" means a telecommunications service that provides
859 transmission of a coded radio signal for the purpose of activating a specific pager.

860 (b) For purposes of Subsection (69)(a), the transmission of a coded radio signal
861 includes a transmission by message or sound.

- 862 (70) "Pawnbroker" is as defined in Section 13-32a-102.
- 863 (71) "Pawn transaction" is as defined in Section 13-32a-102.
- 864 (72) (a) "Permanently attached to real property" means that for tangible personal
865 property attached to real property:
- 866 (i) the attachment of the tangible personal property to the real property:
- 867 (A) is essential to the use of the tangible personal property; and
- 868 (B) suggests that the tangible personal property will remain attached to the real
869 property in the same place over the useful life of the tangible personal property; or
- 870 (ii) if the tangible personal property is detached from the real property, the detachment
871 would:
- 872 (A) cause substantial damage to the tangible personal property; or
- 873 (B) require substantial alteration or repair of the real property to which the tangible
874 personal property is attached.
- 875 (b) "Permanently attached to real property" includes:
- 876 (i) the attachment of an accessory to the tangible personal property if the accessory is:
- 877 (A) essential to the operation of the tangible personal property; and
- 878 (B) attached only to facilitate the operation of the tangible personal property;
- 879 (ii) a temporary detachment of tangible personal property from real property for a
880 repair or renovation if the repair or renovation is performed where the tangible personal
881 property and real property are located; or
- 882 (iii) property attached to oil, gas, or water pipelines, except for the property listed in
883 Subsection (72)(c)(iii) or (iv).
- 884 (c) "Permanently attached to real property" does not include:
- 885 (i) the attachment of portable or movable tangible personal property to real property if
886 that portable or movable tangible personal property is attached to real property only for:
- 887 (A) convenience;
- 888 (B) stability; or
- 889 (C) for an obvious temporary purpose;
- 890 (ii) the detachment of tangible personal property from real property except for the
891 detachment described in Subsection (72)(b)(ii);
- 892 (iii) an attachment of the following tangible personal property to real property if the

893 attachment to real property is only through a line that supplies water, electricity, gas,
894 telecommunications, cable, or supplies a similar item as determined by the commission by rule
895 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

896 (A) a computer;

897 (B) a telephone;

898 (C) a television; or

899 (D) tangible personal property similar to Subsections (72)(c)(iii)(A) through (C) as

900 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah

901 Administrative Rulemaking Act; or

902 (iv) an item listed in Subsection (113)(c).

903 (73) "Person" includes any individual, firm, partnership, joint venture, association,

904 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,

905 municipality, district, or other local governmental entity of the state, or any group or

906 combination acting as a unit.

907 (74) "Place of primary use":

908 (a) for telecommunications service other than mobile telecommunications service,

909 means the street address representative of where the customer's use of the telecommunications
910 service primarily occurs, which shall be:

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

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

913 (b) for mobile telecommunications service, is as defined in the Mobile

914 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

915 (75) (a) "Postpaid calling service" means a telecommunications service a person

916 obtains by making a payment on a call-by-call basis:

917 (i) through the use of a:

918 (A) bank card;

919 (B) credit card;

920 (C) debit card; or

921 (D) travel card; or

922 (ii) by a charge made to a telephone number that is not associated with the origination

923 or termination of the telecommunications service.

924 (b) "Postpaid calling service" includes a service, except for a prepaid wireless calling
925 service, that would be a prepaid wireless calling service if the service were exclusively a
926 telecommunications service.

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

929 (77) "Prepaid calling service" means a telecommunications service:

930 (a) that allows a purchaser access to telecommunications service that is exclusively
931 telecommunications service;

932 (b) that:

933 (i) is paid for in advance; and

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

935 (A) access number; or

936 (B) authorization code;

937 (c) that is dialed:

938 (i) manually; or

939 (ii) electronically; and

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

941 (i) by a known amount; and

942 (ii) with use.

943 (78) "Prepaid wireless calling service" means a telecommunications service:

944 (a) that provides the right to utilize:

945 (i) mobile wireless service; and

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

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

948 (B) a content service; or

949 (C) an ancillary service;

950 (b) that:

951 (i) is paid for in advance; and

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

953 (A) access number; or

954 (B) authorization code;

- 955 (c) that is dialed:
956 (i) manually; or
957 (ii) electronically; and
958 (d) sold in predetermined units or dollars that decline:
959 (i) by a known amount; and
960 (ii) with use.
961 (79) (a) "Prepared food" means:
962 (i) food:
963 (A) sold in a heated state; or
964 (B) heated by a seller;
965 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
966 item; or
967 (iii) except as provided in Subsection (79)(c), food sold with an eating utensil provided
968 by the seller, including a:
969 (A) plate;
970 (B) knife;
971 (C) fork;
972 (D) spoon;
973 (E) glass;
974 (F) cup;
975 (G) napkin; or
976 (H) straw.
977 (b) "Prepared food" does not include:
978 (i) food that a seller only:
979 (A) cuts;
980 (B) repackages; or
981 (C) pasteurizes; or
982 (ii) (A) the following:
983 (I) raw egg;
984 (II) raw fish;
985 (III) raw meat;

- 986 (IV) raw poultry; or
- 987 (V) a food containing an item described in Subsections (79)(b)(ii)(A)(I) through (IV);
- 988 and
- 989 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 990 Food and Drug Administration's Food Code that a consumer cook the items described in
- 991 Subsection (79)(b)(ii)(A) to prevent food borne illness; or
- 992 (iii) the following if sold without eating utensils provided by the seller:
- 993 (A) food and food ingredients sold by a seller if the seller's proper primary
- 994 classification under the 2002 North American Industry Classification System of the federal
- 995 Executive Office of the President, Office of Management and Budget, is manufacturing in
- 996 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
- 997 Manufacturing;
- 998 (B) food and food ingredients sold in an unheated state:
- 999 (I) by weight or volume; and
- 1000 (II) as a single item; or
- 1001 (C) a bakery item, including:
- 1002 (I) a bagel;
- 1003 (II) a bar;
- 1004 (III) a biscuit;
- 1005 (IV) bread;
- 1006 (V) a bun;
- 1007 (VI) a cake;
- 1008 (VII) a cookie;
- 1009 (VIII) a croissant;
- 1010 (IX) a danish;
- 1011 (X) a donut;
- 1012 (XI) a muffin;
- 1013 (XII) a pastry;
- 1014 (XIII) a pie;
- 1015 (XIV) a roll;
- 1016 (XV) a tart;

1017 (XVI) a torte; or
1018 (XVII) a tortilla.
1019 (c) Notwithstanding Subsection (79)(a)(iii), an eating utensil provided by the seller
1020 does not include the following used to transport the food:
1021 (i) a container; or
1022 (ii) packaging.
1023 (80) "Prescription" means an order, formula, or recipe that is issued:
1024 (a) (i) orally;
1025 (ii) in writing;
1026 (iii) electronically; or
1027 (iv) by any other manner of transmission; and
1028 (b) by a licensed practitioner authorized by the laws of a state.
1029 (81) (a) Except as provided in Subsection (81)(b)(ii) or (iii), "prewritten computer
1030 software" means computer software that is not designed and developed:
1031 (i) by the author or other creator of the computer software; and
1032 (ii) to the specifications of a specific purchaser.
1033 (b) "Prewritten computer software" includes:
1034 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
1035 software is not designed and developed:
1036 (A) by the author or other creator of the computer software; and
1037 (B) to the specifications of a specific purchaser;
1038 (ii) notwithstanding Subsection (81)(a), computer software designed and developed by
1039 the author or other creator of the computer software to the specifications of a specific purchaser
1040 if the computer software is sold to a person other than the purchaser; or
1041 (iii) notwithstanding Subsection (81)(a) and except as provided in Subsection (81)(c),
1042 prewritten computer software or a prewritten portion of prewritten computer software:
1043 (A) that is modified or enhanced to any degree; and
1044 (B) if the modification or enhancement described in Subsection (81)(b)(iii)(A) is
1045 designed and developed to the specifications of a specific purchaser.
1046 (c) Notwithstanding Subsection (81)(b)(iii), "prewritten computer software" does not
1047 include a modification or enhancement described in Subsection (81)(b)(iii) if the charges for

1048 the modification or enhancement are:

1049 (i) reasonable; and

1050 (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), separately stated on the
1051 invoice or other statement of price provided to the purchaser[?] at the time of sale or later, as
1052 demonstrated by:

1053 (A) the books and records the seller keeps at the time of the transaction in the regular
1054 course of business, including books and records the seller keeps at the time of the transaction in
1055 the regular course of business for nontax purposes;

1056 (B) a preponderance of the facts and circumstances at the time of the transaction; and

1057 (C) the understanding of all of the parties to the transaction.

1058 (82) (a) "Private communication service" means a telecommunications service:

1059 (i) that entitles a customer to exclusive or priority use of one or more communications
1060 channels between or among termination points; and

1061 (ii) regardless of the manner in which the one or more communications channels are
1062 connected.

1063 (b) "Private communications service" includes the following provided in connection
1064 with the use of one or more communications channels:

1065 (i) an extension line;

1066 (ii) a station;

1067 (iii) switching capacity; or

1068 (iv) another associated service that is provided in connection with the use of one or
1069 more communications channels as defined in Section 59-12-215.

1070 (83) (a) Except as provided in Subsection (83)(b), "product transferred electronically"
1071 means a product transferred electronically that would be subject to a tax under this chapter if
1072 that product was transferred in a manner other than electronically.

1073 (b) "Product transferred electronically" does not include:

1074 (i) an ancillary service;

1075 (ii) computer software; or

1076 (iii) a telecommunications service.

1077 (84) (a) "Prosthetic device" means a device that is worn on or in the body to:

1078 (i) artificially replace a missing portion of the body;

- 1079 (ii) prevent or correct a physical deformity or physical malfunction; or
1080 (iii) support a weak or deformed portion of the body.
- 1081 (b) "Prosthetic device" includes:
1082 (i) parts used in the repairs or renovation of a prosthetic device;
1083 (ii) replacement parts for a prosthetic device;
1084 (iii) a dental prosthesis; or
1085 (iv) a hearing aid.
- 1086 (c) "Prosthetic device" does not include:
1087 (i) corrective eyeglasses; or
1088 (ii) contact lenses.
- 1089 (85) (a) "Protective equipment" means an item:
1090 (i) for human wear; and
1091 (ii) that is:
1092 (A) designed as protection:
1093 (I) to the wearer against injury or disease; or
1094 (II) against damage or injury of other persons or property; and
1095 (B) not suitable for general use.
- 1096 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1097 commission shall make rules:
1098 (i) listing the items that constitute "protective equipment"; and
1099 (ii) that are consistent with the list of items that constitute "protective equipment"
1100 under the agreement.
- 1101 (86) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or
1102 printed matter, other than a photocopy:
1103 (i) regardless of:
1104 (A) characteristics;
1105 (B) copyright;
1106 (C) form;
1107 (D) format;
1108 (E) method of reproduction; or
1109 (F) source; and

1110 (ii) made available in printed or electronic format.

1111 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1112 commission may by rule define the term "photocopy."

1113 (87) (a) "Purchase price" and "sales price" mean the total amount of consideration:

1114 (i) valued in money; and

1115 (ii) for which tangible personal property, a product transferred electronically, or
1116 services are:

1117 (A) sold;

1118 (B) leased; or

1119 (C) rented.

1120 (b) "Purchase price" and "sales price" include:

1121 (i) the seller's cost of the tangible personal property, a product transferred
1122 electronically, or services sold;

1123 (ii) expenses of the seller, including:

1124 (A) the cost of materials used;

1125 (B) a labor cost;

1126 (C) a service cost;

1127 (D) interest;

1128 (E) a loss;

1129 (F) the cost of transportation to the seller; or

1130 (G) a tax imposed on the seller;

1131 (iii) a charge by the seller for any service necessary to complete the sale; or

1132 (iv) consideration a seller receives from a person other than the purchaser if:

1133 (A) (I) the seller actually receives consideration from a person other than the purchaser;

1134 and

1135 (II) the consideration described in Subsection (87)(b)(iv)(A)(I) is directly related to a
1136 price reduction or discount on the sale;

1137 (B) the seller has an obligation to pass the price reduction or discount through to the
1138 purchaser;

1139 (C) the amount of the consideration attributable to the sale is fixed and determinable by
1140 the seller at the time of the sale to the purchaser; and

1141 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the
1142 seller to claim a price reduction or discount; and

1143 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,
1144 coupon, or other documentation with the understanding that the person other than the seller
1145 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;

1146 (II) the purchaser identifies that purchaser to the seller as a member of a group or
1147 organization allowed a price reduction or discount, except that a preferred customer card that is
1148 available to any patron of a seller does not constitute membership in a group or organization
1149 allowed a price reduction or discount; or

1150 (III) the price reduction or discount is identified as a third party price reduction or
1151 discount on the:

1152 (Aa) invoice the purchaser receives; or

1153 (Bb) certificate, coupon, or other documentation the purchaser presents.

1154 (c) "Purchase price" and "sales price" do not include:

1155 (i) a discount:

1156 (A) in a form including:

1157 (I) cash;

1158 (II) term; or

1159 (III) coupon;

1160 (B) that is allowed by a seller;

1161 (C) taken by a purchaser on a sale; and

1162 (D) that is not reimbursed by a third party; or

1163 (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), the following if separately

1164 stated on an invoice, bill of sale, or similar document provided to the purchaser at the time of

1165 sale or later, as demonstrated by the books and records the seller keeps at the time of the

1166 transaction in the regular course of business, including books and records the seller keeps at the

1167 time of the transaction in the regular course of business for nontax purposes, by a

1168 preponderance of the facts and circumstances at the time of the transaction, and by the

1169 understanding of all of the parties to the transaction:

1170 (A) the following from credit extended on the sale of tangible personal property or
1171 services:

- 1172 (I) a carrying charge;
- 1173 (II) a financing charge; or
- 1174 (III) an interest charge;
- 1175 (B) a delivery charge;
- 1176 (C) an installation charge;
- 1177 (D) a manufacturer rebate on a motor vehicle; or
- 1178 (E) a tax or fee legally imposed directly on the consumer.
- 1179 (88) "Purchaser" means a person to whom:
 - 1180 (a) a sale of tangible personal property is made;
 - 1181 (b) a product is transferred electronically; or
 - 1182 (c) a service is furnished.
- 1183 (89) "Regularly rented" means:
 - 1184 (a) rented to a guest for value three or more times during a calendar year; or
 - 1185 (b) advertised or held out to the public as a place that is regularly rented to guests for
 - 1186 value.
- 1187 (90) "Renewable energy" means:
 - 1188 (a) biomass energy;
 - 1189 (b) hydroelectric energy;
 - 1190 (c) geothermal energy;
 - 1191 (d) solar energy; or
 - 1192 (e) wind energy.
- 1193 (91) (a) "Renewable energy production facility" means a facility that:
 - 1194 (i) uses renewable energy to produce electricity; and
 - 1195 (ii) has a production capacity of 20 kilowatts or greater.
- 1196 (b) A facility is a renewable energy production facility regardless of whether the
- 1197 facility is:
 - 1198 (i) connected to an electric grid; or
 - 1199 (ii) located on the premises of an electricity consumer.
- 1200 (92) "Rental" is as defined in Subsection (51).
- 1201 (93) (a) Except as provided in Subsection (93)(b), "repairs or renovations of tangible
- 1202 personal property" means:

1203 (i) a repair or renovation of tangible personal property that is not permanently attached
1204 to real property; or

1205 (ii) attaching tangible personal property or a product transferred electronically to other
1206 tangible personal property if:

1207 (A) the other tangible personal property to which the tangible personal property or
1208 product transferred electronically is attached is not permanently attached to real property; and

1209 (B) the attachment of tangible personal property or a product transferred electronically
1210 to other tangible personal property is made in conjunction with a repair or replacement of
1211 tangible personal property or a product transferred electronically.

1212 (b) "Repairs or renovations of tangible personal property" does not include attaching
1213 prewritten computer software to other tangible personal property if the other tangible personal
1214 property to which the prewritten computer software is attached is not permanently attached to
1215 real property.

1216 (94) "Research and development" means the process of inquiry or experimentation
1217 aimed at the discovery of facts, devices, technologies, or applications and the process of
1218 preparing those devices, technologies, or applications for marketing.

1219 (95) (a) "Residential telecommunications services" means a telecommunications
1220 service or an ancillary service that is provided to an individual for personal use:

1221 (i) at a residential address; or

1222 (ii) at an institution, including a nursing home or a school, if the telecommunications
1223 service or ancillary service is provided to and paid for by the individual residing at the
1224 institution rather than the institution.

1225 (b) For purposes of Subsection (95)(a)(i), a residential address includes an:

1226 (i) apartment; or

1227 (ii) other individual dwelling unit.

1228 (96) "Residential use" means the use in or around a home, apartment building, sleeping
1229 quarters, and similar facilities or accommodations.

1230 (97) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
1231 than:

1232 (a) resale;

1233 (b) sublease; or

1234 (c) subrent.

1235 (98) (a) "Retailer" means any person engaged in a regularly organized business in
1236 tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and
1237 who is selling to the user or consumer and not for resale.

1238 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
1239 engaged in the business of selling to users or consumers within the state.

1240 (99) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
1241 otherwise, in any manner, of tangible personal property or any other taxable transaction under
1242 Subsection 59-12-103(1), for consideration.

1243 (b) "Sale" includes:

1244 (i) installment and credit sales;

1245 (ii) any closed transaction constituting a sale;

1246 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
1247 chapter;

1248 (iv) any transaction if the possession of property is transferred but the seller retains the
1249 title as security for the payment of the price; and

1250 (v) any transaction under which right to possession, operation, or use of any article of
1251 tangible personal property is granted under a lease or contract and the transfer of possession
1252 would be taxable if an outright sale were made.

1253 (100) "Sale at retail" is as defined in Subsection (97).

1254 (101) "Sale-leaseback transaction" means a transaction by which title to tangible
1255 personal property or a product transferred electronically that is subject to a tax under this
1256 chapter is transferred:

1257 (a) by a purchaser-lessee;

1258 (b) to a lessor;

1259 (c) for consideration; and

1260 (d) if:

1261 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
1262 of the tangible personal property or product transferred electronically;

1263 (ii) the sale of the tangible personal property or product transferred electronically to the
1264 lessor is intended as a form of financing;

1265 (A) for the tangible personal property or product transferred electronically; and
1266 (B) to the purchaser-lessee; and
1267 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
1268 is required to:
1269 (A) capitalize the tangible personal property or product transferred electronically for
1270 financial reporting purposes; and
1271 (B) account for the lease payments as payments made under a financing arrangement.
1272 (102) "Sales price" is as defined in Subsection (87).
1273 (103) (a) "Sales relating to schools" means the following sales by, amounts paid to, or
1274 amounts charged by a school:
1275 (i) sales that are directly related to the school's educational functions or activities
1276 including:
1277 (A) the sale of:
1278 (I) textbooks;
1279 (II) textbook fees;
1280 (III) laboratory fees;
1281 (IV) laboratory supplies; or
1282 (V) safety equipment;
1283 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
1284 that:
1285 (I) a student is specifically required to wear as a condition of participation in a
1286 school-related event or school-related activity; and
1287 (II) is not readily adaptable to general or continued usage to the extent that it takes the
1288 place of ordinary clothing;
1289 (C) sales of the following if the net or gross revenues generated by the sales are
1290 deposited into a school district fund or school fund dedicated to school meals:
1291 (I) food and food ingredients; or
1292 (II) prepared food; or
1293 (D) transportation charges for official school activities; or
1294 (ii) amounts paid to or amounts charged by a school for admission to a school-related
1295 event or school-related activity.

- 1296 (b) "Sales relating to schools" does not include:
- 1297 (i) bookstore sales of items that are not educational materials or supplies;
- 1298 (ii) except as provided in Subsection (103)(a)(i)(B):
- 1299 (A) clothing;
- 1300 (B) clothing accessories or equipment;
- 1301 (C) protective equipment; or
- 1302 (D) sports or recreational equipment; or
- 1303 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 1304 event or school-related activity if the amounts paid or charged are passed through to a person:
- 1305 (A) other than a:
- 1306 (I) school;
- 1307 (II) nonprofit organization authorized by a school board or a governing body of a
- 1308 private school to organize and direct a competitive secondary school activity; or
- 1309 (III) nonprofit association authorized by a school board or a governing body of a
- 1310 private school to organize and direct a competitive secondary school activity; and
- 1311 (B) that is required to collect sales and use taxes under this chapter.
- 1312 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1313 commission may make rules defining the term "passed through."
- 1314 (104) For purposes of this section and Section 59-12-104, "school":
- 1315 (a) means:
- 1316 (i) an elementary school or a secondary school that:
- 1317 (A) is a:
- 1318 (I) public school; or
- 1319 (II) private school; and
- 1320 (B) provides instruction for one or more grades kindergarten through 12; or
- 1321 (ii) a public school district; and
- 1322 (b) includes the Electronic High School as defined in Section 53A-15-1002.
- 1323 (105) "Seller" means a person that makes a sale, lease, or rental of:
- 1324 (a) tangible personal property;
- 1325 (b) a product transferred electronically; or
- 1326 (c) a service.

1327 (106) (a) "Semiconductor fabricating, processing, research, or development materials"
1328 means tangible personal property or a product transferred electronically if the tangible personal
1329 property or product transferred electronically is:

1330 (i) used primarily in the process of:

1331 (A) (I) manufacturing a semiconductor;

1332 (II) fabricating a semiconductor; or

1333 (III) research or development of a:

1334 (Aa) semiconductor; or

1335 (Bb) semiconductor manufacturing process; or

1336 (B) maintaining an environment suitable for a semiconductor; or

1337 (ii) consumed primarily in the process of:

1338 (A) (I) manufacturing a semiconductor;

1339 (II) fabricating a semiconductor; or

1340 (III) research or development of a:

1341 (Aa) semiconductor; or

1342 (Bb) semiconductor manufacturing process; or

1343 (B) maintaining an environment suitable for a semiconductor.

1344 (b) "Semiconductor fabricating, processing, research, or development materials"

1345 includes:

1346 (i) parts used in the repairs or renovations of tangible personal property or a product
1347 transferred electronically described in Subsection (106)(a); or

1348 (ii) a chemical, catalyst, or other material used to:

1349 (A) produce or induce in a semiconductor a:

1350 (I) chemical change; or

1351 (II) physical change;

1352 (B) remove impurities from a semiconductor; or

1353 (C) improve the marketable condition of a semiconductor.

1354 (107) "Senior citizen center" means a facility having the primary purpose of providing
1355 services to the aged as defined in Section 62A-3-101.

1356 (108) "Simplified electronic return" means the electronic return:

1357 (a) described in Section 318(C) of the agreement; and

- 1358 (b) approved by the governing board of the agreement.
- 1359 (109) "Solar energy" means the sun used as the sole source of energy for producing
1360 electricity.
- 1361 (110) (a) "Sports or recreational equipment" means an item:
- 1362 (i) designed for human use; and
- 1363 (ii) that is:
- 1364 (A) worn in conjunction with:
- 1365 (I) an athletic activity; or
- 1366 (II) a recreational activity; and
- 1367 (B) not suitable for general use.
- 1368 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1369 commission shall make rules:
- 1370 (i) listing the items that constitute "sports or recreational equipment"; and
- 1371 (ii) that are consistent with the list of items that constitute "sports or recreational
1372 equipment" under the agreement.
- 1373 (111) "State" means the state of Utah, its departments, and agencies.
- 1374 (112) "Storage" means any keeping or retention of tangible personal property or any
1375 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except
1376 sale in the regular course of business.
- 1377 (113) (a) Except as provided in Subsection (113)(d) or (e), "tangible personal property"
1378 means personal property that:
- 1379 (i) may be:
- 1380 (A) seen;
- 1381 (B) weighed;
- 1382 (C) measured;
- 1383 (D) felt; or
- 1384 (E) touched; or
- 1385 (ii) is in any manner perceptible to the senses.
- 1386 (b) "Tangible personal property" includes:
- 1387 (i) electricity;
- 1388 (ii) water;

- 1389 (iii) gas;
- 1390 (iv) steam; or
- 1391 (v) prewritten computer software, regardless of the manner in which the prewritten
- 1392 computer software is transferred.
- 1393 (c) "Tangible personal property" includes the following regardless of whether the item
- 1394 is attached to real property:
- 1395 (i) a dishwasher;
- 1396 (ii) a dryer;
- 1397 (iii) a freezer;
- 1398 (iv) a microwave;
- 1399 (v) a refrigerator;
- 1400 (vi) a stove;
- 1401 (vii) a washer; or
- 1402 (viii) an item similar to Subsections (113)(c)(i) through (vii) as determined by the
- 1403 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 1404 Rulemaking Act.
- 1405 (d) "Tangible personal property" does not include a product that is transferred
- 1406 electronically.
- 1407 (e) "Tangible personal property" does not include the following if attached to real
- 1408 property, regardless of whether the attachment to real property is only through a line that
- 1409 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
- 1410 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 1411 Rulemaking Act:
- 1412 (i) a hot water heater;
- 1413 (ii) a water filtration system; or
- 1414 (iii) a water softener system.
- 1415 (114) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon
- 1416 and require further processing other than mechanical blending before becoming finished
- 1417 petroleum products.
- 1418 (115) (a) "Telecommunications enabling or facilitating equipment, machinery, or
- 1419 software" means an item listed in Subsection (115)(b) if that item is purchased or leased

1420 primarily to enable or facilitate one or more of the following to function:

1421 (i) telecommunications switching or routing equipment, machinery, or software; or

1422 (ii) telecommunications transmission equipment, machinery, or software.

1423 (b) The following apply to Subsection (115)(a):

1424 (i) a pole;

1425 (ii) software;

1426 (iii) a supplementary power supply;

1427 (iv) temperature or environmental equipment or machinery;

1428 (v) test equipment;

1429 (vi) a tower; or

1430 (vii) equipment, machinery, or software that functions similarly to an item listed in

1431 Subsections (115)(b)(i) through (vi) as determined by the commission by rule made in

1432 accordance with Subsection (115)(c).

1433 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1434 commission may by rule define what constitutes equipment, machinery, or software that

1435 functions similarly to an item listed in Subsections (115)(b)(i) through (vi).

1436 (116) "Telecommunications equipment, machinery, or software required for 911

1437 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.

1438 Sec. 20.18.

1439 (117) "Telecommunications maintenance or repair equipment, machinery, or software"

1440 means equipment, machinery, or software purchased or leased primarily to maintain or repair

1441 one or more of the following, regardless of whether the equipment, machinery, or software is

1442 purchased or leased as a spare part or as an upgrade or modification to one or more of the

1443 following:

1444 (a) telecommunications enabling or facilitating equipment, machinery, or software;

1445 (b) telecommunications switching or routing equipment, machinery, or software; or

1446 (c) telecommunications transmission equipment, machinery, or software.

1447 (118) (a) "Telecommunications service" means the electronic conveyance, routing, or

1448 transmission of audio, data, video, voice, or any other information or signal to a point, or

1449 among or between points.

1450 (b) "Telecommunications service" includes:

- 1451 (i) an electronic conveyance, routing, or transmission with respect to which a computer
1452 processing application is used to act:
- 1453 (A) on the code, form, or protocol of the content;
 - 1454 (B) for the purpose of electronic conveyance, routing, or transmission; and
 - 1455 (C) regardless of whether the service:
 - 1456 (I) is referred to as voice over Internet protocol service; or
 - 1457 (II) is classified by the Federal Communications Commission as enhanced or value
1458 added;
 - 1459 (ii) an 800 service;
 - 1460 (iii) a 900 service;
 - 1461 (iv) a fixed wireless service;
 - 1462 (v) a mobile wireless service;
 - 1463 (vi) a postpaid calling service;
 - 1464 (vii) a prepaid calling service;
 - 1465 (viii) a prepaid wireless calling service; or
 - 1466 (ix) a private communications service.
 - 1467 (c) "Telecommunications service" does not include:
 - 1468 (i) advertising, including directory advertising;
 - 1469 (ii) an ancillary service;
 - 1470 (iii) a billing and collection service provided to a third party;
 - 1471 (iv) a data processing and information service if:
 - 1472 (A) the data processing and information service allows data to be:
 - 1473 (I) (Aa) acquired;
 - 1474 (Bb) generated;
 - 1475 (Cc) processed;
 - 1476 (Dd) retrieved; or
 - 1477 (Ee) stored; and
 - 1478 (II) delivered by an electronic transmission to a purchaser; and
 - 1479 (B) the purchaser's primary purpose for the underlying transaction is the processed data
1480 or information;
 - 1481 (v) installation or maintenance of the following on a customer's premises:

- 1482 (A) equipment; or
- 1483 (B) wiring;
- 1484 (vi) Internet access service;
- 1485 (vii) a paging service;
- 1486 (viii) a product transferred electronically, including:
 - 1487 (A) music;
 - 1488 (B) reading material;
 - 1489 (C) a ring tone;
 - 1490 (D) software; or
 - 1491 (E) video;
- 1492 (ix) a radio and television audio and video programming service:
 - 1493 (A) regardless of the medium; and
 - 1494 (B) including:
 - 1495 (I) furnishing conveyance, routing, or transmission of a television audio and video
 - 1496 programming service by a programming service provider;
 - 1497 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
 - 1498 (III) audio and video programming services delivered by a commercial mobile radio
 - 1499 service provider as defined in 47 C.F.R. Sec. 20.3;
 - 1500 (x) a value-added nonvoice data service; or
 - 1501 (xi) tangible personal property.
- 1502 (119) (a) "Telecommunications service provider" means a person that:
 - 1503 (i) owns, controls, operates, or manages a telecommunications service; and
 - 1504 (ii) engages in an activity described in Subsection (119)(a)(i) for the shared use with or
 - 1505 resale to any person of the telecommunications service.
- 1506 (b) A person described in Subsection (119)(a) is a telecommunications service provider
- 1507 whether or not the Public Service Commission of Utah regulates:
 - 1508 (i) that person; or
 - 1509 (ii) the telecommunications service that the person owns, controls, operates, or
 - 1510 manages.
- 1511 (120) (a) "Telecommunications switching or routing equipment, machinery, or
- 1512 software" means an item listed in Subsection (120)(b) if that item is purchased or leased

1513 primarily for switching or routing:

- 1514 (i) an ancillary service;
- 1515 (ii) data communications;
- 1516 (iii) voice communications; or
- 1517 (iv) telecommunications service.

1518 (b) The following apply to Subsection (120)(a):

- 1519 (i) a bridge;
- 1520 (ii) a computer;
- 1521 (iii) a cross connect;
- 1522 (iv) a modem;
- 1523 (v) a multiplexer;
- 1524 (vi) plug in circuitry;
- 1525 (vii) a router;
- 1526 (viii) software;
- 1527 (ix) a switch; or

1528 (x) equipment, machinery, or software that functions similarly to an item listed in
1529 Subsections (120)(b)(i) through (ix) as determined by the commission by rule made in
1530 accordance with Subsection (120)(c).

1531 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1532 commission may by rule define what constitutes equipment, machinery, or software that
1533 functions similarly to an item listed in Subsections (120)(b)(i) through (ix).

1534 (121) (a) "Telecommunications transmission equipment, machinery, or software"
1535 means an item listed in Subsection (121)(b) if that item is purchased or leased primarily for
1536 sending, receiving, or transporting:

- 1537 (i) an ancillary service;
- 1538 (ii) data communications;
- 1539 (iii) voice communications; or
- 1540 (iv) telecommunications service.

1541 (b) The following apply to Subsection (121)(a):

- 1542 (i) an amplifier;
- 1543 (ii) a cable;

- 1544 (iii) a closure;
- 1545 (iv) a conduit;
- 1546 (v) a controller;
- 1547 (vi) a duplexer;
- 1548 (vii) a filter;
- 1549 (viii) an input device;
- 1550 (ix) an input/output device;
- 1551 (x) an insulator;
- 1552 (xi) microwave machinery or equipment;
- 1553 (xii) an oscillator;
- 1554 (xiii) an output device;
- 1555 (xiv) a pedestal;
- 1556 (xv) a power converter;
- 1557 (xvi) a power supply;
- 1558 (xvii) a radio channel;
- 1559 (xviii) a radio receiver;
- 1560 (xix) a radio transmitter;
- 1561 (xx) a repeater;
- 1562 (xxi) software;
- 1563 (xxii) a terminal;
- 1564 (xxiii) a timing unit;
- 1565 (xxiv) a transformer;
- 1566 (xxv) a wire; or
- 1567 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
- 1568 Subsections (121)(b)(i) through (xxv) as determined by the commission by rule made in
- 1569 accordance with Subsection (121)(c).

1570 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1571 commission may by rule define what constitutes equipment, machinery, or software that

1572 functions similarly to an item listed in Subsections (121)(b)(i) through (xxv).

1573 (122) (a) "Textbook for a higher education course" means a textbook or other printed

1574 material that is required for a course:

- 1575 (i) offered by an institution of higher education; and
1576 (ii) that the purchaser of the textbook or other printed material attends or will attend.
1577 (b) "Textbook for a higher education course" includes a textbook in electronic format.

1578 (123) "Tobacco" means:

- 1579 (a) a cigarette;
1580 (b) a cigar;
1581 (c) chewing tobacco;
1582 (d) pipe tobacco; or
1583 (e) any other item that contains tobacco.

1584 (124) "Unassisted amusement device" means an amusement device, skill device, or
1585 ride device that is started and stopped by the purchaser or renter of the right to use or operate
1586 the amusement device, skill device, or ride device.

1587 (125) (a) "Use" means the exercise of any right or power over tangible personal
1588 property, a product transferred electronically, or a service under Subsection 59-12-103(1),
1589 incident to the ownership or the leasing of that tangible personal property, product transferred
1590 electronically, or service.

1591 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal
1592 property, a product transferred electronically, or a service in the regular course of business and
1593 held for resale.

1594 (126) "Value-added nonvoice data service" means a service:

1595 (a) that otherwise meets the definition of a telecommunications service except that a
1596 computer processing application is used to act primarily for a purpose other than conveyance,
1597 routing, or transmission; and

1598 (b) with respect to which a computer processing application is used to act on data or
1599 information:

- 1600 (i) code;
1601 (ii) content;
1602 (iii) form; or
1603 (iv) protocol.

1604 (127) (a) Subject to Subsection (127)(b), "vehicle" means the following that are
1605 required to be titled, registered, or titled and registered:

- 1606 (i) an aircraft as defined in Section 72-10-102;
- 1607 (ii) a vehicle as defined in Section 41-1a-102;
- 1608 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1609 (iv) a vessel as defined in Section 41-1a-102.
- 1610 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:
- 1611 (i) a vehicle described in Subsection (127)(a); or
- 1612 (ii) (A) a locomotive;
- 1613 (B) a freight car;
- 1614 (C) railroad work equipment; or
- 1615 (D) other railroad rolling stock.
- 1616 (128) "Vehicle dealer" means a person engaged in the business of buying, selling, or
- 1617 exchanging a vehicle as defined in Subsection (127).
- 1618 (129) (a) "Vertical service" means an ancillary service that:
- 1619 (i) is offered in connection with one or more telecommunications services; and
- 1620 (ii) offers an advanced calling feature that allows a customer to:
- 1621 (A) identify a caller; and
- 1622 (B) manage multiple calls and call connections.
- 1623 (b) "Vertical service" includes an ancillary service that allows a customer to manage a
- 1624 conference bridging service.
- 1625 (130) (a) "Voice mail service" means an ancillary service that enables a customer to
- 1626 receive, send, or store a recorded message.
- 1627 (b) "Voice mail service" does not include a vertical service that a customer is required
- 1628 to have in order to utilize a voice mail service.
- 1629 (131) (a) Except as provided in Subsection (131)(b), "waste energy facility" means a
- 1630 facility that generates electricity:
- 1631 (i) using as the primary source of energy waste materials that would be placed in a
- 1632 landfill or refuse pit if it were not used to generate electricity, including:
- 1633 (A) tires;
- 1634 (B) waste coal; or
- 1635 (C) oil shale; and
- 1636 (ii) in amounts greater than actually required for the operation of the facility.

- 1637 (b) "Waste energy facility" does not include a facility that incinerates:
1638 (i) municipal solid waste;
1639 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or
1640 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.
1641 (132) "Watercraft" means a vessel as defined in Section 73-18-2.
1642 (133) "Wind energy" means wind used as the sole source of energy to produce
1643 electricity.
1644 (134) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
1645 location by the United States Postal Service.
1646 Section 5. Section **59-12-103** is amended to read:
1647 **59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use**
1648 **tax revenues.**
1649 (1) A tax is imposed on the purchaser as provided in this part for amounts paid or
1650 charged for the following transactions:
1651 (a) retail sales of tangible personal property made within the state;
1652 (b) amounts paid for:
1653 (i) telecommunications service, other than mobile telecommunications service, that
1654 originates and terminates within the boundaries of this state;
1655 (ii) mobile telecommunications service that originates and terminates within the
1656 boundaries of one state only to the extent permitted by the Mobile Telecommunications
1657 Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or
1658 (iii) an ancillary service associated with a:
1659 (A) telecommunications service described in Subsection (1)(b)(i); or
1660 (B) mobile telecommunications service described in Subsection (1)(b)(ii);
1661 (c) sales of the following for commercial use:
1662 (i) gas;
1663 (ii) electricity;
1664 (iii) heat;
1665 (iv) coal;
1666 (v) fuel oil; or
1667 (vi) other fuels;

- 1668 (d) sales of the following for residential use:
- 1669 (i) gas;
- 1670 (ii) electricity;
- 1671 (iii) heat;
- 1672 (iv) coal;
- 1673 (v) fuel oil; or
- 1674 (vi) other fuels;
- 1675 (e) sales of prepared food;
- 1676 (f) except as provided in Section 59-12-104, amounts paid or charged as admission or
- 1677 user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,
- 1678 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,
- 1679 fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit
- 1680 television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf
- 1681 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,
- 1682 tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises,
- 1683 horseback rides, sports activities, or any other amusement, entertainment, recreation,
- 1684 exhibition, cultural, or athletic activity;
- 1685 (g) amounts paid or charged for services for repairs or renovations of tangible personal
- 1686 property, unless Section 59-12-104 provides for an exemption from sales and use tax for:
- 1687 (i) the tangible personal property; and
- 1688 (ii) parts used in the repairs or renovations of the tangible personal property described
- 1689 in Subsection (1)(g)(i), whether or not any parts are actually used in the repairs or renovations
- 1690 of that tangible personal property;
- 1691 (h) except as provided in Subsection 59-12-104(7), amounts paid or charged for
- 1692 assisted cleaning or washing of tangible personal property;
- 1693 (i) amounts paid or charged for tourist home, hotel, motel, or trailer court
- 1694 accommodations and services that are regularly rented for less than 30 consecutive days;
- 1695 (j) amounts paid or charged for laundry or dry cleaning services;
- 1696 (k) amounts paid or charged for leases or rentals of tangible personal property if within
- 1697 this state the tangible personal property is:
- 1698 (i) stored;

1699 (ii) used; or
1700 (iii) otherwise consumed;
1701 (l) amounts paid or charged for tangible personal property if within this state the
1702 tangible personal property is:
1703 (i) stored;
1704 (ii) used; or
1705 (iii) consumed; and
1706 (m) amounts paid or charged for a sale:
1707 (i) (A) of a product transferred electronically; or
1708 (B) of a repair or renovation of a product transferred electronically; and
1709 (ii) regardless of whether the sale provides:
1710 (A) a right of permanent use of the product; or
1711 (B) a right to use the product that is less than a permanent use, including a right:
1712 (I) for a definite or specified length of time; and
1713 (II) that terminates upon the occurrence of a condition.
1714 (2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax
1715 is imposed on a transaction described in Subsection (1) equal to the sum of:
1716 (i) a state tax imposed on the transaction at a tax rate equal to the sum of:
1717 (A) 4.70%; and
1718 (B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales
1719 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211
1720 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional
1721 State Sales and Use Tax Act; and
1722 (II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales
1723 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211
1724 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state
1725 imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and
1726 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
1727 transaction under this chapter other than this part.
1728 (b) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed
1729 on a transaction described in Subsection (1)(d) equal to the sum of:

- 1730 (i) a state tax imposed on the transaction at a tax rate of 2%; and
1731 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
1732 transaction under this chapter other than this part.
- 1733 (c) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed
1734 on amounts paid or charged for food and food ingredients equal to the sum of:
- 1735 (i) a state tax imposed on the amounts paid or charged for food and food ingredients at
1736 a tax rate of 1.75%; and
- 1737 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
1738 amounts paid or charged for food and food ingredients under this chapter other than this part.
- 1739 (d) (i) For a bundled transaction that is attributable to food and food ingredients and
1740 tangible personal property other than food and food ingredients, a state tax and a local tax is
1741 imposed on the entire bundled transaction equal to the sum of:
- 1742 (A) a state tax imposed on the entire bundled transaction equal to the sum of:
- 1743 (I) the tax rate described in Subsection (2)(a)(i)(A); and
- 1744 (II) (Aa) the tax rate the state imposes in accordance with Part 18, Additional State
1745 Sales and Use Tax Act, if the location of the transaction as determined under Sections
1746 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18,
1747 Additional State Sales and Use Tax Act; and
- 1748 (Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State
1749 Sales and Use Tax Act, if the location of the transaction as determined under Sections
1750 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which
1751 the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and
- 1752 (B) a local tax imposed on the entire bundled transaction at the sum of the tax rates
1753 described in Subsection (2)(a)(ii).
- 1754 (ii) Subject to Subsection (2)(d)(iii), for a bundled transaction other than a bundled
1755 transaction described in Subsection (2)(d)(i):
- 1756 (A) if the sales price of the bundled transaction is attributable to tangible personal
1757 property, a product, or a service that is subject to taxation under this chapter and tangible
1758 personal property, a product, or service that is not subject to taxation under this chapter, the
1759 entire bundled transaction is subject to taxation under this chapter unless:
- 1760 (I) the seller is able to identify by reasonable and verifiable standards the tangible

1761 personal property, product, or service that is not subject to taxation under this chapter from the
1762 books and records the seller keeps in the seller's regular course of business; or

1763 (II) state or federal law provides otherwise; or

1764 (B) if the sales price of a bundled transaction is attributable to two or more items of
1765 tangible personal property, products, or services that are subject to taxation under this chapter
1766 at different rates, the entire bundled transaction is subject to taxation under this chapter at the
1767 higher tax rate unless:

1768 (I) the seller is able to identify by reasonable and verifiable standards the tangible
1769 personal property, product, or service that is subject to taxation under this chapter at the lower
1770 tax rate from the books and records the seller keeps in the seller's regular course of business; or

1771 (II) state or federal law provides otherwise.

1772 (iii) For purposes of Subsection (2)(d)(ii), books and records that a seller keeps in the
1773 seller's regular course of business includes books and records the seller keeps in the regular
1774 course of business for nontax purposes.

1775 (e) (i) Except as otherwise provided in this chapter and subject to Subsections (2)(e)(ii)
1776 and (iii), if a transaction consists of the sale, lease, or rental of tangible personal property, a
1777 product, or a service that is subject to taxation under this chapter, and the sale, lease, or rental
1778 of tangible personal property, other property, a product, or a service that is not subject to
1779 taxation under this chapter, the entire transaction is subject to taxation under this chapter unless
1780 the seller, at the time of the transaction:

1781 (A) separately states the portion of the transaction that is not subject to taxation under
1782 this chapter on an invoice, bill of sale, or similar document provided to the purchaser; or

1783 (B) is able to identify by reasonable and verifiable standards, from the books and
1784 records the seller keeps in the seller's regular course of business, the portion of the transaction
1785 that is not subject to taxation under this chapter.

1786 (ii) A purchaser and a seller may correct the taxability of a transaction if:

1787 (A) after the transaction occurs, the purchaser and the seller discover that the portion of
1788 the transaction that is not subject to taxation under this chapter was not separately stated on an
1789 invoice, bill of sale, or similar document provided to the purchaser because of an error or
1790 ignorance of the law; and

1791 (B) the seller is able to identify by reasonable and verifiable standards, from the books

1792 and records the seller keeps in the seller's regular course of business, the portion of the
1793 transaction that is not subject to taxation under this chapter.

1794 (iii) For purposes of Subsections (2)(e)(i) and (ii), books and records that a seller keeps
1795 in the seller's regular course of business includes books and records the seller keeps in the
1796 regular course of business for nontax purposes.

1797 (f) (i) If the sales price of a transaction is attributable to two or more items of tangible
1798 personal property, products, or services that are subject to taxation under this chapter at
1799 different rates, the entire purchase is subject to taxation under this chapter at the higher tax rate
1800 unless the seller, at the time of the transaction:

1801 (A) separately states the items subject to taxation under this chapter at each of the
1802 different rates on an invoice, bill of sale, or similar document provided to the purchaser; or

1803 (B) is able to identify by reasonable and verifiable standards the tangible personal
1804 property, product, or service that is subject to taxation under this chapter at the lower tax rate
1805 from the books and records the seller keeps in the seller's regular course of business.

1806 (ii) For purposes of Subsection (2)(f)(i), books and records that a seller keeps in the
1807 seller's regular course of business includes books and records the seller keeps in the regular
1808 course of business for nontax purposes.

1809 ~~(e)~~ (g) Subject to Subsections (2)~~(f)~~(h) and ~~(g)~~(i), a tax rate repeal or tax rate
1810 change for a tax rate imposed under the following shall take effect on the first day of a calendar
1811 quarter:

1812 (i) Subsection (2)(a)(i)(A);

1813 (ii) Subsection (2)(b)(i);

1814 (iii) Subsection (2)(c)(i); or

1815 (iv) Subsection (2)(d)(i)(A)(I).

1816 ~~(f)~~ (h) (i) A tax rate increase shall take effect on the first day of the first billing period
1817 that begins after the effective date of the tax rate increase if the billing period for the
1818 transaction begins before the effective date of a tax rate increase imposed under:

1819 (A) Subsection (2)(a)(i)(A);

1820 (B) Subsection (2)(b)(i);

1821 (C) Subsection (2)(c)(i); or

1822 (D) Subsection (2)(d)(i)(A)(I).

1823 (ii) The repeal of a tax or a tax rate decrease shall take effect on the first day of the last
1824 billing period that began before the effective date of the repeal of the tax or the tax rate
1825 decrease if the billing period for the transaction begins before the effective date of the repeal of
1826 the tax or the tax rate decrease imposed under:

1827 (A) Subsection (2)(a)(i)(A);

1828 (B) Subsection (2)(b)(i);

1829 (C) Subsection (2)(c)(i); or

1830 (D) Subsection (2)(d)(i)(A)(I).

1831 ~~[(g)]~~ (i) For a tax rate described in Subsection (2)~~[(g)]~~(i)(ii), if a tax due on a
1832 catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, a
1833 tax rate repeal or change in a tax rate takes effect:

1834 (A) on the first day of a calendar quarter; and

1835 (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.

1836 (ii) Subsection (2)~~[(g)]~~(i)(i) applies to the tax rates described in the following:

1837 (A) Subsection (2)(a)(i)(A);

1838 (B) Subsection (2)(b)(i);

1839 (C) Subsection (2)(c)(i); or

1840 (D) Subsection (2)(d)(i)(A)(I).

1841 (iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
1842 the commission may by rule define the term "catalogue sale."

1843 (3) (a) The following state taxes shall be deposited into the General Fund:

1844 (i) the tax imposed by Subsection (2)(a)(i)(A);

1845 (ii) the tax imposed by Subsection (2)(b)(i);

1846 (iii) the tax imposed by Subsection (2)(c)(i); or

1847 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

1848 (b) The following local taxes shall be distributed to a county, city, or town as provided
1849 in this chapter:

1850 (i) the tax imposed by Subsection (2)(a)(ii);

1851 (ii) the tax imposed by Subsection (2)(b)(ii);

1852 (iii) the tax imposed by Subsection (2)(c)(ii); and

1853 (iv) the tax imposed by Subsection (2)(d)(i)(B).

1854 (4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
1855 2003, the lesser of the following amounts shall be used as provided in Subsections (4)(b)
1856 through (g):

1857 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

1858 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and

1859 (B) for the fiscal year; or

1860 (ii) \$17,500,000.

1861 (b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount
1862 described in Subsection (4)(a) shall be transferred each year as dedicated credits to the
1863 Department of Natural Resources to:

1864 (A) implement the measures described in Subsections 79-2-303(3)(a) through (d) to
1865 protect sensitive plant and animal species; or

1866 (B) award grants, up to the amount authorized by the Legislature in an appropriations
1867 act, to political subdivisions of the state to implement the measures described in Subsections
1868 79-2-303(3)(a) through (d) to protect sensitive plant and animal species.

1869 (ii) Money transferred to the Department of Natural Resources under Subsection
1870 (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other
1871 person to list or attempt to have listed a species as threatened or endangered under the
1872 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

1873 (iii) At the end of each fiscal year:

1874 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
1875 Conservation and Development Fund created in Section 73-10-24;

1876 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
1877 Program Subaccount created in Section 73-10c-5; and

1878 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
1879 Program Subaccount created in Section 73-10c-5.

1880 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in
1881 Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund
1882 created in Section 4-18-6.

1883 (d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described
1884 in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water

1885 Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of
1886 water rights.

1887 (ii) At the end of each fiscal year:

1888 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
1889 Conservation and Development Fund created in Section 73-10-24;

1890 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
1891 Program Subaccount created in Section 73-10c-5; and

1892 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
1893 Program Subaccount created in Section 73-10c-5.

1894 (e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described
1895 in Subsection (4)(a) shall be deposited in the Water Resources Conservation and Development
1896 Fund created in Section 73-10-24 for use by the Division of Water Resources.

1897 (ii) In addition to the uses allowed of the Water Resources Conservation and
1898 Development Fund under Section 73-10-24, the Water Resources Conservation and
1899 Development Fund may also be used to:

1900 (A) conduct hydrologic and geotechnical investigations by the Division of Water
1901 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of
1902 quantifying surface and ground water resources and describing the hydrologic systems of an
1903 area in sufficient detail so as to enable local and state resource managers to plan for and
1904 accommodate growth in water use without jeopardizing the resource;

1905 (B) fund state required dam safety improvements; and

1906 (C) protect the state's interest in interstate water compact allocations, including the
1907 hiring of technical and legal staff.

1908 (f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
1909 in Subsection (4)(a) shall be deposited in the Utah Wastewater Loan Program Subaccount
1910 created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

1911 (g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
1912 in Subsection (4)(a) shall be deposited in the Drinking Water Loan Program Subaccount
1913 created in Section 73-10c-5 for use by the Division of Drinking Water to:

1914 (i) provide for the installation and repair of collection, treatment, storage, and
1915 distribution facilities for any public water system, as defined in Section 19-4-102;

1916 (ii) develop underground sources of water, including springs and wells; and
1917 (iii) develop surface water sources.
1918 (5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
1919 2006, the difference between the following amounts shall be expended as provided in this
1920 Subsection (5), if that difference is greater than \$1:
1921 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the
1922 fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and
1923 (ii) \$17,500,000.
1924 (b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:
1925 (A) transferred each fiscal year to the Department of Natural Resources as dedicated
1926 credits; and
1927 (B) expended by the Department of Natural Resources for watershed rehabilitation or
1928 restoration.
1929 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described
1930 in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund
1931 created in Section 73-10-24.
1932 (c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the
1933 remaining difference described in Subsection (5)(a) shall be:
1934 (A) transferred each fiscal year to the Division of Water Resources as dedicated
1935 credits; and
1936 (B) expended by the Division of Water Resources for cloud-seeding projects
1937 authorized by Title 73, Chapter 15, Modification of Weather.
1938 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described
1939 in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund
1940 created in Section 73-10-24.
1941 (d) After making the transfers required by Subsections (5)(b) and (c), 94% of the
1942 remaining difference described in Subsection (5)(a) shall be deposited into the Water
1943 Resources Conservation and Development Fund created in Section 73-10-24 for use by the
1944 Division of Water Resources for:
1945 (i) preconstruction costs:
1946 (A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter

1947 26, Bear River Development Act; and

1948 (B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project
1949 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

1950 (ii) the cost of employing a civil engineer to oversee any project authorized by Title 73,
1951 Chapter 26, Bear River Development Act;

1952 (iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project
1953 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

1954 (iv) other uses authorized under Sections 73-10-24, 73-10-25.1, 73-10-30, and
1955 Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

1956 (e) After making the transfers required by Subsections (5)(b) and (c) and subject to
1957 Subsection (5)(f), 6% of the remaining difference described in Subsection (5)(a) shall be
1958 transferred each year as dedicated credits to the Division of Water Rights to cover the costs
1959 incurred for employing additional technical staff for the administration of water rights.

1960 (f) At the end of each fiscal year, any unexpended dedicated credits described in
1961 Subsection (5)(e) over \$150,000 lapse to the Water Resources Conservation and Development
1962 Fund created in Section 73-10-24.

1963 (6) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
1964 2003, and for taxes listed under Subsection (3)(a), the amount of revenue generated by a 1/16%
1965 tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited in
1966 the Transportation Fund created by Section 72-2-102.

1967 (7) (a) Notwithstanding Subsection (3)(a) and until Subsection (7)(b) applies,
1968 beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial
1969 Highway Fund Restricted Account created in Section 72-2-118 a portion of the taxes listed
1970 under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate on the taxable
1971 transactions under Subsection (1).

1972 (b) Notwithstanding Subsection (3)(a), when the highway general obligation bonds
1973 have been paid off and the highway projects completed that are intended to be paid from
1974 revenues deposited in the Centennial Highway Fund Restricted Account as determined by the
1975 Executive Appropriations Committee under Subsection 72-2-118(6)(d), the Division of
1976 Finance shall deposit into the Transportation Investment Fund of 2005 created by Section
1977 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated

1978 by a 1/64% tax rate on the taxable transactions under Subsection (1).

1979 (8) (a) Notwithstanding Subsection (3)(a) and in addition to the amount deposited in
1980 Subsection (7)(a), for the 2010-11 fiscal year only, the Division of Finance shall deposit into
1981 the Centennial Highway Fund Restricted Account created by Section 72-2-118 a portion of the
1982 taxes listed under Subsection (3)(a) equal to 1.93% of the revenues collected from the
1983 following taxes, which represents a portion of the approximately 17% of sales and use tax
1984 revenues generated annually by the sales and use tax on vehicles and vehicle-related products:

- 1985 (i) the tax imposed by Subsection (2)(a)(i)(A);
- 1986 (ii) the tax imposed by Subsection (2)(b)(i);
- 1987 (iii) the tax imposed by Subsection (2)(c)(i); and
- 1988 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

1989 (b) Notwithstanding Subsection (3)(a), in addition to the amount deposited in
1990 Subsection (7)(a), and until Subsection (8)(c) applies, for the 2011-12 fiscal year only, the
1991 Division of Finance shall deposit into the Centennial Highway Fund Restricted Account
1992 created by Section 72-2-118 a portion of the taxes listed under Subsection (3)(a) equal to 8.3%
1993 of the revenues collected from the following taxes, which represents a portion of the
1994 approximately 17% of sales and use tax revenues generated annually by the sales and use tax
1995 on vehicles and vehicle-related products:

- 1996 (i) the tax imposed by Subsection (2)(a)(i)(A);
- 1997 (ii) the tax imposed by Subsection (2)(b)(i);
- 1998 (iii) the tax imposed by Subsection (2)(c)(i); and
- 1999 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

2000 (c) Notwithstanding Subsection (3)(a), in addition to the amounts deposited under
2001 Subsection (7)(b), and until Subsection (8)(d) or (e) applies, when the highway general
2002 obligation bonds have been paid off and the highway projects completed that are intended to be
2003 paid from revenues deposited in the Centennial Highway Fund Restricted Account as
2004 determined by the Executive Appropriations Committee under Subsection 72-2-118(6)(d), the
2005 Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by
2006 Section 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to 8.3% of the
2007 revenues collected from the following taxes, which represents a portion of the approximately
2008 17% of sales and use tax revenues generated annually by the sales and use tax on vehicles and

2009 vehicle-related products:

2010 (i) the tax imposed by Subsection (2)(a)(i)(A);

2011 (ii) the tax imposed by Subsection (2)(b)(i);

2012 (iii) the tax imposed by Subsection (2)(c)(i); and

2013 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

2014 (d) Notwithstanding Subsection (3)(a), in addition to the amounts deposited in
2015 Subsection (7)(a), until Subsection (8)(e) applies, and subject to Subsection (8)(f), for a fiscal
2016 year beginning on or after July 1, 2012, the Division of Finance shall deposit into the
2017 Centennial Highway Fund Restricted Account created by Section 72-2-118:

2018 (i) a portion of the taxes listed under Subsection (3)(a) in an amount equal to 8.3% of
2019 the revenues collected from the following taxes, which represents a portion of the
2020 approximately 17% of sales and use tax revenues generated annually by the sales and use tax
2021 on vehicles and vehicle-related products:

2022 (A) the tax imposed by Subsection (2)(a)(i)(A);

2023 (B) the tax imposed by Subsection (2)(b)(i);

2024 (C) the tax imposed by Subsection (2)(c)(i); and

2025 (D) the tax imposed by Subsection (2)(d)(i)(A)(I); plus

2026 (ii) an amount equal to 30% of the growth in the amount of revenues collected in the
2027 current fiscal year from the sales and use taxes described in Subsections (8)(d)(i)(A) through
2028 (D) that exceeds the amount collected from the sales and use taxes described in Subsections
2029 (8)(d)(i)(A) through (D) in the 2010-11 fiscal year.

2030 (e) Notwithstanding Subsection (3)(a), in addition to the amounts deposited under
2031 Subsection (7)(b), and subject to Subsection (8)(f), when the highway general obligation bonds
2032 have been paid off and the highway projects completed that are intended to be paid from
2033 revenues deposited in the Centennial Highway Fund Restricted Account as determined by the
2034 Executive Appropriations Committee under Subsection 72-2-118(6)(d), for a fiscal year
2035 beginning on or after July 1, 2012, the Division of Finance shall deposit into the Transportation
2036 Investment Fund of 2005 created by Section 72-2-124:

2037 (i) a portion of the taxes listed under Subsection (3)(a) in an amount equal to 8.3% of
2038 the revenues collected from the following taxes, which represents a portion of the
2039 approximately 17% of sales and use tax revenues generated annually by the sales and use tax

2040 on vehicles and vehicle-related products:

2041 (A) the tax imposed by Subsection (2)(a)(i)(A);

2042 (B) the tax imposed by Subsection (2)(b)(i);

2043 (C) the tax imposed by Subsection (2)(c)(i); and

2044 (D) the tax imposed by Subsection (2)(d)(i)(A)(I); plus

2045 (ii) an amount equal to 30% of the growth in the amount of revenues collected in the

2046 current fiscal year from the sales and use taxes described in Subsections (8)(e)(i)(A) through

2047 (D) that exceeds the amount collected from the sales and use taxes described in Subsections

2048 (8)(e)(i)(A) through (D) in the 2010-11 fiscal year.

2049 (f) (i) Subject to Subsections (8)(f)(ii) and (iii), in any fiscal year that the portion of the

2050 sales and use taxes deposited under Subsection (8)(d) or (e) represents an amount that is a total

2051 lower percentage of the sales and use taxes described in Subsections (8)(e)(i)(A) through (D)

2052 generated in the current fiscal year than the total percentage of sales and use taxes deposited in

2053 the previous fiscal year, the Division of Finance shall deposit an amount under Subsection

2054 (8)(d) or (e) equal to the product of:

2055 (A) the total percentage of sales and use taxes deposited under Subsection (8)(d) or (e)

2056 in the previous fiscal year; and

2057 (B) the total sales and use tax revenue generated by the taxes described in Subsections

2058 (8)(e)(i)(A) through (D) in the current fiscal year.

2059 (ii) In any fiscal year in which the portion of the sales and use taxes deposited under

2060 Subsection (8)(d) or (e) would exceed 17% of the revenues collected from the sales and use

2061 taxes described in Subsections (8)(e)(i)(A) through (D) in the current fiscal year, the Division

2062 of Finance shall deposit 17% of the revenues collected from the sales and use taxes described

2063 in Subsections (8)(e)(i)(A) through (D) for the current fiscal year under Subsection (8)(d) or

2064 (e).

2065 (iii) In all subsequent fiscal years after a year in which 17% of the revenues collected

2066 from the sales and use taxes described in Subsections (8)(e)(i)(A) through (D) was deposited

2067 under Subsection (8)(d) or (e), the Division of Finance shall annually deposit 17% of the

2068 revenues collected from the sales and use taxes described in Subsections (8)(e)(i)(A) through

2069 (D) in the current fiscal year under Subsection (8)(d) or (e).

2070 (9) (a) Notwithstanding Subsection (3)(a) and for the fiscal year 2008-09 only, the

2071 Division of Finance shall deposit \$55,000,000 of the revenues generated by the taxes listed
2072 under Subsection (3)(a) into the Critical Highway Needs Fund created by Section 72-2-125.

2073 (b) Notwithstanding Subsection (3)(a) and until Subsection (9)(c) applies, for a fiscal
2074 year beginning on or after July 1, 2009, the Division of Finance shall annually deposit
2075 \$90,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the
2076 Critical Highway Needs Fund created by Section 72-2-125.

2077 (c) Notwithstanding Subsection (3)(a) and in addition to any amounts deposited under
2078 Subsections (7) and (8), when the general obligation bonds authorized by Section 63B-16-101
2079 have been paid off and the highway projects completed that are included in the prioritized
2080 project list under Subsection 72-2-125(4) as determined in accordance with Subsection
2081 72-2-125(6), the Division of Finance shall annually deposit \$90,000,000 of the revenues
2082 generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund
2083 of 2005 created by Section 72-2-124.

2084 (10) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year
2085 2009-10, \$533,750 shall be deposited into the Qualified Emergency Food Agencies Fund
2086 created by Section 9-4-1409 and expended as provided in Section 9-4-1409.

2087 (11) (a) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection
2088 (11)(a)(ii), and until Subsection (11)(b) applies, beginning on January 1, 2009, the Division of
2089 Finance shall deposit into the Critical Highway Needs Fund created by Section 72-2-125 the
2090 amount of tax revenue generated by a .025% tax rate on the transactions described in
2091 Subsection (1).

2092 (ii) For purposes of Subsection (11)(a)(i), the Division of Finance may not deposit into
2093 the Critical Highway Needs Fund any tax revenue generated by amounts paid or charged for
2094 food and food ingredients, except for tax revenue generated by a bundled transaction
2095 attributable to food and food ingredients and tangible personal property other than food and
2096 food ingredients described in Subsection (2)(e).

2097 (b) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection (11)(b)(ii),
2098 and in addition to any amounts deposited under Subsections (7), (9), and (10), when the general
2099 obligation bonds authorized by Section 63B-16-101 have been paid off and the highway
2100 projects completed that are included in the prioritized project list under Subsection 72-2-125(4)
2101 as determined in accordance with Subsection 72-2-125(6), the Division of Finance shall

2102 deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the
2103 amount of tax revenue generated by a .025% tax rate on the transactions described in
2104 Subsection (1).

2105 (ii) For purposes of Subsection (11)(b)(i), the Division of Finance may not deposit into
2106 the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or
2107 charged for food and food ingredients, except for tax revenue generated by a bundled
2108 transaction attributable to food and food ingredients and tangible personal property other than
2109 food and food ingredients described in Subsection (2)(e).

2110 (12) (a) Notwithstanding Subsection (3)(a), and except as provided in Subsection
2111 (12)(b), beginning on January 1, 2009, the Division of Finance shall deposit into the
2112 Transportation Fund created by Section 72-2-102 the amount of tax revenue generated by a
2113 .025% tax rate on the transactions described in Subsection (1) to be expended to address
2114 chokepoints in construction management.

2115 (b) For purposes of Subsection (12)(a), the Division of Finance may not deposit into
2116 the Transportation Fund any tax revenue generated by amounts paid or charged for food and
2117 food ingredients, except for tax revenue generated by a bundled transaction attributable to food
2118 and food ingredients and tangible personal property other than food and food ingredients
2119 described in Subsection (2)(e).

2120 Section 6. Section **59-12-110** is amended to read:

2121 **59-12-110. Refunds procedures.**

2122 (1) A seller that files a claim for a refund under Section 59-12-107 for bad debt shall
2123 file the claim with the commission within three years from the date on which the seller could
2124 first claim the refund for the bad debt.

2125 (2) A seller that files a claim for a refund for a repossessed item shall file the claim
2126 with the commission within three years from the date the item is repossessed.

2127 ~~[(3) A taxpayer may obtain a refund under Section 59-1-1410 of a tax paid under this~~
2128 ~~chapter on a transaction that is taxable under Subsection 59-12-103(1) if:]~~

2129 ~~[(a) the sale or use is exempt from sales and use taxes under Section 59-12-104 on the~~
2130 ~~date of purchase; and]~~

2131 ~~[(b) the taxpayer files a claim for a refund with the commission as provided in Section~~
2132 ~~59-1-1410.]~~

2133 (3) Except as provided in Subsection (1) or (2), procedures and requirements for a
2134 taxpayer to obtain a refund from the commission are as provided in Section 59-1-1410.

2135 Section 7. **Retrospective operation -- Effective date.**

2136 (1) The amendments to the following sections have retrospective operation to
2137 September 27, 2011, and apply to a refund request that is pending on, or filed on or after,
2138 September 27, 2011:

2139 (a) Section 59-1-1410; ~~H~~→ [and] ←~~H~~

2140 (b) Section 59-1-1417 ~~H~~→ [;] ; and ←~~H~~

2141 (c) Section 59-12-110.

2142 (2) The amendments to the following sections take effect on July 1, 2014, and apply to
2143 a refund request that is pending on, or filed on or after, January 1, 2012:

2144 (a) Section 10-1-405;

2145 (b) Section 59-12-102; and

2146 (c) Section 59-12-103.