

Representative Craig W. Buttars proposes the following substitute bill:

**COUNTY OPTION SALES AND USE TAX FOR
AGRICULTURAL LAND, OPEN LAND, AND
RECREATIONAL FACILITIES ACT**

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Craig W. Buttars

LONG TITLE

General Description:

This bill modifies the Revenue and Taxation title to enact the County Option Sales and Use Tax for Agricultural Land, Open Land, and Recreational Facilities Act.

Highlighted Provisions:

This bill:

- ▶ enacts the County Option Sales and Use Tax for Agricultural Land, Open Land, and Recreational Facilities Act;
- ▶ provides and amends definitions;
- ▶ addresses the sourcing of certain transactions;
- ▶ provides procedures and requirements for the imposition, enactment, and repeal of the tax;
- ▶ provides procedures and requirements for the administration, collection, and enforcement of the tax by the State Tax Commission and provides that the State Tax Commission may collect an administrative fee for administering, collecting, and enforcing the tax;
- ▶ provides procedures and requirements for the allocation, distribution, and expenditure of tax revenues;



- 26 ▶ requires a county legislative body to establish an advisory board to advise the
- 27 county legislative body on the expenditure of tax revenues and provides procedures
- 28 and requirements for establishing an advisory board;
- 29 ▶ provides that if tax revenues are not used for certain purposes within a three
- 30 consecutive year period, the county legislative body shall repeal the tax;
- 31 ▶ provides that the State Tax Commission shall adjust a county's certified tax rate to
- 32 include any unexpended sales and use tax revenues as ad valorem property tax
- 33 revenues;
- 34 ▶ requires the State Tax Commission to make administrative rules to provide
- 35 procedures for adjusting a county's certified tax rate; and
- 36 ▶ addresses a seller's or certified service provider's reliance on State Tax Commission
- 37 information or certain systems.

38 Monies Appropriated in this Bill:

39 None

40 Other Special Clauses:

41 None

42 Utah Code Sections Affected:

43 AMENDS:

- 44 **59-2-924**, as last amended by Chapter 122, Laws of Utah 2003
- 45 **59-12-102**, as last amended by Chapters 1, 156, 255, 298 and 300, Laws of Utah 2004
- 46 **59-12-207.1**, as last amended by Chapter 255, Laws of Utah 2004

47 ENACTS:

- 48 **59-12-1601**, Utah Code Annotated 1953
- 49 **59-12-1602**, Utah Code Annotated 1953
- 50 **59-12-1603**, Utah Code Annotated 1953
- 51 **59-12-1604**, Utah Code Annotated 1953
- 52 **59-12-1605**, Utah Code Annotated 1953
- 53 **59-12-1606**, Utah Code Annotated 1953
- 54 **59-12-1607**, Utah Code Annotated 1953

55

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

57 Section 1. Section **59-2-924** is amended to read:

58 **59-2-924. Report of valuation of property to county auditor and commission --**
59 **Transmittal by auditor to governing bodies -- Certified tax rate -- Rulemaking authority**
60 **-- Adoption of tentative budget.**

61 (1) (a) Before June 1 of each year, the county assessor of each county shall deliver to
62 the county auditor and the commission the following statements:

63 (i) a statement containing the aggregate valuation of all taxable property in each taxing
64 entity; and

65 (ii) a statement containing the taxable value of any additional personal property
66 estimated by the county assessor to be subject to taxation in the current year.

67 (b) The county auditor shall, on or before June 8, transmit to the governing body of
68 each taxing entity:

69 (i) the statements described in Subsections (1)(a)(i) and (ii);

70 (ii) an estimate of the revenue from personal property;

71 (iii) the certified tax rate; and

72 (iv) all forms necessary to submit a tax levy request.

73 (2) (a) (i) The "certified tax rate" means a tax rate that will provide the same ad
74 valorem property tax revenues for a taxing entity as were budgeted by that taxing entity for the
75 prior year.

76 (ii) For purposes of this Subsection (2), "ad valorem property tax revenues" do not
77 include:

78 (A) collections from redemptions;

79 (B) interest; and

80 (C) penalties.

81 (iii) Except as provided in Subsection (2)(a)(v), the certified tax rate shall be calculated
82 by dividing the ad valorem property tax revenues budgeted for the prior year by the taxing
83 entity by the taxable value established in accordance with Section 59-2-913.

84 (iv) (A) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
85 Act, the commission shall make rules determining the calculation of ad valorem property tax
86 revenues budgeted by a taxing entity.

87 (B) For purposes of Subsection (2)(a)(iv)(A), ad valorem property tax revenues

88 budgeted by a taxing entity shall be calculated in the same manner as budgeted property tax
89 revenues are calculated for purposes of Section 59-2-913.

90 (v) The certified tax rates for the taxing entities described in this Subsection (2)(a)(v)
91 shall be calculated as follows:

92 (A) except as provided in Subsection (2)(a)(v)(B), for new taxing entities the certified
93 tax rate is zero;

94 (B) for each municipality incorporated on or after July 1, 1996, the certified tax rate is:

95 (I) in a county of the first, second, or third class, the levy imposed for municipal-type
96 services under Sections 17-34-1 and 17-36-9; and

97 (II) in a county of the fourth, fifth, or sixth class, the levy imposed for general county
98 purposes and such other levies imposed solely for the municipal-type services identified in
99 Section 17-34-1 and Subsection 17-36-3(22);

100 (C) for debt service voted on by the public, the certified tax rate shall be the actual levy
101 imposed by that section, except that the certified tax rates for the following levies shall be
102 calculated in accordance with Section 59-2-913 and this section:

103 (I) school leeways provided for under Sections 11-2-7, 53A-16-110, 53A-17a-125,
104 53A-17a-127, 53A-17a-134, 53A-17a-143, 53A-17a-145, and 53A-21-103; and

105 (II) levies to pay for the costs of state legislative mandates or judicial or administrative
106 orders under Section 59-2-906.3.

107 (vi) (A) A judgment levy imposed under Section 59-2-1328 or Section 59-2-1330 shall
108 be established at that rate which is sufficient to generate only the revenue required to satisfy
109 one or more eligible judgments, as defined in Section 59-2-102.

110 (B) The ad valorem property tax revenue generated by the judgment levy shall not be
111 considered in establishing the taxing entity's aggregate certified tax rate.

112 (b) (i) For the purpose of calculating the certified tax rate, the county auditor shall use
113 the taxable value of property on the assessment roll.

114 (ii) For purposes of Subsection (2)(b)(i), the taxable value of property on the
115 assessment roll does not include new growth as defined in Subsection (2)(b)(iii).

116 (iii) "New growth" means:

117 (A) the difference between the increase in taxable value of the taxing entity from the
118 previous calendar year to the current year; minus

- 119 (B) the amount of an increase in taxable value described in Subsection (2)(b)(iv).
120 (iv) Subsection (2)(b)(iii)(B) applies to the following increases in taxable value:
121 (A) the amount of increase to locally assessed real property taxable values resulting
122 from factoring, reappraisal, or any other adjustments; or
123 (B) the amount of an increase in the taxable value of property assessed by the
124 commission under Section 59-2-201 resulting from a change in the method of apportioning the
125 taxable value prescribed by:
126 (I) the Legislature;
127 (II) a court;
128 (III) the commission in an administrative rule; or
129 (IV) the commission in an administrative order.
130 (c) Beginning January 1, 1997, if a taxing entity receives increased revenues from
131 uniform fees on tangible personal property under Section 59-2-404, 59-2-405, or 59-2-405.1 as
132 a result of any county imposing a sales and use tax under Chapter 12, Part 11, County Option
133 Sales and Use Tax, the taxing entity shall decrease its certified tax rate to offset the increased
134 revenues.
135 (d) (i) Beginning July 1, 1997, if a county has imposed a sales and use tax under
136 Chapter 12, Part 11, County Option Sales and Use Tax, the county's certified tax rate shall be:
137 (A) decreased on a one-time basis by the amount of the estimated sales and use tax
138 revenue to be distributed to the county under Subsection 59-12-1102(3); and
139 (B) increased by the amount necessary to offset the county's reduction in revenue from
140 uniform fees on tangible personal property under Section 59-2-404, 59-2-405, or 59-2-405.1 as
141 a result of the decrease in the certified tax rate under Subsection (2)(d)(i)(A).
142 (ii) The commission shall determine estimates of sales and use tax distributions for
143 purposes of Subsection (2)(d)(i).
144 (e) Beginning January 1, 1998, if a municipality has imposed an additional resort
145 communities sales tax under Section 59-12-402, the municipality's certified tax rate shall be
146 decreased on a one-time basis by the amount necessary to offset the first 12 months of
147 estimated revenue from the additional resort communities sales and use tax imposed under
148 Section 59-12-402.
149 (f) For the calendar year beginning on January 1, 1999, and ending on December 31,

150 1999, a taxing entity's certified tax rate shall be adjusted by the amount necessary to offset the
151 adjustment in revenues from uniform fees on tangible personal property under Section
152 59-2-405.1 as a result of the adjustment in uniform fees on tangible personal property under
153 Section 59-2-405.1 enacted by the Legislature during the 1998 Annual General Session.

154 (g) For purposes of Subsections (2)(h) through (j):

155 (i) "1998 actual collections" means the amount of revenues a taxing entity actually
156 collected for the calendar year beginning on January 1, 1998, under Section 59-2-405 for:

157 (A) motor vehicles required to be registered with the state that weigh 12,000 pounds or
158 less; and

159 (B) state-assessed commercial vehicles required to be registered with the state that
160 weigh 12,000 pounds or less.

161 (ii) "1999 actual collections" means the amount of revenues a taxing entity actually
162 collected for the calendar year beginning on January 1, 1999, under Section 59-2-405.1.

163 (h) For the calendar year beginning on January 1, 2000, the commission shall make the
164 following adjustments:

165 (i) the commission shall make the adjustment described in Subsection (2)(i)(i) if, for
166 the calendar year beginning on January 1, 1999, a taxing entity's 1998 actual collections were
167 greater than the sum of:

168 (A) the taxing entity's 1999 actual collections; and

169 (B) any adjustments the commission made under Subsection (2)(f);

170 (ii) the commission shall make the adjustment described in Subsection (2)(i)(ii) if, for
171 the calendar year beginning on January 1, 1999, a taxing entity's 1998 actual collections were
172 greater than the taxing entity's 1999 actual collections, but the taxing entity's 1998 actual
173 collections were less than the sum of:

174 (A) the taxing entity's 1999 actual collections; and

175 (B) any adjustments the commission made under Subsection (2)(f); and

176 (iii) the commission shall make the adjustment described in Subsection (2)(i)(iii) if, for
177 the calendar year beginning on January 1, 1999, a taxing entity's 1998 actual collections were
178 less than the taxing entity's 1999 actual collections.

179 (i) (i) For purposes of Subsection (2)(h)(i), the commission shall increase a taxing
180 entity's certified tax rate under this section and a taxing entity's certified revenue levy under

181 Section 59-2-906.1 by the amount necessary to offset the difference between:

182 (A) the taxing entity's 1998 actual collections; and

183 (B) the sum of:

184 (I) the taxing entity's 1999 actual collections; and

185 (II) any adjustments the commission made under Subsection (2)(f).

186 (ii) For purposes of Subsection (2)(h)(ii), the commission shall decrease a taxing
187 entity's certified tax rate under this section and a taxing entity's certified revenue levy under

188 Section 59-2-906.1 by the amount necessary to offset the difference between:

189 (A) the sum of:

190 (I) the taxing entity's 1999 actual collections; and

191 (II) any adjustments the commission made under Subsection (2)(f); and

192 (B) the taxing entity's 1998 actual collections.

193 (iii) For purposes of Subsection (2)(h)(iii), the commission shall decrease a taxing
194 entity's certified tax rate under this section and a taxing entity's certified revenue levy under
195 Section 59-2-906.1 by the amount of any adjustments the commission made under Subsection
196 (2)(f).

197 (j) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for
198 purposes of Subsections (2)(f) through (i), the commission may make rules establishing the
199 method for determining a taxing entity's 1998 actual collections and 1999 actual collections.

200 (k) (i) (A) For fiscal year 2000, the certified tax rate of each county required under
201 Subsection 17-34-1(4)(a) to provide advanced life support and paramedic services to the
202 unincorporated area of the county shall be decreased by the amount necessary to reduce
203 revenues in that fiscal year by an amount equal to the difference between the amount the county
204 budgeted in its 2000 fiscal year budget for advanced life support and paramedic services
205 countywide and the amount the county spent during fiscal year 2000 for those services,
206 excluding amounts spent from a municipal services fund for those services.

207 (B) For fiscal year 2001, the certified tax rate of each county to which Subsection
208 (2)(k)(i)(A) applies shall be decreased by the amount necessary to reduce revenues in that fiscal
209 year by the amount that the county spent during fiscal year 2000 for advanced life support and
210 paramedic services countywide, excluding amounts spent from a municipal services fund for
211 those services.

212 (ii) (A) A city or town located within a county of the first class to which Subsection
213 (2)(k)(i) applies may increase its certified tax rate by the amount necessary to generate within
214 the city or town the same amount of revenues as the county would collect from that city or
215 town if the decrease under Subsection (2)(k)(i) did not occur.

216 (B) An increase under Subsection (2)(k)(ii)(A), whether occurring in a single fiscal
217 year or spread over multiple fiscal years, is not subject to the notice and hearing requirements
218 of Sections 59-2-918 and 59-2-919.

219 (l) (i) The certified tax rate of each county required under Subsection 17-34-1(4)(b) to
220 provide detective investigative services to the unincorporated area of the county shall be
221 decreased:

222 (A) in fiscal year 2001 by the amount necessary to reduce revenues in that fiscal year
223 by at least \$4,400,000; and

224 (B) in fiscal year 2002 by the amount necessary to reduce revenues in that fiscal year
225 by an amount equal to the difference between \$9,258,412 and the amount of the reduction in
226 revenues under Subsection (2)(l)(i)(A).

227 (ii) (A) (I) Beginning with municipal fiscal year 2002, a city or town located within a
228 county to which Subsection (2)(l)(i) applies may increase its certified tax rate to generate
229 within the city or town the same amount of revenue as the county would have collected during
230 county fiscal year 2001 from within the city or town except for Subsection (2)(l)(i)(A).

231 (II) Beginning with municipal fiscal year 2003, a city or town located within a county
232 to which Subsection (2)(l)(i) applies may increase its certified tax rate to generate within the
233 city or town the same amount of revenue as the county would have collected during county
234 fiscal year 2002 from within the city or town except for Subsection (2)(l)(i)(B).

235 (B) (I) Except as provided in Subsection (2)(l)(ii)(B)(II), an increase in the city or
236 town's certified tax rate under Subsection (2)(l)(ii)(A), whether occurring in a single fiscal year
237 or spread over multiple fiscal years, is subject to the notice and hearing requirements of
238 Sections 59-2-918 and 59-2-919.

239 (II) For an increase under this Subsection (2)(l)(ii) that generates revenue that does not
240 exceed the same amount of revenue as the county would have collected except for Subsection
241 (2)(l)(i), the requirements of Sections 59-2-918 and 59-2-919 do not apply if the city or town:

242 (Aa) publishes a notice that meets the size, type, placement, and frequency

243 requirements of Section 59-2-919, reflects that the increase is a shift of a tax from one imposed
244 by the county to one imposed by the city or town, and explains how the revenues from the tax
245 increase will be used; and

246 (Bb) holds a public hearing on the tax shift that may be held in conjunction with the
247 city or town's regular budget hearing.

248 (m) (i) This Subsection (2)(m) applies to each county that:

249 (A) establishes a countywide special service district under Title 17A, Chapter 2, Part
250 13, Utah Special Service District Act, to provide jail service, as provided in Subsection
251 17A-2-1304(1)(a)(x); and

252 (B) levies a property tax on behalf of the special service district under Section
253 17A-2-1322.

254 (ii) (A) The certified tax rate of each county to which this Subsection (2)(m) applies
255 shall be decreased by the amount necessary to reduce county revenues by the same amount of
256 revenues that will be generated by the property tax imposed on behalf of the special service
257 district.

258 (B) Each decrease under Subsection (2)(m)(ii)(A) shall occur contemporaneously with
259 the levy on behalf of the special service district under Section 17A-2-1322.

260 (n) (i) As used in this Subsection (2)(n):

261 (A) "Annexing county" means a county whose unincorporated area is included within a
262 fire district by annexation.

263 (B) "Annexing municipality" means a municipality whose area is included within a fire
264 district by annexation.

265 (C) "Equalized fire protection tax rate" means the tax rate that results from:

266 (I) calculating, for each participating county and each participating municipality, the
267 property tax revenue necessary to cover all of the costs associated with providing fire
268 protection, paramedic, and emergency services:

269 (Aa) for a participating county, in the unincorporated area of the county; and

270 (Bb) for a participating municipality, in the municipality; and

271 (II) adding all the amounts calculated under Subsection (2)(n)(i)(C)(I) for all
272 participating counties and all participating municipalities and then dividing that sum by the
273 aggregate taxable value of the property, as adjusted in accordance with Section 59-2-913:

274 (Aa) for participating counties, in the unincorporated area of all participating counties;
275 and

276 (Bb) for participating municipalities, in all the participating municipalities.

277 (D) "Fire district" means a county service area under Title 17A, Chapter 2, Part 4,
278 County Service Area Act, in the creation of which an election was not required under
279 Subsection 17B-2-214(3)(c).

280 (E) "Fire protection tax rate" means:

281 (I) for an annexing county, the property tax rate that, when applied to taxable property
282 in the unincorporated area of the county, generates enough property tax revenue to cover all the
283 costs associated with providing fire protection, paramedic, and emergency services in the
284 unincorporated area of the county; and

285 (II) for an annexing municipality, the property tax rate that generates enough property
286 tax revenue in the municipality to cover all the costs associated with providing fire protection,
287 paramedic, and emergency services in the municipality.

288 (F) "Participating county" means a county whose unincorporated area is included
289 within a fire district at the time of the creation of the fire district.

290 (G) "Participating municipality" means a municipality whose area is included within a
291 fire district at the time of the creation of the fire district.

292 (ii) In the first year following creation of a fire district, the certified tax rate of each
293 participating county and each participating municipality shall be decreased by the amount of
294 the equalized fire protection tax rate.

295 (iii) In the first year following annexation to a fire district, the certified tax rate of each
296 annexing county and each annexing municipality shall be decreased by the fire protection tax
297 rate.

298 (iv) Each tax levied under this section by a fire district shall be considered to be levied
299 by:

300 (A) each participating county and each annexing county for purposes of the county's
301 tax limitation under Section 59-2-908; and

302 (B) each participating municipality and each annexing municipality for purposes of the
303 municipality's tax limitation under Section 10-5-112, for a town, or Section 10-6-133, for a
304 city.

305 (o) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
306 commission shall make rules to provide procedures for adjusting a county's certified tax rate as
307 required by Section 59-12-1606.

308 (3) (a) On or before June 22, each taxing entity shall annually adopt a tentative budget.

309 (b) If the taxing entity intends to exceed the certified tax rate, it shall notify the county
310 auditor of:

311 (i) its intent to exceed the certified tax rate; and

312 (ii) the amount by which it proposes to exceed the certified tax rate.

313 (c) The county auditor shall notify all property owners of any intent to exceed the
314 certified tax rate in accordance with Subsection 59-2-919(2).

315 (4) (a) The taxable value for the base year under Subsection 17B-4-102(4) shall be
316 reduced for any year to the extent necessary to provide a redevelopment agency established
317 under Title 17B, Chapter 4, Redevelopment Agencies Act, with approximately the same
318 amount of money the agency would have received without a reduction in the county's certified
319 tax rate if:

320 (i) in that year there is a decrease in the certified tax rate under Subsection (2)(c) or
321 (2)(d)(i);

322 (ii) the amount of the decrease is more than 20% of the county's certified tax rate of the
323 previous year; and

324 (iii) the decrease results in a reduction of the amount to be paid to the agency under
325 Section 17B-4-1003 or 17B-4-1004.

326 (b) The base taxable value under Subsection 17B-4-102(4) shall be increased in any
327 year to the extent necessary to provide a redevelopment agency with approximately the same
328 amount of money as the agency would have received without an increase in the certified tax
329 rate that year if:

330 (i) in that year the base taxable value under Subsection 17B-4-102(4) is reduced due to
331 a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i); and

332 (ii) The certified tax rate of a city, school district, or special district increases
333 independent of the adjustment to the taxable value of the base year.

334 (c) Notwithstanding a decrease in the certified tax rate under Subsection (2)(c) or
335 (2)(d)(i), the amount of money allocated and, when collected, paid each year to a

336 redevelopment agency established under Title 17B, Chapter 4, Redevelopment Agencies Act,
337 for the payment of bonds or other contract indebtedness, but not for administrative costs, may
338 not be less than that amount would have been without a decrease in the certified tax rate under
339 Subsection (2)(c) or (2)(d)(i).

340 Section 2. Section **59-12-102** is amended to read:

341 **59-12-102. Definitions.**

342 As used in this chapter:

343 (1) (a) "Admission or user fees" includes season passes.

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

346 (2) "Agreement" means the Streamlined Sales and Use Tax Agreement described in
347 Section 59-12-102.1.

348 (3) "Agreement combined tax rate" means the sum of the tax rates:

349 (a) listed under Subsection (4); and

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

351 (4) "Agreement sales and use tax" means a tax imposed under:

352 (a) Subsection 59-12-103(2)(a)(i);

353 (b) Section 59-12-204;

354 (c) Section 59-12-401;

355 (d) Section 59-12-402;

356 (e) Section 59-12-501;

357 (f) Section 59-12-502;

358 (g) Section 59-12-703;

359 (h) Section 59-12-802;

360 (i) Section 59-12-804;

361 (j) Section 59-12-1001;

362 (k) Section 59-12-1102;

363 (l) Section 59-12-1302;

364 (m) Section 59-12-1402; [~~or~~]

365 (n) Section 59-12-1503[~~;~~]; or

366 (o) Section 59-12-1603.

- 367 (5) "Aircraft" is as defined in Section 72-10-102.
- 368 (6) "Alcoholic beverage" means a beverage that:
- 369 (a) is suitable for human consumption; and
- 370 (b) contains .5% or more alcohol by volume.
- 371 (7) "Area agency on aging" is as defined in Section 62A-3-101.
- 372 (8) "Authorized carrier" means:
- 373 (a) in the case of vehicles operated over public highways, the holder of credentials
- 374 indicating that the vehicle is or will be operated pursuant to both the International Registration
- 375 Plan and the International Fuel Tax Agreement;
- 376 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating
- 377 certificate or air carrier's operating certificate; or
- 378 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling
- 379 stock, the holder of a certificate issued by the United States Surface Transportation Board.
- 380 (9) (a) Except as provided in Subsection (9)(b), "biomass energy" means any of the
- 381 following that is used as the primary source of energy to produce fuel or electricity:
- 382 (i) material from a plant or tree; or
- 383 (ii) other organic matter that is available on a renewable basis, including:
- 384 (A) slash and brush from forests and woodlands;
- 385 (B) animal waste;
- 386 (C) methane produced:
- 387 (I) at landfills; or
- 388 (II) as a byproduct of the treatment of wastewater residuals;
- 389 (D) aquatic plants; and
- 390 (E) agricultural products.
- 391 (b) "Biomass energy" does not include:
- 392 (i) black liquor;
- 393 (ii) treated woods; or
- 394 (iii) biomass from municipal solid waste other than methane produced:
- 395 (A) at landfills; or
- 396 (B) as a byproduct of the treatment of wastewater residuals.
- 397 (10) "Certified automated system" means software certified by the governing board of

398 the agreement in accordance with Section 59-12-102.1 that:

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

401 (i) on a transaction; and

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

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

405 (c) maintains a record of the transaction described in Subsection (10)(a)(i).

406 (11) "Certified service provider" means an agent certified:

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

408 and

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

412 (12) (a) Subject to Subsection (12)(b), "clothing" means all human wearing apparel
413 suitable for general use.

414 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
415 commission shall make rules:

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

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

419 (13) (a) For purposes of Subsection 59-12-104(42), "coin-operated amusement device"
420 means:

421 (i) a coin-operated amusement, skill, or ride device;

422 (ii) that is not controlled through seller-assisted, over-the-counter, sales of tokens; and

423 (iii) includes a music machine, pinball machine, billiard machine, video game machine,
424 arcade machine, and a mechanical or electronic skill game or ride.

425 (b) For purposes of Subsection 59-12-104(42), "coin-operated amusement device" does
426 not mean a coin-operated amusement device possessing a coinage mechanism that:

427 (i) accepts and registers multiple denominations of coins; and

428 (ii) allows the seller to collect the sales and use tax at the time an amusement device is

429 activated and operated by a person inserting coins into the device.

430 (14) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
431 fuels that does not constitute industrial use under Subsection (34) or residential use under
432 Subsection (63).

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

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

438 (ii) For purposes of Subsection (15)(b)(i), in accordance with Title 63, Chapter 46a,
439 Utah Administrative Rulemaking Act, the commission may make rules defining what
440 constitutes a person's place of employment.

441 (16) "Component part" includes:

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

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

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

447 (d) feed, seeds, and seedlings.

448 (17) "Computer" means an electronic device that accepts information:

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

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

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

452 (18) "Computer software" means a set of coded instructions designed to cause:

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

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

455 (19) "Construction materials" means any tangible personal property that will be
456 converted into real property.

457 (20) "Delivered electronically" means delivered to a purchaser by means other than
458 tangible storage media.

459 (21) (a) "Delivery charge" means a charge:

- 460 (i) by a seller of:
- 461 (A) tangible personal property; or
- 462 (B) services; and
- 463 (ii) for preparation and delivery of the tangible personal property or services described
- 464 in Subsection (21)(a)(i) to a location designated by the purchaser.
- 465 (b) "Delivery charge" includes a charge for the following:
- 466 (i) transportation;
- 467 (ii) shipping;
- 468 (iii) postage;
- 469 (iv) handling;
- 470 (v) crating; or
- 471 (vi) packing.
- 472 (22) "Dietary supplement" means a product, other than tobacco, that:
- 473 (a) is intended to supplement the diet;
- 474 (b) contains one or more of the following dietary ingredients:
- 475 (i) a vitamin;
- 476 (ii) a mineral;
- 477 (iii) an herb or other botanical;
- 478 (iv) an amino acid;
- 479 (v) a dietary substance for use by humans to supplement the diet by increasing the total
- 480 dietary intake; or
- 481 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
- 482 described in Subsections (22)(b)(i) through (v);
- 483 (c) (i) except as provided in Subsection (22)(c)(ii), is intended for ingestion in:
- 484 (A) tablet form;
- 485 (B) capsule form;
- 486 (C) powder form;
- 487 (D) softgel form;
- 488 (E) gelcap form; or
- 489 (F) liquid form; or
- 490 (ii) notwithstanding Subsection (22)(c)(i), if the product is not intended for ingestion in

491 a form described in Subsections (22)(c)(i)(A) through (F), is not represented:

492 (A) as conventional food; and

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

494 (I) a meal; or

495 (II) the diet; and

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

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

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

499 (23) (a) "Direct mail" means printed material delivered or distributed by United States
500 mail or other delivery service:

501 (i) to:

502 (A) a mass audience; or

503 (B) addressees on a mailing list provided by a purchaser of the mailing list; and

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

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

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

509 (24) (a) "Drug" means a compound, substance, or preparation, or a component of a
510 compound, substance, or preparation that is:

511 (i) recognized in:

512 (A) the official United States Pharmacopoeia;

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

514 (C) the official National Formulary; or

515 (D) a supplement to a publication listed in Subsections (24)(a)(i)(A) through (C);

516 (ii) intended for use in the:

517 (A) diagnosis of disease;

518 (B) cure of disease;

519 (C) mitigation of disease;

520 (D) treatment of disease; or

521 (E) prevention of disease; or

- 522 (iii) intended to affect:
- 523 (A) the structure of the body; or
- 524 (B) any function of the body.
- 525 (b) "Drug" does not include:
- 526 (i) food and food ingredients;
- 527 (ii) a dietary supplement;
- 528 (iii) an alcoholic beverage; or
- 529 (iv) a prosthetic device.
- 530 (25) (a) Except as provided in Subsection (25)(c), "durable medical equipment" means
- 531 equipment that:
- 532 (i) can withstand repeated use;
- 533 (ii) is primarily and customarily used to serve a medical purpose;
- 534 (iii) generally is not useful to a person in the absence of illness or injury;
- 535 (iv) is not worn in or on the body;
- 536 (v) is listed as eligible for payment under:
- 537 (A) Title XVIII of the federal Social Security Act; or
- 538 (B) the state plan for medical assistance under Title XIX of the federal Social Security
- 539 Act; and
- 540 (vi) is used for home use only.
- 541 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 542 equipment described in Subsection (25)(a).
- 543 (c) Notwithstanding Subsection (25)(a), "durable medical equipment" does not include
- 544 mobility enhancing equipment.
- 545 (26) "Electronic" means:
- 546 (a) relating to technology; and
- 547 (b) having:
- 548 (i) electrical capabilities;
- 549 (ii) digital capabilities;
- 550 (iii) magnetic capabilities;
- 551 (iv) wireless capabilities;
- 552 (v) optical capabilities;

- 553 (vi) electromagnetic capabilities; or
- 554 (vii) capabilities similar to Subsections (26)(b)(i) through (vi).
- 555 (27) (a) "Food and food ingredients" means substances:
- 556 (i) regardless of whether the substances are in:
- 557 (A) liquid form;
- 558 (B) concentrated form;
- 559 (C) solid form;
- 560 (D) frozen form;
- 561 (E) dried form; or
- 562 (F) dehydrated form; and
- 563 (ii) that are:
- 564 (A) sold for:
- 565 (I) ingestion by humans; or
- 566 (II) chewing by humans; and
- 567 (B) consumed for the substance's:
- 568 (I) taste; or
- 569 (II) nutritional value.
- 570 (b) "Food and food ingredients" does not include:
- 571 (i) an alcoholic beverage;
- 572 (ii) tobacco; or
- 573 (iii) prepared food.
- 574 (28) (a) "Fundraising sales" means sales:
- 575 (i) (A) made by a school; or
- 576 (B) made by a school student;
- 577 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 578 materials, or provide transportation; and
- 579 (iii) that are part of an officially sanctioned school activity.
- 580 (b) For purposes of Subsection (28)(a)(iii), "officially sanctioned school activity"
- 581 means a school activity:
- 582 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 583 district governing the authorization and supervision of fundraising activities;

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

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

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

590 (30) "Governing board of the agreement" means the governing board of the agreement
591 that is:

592 (a) authorized to administer the agreement; and

593 (b) established in accordance with the agreement.

594 (31) (a) "Hearing aid" means:

595 (i) an instrument or device having an electronic component that is designed to:

596 (A) (I) improve impaired human hearing; or

597 (II) correct impaired human hearing; and

598 (B) (I) be worn in the human ear; or

599 (II) affixed behind the human ear;

600 (ii) an instrument or device that is surgically implanted into the cochlea; or

601 (iii) a telephone amplifying device.

602 (b) "Hearing aid" does not include:

603 (i) except as provided in Subsection (31)(a)(i)(B) or (31)(a)(ii), an instrument or device
604 having an electronic component that is designed to be worn on the body;

605 (ii) except as provided in Subsection (31)(a)(iii), an assistive listening device or system
606 designed to be used by one individual, including:

607 (A) a personal amplifying system;

608 (B) a personal FM system;

609 (C) a television listening system; or

610 (D) a device or system similar to a device or system described in Subsections

611 (31)(b)(ii)(A) through (C); or

612 (iii) an assistive listening device or system designed to be used by more than one
613 individual, including:

614 (A) a device or system installed in:

- 615 (I) an auditorium;
- 616 (II) a church;
- 617 (III) a conference room;
- 618 (IV) a synagogue; or
- 619 (V) a theater; or
- 620 (B) a device or system similar to a device or system described in Subsections
- 621 (31)(b)(iii)(A)(I) through (V).
- 622 (32) (a) "Hearing aid accessory" means a hearing aid:
- 623 (i) component;
- 624 (ii) attachment; or
- 625 (iii) accessory.
- 626 (b) "Hearing aid accessory" includes:
- 627 (i) a hearing aid neck loop;
- 628 (ii) a hearing aid cord;
- 629 (iii) a hearing aid ear mold;
- 630 (iv) hearing aid tubing;
- 631 (v) a hearing aid ear hook; or
- 632 (vi) a hearing aid remote control.
- 633 (c) "Hearing aid accessory" does not include:
- 634 (i) a component, attachment, or accessory designed to be used only with an:
- 635 (A) instrument or device described in Subsection (31)(b)(i); or
- 636 (B) assistive listening device or system described in Subsection (31)(b)(ii) or (iii); or
- 637 (ii) a hearing aid battery.
- 638 (33) "Hydroelectric energy" means water used as the sole source of energy to produce
- 639 electricity.
- 640 (34) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
- 641 other fuels:
- 642 (a) in mining or extraction of minerals;
- 643 (b) in agricultural operations to produce an agricultural product up to the time of
- 644 harvest or placing the agricultural product into a storage facility, including:
- 645 (i) commercial greenhouses;

646 (ii) irrigation pumps;
647 (iii) farm machinery;
648 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
649 registered under Title 41, Chapter 1a, Part 2, Registration; and
650 (v) other farming activities;
651 (c) in manufacturing tangible personal property at an establishment described in SIC
652 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
653 Executive Office of the President, Office of Management and Budget; or
654 (d) by a scrap recycler if:
655 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
656 one or more of the following items into prepared grades of processed materials for use in new
657 products:
658 (A) iron;
659 (B) steel;
660 (C) nonferrous metal;
661 (D) paper;
662 (E) glass;
663 (F) plastic;
664 (G) textile; or
665 (H) rubber; and
666 (ii) the new products under Subsection (34)(d)(i) would otherwise be made with
667 nonrecycled materials.
668 (35) (a) "Lease" or "rental" means a transfer of possession or control of tangible
669 personal property for:
670 (i) (A) a fixed term; or
671 (B) an indeterminate term; and
672 (ii) consideration.
673 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
674 amount of consideration may be increased or decreased by reference to the amount realized
675 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
676 Code.

- 677 (c) "Lease" or "rental" does not include:
- 678 (i) a transfer of possession or control of property under a security agreement or
679 deferred payment plan that requires the transfer of title upon completion of the required
680 payments;
- 681 (ii) a transfer of possession or control of property under an agreement:
- 682 (A) that requires the transfer of title upon completion of required payments; and
683 (B) in which the payment of an option price does not exceed the greater of:
- 684 (I) \$100; or
685 (II) 1% of the total required payments; or
- 686 (iii) providing tangible personal property along with an operator for a fixed period of
687 time or an indeterminate period of time if the operator is necessary for equipment to perform as
688 designed.
- 689 (d) For purposes of Subsection (35)(c)(iii), an operator is necessary for equipment to
690 perform as designed if the operator's duties exceed the:
- 691 (i) set-up of tangible personal property;
692 (ii) maintenance of tangible personal property; or
693 (iii) inspection of tangible personal property.
- 694 (36) "Load and leave" means delivery to a purchaser by use of a tangible storage media
695 if the tangible storage media is not physically transferred to the purchaser.
- 696 (37) "Local taxing jurisdiction" means a:
- 697 (a) county that is authorized to impose an agreement sales and use tax;
698 (b) city that is authorized to impose an agreement sales and use tax; or
699 (c) town that is authorized to impose an agreement sales and use tax.
- 700 (38) "Manufactured home" is as defined in Section 58-56-3.
- 701 (39) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:
- 702 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
703 Industrial Classification Manual of the federal Executive Office of the President, Office of
704 Management and Budget; or
- 705 (b) a scrap recycler if:
- 706 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
707 one or more of the following items into prepared grades of processed materials for use in new

708 products:

709 (A) iron;

710 (B) steel;

711 (C) nonferrous metal;

712 (D) paper;

713 (E) glass;

714 (F) plastic;

715 (G) textile; or

716 (H) rubber; and

717 (ii) the new products under Subsection (39)(b)(i) would otherwise be made with

718 nonrecycled materials.

719 (40) "Mobile home" is as defined in Section 58-56-3.

720 (41) "Mobile telecommunications service" is as defined in the Mobile

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

722 (42) (a) Except as provided in Subsection (42)(c), "mobility enhancing equipment"

723 means equipment that is:

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

726 (ii) appropriate for use in a:

727 (A) home; or

728 (B) motor vehicle;

729 (iii) not generally used by persons with normal mobility; and

730 (iv) listed as eligible for payment under:

731 (A) Title XVIII of the federal Social Security Act; or

732 (B) the state plan for medical assistance under Title XIX of the federal Social Security

733 Act.

734 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
735 the equipment described in Subsection (42)(a).

736 (c) Notwithstanding Subsection (42)(a), "mobility enhancing equipment" does not
737 include:

738 (i) a motor vehicle;

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

741 (iii) durable medical equipment; or

742 (iv) a prosthetic device.

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

747 (44) "Model 2 seller" means a seller that:

748 (a) except as provided in Subsection (44)(b), has selected a certified automated system
749 to perform the seller's sales tax functions for agreement sales and use taxes; and

750 (b) notwithstanding Subsection (44)(a), retains responsibility for remitting all of the
751 sales tax:

752 (i) collected by the seller; and

753 (ii) to the appropriate local taxing jurisdiction.

754 (45) (a) Subject to Subsection (45)(b), "model 3 seller" means a seller that has:

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

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

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

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

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

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

761 (b) For purposes of Subsection (45)(a), "model 3 seller" includes an affiliated group of
762 sellers using the same proprietary system.

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

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

765 (48) (a) "Other fuels" means products that burn independently to produce heat or
766 energy.

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

769 (49) "Person" includes any individual, firm, partnership, joint venture, association,

770 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
771 municipality, district, or other local governmental entity of the state, or any group or
772 combination acting as a unit.

773 (50) "Place of primary use":

774 (a) for telephone service other than mobile telecommunications service, means the
775 street address representative of where the purchaser's use of the telephone service primarily
776 occurs, which shall be:

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

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

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

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

781 (51) "Postproduction" means an activity related to the finishing or duplication of a
782 medium described in Subsection 59-12-104(60)(a).

783 (52) (a) "Prepared food" means:

784 (i) food:

785 (A) sold in a heated state; or

786 (B) heated by a seller;

787 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
788 item; or

789 (iii) except as provided in Subsection (52)(c), food sold with an eating utensil provided
790 by the seller, including a:

791 (A) plate;

792 (B) knife;

793 (C) fork;

794 (D) spoon;

795 (E) glass;

796 (F) cup;

797 (G) napkin; or

798 (H) straw.

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

800 (i) food that a seller only:

- 801 (A) cuts;
- 802 (B) repackages; or
- 803 (C) pasteurizes; or
- 804 (ii) (A) the following:
- 805 (I) raw egg;
- 806 (II) raw fish;
- 807 (III) raw meat;
- 808 (IV) raw poultry; or
- 809 (V) a food containing an item described in Subsections (52)(b)(ii)(A)(I) through (IV);

810 and

811 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
812 Food and Drug Administration's Food Code that a consumer cook the items described in
813 Subsection (52)(b)(ii)(A) to prevent food borne illness.

814 (c) Notwithstanding Subsection (52)(a)(iii), an eating utensil provided by the seller
815 does not include the following used to transport the food:

816 (i) a container; or

817 (ii) packaging.

818 (53) "Prescription" means an order, formula, or recipe that is issued:

819 (a) (i) orally;

820 (ii) in writing;

821 (iii) electronically; or

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

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

824 (54) (a) Except as provided in Subsection (54)(b)(ii) or (iii), "prewritten computer
825 software" means computer software that is not designed and developed:

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

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

828 (b) "Prewritten computer software" includes:

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

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

- 832 (B) to the specifications of a specific purchaser;
- 833 (ii) notwithstanding Subsection (54)(a), computer software designed and developed by
834 the author or other creator of the computer software to the specifications of a specific purchaser
835 if the computer software is sold to a person other than the purchaser; or
- 836 (iii) notwithstanding Subsection (54)(a) and except as provided in Subsection (54)(c),
837 prewritten computer software or a prewritten portion of prewritten computer software:
- 838 (A) that is modified or enhanced to any degree; and
- 839 (B) if the modification or enhancement described in Subsection (54)(b)(iii)(A) is
840 designed and developed to the specifications of a specific purchaser.
- 841 (c) Notwithstanding Subsection (54)(b)(iii), "prewritten computer software" does not
842 include a modification or enhancement described in Subsection (54)(b)(iii) if the charges for
843 the modification or enhancement are:
- 844 (i) reasonable; and
- 845 (ii) separately stated on the invoice or other statement of price provided to the
846 purchaser.
- 847 (55) (a) "Prosthetic device" means a device that is:
- 848 (i) worn on or in the body to:
- 849 (A) artificially replace a missing portion of the body;
- 850 (B) prevent or correct a physical deformity or physical malfunction; or
- 851 (C) support a weak or deformed portion of the body; and
- 852 (ii) listed as eligible for payment under:
- 853 (A) Title XVIII of the federal Social Security Act; or
- 854 (B) the state plan for medical assistance under Title XIX of the federal Social Security
855 Act.
- 856 (b) "Prosthetic device" includes:
- 857 (i) parts used in the repairs or renovation of a prosthetic device; or
- 858 (ii) replacement parts for a prosthetic device.
- 859 (c) "Prosthetic device" does not include:
- 860 (i) corrective eyeglasses;
- 861 (ii) contact lenses;
- 862 (iii) hearing aids; or

- 863 (iv) dental prostheses.
- 864 (56) (a) "Protective equipment" means an item:
- 865 (i) for human wear; and
- 866 (ii) that is:
- 867 (A) designed as protection:
- 868 (I) to the wearer against injury or disease; or
- 869 (II) against damage or injury of other persons or property; and
- 870 (B) not suitable for general use.
- 871 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 872 commission shall make rules:
- 873 (i) listing the items that constitute "protective equipment"; and
- 874 (ii) that are consistent with the list of items that constitute "protective equipment"
- 875 under the agreement.
- 876 (57) (a) "Purchase price" and "sales price" mean the total amount of consideration:
- 877 (i) valued in money; and
- 878 (ii) for which tangible personal property or services are:
- 879 (A) sold;
- 880 (B) leased; or
- 881 (C) rented.
- 882 (b) "Purchase price" and "sales price" include:
- 883 (i) the seller's cost of the tangible personal property or services sold;
- 884 (ii) expenses of the seller, including:
- 885 (A) the cost of materials used;
- 886 (B) a labor cost;
- 887 (C) a service cost;
- 888 (D) interest;
- 889 (E) a loss;
- 890 (F) the cost of transportation to the seller; or
- 891 (G) a tax imposed on the seller;
- 892 (iii) a charge by the seller for any service necessary to complete the sale;
- 893 (iv) a delivery charge; or

- 894 (v) an installation charge.
- 895 (c) "Purchase price" and "sales price" do not include:
- 896 (i) a discount:
- 897 (A) in a form including:
- 898 (I) cash;
- 899 (II) term; or
- 900 (III) coupon;
- 901 (B) that is allowed by a seller;
- 902 (C) taken by a purchaser on a sale; and
- 903 (D) that is not reimbursed by a third party; or
- 904 (ii) the following if separately stated on an invoice, bill of sale, or similar document
- 905 provided to the purchaser:
- 906 (A) the amount of a trade-in;
- 907 (B) the following from credit extended on the sale of tangible personal property or
- 908 services:
- 909 (I) interest charges;
- 910 (II) financing charges; or
- 911 (III) carrying charges; or
- 912 (C) a tax or fee legally imposed directly on the consumer.
- 913 (58) "Purchaser" means a person to whom:
- 914 (a) a sale of tangible personal property is made; or
- 915 (b) a service is furnished.
- 916 (59) "Regularly rented" means:
- 917 (a) rented to a guest for value three or more times during a calendar year; or
- 918 (b) advertised or held out to the public as a place that is regularly rented to guests for
- 919 value.
- 920 (60) "Renewable energy" means:
- 921 (a) biomass energy;
- 922 (b) hydroelectric energy;
- 923 (c) geothermal energy;
- 924 (d) solar energy; or

925 (e) wind energy.

926 (61) (a) "Renewable energy production facility" means a facility that:

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

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

929 (b) A facility is a renewable energy production facility regardless of whether the
930 facility is:

931 (i) connected to an electric grid; or

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

933 (62) "Rental" is as defined in Subsection (35).

934 (63) "Residential use" means the use in or around a home, apartment building, sleeping
935 quarters, and similar facilities or accommodations.

936 (64) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
937 than:

938 (a) resale;

939 (b) sublease; or

940 (c) subrent.

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

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

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

949 (b) "Sale" includes:

950 (i) installment and credit sales;

951 (ii) any closed transaction constituting a sale;

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

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

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

959 (67) "Sale at retail" is as defined in Subsection (64).

960 (68) "Sale-leaseback transaction" means a transaction by which title to tangible
961 personal property that is subject to a tax under this chapter is transferred:

962 (a) by a purchaser-lessee;

963 (b) to a lessor;

964 (c) for consideration; and

965 (d) if:

966 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
967 of the tangible personal property;

968 (ii) the sale of the tangible personal property to the lessor is intended as a form of
969 financing:

970 (A) for the property; and

971 (B) to the purchaser-lessee; and

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

974 (A) capitalize the property for financial reporting purposes; and

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

976 (69) "Sales price" is as defined in Subsection (57).

977 (70) (a) "Sales relating to schools" means the following sales by, amounts paid to, or
978 amounts charged by a school:

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

981 (A) the sale of:

982 (I) textbooks;

983 (II) textbook fees;

984 (III) laboratory fees;

985 (IV) laboratory supplies; or

986 (V) safety equipment;

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

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

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

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

995 (I) food and food ingredients; or

996 (II) prepared food; or

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

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

1000 (b) "Sales relating to schools" does not include:

1001 (i) bookstore sales of items that are not educational materials or supplies;

1002 (ii) except as provided in Subsection (70)(a)(i)(B):

1003 (A) clothing;

1004 (B) clothing accessories or equipment;

1005 (C) protective equipment; or

1006 (D) sports or recreational equipment; or

1007 (iii) amounts paid to or amounts charged by a school for admission to a school-related
1008 event or school-related activity if the amounts paid or charged are passed through to a person:

1009 (A) other than a:

1010 (I) school;

1011 (II) nonprofit organization authorized by a school board or a governing body of a
1012 private school to organize and direct a competitive secondary school activity; or

1013 (III) nonprofit association authorized by a school board or a governing body of a
1014 private school to organize and direct a competitive secondary school activity; and

1015 (B) that is required to collect sales and use taxes under this chapter.

1016 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1017 commission may make rules defining the term "passed through."

- 1018 (71) For purposes of this section and Section 59-12-104, "school" means:
- 1019 (a) an elementary school or a secondary school that:
- 1020 (i) is a:
- 1021 (A) public school; or
- 1022 (B) private school; and
- 1023 (ii) provides instruction for one or more grades kindergarten through 12; or
- 1024 (b) a public school district.
- 1025 (72) "Seller" means a person that makes a sale, lease, or rental of:
- 1026 (a) tangible personal property; or
- 1027 (b) a service.
- 1028 (73) (a) "Semiconductor fabricating or processing materials" means tangible personal
- 1029 property:
- 1030 (i) used primarily in the process of:
- 1031 (A) (I) manufacturing a semiconductor; or
- 1032 (II) fabricating a semiconductor; or
- 1033 (B) maintaining an environment suitable for a semiconductor; or
- 1034 (ii) consumed primarily in the process of:
- 1035 (A) (I) manufacturing a semiconductor; or
- 1036 (II) fabricating a semiconductor; or
- 1037 (B) maintaining an environment suitable for a semiconductor.
- 1038 (b) "Semiconductor fabricating or processing materials" includes:
- 1039 (i) parts used in the repairs or renovations of tangible personal property described in
- 1040 Subsection (73)(a); or
- 1041 (ii) a chemical, catalyst, or other material used to:
- 1042 (A) produce or induce in a semiconductor a:
- 1043 (I) chemical change; or
- 1044 (II) physical change;
- 1045 (B) remove impurities from a semiconductor; or
- 1046 (C) improve the marketable condition of a semiconductor.
- 1047 (74) "Senior citizen center" means a facility having the primary purpose of providing
- 1048 services to the aged as defined in Section 62A-3-101.

- 1049 (75) "Simplified electronic return" means the electronic return:
1050 (a) described in Section 318(C) of the agreement; and
1051 (b) approved by the governing board of the agreement.
- 1052 (76) "Solar energy" means the sun used as the sole source of energy for producing
1053 electricity.
- 1054 (77) (a) "Sports or recreational equipment" means an item:
1055 (i) designed for human use; and
1056 (ii) that is:
1057 (A) worn in conjunction with:
1058 (I) an athletic activity; or
1059 (II) a recreational activity; and
1060 (B) not suitable for general use.
- 1061 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1062 commission shall make rules:
1063 (i) listing the items that constitute "sports or recreational equipment"; and
1064 (ii) that are consistent with the list of items that constitute "sports or recreational
1065 equipment" under the agreement.
- 1066 (78) "State" means the state of Utah, its departments, and agencies.
- 1067 (79) "Storage" means any keeping or retention of tangible personal property or any
1068 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except
1069 sale in the regular course of business.
- 1070 (80) (a) "Tangible personal property" means personal property that:
1071 (i) may be:
1072 (A) seen;
1073 (B) weighed;
1074 (C) measured;
1075 (D) felt; or
1076 (E) touched; or
1077 (ii) is in any manner perceptible to the senses.
- 1078 (b) "Tangible personal property" includes:
1079 (i) electricity;

- 1080 (ii) water;
- 1081 (iii) gas;
- 1082 (iv) steam; or
- 1083 (v) prewritten computer software.
- 1084 (81) (a) "Telephone service" means a two-way transmission:
- 1085 (i) by:
- 1086 (A) wire;
- 1087 (B) radio;
- 1088 (C) lightwave; or
- 1089 (D) other electromagnetic means; and
- 1090 (ii) of one or more of the following:
- 1091 (A) a sign;
- 1092 (B) a signal;
- 1093 (C) writing;
- 1094 (D) an image;
- 1095 (E) sound;
- 1096 (F) a message;
- 1097 (G) data; or
- 1098 (H) other information of any nature.
- 1099 (b) "Telephone service" includes:
- 1100 (i) mobile telecommunications service;
- 1101 (ii) private communications service; or
- 1102 (iii) automated digital telephone answering service.
- 1103 (c) "Telephone service" does not include a service or a transaction that a state or a
- 1104 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet
- 1105 Tax Freedom Act, Pub. L. No. 105-277.
- 1106 (82) Notwithstanding where a call is billed or paid, "telephone service address" means:
- 1107 (a) if the location described in this Subsection (82)(a) is known, the location of the
- 1108 telephone service equipment:
- 1109 (i) to which a call is charged; and
- 1110 (ii) from which the call originates or terminates;

1111 (b) if the location described in Subsection (82)(a) is not known but the location
1112 described in this Subsection (82)(b) is known, the location of the origination point of the signal
1113 of the telephone service first identified by:

1114 (i) the telecommunications system of the seller; or

1115 (ii) if the system used to transport the signal is not that of the seller, information
1116 received by the seller from its service provider; or

1117 (c) if the locations described in Subsection (82)(a) or (b) are not known, the location of
1118 a purchaser's primary place of use.

1119 (83) (a) "Telephone service provider" means a person that:

1120 (i) owns, controls, operates, or manages a telephone service; and

1121 (ii) engages in an activity described in Subsection (83)(a)(i) for the shared use with or
1122 resale to any person of the telephone service.

1123 (b) A person described in Subsection (83)(a) is a telephone service provider whether or
1124 not the Public Service Commission of Utah regulates:

1125 (i) that person; or

1126 (ii) the telephone service that the person owns, controls, operates, or manages.

1127 (84) "Tobacco" means:

1128 (a) a cigarette;

1129 (b) a cigar;

1130 (c) chewing tobacco;

1131 (d) pipe tobacco; or

1132 (e) any other item that contains tobacco.

1133 (85) (a) "Use" means the exercise of any right or power over tangible personal property
1134 under Subsection 59-12-103(1), incident to the ownership or the leasing of that property, item,
1135 or service.

1136 (b) "Use" does not include the sale, display, demonstration, or trial of that property in
1137 the regular course of business and held for resale.

1138 (86) (a) Subject to Subsection (86)(b), "vehicle" means the following that are required
1139 to be titled, registered, or titled and registered:

1140 (i) an aircraft as defined in Section 72-10-102;

1141 (ii) a vehicle as defined in Section 41-1a-102;

- 1142 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1143 (iv) a vessel as defined in Section 41-1a-102.
- 1144 (b) For purposes of Subsection 59-12-104(35) only, "vehicle" includes:
- 1145 (i) a vehicle described in Subsection (86)(a); or
- 1146 (ii) (A) a locomotive;
- 1147 (B) a freight car;
- 1148 (C) railroad work equipment; or
- 1149 (D) other railroad rolling stock.
- 1150 (87) "Vehicle dealer" means a person engaged in the business of buying, selling, or
- 1151 exchanging a vehicle as defined in Subsection (86).
- 1152 (88) (a) Except as provided in Subsection (88)(b), "waste energy facility" means a
- 1153 facility that generates electricity:
- 1154 (i) using as the primary source of energy waste materials that would be placed in a
- 1155 landfill or refuse pit if it were not used to generate electricity, including:
- 1156 (A) tires;
- 1157 (B) waste coal; or
- 1158 (C) oil shale; and
- 1159 (ii) in amounts greater than actually required for the operation of the facility.
- 1160 (b) "Waste energy facility" does not include a facility that incinerates:
- 1161 (i) municipal solid waste;
- 1162 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or
- 1163 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.
- 1164 (89) "Watercraft" means a vessel as defined in Section 73-18-2.
- 1165 (90) "Wind energy" means wind used as the sole source of energy to produce
- 1166 electricity.
- 1167 (91) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
- 1168 location by the United States Postal Service.

1169 Section 3. Section **59-12-207.1** is amended to read:

1170 **59-12-207.1. Definitions -- Location of certain transactions -- Reports to**
1171 **commission -- Direct payment provision for a seller making certain purchases --**
1172 **Exceptions -- Rulemaking authority.**

- 1173 (1) As used in this section:
- 1174 (a) (i) "Receive" and "receipt" mean:
- 1175 (A) taking possession of tangible personal property;
- 1176 (B) making first use of services; or
- 1177 (C) for a digital good, the earlier of:
- 1178 (I) taking possession of tangible personal property; or
- 1179 (II) making first use of services.
- 1180 (ii) "Receive" and "receipt" do not include possession by a shipping company on behalf
- 1181 of a purchaser.
- 1182 (b) "Transportation equipment" means:
- 1183 (i) a locomotive or railcar that is utilized for the carriage of persons or property in
- 1184 interstate commerce;
- 1185 (ii) a truck or truck-tractor with a gross vehicle weight rating of 10,001 pounds or more
- 1186 that is:
- 1187 (A) registered under Section 41-1a-301; and
- 1188 (B) operated under the authority of a carrier authorized and certificated:
- 1189 (I) by the United States Department of Transportation or another federal authority; and
- 1190 (II) to engage in the carriage of persons or property in interstate commerce;
- 1191 (iii) a trailer, semitrailer, or passenger bus that is:
- 1192 (A) registered under Section 41-1a-301; and
- 1193 (B) operated under the authority of a carrier authorized and certificated:
- 1194 (I) by the United States Department of Transportation or another federal authority; and
- 1195 (II) to engage in the carriage of persons or property in interstate commerce;
- 1196 (iv) an aircraft that is operated by an air carrier authorized and certificated:
- 1197 (A) by the United States Department of Transportation or another federal or foreign
- 1198 authority; and
- 1199 (B) to engage in the carriage of persons or property in interstate commerce; or
- 1200 (v) a container designed for use on, or a component part attached or secured on an item
- 1201 listed in Subsections (1)(b)(i) through (iv).
- 1202 (2) Except as provided in Subsections (8) and (14), if tangible personal property or a
- 1203 service that is subject to taxation under this chapter is received by a purchaser at a business

1204 location of a seller, the location of the transaction is the business location of the seller.

1205 (3) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
1206 and (14), if tangible personal property or a service that is subject to taxation under this chapter
1207 is not received by a purchaser at a business location of a seller, the location of the transaction is
1208 the location where the purchaser takes receipt of the tangible personal property or services.

1209 (4) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
1210 and (14), if Subsection (2) or (3) does not apply, the location of the transaction is the location
1211 indicated by an address for or other information on the purchaser if:

- 1212 (a) the address or other information is available from the seller's business records; and
- 1213 (b) use of the address or other information from the seller's records does not constitute
1214 bad faith.

1215 (5) (a) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9),
1216 (11), and (14), if Subsection (2), (3), or (4) does not apply, the location of the transaction is the
1217 location indicated by an address for the purchaser if:

- 1218 (i) the address was obtained during the consummation of the transaction; and
- 1219 (ii) use of the address described in Subsection (5)(a)(i) does not constitute bad faith.
- 1220 (b) An address used under Subsection (5)(a) may include the address of a purchaser's
1221 payment instrument if no other address is available.

1222 (6) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
1223 and (14), if Subsection (2), (3), (4), or (5) does not apply or if a seller does not have sufficient
1224 information to apply Subsection (2), (3), (4), or (5), the location of the transaction is the
1225 location indicated by the address from which:

- 1226 (a) except as provided in Subsection (6)(b), for tangible personal property that is
1227 subject to taxation under this chapter, the tangible personal property was shipped;
- 1228 (b) notwithstanding Subsection (6)(a), for computer software delivered electronically
1229 or a digital good that is subject to taxation under this chapter, the computer software delivered
1230 electronically or digital good was first available for transmission by the seller; or
- 1231 (c) for a service that is subject to taxation under this chapter, the service was provided.

1232 (7) (a) As used in this Subsection (7), "shared ZIP Code" means:

- 1233 (i) a nine-digit ZIP Code that is located within two or more local taxing jurisdictions;

1234 or

1235 (ii) a five-digit ZIP Code that is located within two or more local taxing jurisdictions if:

1236 (A) a nine-digit ZIP Code is not available for a location; or

1237 (B) after exercising due diligence, a seller is unable to determine a nine-digit ZIP Code
1238 for a location.

1239 (b) Notwithstanding Subsections (3) through (6) and except as provided in Subsection
1240 (7)(d)(ii), if the location of a transaction determined under Subsections (3) through (6) is in a
1241 shared ZIP Code, the location of the transaction is:

1242 (i) if there is only one local taxing jurisdiction that imposes the lowest agreement
1243 combined tax rate for the shared ZIP Code, the local taxing jurisdiction that imposes the lowest
1244 agreement combined tax rate; or

1245 (ii) if two or more local taxing jurisdictions impose the lowest agreement combined tax
1246 rate for the shared ZIP Code, the local taxing jurisdiction that:

1247 (A) imposes the lowest agreement combined tax rate for the shared ZIP Code; and

1248 (B) has located within the local taxing jurisdiction the largest number of street
1249 addresses within the shared ZIP Code.

1250 (c) A seller shall collect a tax imposed under this chapter at the lowest agreement
1251 combined tax rate imposed within the local taxing jurisdiction in which the transaction is
1252 located under Subsection (7)(b) notwithstanding the following:

1253 (i) Section 59-12-204;

1254 (ii) Section 59-12-401;

1255 (iii) Section 59-12-402;

1256 (iv) Section 59-12-501;

1257 (v) Section 59-12-502;

1258 (vi) Section 59-12-703;

1259 (vii) Section 59-12-802;

1260 (viii) Section 59-12-804;

1261 (ix) Section 59-12-1001;

1262 (x) Section 59-12-1102;

1263 (xi) Section 59-12-1302;

1264 (xii) Section 59-12-1402; ~~and~~

1265 (xiii) Section 59-12-1503[-]; and

1266 (xiv) Section 59-12-1603.

1267 (d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1268 commission may make rules:

1269 (i) providing for the circumstances under which a seller has exercised due diligence in
1270 determining the nine-digit ZIP Code for an address; or

1271 (ii) notwithstanding Subsection (7)(b), for determining the local taxing jurisdiction
1272 within which a transaction is located if a seller is unable to determine the local taxing
1273 jurisdiction within which the transaction is located under Subsection (7)(b).

1274 (8) Notwithstanding Subsections (2) through (6), the location of a transaction made
1275 with a direct payment permit described in Section 59-12-107.1 is:

1276 (a) for a tax imposed under Section 59-12-204, the location determined under Section
1277 59-12-205; or

1278 (b) for a tax imposed under this chapter other than under Section 59-12-204, the
1279 location at which the tangible personal property or service purchased using the direct payment
1280 permit is used.

1281 (9) Notwithstanding Subsections (3) through (5), the location of a purchase of direct
1282 mail is the location described in Subsection (6), if the purchaser of the direct mail:

1283 (a) has not been issued a direct payment permit under Section 59-12-107.1; and

1284 (b) does not provide the seller the form or information described in Subsection
1285 59-12-107.3(1).

1286 (10) (a) Except as provided in Subsection (10)(b), the location of a transaction
1287 determined under Subsections (3) through (6), (8), and (9), is the local taxing jurisdiction
1288 within which:

1289 (i) the nine-digit ZIP Code assigned to the location determined under Subsections (3)
1290 through (6), (8), and (9) is located; or

1291 (ii) the five-digit ZIP Code assigned to the location determined under Subsections (3)
1292 through (6), (8), and (9) is located if:

1293 (A) a nine-digit ZIP Code is not available for the location determined under
1294 Subsections (3) through (6), (8), and (9); or

1295 (B) after exercising due diligence, a seller is unable to determine a nine-digit ZIP Code
1296 for the location determined under Subsections (3) through (6), (8), and (9).

1297 (b) Notwithstanding Subsection (10)(a), in accordance with Title 63, Chapter 46a, Utah
1298 Administrative Rulemaking Act, the commission may make rules for determining the local
1299 taxing jurisdiction within which a transaction is located if a seller is unable to determine the
1300 local taxing jurisdiction within which the transaction is located under Subsection (10)(a).

1301 (11) (a) As used in this Subsection (11), "florist delivery transaction" means a
1302 transaction commenced by a florist that transmits an order:

1303 (i) by:

1304 (A) telegraph;

1305 (B) telephone; or

1306 (C) a means of communication similar to Subsection (11)(a)(i)(A) or (B); and

1307 (ii) for delivery to another place:

1308 (A) in this state; or

1309 (B) outside this state.

1310 (b) Notwithstanding Subsections (3) through (6), beginning on July 1, 2004, through
1311 December 31, 2005, the location of a florist delivery transaction is the business location of the
1312 florist that commences the florist delivery transaction.

1313 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1314 commission may by rule:

1315 (i) define the terms:

1316 (A) "business location"; and

1317 (B) "florist";

1318 (ii) define what constitutes a means of communication similar to Subsection
1319 (11)(a)(i)(A) or (B); and

1320 (iii) provide procedures for determining when a transaction is commenced.

1321 (12) If a purchaser knows at the time that the purchaser purchases a service, prewritten
1322 computer software delivered electronically, or a digital good that the service, prewritten
1323 computer software delivered electronically, or digital good will be concurrently available for
1324 use in more than one location, the purchaser shall:

1325 (a) determine the location of the transaction under this section for each location in
1326 which the service, prewritten computer software delivered electronically, or digital good will
1327 be concurrently available for use; and

1328 (b) apportion the purchase price of the service, prewritten computer software delivered
1329 electronically, or digital good:

1330 (i) among each location determined under Subsection (12)(a); and

1331 (ii) in accordance with Section 59-12-107.2.

1332 (13) (a) A tax collected under this chapter shall be reported to the commission on a
1333 form that identifies the location of each transaction that occurred during the return filing
1334 period.

1335 (b) The form described in Subsection (13)(a) shall be filed with the commission as
1336 required under this chapter.

1337 (14) This section does not apply to:

1338 (a) amounts charged by a seller for:

1339 (i) telephone service;

1340 (ii) the retail sale or transfer of:

1341 (A) a motor vehicle other than a motor vehicle that is transportation equipment;

1342 (B) an aircraft other than an aircraft that is transportation equipment;

1343 (C) a watercraft;

1344 (D) a modular home;

1345 (E) a manufactured home; or

1346 (F) a mobile home; or

1347 (iii) except as provided in Section 59-12-207.3, the lease or rental of tangible personal
1348 property other than tangible personal property that is transportation equipment; or

1349 (b) a tax paid under this chapter:

1350 (i) by a seller; and

1351 (ii) for the seller's purchases.

1352 Section 4. Section **59-12-1601** is enacted to read:

1353 **Part 16. County Option Sales and Use Tax for Agricultural Land,**

1354 **Open Land, and Recreational Facilities Act**

1355 **59-12-1601. Title.**

1356 This part is known as the "County Option Sales and Use Tax for Agricultural Land,
1357 Open Land, and Recreational Facilities Act."

1358 Section 5. Section **59-12-1602** is enacted to read:

1359 **59-12-1602. Definitions.**

1360 As used in this part:

1361 (1) "Agricultural land" has the same meaning as "land in agricultural use" under
1362 Section 59-2-502.

1363 (2) "Annexation" means an annexation to a county under Title 17, Chapter 2,
1364 Annexation to County.

1365 (3) "Annexing area" means an area that is annexed into a county.

1366 (4) "Governmental entity" means:

1367 (a) the United States;

1368 (b) the state;

1369 (c) a county;

1370 (d) a city;

1371 (e) a town;

1372 (f) a political subdivision of an entity described in Subsections (4)(b) through (e); or

1373 (g) an agency, a department, a division, or other similar instrumentality of an entity
1374 described in Subsections (4)(a) through (f).

1375 (5) "Municipality" means a city or town.

1376 (6) "Municipality's proportionate share" means a percentage of revenues described in
1377 Subsection 59-12-1604(2)(b) equal to the percentage that the population of a municipality
1378 bears to the total population of the county in which the municipality is located.

1379 (7) "Open land" means land that is:

1380 (a) preserved predominantly in a natural, open, and undeveloped condition; and

1381 (b) used for:

1382 (i) wildlife habitat;

1383 (ii) cultural or recreational use;

1384 (iii) watershed protection; or

1385 (iv) a use:

1386 (A) other than a use described in Subsections (7)(b)(i) through (iii); and

1387 (B) that is consistent with the preservation of the land in a predominantly natural, open,
1388 and undeveloped condition.

1389 (8) "Public land" means land that is owned by a governmental entity.

1390 (9) "Recreational facility" is as defined in Section 59-12-702.
1391 (10) "Unexpended sales and use tax revenues" means any revenues:
1392 (a) generated by a tax under this part; and
1393 (b) that:
1394 (i) on the day on which a county legislative body repeals a tax under this part as
1395 required by Section 59-12-1606, the county legislative body has not:
1396 (A) expended for a purpose described in Subsection 59-12-1604(3)(a);
1397 (B) expended within the unincorporated areas of the county in accordance with
1398 Subsection 59-12-1604(3)(b)(ii)(A); or
1399 (C) distributed to a municipality in accordance with Subsection
1400 59-12-1604(3)(b)(ii)(B); and
1401 (ii) have not been retained by the commission in accordance with Subsection
1402 59-12-1603(4)(b).
1403 (11) "Unincorporated area's proportionate share" means a percentage of revenues
1404 described in Subsection 59-12-1604(2)(b) equal to the percentage that the population of the
1405 unincorporated area of a county bears to the total population of the county.
1406 Section 6. Section **59-12-1603** is enacted to read:
1407 **59-12-1603. Imposition of tax -- Base -- Rate -- Opinion question election -- Use of**
1408 **tax revenues -- Administration, collection, and enforcement of tax by commission --**
1409 **Administrative fee -- Enactment or repeal of tax -- Annexation -- Notice.**
1410 (1) (a) Beginning on or after July 1, 2005, and subject to the other provisions of this
1411 part, a county legislative body of a county of the third, fourth, fifth, or sixth class may impose a
1412 sales and use tax of .125%:
1413 (i) if 60% or less of the land within the county is public land;
1414 (ii) except as provided in Subsections (1)(b) and 59-12-207.1(7)(c), on the transactions:
1415 (A) described in Subsection 59-12-103(1); and
1416 (B) within the county, including the cities and towns within the county;
1417 (iii) for the purposes described in Section 59-12-1604; and
1418 (iv) in addition to any other sales and use tax authorized under this chapter.
1419 (b) Notwithstanding Subsection (1)(a)(i), a county legislative body may not impose a
1420 tax under this section on the sales and uses described in Section 59-12-104 to the extent the

1421 sales and uses are exempt from taxation under Section 59-12-104.

1422 (c) For purposes of this Subsection (1), the location of a transaction shall be

1423 determined in accordance with Sections 59-12-207.1 through 59-12-207.4.

1424 (2) (a) Before imposing a tax under this part, a county legislative body shall:

1425 (i) obtain approval from a majority of the members of the county legislative body to

1426 impose the tax; and

1427 (ii) subject to Subsection (2)(b), submit an opinion question to the county's registered

1428 voters voting on the imposition of the tax so that each registered voter has the opportunity to

1429 express the registered voter's opinion on whether a tax should be imposed under this part.

1430 (b) The election required by Subsection (2)(a)(ii) shall be held:

1431 (i) at a regular general election; and

1432 (ii) in accordance with the procedures and requirements of Title 20A, Election Code,

1433 governing regular general elections.

1434 (3) Subject to the other provisions of this part, if a county legislative body determines

1435 that a majority of the county's registered voters voting on the imposition of the tax have voted

1436 in favor of the imposition of the tax in accordance with Subsection (2), the county legislative

1437 body shall enact the tax:

1438 (a) by a majority vote of all of the members of the county legislative body;

1439 (b) by enacting an ordinance:

1440 (i) imposing the tax;

1441 (ii) (A) creating a fund to deposit the revenues generated by the tax; and

1442 (B) providing procedures and requirements for the administration of the fund described

1443 in Subsection (3)(b)(ii)(A); and

1444 (iii) creating an advisory board in accordance with Section 59-12-1605 to make

1445 findings and recommendations to the county legislative body; and

1446 (c) in accordance with Subsection (5).

1447 (4) (a) (i) Except as provided in Subsection (4)(a)(ii), the tax authorized under this part

1448 shall be administered, collected, and enforced in accordance with:

1449 (A) the same procedures used to administer, collect, and enforce the tax under:

1450 (I) Part 1, Tax Collection; or

1451 (II) Part 2, Local Sales and Use Tax Act; and

- 1452 (B) Chapter 1, General Taxation Policies.
- 1453 (ii) Notwithstanding Subsection (4)(a)(i), a tax under this part is not subject to
- 1454 Subsections 59-12-205(2) through (9).
- 1455 (b) (i) The commission may retain an amount of tax collected under this part of not to
- 1456 exceed the lesser of:
- 1457 (A) 1.5%; or
- 1458 (B) an amount equal to the cost to the commission of administering this part.
- 1459 (ii) Any amount the commission retains under Subsection (4)(b)(i) shall be:
- 1460 (A) placed in the Sales and Use Tax Administrative Fees Account; and
- 1461 (B) used as provided in Subsection 59-12-206(2).
- 1462 (5) (a) (i) Except as provided in Subsection (5)(b) or (c), if, on or after July 1, 2005, a
- 1463 county legislative body enacts or repeals a tax under this part, the enactment or repeal shall take
- 1464 effect:
- 1465 (A) on the first day of a calendar quarter; and
- 1466 (B) after a 90-day period beginning on the date the commission receives notice meeting
- 1467 the requirements of Subsection (5)(a)(ii) from the county.
- 1468 (ii) The notice described in Subsection (5)(a)(i)(B) shall state:
- 1469 (A) that the county legislative body will enact or repeal a tax under this part;
- 1470 (B) the statutory authority for the tax described in Subsection (5)(a)(ii)(A);
- 1471 (C) the effective date of the tax described in Subsection (5)(a)(ii)(A); and
- 1472 (D) if the county legislative body enacts the tax described in Subsection (5)(a)(ii)(A),
- 1473 the rate of the tax.
- 1474 (b) (i) Notwithstanding Subsection (5)(a)(i), for a transaction described in Subsection
- 1475 (5)(b)(iii), the enactment of a tax shall take effect on the first day of the first billing period:
- 1476 (A) that begins after the effective date of the enactment of the tax; and
- 1477 (B) if the billing period for the transaction begins before the effective date of the
- 1478 enactment of the tax under Subsection (1).
- 1479 (ii) Notwithstanding Subsection (5)(a)(i), for a transaction described in Subsection
- 1480 (5)(b)(iii), the repeal of a tax shall take effect on the first day of the last billing period:
- 1481 (A) that began before the effective date of the repeal of the tax; and
- 1482 (B) if the billing period for the transaction begins before the effective date of the repeal

- 1483 of the tax imposed under Subsection (1).
- 1484 (iii) Subsections (5)(b)(i) and (ii) apply to transactions subject to a tax under:
- 1485 (A) Subsection 59-12-103(1)(b);
- 1486 (B) Subsection 59-12-103(1)(c);
- 1487 (C) Subsection 59-12-103(1)(d);
- 1488 (D) Subsection 59-12-103(1)(e);
- 1489 (E) Subsection 59-12-103(1)(f);
- 1490 (F) Subsection 59-12-103(1)(g);
- 1491 (G) Subsection 59-12-103(1)(h);
- 1492 (H) Subsection 59-12-103(1)(i);
- 1493 (I) Subsection 59-12-103(1)(j); or
- 1494 (J) Subsection 59-12-103(1)(k).
- 1495 (c) (i) Notwithstanding Subsection (5)(a)(i), if a tax due under this chapter on a
- 1496 catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an
- 1497 enactment or repeal of a tax described in Subsection (5)(a)(i) takes effect:
- 1498 (A) on the first day of a calendar quarter; and
- 1499 (B) beginning 60 days after the effective date of the enactment or repeal under
- 1500 Subsection (5)(a)(i).
- 1501 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
- 1502 the commission may by rule define the term "catalogue sale."
- 1503 (d) (i) Except as provided in Subsection (5)(e) or (f), if, for an annexation that occurs
- 1504 on or after July 1, 2005, the annexation will result in the enactment or repeal of a tax under this
- 1505 part for an annexing area, the enactment or repeal shall take effect:
- 1506 (A) on the first day of a calendar quarter; and
- 1507 (B) after a 90-day period beginning on the date the commission receives notice meeting
- 1508 the requirements of Subsection (5)(d)(ii) from the county legislative body that annexes the
- 1509 annexing area.
- 1510 (ii) The notice described in Subsection (5)(d)(i)(B) shall state:
- 1511 (A) that the annexation described in Subsection (5)(d)(i)(B) will result in an enactment
- 1512 or repeal of a tax under this part for the annexing area;
- 1513 (B) the statutory authority for the tax described in Subsection (5)(d)(ii)(A);

1514 (C) the effective date of the tax described in Subsection (5)(d)(ii)(A); and
1515 (D) if the county legislative body enacts the tax described in Subsection (5)(d)(ii)(A),
1516 the rate of the tax.

1517 (e) (i) Notwithstanding Subsection (5)(d)(i), for a transaction described in Subsection
1518 (5)(e)(iii), the enactment of a tax shall take effect on the first day of the first billing period:

1519 (A) that begins after the effective date of the enactment of the tax; and

1520 (B) if the billing period for the transaction begins before the effective date of the
1521 enactment of the tax under Subsection (1).

1522 (ii) Notwithstanding Subsection (5)(d)(i), for a transaction described in Subsection
1523 (5)(e)(iii), the repeal of a tax shall take effect on the first day of the last billing period:

1524 (A) that began before the effective date of the repeal of the tax; and

1525 (B) if the billing period for the transaction begins before the effective date of the repeal
1526 of the tax imposed under Subsection (1).

1527 (iii) Subsections (5)(e)(i) and (ii) apply to transactions subject to a tax under:

1528 (A) Subsection 59-12-103(1)(b);

1529 (B) Subsection 59-12-103(1)(c);

1530 (C) Subsection 59-12-103(1)(d);

1531 (D) Subsection 59-12-103(1)(e);

1532 (E) Subsection 59-12-103(1)(f);

1533 (F) Subsection 59-12-103(1)(g);

1534 (G) Subsection 59-12-103(1)(h);

1535 (H) Subsection 59-12-103(1)(i);

1536 (I) Subsection 59-12-103(1)(j); or

1537 (J) Subsection 59-12-103(1)(k).

1538 (f) (i) Notwithstanding Subsection (5)(d)(i), if a tax due under this chapter on a
1539 catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an
1540 enactment or repeal of a tax described in Subsection (5)(d)(i) takes effect:

1541 (A) on the first day of a calendar quarter; and

1542 (B) beginning 60 days after the effective date of the enactment or repeal under
1543 Subsection (5)(d)(i).

1544 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,

1545 the commission may by rule define the term "catalogue sale."
1546 Section 7. Section **59-12-1604** is enacted to read:
1547 **59-12-1604. Allocation, distribution, and expenditure of tax revenues.**
1548 (1) After the commission subtracts the amount described in Subsection
1549 59-12-1603(4)(b), the remaining revenues generated by a tax under this part shall be:
1550 (a) transmitted:
1551 (i) by the commission;
1552 (ii) to the county legislative body imposing the tax;
1553 (iii) monthly; and
1554 (iv) by electronic funds transfer; and
1555 (b) allocated, distributed, and expended as provided in this section.
1556 (2) A county legislative body that imposes a tax under this part shall:
1557 (a) expend 90% of the revenues distributed to the county legislative body under
1558 Subsection (1) as provided in Subsection (3)(a); and
1559 (b) allocate or distribute 10% of the revenues distributed to the county legislative body
1560 under Subsection (1) as provided in Subsection (3)(b).
1561 (3) (a) Except as provided in Subsections (4) through (6), a county legislative body
1562 shall expend the revenues described in Subsection (2)(a):
1563 (i) to establish conservation easements as provided in Title 57, Chapter 18, Land
1564 Conservation Easement Act, to protect agricultural land;
1565 (ii) for watershed protection;
1566 (iii) for per diem and expenses for members of a county board as provided in Section
1567 59-12-1605; or
1568 (iv) for a combination of the purposes described in Subsections (3)(a)(i) through (iii).
1569 (b) (i) Except as provided in Subsections (4) through (6), the revenues described in
1570 Subsection (2)(b) shall be allocated, distributed, and expended in accordance with this
1571 Subsection (3)(b).
1572 (ii) A county legislative body imposing a tax under this part shall:
1573 (A) allocate the unincorporated area's proportionate share of the revenues described in
1574 Subsection (2)(b) to be expended by the county as provided in Subsection (3)(b)(iii) within the
1575 unincorporated areas of the county; and

1576 (B) distribute to each municipality within the county the municipality's proportionate
1577 share of the revenues described in Subsection (2)(b) to be expended by the municipality as
1578 provided in Subsection (3)(b)(iii).

1579 (iii) The revenues described in Subsection (2)(b) shall be expended as follows:

1580 (A) the first priority for expending the revenues described in Subsection (2)(b) is
1581 watershed protection;

1582 (B) the second priority for expending the revenues described in Subsection (2)(b) is:

1583 (I) to establish conservation easements as provided in Title 57, Chapter 18, Land
1584 Conservation Easement Act, to protect open land; or

1585 (II) for another use consistent with the preservation of open land in a predominantly
1586 natural, open, and undeveloped condition;

1587 (C) the third priority for expending the revenues described in Subsection (2)(b) is for
1588 the planning, development, or construction of recreational facilities; and

1589 (D) the revenues described in Subsection (2)(b) may be expended for a combination of
1590 the priorities described in Subsections (3)(b)(iii)(A) through (C).

1591 (4) (a) Notwithstanding Subsection (3) and except as provided in Subsection (4)(b), a
1592 county or municipality may not expend any revenues generated by a tax under this part to
1593 purchase a fee interest in real property to protect open land.

1594 (b) Notwithstanding Subsection (4)(a) and subject to Subsections (4)(c) and (d), a
1595 county or municipality may expend revenues generated by a tax under this part to purchase a
1596 fee interest in real property to protect open land if:

1597 (i) the parcel to be purchased is not more than ten acres in size; and

1598 (ii) real property that is roughly equivalent in size to the real property with respect to
1599 which a fee interest is purchased is transferred to private ownership;

1600 (A) within 30 days after the day on which the fee interest in real property is purchased;
1601 and

1602 (B) from the county or municipality that purchases the fee interest in real property.

1603 (c) Eminent domain may not be used or threatened in connection with any purchase
1604 under this Subsection (4).

1605 (d) A parcel of real property larger than ten acres in size may not be divided into
1606 separate parcels that are smaller than ten acres each to meet the requirements of Subsection

1607 (4)(b).
1608 (5) Notwithstanding Subsection (3), a county may not:
1609 (a) expend any revenues generated by a tax under this part to pay:
1610 (i) debt service on a bond or bond anticipation note; or
1611 (ii) for a cost related to the authorization or issuance of a bond or bond anticipation
1612 note, including:
1613 (A) an engineering fee;
1614 (B) a legal fee;
1615 (C) a fiscal advisor's fee;
1616 (D) interest that accrues on a bond or bond anticipation note; or
1617 (E) a cost similar to a cost described in Subsections (5)(a)(i)(A) through (D); or
1618 (b) pledge any revenues generated by a tax under this part as a source of payment for a
1619 bond or bond anticipation note.
1620 (6) Notwithstanding Subsection (3), a county or municipality may expend revenues
1621 generated by a tax under this part within a county or municipality that is located outside of the
1622 county or municipality expending the revenues if the county or municipality receiving the
1623 revenues agrees to the expenditure.
1624 Section 8. Section **59-12-1605** is enacted to read:
1625 **59-12-1605. Advisory board.**
1626 (1) A county legislative body imposing a tax under this part shall, in accordance with
1627 Section 59-12-1603, enact an ordinance establishing an advisory board to make findings and
1628 recommendations to the county legislative body on expending the revenues described in
1629 Subsection 59-12-1604(2)(a) in accordance with Subsection 59-12-1604(3)(a).
1630 (2) (a) Subject to Subsection (2)(b), the advisory board required by Subsection (1) shall
1631 consist of seven members appointed by the county legislative body imposing a tax under this
1632 part as follows:
1633 (i) five members shall represent agricultural interests as determined by the county
1634 legislative body;
1635 (ii) one member shall be a:
1636 (A) mayor of a city or town located within the county; or
1637 (B) member of a municipal legislative body of a municipality located within the

1638 county; and

1639 (iii) one member shall be:

1640 (A) a member of the:

1641 (I) county legislative body; or

1642 (II) county executive body; or

1643 (B) the county executive.

1644 (b) A county legislative body shall select the members described in Subsection (2)(a)(i)

1645 from names submitted as follows:

1646 (i) each of the local soil conservation districts created by Title 17A, Chapter 3, Part 8,

1647 Soil Conservation Districts, that are located within the county shall submit ten or more names

1648 to the county legislative body; and

1649 (ii) other agricultural organizations that are located within the county may submit one

1650 or more names to the county legislative body.

1651 (3) The ordinance required by Section 59-12-1603 establishing the advisory board

1652 shall:

1653 (a) provide for the terms of the members;

1654 (b) provide for the method of appointing members to the advisory board;

1655 (c) provide a procedure for filling vacancies and removing members from office;

1656 (d) provide for the appointment of a chair of the advisory board; and

1657 (e) contain other provisions relating to the organization and procedure of the advisory

1658 board.

1659 (4) (a) A member of an advisory board who is not an employee of a governmental

1660 entity may not receive compensation for the member's work associated with the advisory board,

1661 but may receive per diem and reimbursement for travel expenses incurred as a member of the

1662 advisory board at the rates established by the Division of Finance under Sections 63A-3-106

1663 and 63A-3-107.

1664 (b) A member of an advisory board who is an employee of a governmental entity who

1665 does not receive salary, per diem, or expenses from the governmental entity for their work

1666 associated with the advisory board may receive per diem and reimbursement for travel

1667 expenses incurred as a member of the advisory board at the rates established by the Division of

1668 Finance under Sections 63A-3-106 and 63A-3-107.

1669 (c) A member of an advisory board may decline to receive per diem and expenses for
1670 their work associated with the advisory board.

1671 Section 9. Section **59-12-1606** is enacted to read:

1672 **59-12-1606. Repeal of tax -- Treatment of unexpended sales and use tax revenues**
1673 **as ad valorem property tax revenues.**

1674 (1) If, at any time after the day on which a county legislative body imposes a tax under
1675 this part, the county does not expend any of the revenues generated by the tax for a purpose
1676 described in Subsection 59-12-1604(3)(a) for a three consecutive year period, the county
1677 legislative body shall:

1678 (a) repeal the tax in accordance with Subsection 59-12-1603(5); and

1679 (b) provide notice to the commission of the repeal:

1680 (i) no later than 30 days after the expiration of the three consecutive year period; and

1681 (ii) in accordance with Subsection 59-12-1603(5).

1682 (2) For one or more calendar years after a county legislative body repeals a tax under
1683 this part as required by Subsection (1), the commission shall adjust the county's certified tax
1684 rate to include any unexpended sales and use tax revenues as ad valorem property tax revenues
1685 in accordance with Section 59-2-924.

1686 Section 10. Section **59-12-1607** is enacted to read:

1687 **59-12-1607. Seller or certified service provider reliance on commission**
1688 **information or certain systems.**

1689 A seller or certified service provider is not liable for failing to collect and remit a tax at
1690 a tax rate imposed under this part if:

1691 (1) the tax rate at which the seller or certified service provider collected the tax was
1692 derived from a database created by the commission containing:

1693 (a) tax rates; or

1694 (b) local taxing jurisdiction boundaries;

1695 (2) the failure to collect and remit the tax is as a result of the seller's or certified service
1696 provider's reliance on incorrect data provided by the commission in the taxability matrix
1697 required by Section 328 of the agreement;

1698 (3) for a model 2 seller, the failure to collect and remit the tax:

1699 (a) is due to an error in the certified automated system used by the model 2 seller; and

1700 (b) occurs prior to an audit of the certified automated system that reveals the error in
1701 the certified automated system; or
1702 (4) for a model 3 seller, the failure to collect and remit the tax;
1703 (a) is due to an error in the proprietary system used by the model 3 seller; and
1704 (b) occurs prior to an audit of the proprietary system that reveals the error in the
1705 proprietary system.