

1 **SALES AND USE TAXATION OF AMUSEMENT**
2 **DEVICES AND CLEANING OR WASHING OF**
3 **TANGIBLE PERSONAL PROPERTY**

4 2006 GENERAL SESSION

5 STATE OF UTAH

6 **Chief Sponsor: Wayne A. Harper**

7 Senate Sponsor: Curtis S. Bramble

8
9 **LONG TITLE**

10 **General Description:**

11 This bill amends the Sales and Use Tax Act to address the sales and use taxation of the
12 right to use or operate an amusement device and the cleaning or washing of tangible
13 personal property.

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ provides definitions of "assisted amusement device," "assisted cleaning or washing
17 of tangible personal property," and "unassisted amusement device";
- 18 ▶ modifies the sales and use taxation of sales or rentals of the right to use or operate
19 certain amusement devices;
- 20 ▶ modifies the sales and use taxation of cleaning or washing of tangible personal
21 property; and
- 22 ▶ makes technical changes.

23 **Monies Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 This bill takes effect on July 1, 2006.

27 **Utah Code Sections Affected:**



28 AMENDS:

29 **59-1-403**, as last amended by Chapter 204, Laws of Utah 2005

30 **59-12-102**, as last amended by Chapters 158 and 246, Laws of Utah 2005

31 **59-12-103 (Effective 07/01/06)**, as last amended by Chapter 1, Laws of Utah 2005,

32 First Special Session

33 **59-12-104**, as last amended by Chapters 158, 203, 209, 240 and 246, Laws of Utah

34 2005

35 **59-12-105 (Portions Eff 07/01/06 See 59-1-1201)**, as last amended by Chapters 156

36 and 255, Laws of Utah 2004

37

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

39 Section 1. Section **59-1-403** is amended to read:

40 **59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

41 (1) (a) Except as provided in this section, any of the following may not divulge or
42 make known in any manner any information gained by that person from any return filed with
43 the commission:

44 (i) a tax commissioner;

45 (ii) an agent, clerk, or other officer or employee of the commission; or

46 (iii) a representative, agent, clerk, or other officer or employee of any county, city, or
47 town.

48 (b) Except as provided in Subsection (1)(c), an official charged with the custody of a
49 return filed with the commission is not required to produce the return or evidence of anything
50 contained in the return in any action or proceeding in any court, except:

51 (i) in accordance with judicial order;

52 (ii) on behalf of the commission in any action or proceeding under:

53 (A) this title; or

54 (B) other law under which persons are required to file returns with the commission;

55 (iii) on behalf of the commission in any action or proceeding to which the commission
56 is a party; or

57 (iv) on behalf of any party to any action or proceeding under this title if the report or
58 facts shown by the return are directly involved in the action or proceeding.

59 (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may
60 admit in evidence, any portion of a return or of the facts shown by the return, as are specifically
61 pertinent to the action or proceeding.

62 (2) This section does not prohibit:

63 (a) a person or that person's duly authorized representative from receiving a copy of
64 any return or report filed in connection with that person's own tax;

65 (b) the publication of statistics as long as the statistics are classified to prevent the
66 identification of particular reports or returns; and

67 (c) the inspection by the attorney general or other legal representative of the state of the
68 report or return of any taxpayer:

69 (i) who brings action to set aside or review a tax based on the report or return;

70 (ii) against whom an action or proceeding is contemplated or has been instituted under
71 this title; or

72 (iii) against whom the state has an unsatisfied money judgment.

73 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the
74 commission may by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative
75 Rulemaking Act, provide for a reciprocal exchange of information with:

76 (i) the United States Internal Revenue Service; or

77 (ii) the revenue service of any other state.

78 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and
79 corporate franchise tax, the commission may by rule, made in accordance with Title 63,
80 Chapter 46a, Utah Administrative Rulemaking Act, share information gathered from returns
81 and other written statements with the federal government, any other state, any of the political
82 subdivisions of another state, or any political subdivision of this state, except as limited by
83 Sections 59-12-209 and 59-12-210, if these political subdivisions or the federal government
84 grant substantially similar privileges to this state.

85 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and
86 corporate franchise tax, the commission may by rule, in accordance with Title 63, Chapter 46a,
87 Utah Administrative Rulemaking Act, provide for the issuance of information concerning the
88 identity and other information of taxpayers who have failed to file tax returns or to pay any tax
89 due.

90 (d) Notwithstanding Subsection (1), the commission shall provide to the Solid and
91 Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, as
92 requested by the executive secretary, any records, returns, or other information filed with the
93 commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5
94 regarding the environmental assurance program participation fee.

95 (e) Notwithstanding Subsection (1), at the request of any person the commission shall
96 provide that person sales and purchase volume data reported to the commission on a report,
97 return, or other information filed with the commission under:

- 98 (i) Chapter 13, Part 2, Motor Fuel; or
- 99 (ii) Chapter 13, Part 4, Aviation Fuel.

100 (f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer,
101 as defined in Section 59-22-202, the commission shall report to the manufacturer:

102 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
103 manufacturer and reported to the commission for the previous calendar year under Section
104 59-14-407; and

105 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
106 manufacturer for which a tax refund was granted during the previous calendar year under
107 Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

108 (g) Notwithstanding Subsection (1), the commission shall notify manufacturers,
109 distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited
110 from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

111 (h) Notwithstanding Subsection (1), the commission may:

112 (i) provide to the Division of Consumer Protection within the Department of
113 Commerce and the attorney general data:

- 114 (A) reported to the commission under Section 59-14-212; or
- 115 (B) related to a violation under Section 59-14-211; and

116 (ii) upon request provide to any person data reported to the commission under
117 Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).

118 (i) Notwithstanding Subsection (1), the commission shall, at the request of a committee
119 of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning
120 and Budget, provide to the committee or office the total amount of revenues collected by the

121 commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period
122 specified by the committee or office.

123 (j) Notwithstanding Subsection (1), the commission shall at the request of the
124 Legislature provide to the Legislature the total amount of sales or uses exempt under
125 Subsection 59-12-104~~(50)~~(49) reported to the commission in accordance with Section
126 59-12-105.

127 (k) Notwithstanding Subsection (1), the commission shall make the directory required
128 by Section 59-14-603 available for public inspection.

129 (l) Notwithstanding Subsection (1), the commission shall comply with the reporting
130 requirements of Section 10-1-409.

131 (m) Notwithstanding Subsection (1), the commission may share information with
132 federal, state, or local agencies as provided in Subsection 59-14-606(3).

133 (4) (a) Reports and returns shall be preserved for at least three years.

134 (b) After the three-year period provided in Subsection (4)(a) the commission may
135 destroy a report or return.

136 (5) (a) Any person who violates this section is guilty of a class A misdemeanor.

137 (b) If the person described in Subsection (5)(a) is an officer or employee of the state,
138 the person shall be dismissed from office and be disqualified from holding public office in this
139 state for a period of five years thereafter.

140 (6) Except as provided in Section 59-1-404, this part does not apply to the property tax.

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

142 **59-12-102. Definitions.**

143 As used in this chapter:

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

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

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

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

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

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

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

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

154 (b) Section 59-12-204;

155 (c) Section 59-12-401;

156 (d) Section 59-12-402;

157 (e) Section 59-12-501;

158 (f) Section 59-12-502;

159 (g) Section 59-12-703;

160 (h) Section 59-12-802;

161 (i) Section 59-12-804;

162 (j) Section 59-12-1001;

163 (k) Section 59-12-1102;

164 (l) Section 59-12-1302;

165 (m) Section 59-12-1402; or

166 (n) Section 59-12-1503.

167 (5) "Aircraft" is as defined in Section 72-10-102.

168 (6) "Alcoholic beverage" means a beverage that:

169 (a) is suitable for human consumption; and

170 (b) contains .5% or more alcohol by volume.

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

172 (8) "Assisted amusement device" means an amusement device, skill device, or ride
173 device that is started and stopped by an individual:

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

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

178 (9) "Assisted cleaning or washing of tangible personal property" means cleaning or
179 washing of tangible personal property if the cleaning or washing ~~is~~ **is** primarily performed by an individual:
180 property] labor ~~is~~ **is** primarily performed by an individual:

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

183 (b) at the direction of the seller of the cleaning or washing of the tangible personal
184 property.

185 ~~[(8)]~~ (10) "Authorized carrier" means:

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

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

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

193 ~~[(9)]~~ (11) (a) Except as provided in Subsection ~~[(9)]~~ (11)(b), "biomass energy" means
194 any of the following that is used as the primary source of energy to produce fuel or electricity:

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

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

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

198 (B) animal waste;

199 (C) methane produced:

200 (I) at landfills; or

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

202 (D) aquatic plants; and

203 (E) agricultural products.

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

205 (i) black liquor;

206 (ii) treated woods; or

207 (iii) biomass from municipal solid waste other than methane produced:

208 (A) at landfills; or

209 (B) as a byproduct of the treatment of wastewater residuals.

210 ~~[(10)]~~ (12) "Certified automated system" means software certified by the governing
211 board of the agreement in accordance with Section 59-12-102.1 that:

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

214 (i) on a transaction; and
 215 (ii) in the states that are members of the agreement;
 216 (b) determines the amount of agreement sales and use tax to remit to a state that is a
 217 member of the agreement; and

218 (c) maintains a record of the transaction described in Subsection ~~[(10)]~~ (12)(a)(i).

219 ~~[(11)]~~ (13) "Certified service provider" means an agent certified:

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

221 and

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

225 ~~[(12)]~~ (14) (a) Subject to Subsection ~~[(12)]~~ (14)(b), "clothing" means all human
 226 wearing apparel suitable for general use.

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

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

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

232 ~~[(13)(a) For purposes of Subsection 59-12-104(42), "coin-operated amusement
 233 device" means:]~~

234 ~~[(i) a coin-operated amusement, skill, or ride device;]~~

235 ~~[(ii) that is not controlled through seller-assisted, over-the-counter, sales of tokens;~~

236 and]

237 ~~[(iii) includes a music machine, pinball machine, billiard machine, video game
 238 machine, arcade machine, and a mechanical or electronic skill game or ride.]~~

239 ~~[(b) For purposes of Subsection 59-12-104(42), "coin-operated amusement device"
 240 does not mean a coin-operated amusement device possessing a coinage mechanism that:]~~

241 ~~[(i) accepts and registers multiple denominations of coins; and]~~

242 ~~[(ii) allows the seller to collect the sales and use tax at the time an amusement device is
 243 activated and operated by a person inserting coins into the device.]~~

244 ~~[(14)]~~ (15) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or

245 other fuels that does not constitute industrial use under Subsection [~~(34)~~] (35) or residential use
246 under Subsection [~~(68)~~] (69).

247 [~~(15)~~] (16) (a) "Common carrier" means a person engaged in or transacting the
248 business of transporting passengers, freight, merchandise, or other property for hire within this
249 state.

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

253 (ii) For purposes of Subsection [~~(15)~~] (16)(b)(i), in accordance with Title 63, Chapter
254 46a, Utah Administrative Rulemaking Act, the commission may make rules defining what
255 constitutes a person's place of employment.

256 [~~(16)~~] (17) "Component part" includes:

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

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

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

262 (d) feed, seeds, and seedlings.

263 [~~(17)~~] (18) "Computer" means an electronic device that accepts information:

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

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

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

267 [~~(18)~~] (19) "Computer software" means a set of coded instructions designed to cause:

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

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

270 [~~(19)~~] (20) "Construction materials" means any tangible personal property that will be
271 converted into real property.

272 [~~(20)~~] (21) "Delivered electronically" means delivered to a purchaser by means other
273 than tangible storage media.

274 [~~(21)~~] (22) (a) "Delivery charge" means a charge:

275 (i) by a seller of:

- 276 (A) tangible personal property; or
- 277 (B) services; and
- 278 (ii) for preparation and delivery of the tangible personal property or services described
- 279 in Subsection [~~(21)~~] (22)(a)(i) to a location designated by the purchaser.
- 280 (b) "Delivery charge" includes a charge for the following:
- 281 (i) transportation;
- 282 (ii) shipping;
- 283 (iii) postage;
- 284 (iv) handling;
- 285 (v) crating; or
- 286 (vi) packing.
- 287 [~~(22)~~] (23) "Dietary supplement" means a product, other than tobacco, that:
- 288 (a) is intended to supplement the diet;
- 289 (b) contains one or more of the following dietary ingredients:
- 290 (i) a vitamin;
- 291 (ii) a mineral;
- 292 (iii) an herb or other botanical;
- 293 (iv) an amino acid;
- 294 (v) a dietary substance for use by humans to supplement the diet by increasing the total
- 295 dietary intake; or
- 296 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
- 297 described in Subsections [~~(22)~~] (23)(b)(i) through (v);
- 298 (c) (i) except as provided in Subsection [~~(22)~~] (23)(c)(ii), is intended for ingestion in:
- 299 (A) tablet form;
- 300 (B) capsule form;
- 301 (C) powder form;
- 302 (D) softgel form;
- 303 (E) gelcap form; or
- 304 (F) liquid form; or
- 305 (ii) notwithstanding Subsection [~~(22)~~] (23)(c)(i), if the product is not intended for
- 306 ingestion in a form described in Subsections [~~(22)~~] (23)(c)(i)(A) through (F), is not

307 represented:

308 (A) as conventional food; and

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

310 (I) a meal; or

311 (II) the diet; and

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

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

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

315 [~~(23)~~] (24) (a) "Direct mail" means printed material delivered or distributed by United
316 States mail or other delivery service:

317 (i) to:

318 (A) a mass audience; or

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

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

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

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

325 [~~(24)~~] (25) (a) "Drug" means a compound, substance, or preparation, or a component of
326 a compound, substance, or preparation that is:

327 (i) recognized in:

328 (A) the official United States Pharmacopoeia;

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

330 (C) the official National Formulary; or

331 (D) a supplement to a publication listed in Subsections [~~(24)~~] (25)(a)(i)(A) through
332 (C);

333 (ii) intended for use in the:

334 (A) diagnosis of disease;

335 (B) cure of disease;

336 (C) mitigation of disease;

337 (D) treatment of disease; or

- 338 (E) prevention of disease; or
- 339 (iii) intended to affect:
- 340 (A) the structure of the body; or
- 341 (B) any function of the body.
- 342 (b) "Drug" does not include:
- 343 (i) food and food ingredients;
- 344 (ii) a dietary supplement;
- 345 (iii) an alcoholic beverage; or
- 346 (iv) a prosthetic device.
- 347 [~~(25)~~] (26) (a) Except as provided in Subsection [~~(25)~~] (26)(c), "durable medical
- 348 equipment" means equipment that:
- 349 (i) can withstand repeated use;
- 350 (ii) is primarily and customarily used to serve a medical purpose;
- 351 (iii) generally is not useful to a person in the absence of illness or injury; and
- 352 (iv) is not worn in or on the body.
- 353 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 354 equipment described in Subsection [~~(25)~~] (26)(a).
- 355 (c) Notwithstanding Subsection [~~(25)~~] (26)(a), "durable medical equipment" does not
- 356 include mobility enhancing equipment.
- 357 [~~(26)~~] (27) "Electronic" means:
- 358 (a) relating to technology; and
- 359 (b) having:
- 360 (i) electrical capabilities;
- 361 (ii) digital capabilities;
- 362 (iii) magnetic capabilities;
- 363 (iv) wireless capabilities;
- 364 (v) optical capabilities;
- 365 (vi) electromagnetic capabilities; or
- 366 (vii) capabilities similar to Subsections [~~(26)~~] (27)(b)(i) through (vi).
- 367 [~~(27)~~] (28) (a) "Food and food ingredients" means substances:
- 368 (i) regardless of whether the substances are in:

- 369 (A) liquid form;
- 370 (B) concentrated form;
- 371 (C) solid form;
- 372 (D) frozen form;
- 373 (E) dried form; or
- 374 (F) dehydrated form; and
- 375 (ii) that are:
- 376 (A) sold for:
- 377 (I) ingestion by humans; or
- 378 (II) chewing by humans; and
- 379 (B) consumed for the substance's:
- 380 (I) taste; or
- 381 (II) nutritional value.
- 382 (b) "Food and food ingredients" does not include:
- 383 (i) an alcoholic beverage;
- 384 (ii) tobacco; or
- 385 (iii) prepared food.
- 386 [~~(28)~~] (29) (a) "Fundraising sales" means sales:
- 387 (i) (A) made by a school; or
- 388 (B) made by a school student;
- 389 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 390 materials, or provide transportation; and
- 391 (iii) that are part of an officially sanctioned school activity.
- 392 (b) For purposes of Subsection [~~(28)~~] (29)(a)(iii), "officially sanctioned school activity"
- 393 means a school activity:
- 394 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 395 district governing the authorization and supervision of fundraising activities;
- 396 (ii) that does not directly or indirectly compensate an individual teacher or other
- 397 educational personnel by direct payment, commissions, or payment in kind; and
- 398 (iii) the net or gross revenues from which are deposited in a dedicated account
- 399 controlled by the school or school district.

400 [~~(29)~~] (30) "Geothermal energy" means energy contained in heat that continuously
401 flows outward from the earth that is used as the sole source of energy to produce electricity.

402 [~~(30)~~] (31) "Governing board of the agreement" means the governing board of the
403 agreement that is:

- 404 (a) authorized to administer the agreement; and
- 405 (b) established in accordance with the agreement.

406 [~~(31)~~] (32) (a) "Hearing aid" means:

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

- 408 (A) (I) improve impaired human hearing; or
- 409 (II) correct impaired human hearing; and

- 410 (B) (I) be worn in the human ear; or
- 411 (II) affixed behind the human ear;

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

413 (iii) a telephone amplifying device.

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

415 (i) except as provided in Subsection [~~(31)~~] (32)(a)(i)(B) or [~~(31)~~] (32)(a)(ii), an
416 instrument or device having an electronic component that is designed to be worn on the body;

417 (ii) except as provided in Subsection [~~(31)~~] (32)(a)(iii), an assistive listening device or
418 system designed to be used by one individual, including:

- 419 (A) a personal amplifying system;
- 420 (B) a personal FM system;
- 421 (C) a television listening system; or
- 422 (D) a device or system similar to a device or system described in Subsections [~~(31)~~]

423 (32)(b)(ii)(A) through (C); or

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

- 426 (A) a device or system installed in:
 - 427 (I) an auditorium;
 - 428 (II) a church;
 - 429 (III) a conference room;
 - 430 (IV) a synagogue; or

- 431 (V) a theater; or
- 432 (B) a device or system similar to a device or system described in Subsections [~~(31)~~
- 433 ~~(32)~~(b)(iii)(A)(I) through (V).
- 434 [~~(32)~~] (33) (a) "Hearing aid accessory" means a hearing aid:
- 435 (i) component;
- 436 (ii) attachment; or
- 437 (iii) accessory.
- 438 (b) "Hearing aid accessory" includes:
- 439 (i) a hearing aid neck loop;
- 440 (ii) a hearing aid cord;
- 441 (iii) a hearing aid ear mold;
- 442 (iv) hearing aid tubing;
- 443 (v) a hearing aid ear hook; or
- 444 (vi) a hearing aid remote control.
- 445 (c) "Hearing aid accessory" does not include:
- 446 (i) a component, attachment, or accessory designed to be used only with an:
- 447 (A) instrument or device described in Subsection [~~(31)~~] (32)(b)(i); or
- 448 (B) assistive listening device or system described in Subsection [~~(31)~~] (32)(b)(ii) or
- 449 (iii); or
- 450 (ii) a hearing aid battery.
- 451 [~~(33)~~] (34) "Hydroelectric energy" means water used as the sole source of energy to
- 452 produce electricity.
- 453 [~~(34)~~] (35) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil,
- 454 or other fuels:
- 455 (a) in mining or extraction of minerals;
- 456 (b) in agricultural operations to produce an agricultural product up to the time of
- 457 harvest or placing the agricultural product into a storage facility, including:
- 458 (i) commercial greenhouses;
- 459 (ii) irrigation pumps;
- 460 (iii) farm machinery;
- 461 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not

462 registered under Title 41, Chapter 1a, Part 2, Registration; and

463 (v) other farming activities;

464 (c) in manufacturing tangible personal property at an establishment described in SIC

465 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal

466 Executive Office of the President, Office of Management and Budget; or

467 (d) by a scrap recycler if:

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

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

470 products:

471 (A) iron;

472 (B) steel;

473 (C) nonferrous metal;

474 (D) paper;

475 (E) glass;

476 (F) plastic;

477 (G) textile; or

478 (H) rubber; and

479 (ii) the new products under Subsection [~~(34)~~] (35)(d)(i) would otherwise be made with

480 nonrecycled materials.

481 [~~(35)~~] (36) (a) Except as provided in Subsection [~~(35)~~] (36)(b), "installation charge"

482 means a charge for installing tangible personal property.

483 (b) Notwithstanding Subsection [~~(35)~~] (36)(a), "installation charge" does not include a

484 charge for repairs or renovations of tangible personal property.

485 [~~(36)~~] (37) (a) "Lease" or "rental" means a transfer of possession or control of tangible

486 personal property for:

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

488 (B) an indeterminate term; and

489 (ii) consideration.

490 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the

491 amount of consideration may be increased or decreased by reference to the amount realized

492 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue

493 Code.

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

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

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

500 (A) upon completion of required payments; and

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

502 (I) \$100; or

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

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

507 (d) For purposes of Subsection [~~36~~] (37)(c)(iii), an operator is necessary for
508 equipment to perform as designed if the operator's duties exceed the:

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

510 (ii) maintenance of tangible personal property; or

511 (iii) inspection of tangible personal property.

512 [~~37~~] (38) "Load and leave" means delivery to a purchaser by use of a tangible storage
513 media if the tangible storage media is not physically transferred to the purchaser.

514 [~~38~~] (39) "Local taxing jurisdiction" means a:

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

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

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

518 [~~39~~] (40) "Manufactured home" is as defined in Section 58-56-3.

519 [~~40~~] (41) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:

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

521 Industrial Classification Manual of the federal Executive Office of the President, Office of
522 Management and Budget; or

523 (b) a scrap recycler if:

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

- 527 (A) iron;
- 528 (B) steel;
- 529 (C) nonferrous metal;
- 530 (D) paper;
- 531 (E) glass;
- 532 (F) plastic;
- 533 (G) textile; or
- 534 (H) rubber; and

535 (ii) the new products under Subsection [~~(40)~~] (41)(b)(i) would otherwise be made with
536 nonrecycled materials.

537 [~~(41)~~] (42) "Mobile home" is as defined in Section 58-56-3.

538 [~~(42)~~] (43) "Mobile telecommunications service" is as defined in the Mobile
539 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

540 [~~(43)~~] (44) (a) Except as provided in Subsection [~~(43)~~] (44)(c), "mobility enhancing
541 equipment" means equipment that is:

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

544 (ii) appropriate for use in a:

- 545 (A) home; or
- 546 (B) motor vehicle; and

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

548 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
549 the equipment described in Subsection [~~(43)~~] (44)(a).

550 (c) Notwithstanding Subsection [~~(43)~~] (44)(a), "mobility enhancing equipment" does
551 not include:

552 (i) a motor vehicle;

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

555 (iii) durable medical equipment; or

556 (iv) a prosthetic device.

557 [~~(44)~~] (45) "Model 1 seller" means a seller that has selected a certified service provider
558 as the seller's agent to perform all of the seller's sales and use tax functions for agreement sales
559 and use taxes other than the seller's obligation under Section 59-12-107.4 to remit a tax on the
560 seller's own purchases.

561 [~~(45)~~] (46) "Model 2 seller" means a seller that:

562 (a) except as provided in Subsection [~~(45)~~] (46)(b), has selected a certified automated
563 system to perform the seller's sales tax functions for agreement sales and use taxes; and

564 (b) notwithstanding Subsection [~~(45)~~] (46)(a), retains responsibility for remitting all of
565 the sales tax:

566 (i) collected by the seller; and

567 (ii) to the appropriate local taxing jurisdiction.

568 [~~(46)~~] (47) (a) Subject to Subsection [~~(46)~~] (47)(b), "model 3 seller" means a seller that
569 has:

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

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

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

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

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

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

576 (b) For purposes of Subsection [~~(46)~~] (47)(a), "model 3 seller" includes an affiliated
577 group of sellers using the same proprietary system.

578 [~~(47)~~] (48) "Modular home" means a modular unit as defined in Section 58-56-3.

579 [~~(48)~~] (49) "Motor vehicle" is as defined in Section 41-1a-102.

580 [~~(49)~~] (50) (a) "Other fuels" means products that burn independently to produce heat or
581 energy.

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

584 [~~(50)~~] (51) "Pawnbroker" is as defined in Section 13-32a-102.

585 [~~(51)~~] (52) "Pawn transaction" is as defined in Section 13-32a-102.

586 [~~52~~] (53) (a) "Permanently attached to real property" means that for tangible personal
587 property attached to real property:

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

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

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

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

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

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

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

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

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

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

601 (ii) a temporary detachment of tangible personal property from real property for a
602 repair or renovation if the repair or renovation is performed where the tangible personal
603 property and real property are located.

604 (c) "Permanently attached to real property" does not include:

605 (i) the attachment of portable or movable tangible personal property to real property if
606 that portable or movable tangible personal property is attached to real property only for:

607 (A) convenience;

608 (B) stability; or

609 (C) for an obvious temporary purpose; or

610 (ii) the detachment of tangible personal property from real property other than the
611 detachment described in Subsection [~~52~~] (53)(b)(ii).

612 [~~53~~] (54) "Person" includes any individual, firm, partnership, joint venture,
613 association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county,
614 city, municipality, district, or other local governmental entity of the state, or any group or
615 combination acting as a unit.

616 [~~54~~] (55) "Place of primary use":

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

- 620 (i) the residential street address of the purchaser; or
621 (ii) the primary business street address of the purchaser; or
622 (b) for mobile telecommunications service, is as defined in the Mobile
623 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

624 ~~[(55)]~~ (56) "Postproduction" means an activity related to the finishing or duplication of
625 a medium described in Subsection 59-12-104~~[(60)]~~(59)(a).

626 ~~[(56)]~~ (57) (a) "Prepared food" means:

- 627 (i) food:
628 (A) sold in a heated state; or
629 (B) heated by a seller;
630 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
631 item; or

632 (iii) except as provided in Subsection ~~[(56)]~~ (57)(c), food sold with an eating utensil
633 provided by the seller, including a:

- 634 (A) plate;
635 (B) knife;
636 (C) fork;
637 (D) spoon;
638 (E) glass;
639 (F) cup;
640 (G) napkin; or
641 (H) straw.

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

- 643 (i) food that a seller only:
644 (A) cuts;
645 (B) repackages; or
646 (C) pasteurizes; or
647 (ii) (A) the following:

- 648 (I) raw egg;
- 649 (II) raw fish;
- 650 (III) raw meat;
- 651 (IV) raw poultry; or
- 652 (V) a food containing an item described in Subsections [~~56~~] (57)(b)(ii)(A)(I) through
- 653 (IV); and

654 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
655 Food and Drug Administration's Food Code that a consumer cook the items described in
656 Subsection [~~56~~] (57)(b)(ii)(A) to prevent food borne illness.

657 (c) Notwithstanding Subsection [~~56~~] (57)(a)(iii), an eating utensil provided by the
658 seller does not include the following used to transport the food:

- 659 (i) a container; or
- 660 (ii) packaging.

661 [~~57~~] (58) "Prescription" means an order, formula, or recipe that is issued:

- 662 (a) (i) orally;
- 663 (ii) in writing;
- 664 (iii) electronically; or
- 665 (iv) by any other manner of transmission; and

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

667 [~~58~~] (59) (a) Except as provided in Subsection [~~58~~] (59)(b)(ii) or (iii), "prewritten
668 computer software" means computer software that is not designed and developed:

- 669 (i) by the author or other creator of the computer software; and
- 670 (ii) to the specifications of a specific purchaser.

671 (b) "Prewritten computer software" includes:

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

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

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

676 (ii) notwithstanding Subsection [~~58~~] (59)(a), computer software designed and
677 developed by the author or other creator of the computer software to the specifications of a
678 specific purchaser if the computer software is sold to a person other than the purchaser; or

679 (iii) notwithstanding Subsection [~~(58)~~] (59)(a) and except as provided in Subsection
680 [~~(58)~~] (59)(c), prewritten computer software or a prewritten portion of prewritten computer
681 software:

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

683 (B) if the modification or enhancement described in Subsection [~~(58)~~] (59)(b)(iii)(A) is
684 designed and developed to the specifications of a specific purchaser.

685 (c) Notwithstanding Subsection [~~(58)~~] (59)(b)(iii), "prewritten computer software"
686 does not include a modification or enhancement described in Subsection [~~(58)~~] (59)(b)(iii) if
687 the charges for the modification or enhancement are:

688 (i) reasonable; and

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

691 [~~(59)~~] (60) (a) "Prosthetic device" means a device that is worn on or in the body to:

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

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

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

695 (b) "Prosthetic device" includes:

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

697 (ii) replacement parts for a prosthetic device.

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

699 (i) corrective eyeglasses;

700 (ii) contact lenses;

701 (iii) hearing aids; or

702 (iv) dental prostheses.

703 [~~(60)~~] (61) (a) "Protective equipment" means an item:

704 (i) for human wear; and

705 (ii) that is:

706 (A) designed as protection:

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

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

709 (B) not suitable for general use.

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

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

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

714 under the agreement.

715 ~~[(61)]~~ (62) (a) "Purchase price" and "sales price" mean the total amount of
716 consideration:

717 (i) valued in money; and

718 (ii) for which tangible personal property or services are:

719 (A) sold;

720 (B) leased; or

721 (C) rented.

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

723 (i) the seller's cost of the tangible personal property or services sold;

724 (ii) expenses of the seller, including:

725 (A) the cost of materials used;

726 (B) a labor cost;

727 (C) a service cost;

728 (D) interest;

729 (E) a loss;

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

731 (G) a tax imposed on the seller; or

732 (iii) a charge by the seller for any service necessary to complete the sale.

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

734 (i) a discount:

735 (A) in a form including:

736 (I) cash;

737 (II) term; or

738 (III) coupon;

739 (B) that is allowed by a seller;

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

- 741 (D) that is not reimbursed by a third party; or
- 742 (ii) the following if separately stated on an invoice, bill of sale, or similar document
- 743 provided to the purchaser:
- 744 (A) the amount of a trade-in;
- 745 (B) the following from credit extended on the sale of tangible personal property or
- 746 services:
- 747 (I) interest charges;
- 748 (II) financing charges; or
- 749 (III) carrying charges;
- 750 (C) a tax or fee legally imposed directly on the consumer;
- 751 (D) a delivery charge; or
- 752 (E) an installation charge.
- 753 [~~(62)~~] (63) "Purchaser" means a person to whom:
- 754 (a) a sale of tangible personal property is made; or
- 755 (b) a service is furnished.
- 756 [~~(63)~~] (64) "Regularly rented" means:
- 757 (a) rented to a guest for value three or more times during a calendar year; or
- 758 (b) advertised or held out to the public as a place that is regularly rented to guests for
- 759 value.
- 760 [~~(64)~~] (65) "Renewable energy" means:
- 761 (a) biomass energy;
- 762 (b) hydroelectric energy;
- 763 (c) geothermal energy;
- 764 (d) solar energy; or
- 765 (e) wind energy.
- 766 [~~(65)~~] (66) (a) "Renewable energy production facility" means a facility that:
- 767 (i) uses renewable energy to produce electricity; and
- 768 (ii) has a production capacity of 20 kilowatts or greater.
- 769 (b) A facility is a renewable energy production facility regardless of whether the
- 770 facility is:
- 771 (i) connected to an electric grid; or

772 (ii) located on the premises of an electricity consumer.
773 [~~(66)~~] (67) "Rental" is as defined in Subsection [~~(36)~~] (37).
774 [~~(67)~~] (68) "Repairs or renovations of tangible personal property" means:
775 (a) a repair or renovation of tangible personal property that is not permanently attached
776 to real property; or
777 (b) attaching tangible personal property to other tangible personal property if the other
778 tangible personal property to which the tangible personal property is attached is not
779 permanently attached to real property.
780 [~~(68)~~] (69) "Residential use" means the use in or around a home, apartment building,
781 sleeping quarters, and similar facilities or accommodations.
782 [~~(69)~~] (70) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose
783 other than:
784 (a) resale;
785 (b) sublease; or
786 (c) subrent.
787 [~~(70)~~] (71) (a) "Retailer" means any person engaged in a regularly organized business
788 in tangible personal property or any other taxable transaction under Subsection 59-12-103(1),
789 and who is selling to the user or consumer and not for resale.
790 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
791 engaged in the business of selling to users or consumers within the state.
792 [~~(71)~~] (72) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
793 otherwise, in any manner, of tangible personal property or any other taxable transaction under
794 Subsection 59-12-103(1), for consideration.
795 (b) "Sale" includes:
796 (i) installment and credit sales;
797 (ii) any closed transaction constituting a sale;
798 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
799 chapter;
800 (iv) any transaction if the possession of property is transferred but the seller retains the
801 title as security for the payment of the price; and
802 (v) any transaction under which right to possession, operation, or use of any article of

803 tangible personal property is granted under a lease or contract and the transfer of possession
804 would be taxable if an outright sale were made.

805 ~~[(72)]~~ (73) "Sale at retail" is as defined in Subsection ~~[(69)]~~ (70).

806 ~~[(73)]~~ (74) "Sale-leaseback transaction" means a transaction by which title to tangible
807 personal property that is subject to a tax under this chapter is transferred:

808 (a) by a purchaser-lessee;

809 (b) to a lessor;

810 (c) for consideration; and

811 (d) if:

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

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

816 (A) for the property; and

817 (B) to the purchaser-lessee; and

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

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

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

822 ~~[(74)]~~ (75) "Sales price" is as defined in Subsection ~~[(61)]~~ (62).

823 ~~[(75)]~~ (76) (a) "Sales relating to schools" means the following sales by, amounts paid
824 to, or amounts charged by a school:

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

826 including:

827 (A) the sale of:

828 (I) textbooks;

829 (II) textbook fees;

830 (III) laboratory fees;

831 (IV) laboratory supplies; or

832 (V) safety equipment;

833 (B) the sale of a uniform, protective equipment, or sports or recreational equipment

834 that:

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

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

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

841 (I) food and food ingredients; or

842 (II) prepared food; or

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

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

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

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

848 (ii) except as provided in Subsection [~~(75)~~] (76)(a)(i)(B):

849 (A) clothing;

850 (B) clothing accessories or equipment;

851 (C) protective equipment; or

852 (D) sports or recreational equipment; or

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

855 (A) other than a:

856 (I) school;

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

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

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

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

864 [~~(76)~~] (77) For purposes of this section and Section 59-12-104, "school" means:

- 865 (a) an elementary school or a secondary school that:
- 866 (i) is a:
- 867 (A) public school; or
- 868 (B) private school; and
- 869 (ii) provides instruction for one or more grades kindergarten through 12; or
- 870 (b) a public school district.
- 871 [~~77~~] (78) "Seller" means a person that makes a sale, lease, or rental of:
- 872 (a) tangible personal property; or
- 873 (b) a service.
- 874 [~~78~~] (79) (a) "Semiconductor fabricating or processing materials" means tangible
- 875 personal property:
- 876 (i) used primarily in the process of:
- 877 (A) (I) manufacturing a semiconductor; or
- 878 (II) fabricating a semiconductor; or
- 879 (B) maintaining an environment suitable for a semiconductor; or
- 880 (ii) consumed primarily in the process of:
- 881 (A) (I) manufacturing a semiconductor; or
- 882 (II) fabricating a semiconductor; or
- 883 (B) maintaining an environment suitable for a semiconductor.
- 884 (b) "Semiconductor fabricating or processing materials" includes:
- 885 (i) parts used in the repairs or renovations of tangible personal property described in
- 886 Subsection [~~78~~] (79)(a); or
- 887 (ii) a chemical, catalyst, or other material used to:
- 888 (A) produce or induce in a semiconductor a:
- 889 (I) chemical change; or
- 890 (II) physical change;
- 891 (B) remove impurities from a semiconductor; or
- 892 (C) improve the marketable condition of a semiconductor.
- 893 [~~79~~] (80) "Senior citizen center" means a facility having the primary purpose of
- 894 providing services to the aged as defined in Section 62A-3-101.
- 895 [~~80~~] (81) "Simplified electronic return" means the electronic return:

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

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

898 [~~81~~] (82) "Solar energy" means the sun used as the sole source of energy for
899 producing electricity.

900 [~~82~~] (83) (a) "Sports or recreational equipment" means an item:

901 (i) designed for human use; and

902 (ii) that is:

903 (A) worn in conjunction with:

904 (I) an athletic activity; or

905 (II) a recreational activity; and

906 (B) not suitable for general use.

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

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

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

912 [~~83~~] (84) "State" means the state of Utah, its departments, and agencies.

913 [~~84~~] (85) "Storage" means any keeping or retention of tangible personal property or
914 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose
915 except sale in the regular course of business.

916 [~~85~~] (86) (a) "Tangible personal property" means personal property that:

917 (i) may be:

918 (A) seen;

919 (B) weighed;

920 (C) measured;

921 (D) felt; or

922 (E) touched; or

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

924 (b) "Tangible personal property" includes:

925 (i) electricity;

926 (ii) water;

- 927 (iii) gas;
- 928 (iv) steam; or
- 929 (v) prewritten computer software.
- 930 [~~(86)~~ (87) (a) "Telephone service" means a two-way transmission:
- 931 (i) by:
- 932 (A) wire;
- 933 (B) radio;
- 934 (C) lightwave; or
- 935 (D) other electromagnetic means; and
- 936 (ii) of one or more of the following:
- 937 (A) a sign;
- 938 (B) a signal;
- 939 (C) writing;
- 940 (D) an image;
- 941 (E) sound;
- 942 (F) a message;
- 943 (G) data; or
- 944 (H) other information of any nature.
- 945 (b) "Telephone service" includes:
- 946 (i) mobile telecommunications service;
- 947 (ii) private communications service; or
- 948 (iii) automated digital telephone answering service.
- 949 (c) "Telephone service" does not include a service or a transaction that a state or a
- 950 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet
- 951 Tax Freedom Act, Pub. L. No. 105-277.
- 952 [~~(87)~~ (88) Notwithstanding where a call is billed or paid, "telephone service address"
- 953 means:
- 954 (a) if the location described in this Subsection [~~(87)~~ (88)(a) is known, the location of
- 955 the telephone service equipment:
- 956 (i) to which a call is charged; and
- 957 (ii) from which the call originates or terminates;

958 (b) if the location described in Subsection [~~(87)~~] (88)(a) is not known but the location
959 described in this Subsection [~~(87)~~] (88)(b) is known, the location of the origination point of the
960 signal of the telephone service first identified by:

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

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

964 (c) if the locations described in Subsection [~~(87)~~] (88)(a) or (b) are not known, the
965 location of a purchaser's primary place of use.

966 [~~(88)~~] (89) (a) "Telephone service provider" means a person that:

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

968 (ii) engages in an activity described in Subsection [~~(88)~~] (89)(a)(i) for the shared use
969 with or resale to any person of the telephone service.

970 (b) A person described in Subsection [~~(88)~~] (89)(a) is a telephone service provider
971 whether or not the Public Service Commission of Utah regulates:

972 (i) that person; or

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

974 [~~(89)~~] (90) "Tobacco" means:

975 (a) a cigarette;

976 (b) a cigar;

977 (c) chewing tobacco;

978 (d) pipe tobacco; or

979 (e) any other item that contains tobacco.

980 (91) "Unassisted amusement device" means an amusement device, skill device, or ride
981 device that is started and stopped by the purchaser or renter of the right to use or operate the
982 amusement device, skill device, or ride device.

983 [~~(90)~~] (92) (a) "Use" means the exercise of any right or power over tangible personal
984 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that
985 property, item, or service.

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

988 [~~(91)~~] (93) (a) Subject to Subsection [~~(91)~~] (93)(b), "vehicle" means the following that

989 are required to be titled, registered, or titled and registered:

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

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

992 (iii) an off-highway vehicle as defined in Section 41-22-2; or

993 (iv) a vessel as defined in Section 41-1a-102.

994 (b) For purposes of Subsection 59-12-104(35) only, "vehicle" includes:

995 (i) a vehicle described in Subsection [~~(91)~~] (93)(a); or

996 (ii) (A) a locomotive;

997 (B) a freight car;

998 (C) railroad work equipment; or

999 (D) other railroad rolling stock.

1000 [~~(92)~~] (94) "Vehicle dealer" means a person engaged in the business of buying, selling,

1001 or exchanging a vehicle as defined in Subsection [~~(91)~~] (93).

1002 [~~(93)~~] (95) (a) Except as provided in Subsection [~~(93)~~] (95)(b), "waste energy facility"

1003 means a facility that generates electricity:

1004 (i) using as the primary source of energy waste materials that would be placed in a

1005 landfill or refuse pit if it were not used to generate electricity, including:

1006 (A) tires;

1007 (B) waste coal; or

1008 (C) oil shale; and

1009 (ii) in amounts greater than actually required for the operation of the facility.

1010 (b) "Waste energy facility" does not include a facility that incinerates:

1011 (i) municipal solid waste;

1012 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or

1013 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1014 [~~(94)~~] (96) "Watercraft" means a vessel as defined in Section 73-18-2.

1015 [~~(95)~~] (97) "Wind energy" means wind used as the sole source of energy to produce

1016 electricity.

1017 [~~(96)~~] (98) "ZIP Code" means a Zoning Improvement Plan Code assigned to a

1018 geographic location by the United States Postal Service.

1019 Section 3. Section **59-12-103 (Effective 07/01/06)** is amended to read:

1020 **59-12-103 (Effective 07/01/06). Sales and use tax base -- Rates -- Effective dates --**
1021 **Use of sales and use tax revenues.**

1022 (1) A tax is imposed on the purchaser as provided in this part for amounts paid or
1023 charged for the following transactions:

1024 (a) retail sales of tangible personal property made within the state;

1025 (b) amounts paid:

1026 (i) (A) to a common carrier; or

1027 (B) whether the following are municipally or privately owned, to a:

1028 (I) telephone service provider; or

1029 (II) telegraph corporation as defined in Section 54-2-1; and

1030 (ii) for:

1031 (A) all transportation;

1032 (B) telephone service, other than mobile telecommunications service, that originates
1033 and terminates within the boundaries of this state;

1034 (C) mobile telecommunications service that originates and terminates within the
1035 boundaries of one state only to the extent permitted by the Mobile Telecommunications
1036 Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or

1037 (D) telegraph service;

1038 (c) sales of the following for commercial use:

1039 (i) gas;

1040 (ii) electricity;

1041 (iii) heat;

1042 (iv) coal;

1043 (v) fuel oil; or

1044 (vi) other fuels;

1045 (d) sales of the following for residential use:

1046 (i) gas;

1047 (ii) electricity;

1048 (iii) heat;

1049 (iv) coal;

1050 (v) fuel oil; or

- 1051 (vi) other fuels;
- 1052 (e) sales of prepared food;
- 1053 (f) except as provided in Section 59-12-104, amounts paid or charged as admission or
1054 user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,
1055 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,
1056 fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit
1057 television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf
1058 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,
1059 tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises,
1060 horseback rides, sports activities, or any other amusement, entertainment, recreation,
1061 exhibition, cultural, or athletic activity;
- 1062 (g) amounts paid or charged for services for repairs or renovations of tangible personal
1063 property, unless Section 59-12-104 provides for an exemption from sales and use tax for:
- 1064 (i) the tangible personal property; and
- 1065 (ii) parts used in the repairs or renovations of the tangible personal property described
1066 in Subsection (1)(g)(i), whether or not any parts are actually used in the repairs or renovations
1067 of that tangible personal property;
- 1068 (h) except as provided in Subsection 59-12-104(7), amounts paid or charged for
1069 assisted cleaning or washing of tangible personal property;
- 1070 (i) amounts paid or charged for tourist home, hotel, motel, or trailer court
1071 accommodations and services that are regularly rented for less than 30 consecutive days;
- 1072 (j) amounts paid or charged for laundry or dry cleaning services;
- 1073 (k) amounts paid or charged for leases or rentals of tangible personal property if within
1074 this state the tangible personal property is:
- 1075 (i) stored;
- 1076 (ii) used; or
- 1077 (iii) otherwise consumed;
- 1078 (l) amounts paid or charged for tangible personal property if within this state the
1079 tangible personal property is:
- 1080 (i) stored;
- 1081 (ii) used; or

1082 (iii) consumed; and
1083 (m) amounts paid or charged for prepaid telephone calling cards.
1084 (2) (a) Except as provided in Subsection (2)(b), beginning on July 1, 2001, a state tax
1085 and a local tax is imposed on a transaction described in Subsection (1) equal to the sum of:
1086 (i) a state tax imposed on the transaction at a rate of 4.75%; and
1087 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
1088 transaction under this chapter other than this part.
1089 (b) Notwithstanding Subsection (2)(a), beginning on July 1, 2001, a state tax and a
1090 local tax is imposed on a transaction described in Subsection (1)(d) equal to the sum of:
1091 (i) a state tax imposed on the transaction at a rate of 2%; and
1092 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
1093 transaction under this chapter other than this part.
1094 (c) Subject to Subsections (2)(d) and (e), a tax rate repeal or tax rate change for a tax
1095 rate imposed under the following shall take effect on the first day of a calendar quarter:
1096 (i) Subsection (2)(a)(i); or
1097 (ii) Subsection (2)(b)(i).
1098 (d) (i) For a transaction described in Subsection (2)(d)(iii), a tax rate increase shall take
1099 effect on the first day of the first billing period:
1100 (A) that begins after the effective date of the tax rate increase; and
1101 (B) if the billing period for the transaction begins before the effective date of a tax rate
1102 increase imposed under:
1103 (I) Subsection (2)(a)(i); or
1104 (II) Subsection (2)(b)(i).
1105 (ii) For a transaction described in Subsection (2)(d)(iii), the repeal of a tax or a tax rate
1106 decrease shall take effect on the first day of the last billing period:
1107 (A) that began before the effective date of the repeal of the tax or the tax rate decrease;
1108 and
1109 (B) if the billing period for the transaction begins before the effective date of the repeal
1110 of the tax or the tax rate decrease imposed under:
1111 (I) Subsection (2)(a)(i); or
1112 (II) Subsection (2)(b)(i).

- 1113 (iii) Subsections (2)(d)(i) and (ii) apply to transactions subject to a tax under:
- 1114 (A) Subsection (1)(b);
- 1115 (B) Subsection (1)(c);
- 1116 (C) Subsection (1)(d);
- 1117 (D) Subsection (1)(e);
- 1118 (E) Subsection (1)(f);
- 1119 (F) Subsection (1)(g);
- 1120 (G) Subsection (1)(h);
- 1121 (H) Subsection (1)(i);
- 1122 (I) Subsection (1)(j); or
- 1123 (J) Subsection (1)(k).
- 1124 (e) (i) If a tax due under Subsection (2)(a)(i) on a catalogue sale is computed on the
- 1125 basis of sales and use tax rates published in the catalogue, a tax rate repeal or change in a tax
- 1126 rate imposed under Subsection (2)(a)(i) takes effect:
- 1127 (A) on the first day of a calendar quarter; and
- 1128 (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change
- 1129 under Subsection (2)(a)(i).
- 1130 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
- 1131 the commission may by rule define the term "catalogue sale."
- 1132 (3) (a) Except as provided in Subsections (4) through (7), the following state taxes
- 1133 shall be deposited into the General Fund:
- 1134 (i) the tax imposed by Subsection (2)(a)(i); or
- 1135 (ii) the tax imposed by Subsection (2)(b)(i).
- 1136 (b) The local taxes described in Subsections (2)(a)(ii) and (2)(b)(ii) shall be distributed
- 1137 to a county, city, or town as provided in this chapter.
- 1138 (4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
- 1139 2003, the lesser of the following amounts shall be used as provided in Subsections (4)(b)
- 1140 through (g):
- 1141 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:
- 1142 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and
- 1143 (B) for the fiscal year; or

1144 (ii) \$17,500,000.

1145 (b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount
1146 described in Subsection (4)(a) shall be transferred each year as dedicated credits to the
1147 Department of Natural Resources to:

1148 (A) implement the measures described in Subsections 63-34-14(4)(a) through (d) to
1149 protect sensitive plant and animal species; or

1150 (B) award grants, up to the amount authorized by the Legislature in an appropriations
1151 act, to political subdivisions of the state to implement the measures described in Subsections
1152 63-34-14(4)(a) through (d) to protect sensitive plant and animal species.

1153 (ii) Money transferred to the Department of Natural Resources under Subsection
1154 (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other
1155 person to list or attempt to have listed a species as threatened or endangered under the
1156 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

1157 (iii) At the end of each fiscal year:

1158 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
1159 Conservation and Development Fund created in Section 73-10-24;

1160 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
1161 Program Subaccount created in Section 73-10c-5; and

1162 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
1163 Program Subaccount created in Section 73-10c-5.

1164 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in
1165 Subsection (4)(b)(i) shall be deposited each year in the Agriculture Resource Development
1166 Fund created in Section 4-18-6.

1167 (d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described
1168 in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water
1169 Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of
1170 water rights.

1171 (ii) At the end of each fiscal year:

1172 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
1173 Conservation and Development Fund created in Section 73-10-24;

1174 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan

1175 Program Subaccount created in Section 73-10c-5; and

1176 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
1177 Program Subaccount created in Section 73-10c-5.

1178 (e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described
1179 in Subsection (4)(a) shall be deposited in the Water Resources Conservation and Development
1180 Fund created in Section 73-10-24 for use by the Division of Water Resources.

1181 (ii) In addition to the uses allowed of the Water Resources Conservation and
1182 Development Fund under Section 73-10-24, the Water Resources Conservation and
1183 Development Fund may also be used to:

1184 (A) provide a portion of the local cost share, not to exceed in any fiscal year 50% of the
1185 funds made available to the Division of Water Resources under this section, of potential project
1186 features of the Central Utah Project;

1187 (B) conduct hydrologic and geotechnical investigations by the Department of Natural
1188 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of
1189 quantifying surface and ground water resources and describing the hydrologic systems of an
1190 area in sufficient detail so as to enable local and state resource managers to plan for and
1191 accommodate growth in water use without jeopardizing the resource;

1192 (C) fund state required dam safety improvements; and

1193 (D) protect the state's interest in interstate water compact allocations, including the
1194 hiring of technical and legal staff.

1195 (f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
1196 in Subsection (4)(a) shall be deposited in the Utah Wastewater Loan Program Subaccount
1197 created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

1198 (g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
1199 in Subsection (4)(a) shall be deposited in the Drinking Water Loan Program Subaccount
1200 created in Section 73-10c-5 for use by the Division of Drinking Water to:

1201 (i) provide for the installation and repair of collection, treatment, storage, and
1202 distribution facilities for any public water system, as defined in Section 19-4-102;

1203 (ii) develop underground sources of water, including springs and wells; and

1204 (iii) develop surface water sources.

1205 (5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,

1206 2003, the lesser of the following amounts shall be used as provided in Subsections (5)(b)
1207 through (d):

1208 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

1209 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and

1210 (B) for the fiscal year; or

1211 (ii) \$18,743,000.

1212 (b) (i) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described
1213 in Subsection (5)(a) shall be deposited each year in the Transportation Corridor Preservation
1214 Revolving Loan Fund created in Section 72-2-117.

1215 (ii) At least 50% of the money deposited in the Transportation Corridor Preservation
1216 Revolving Loan Fund under Subsection (5)(b)(i) shall be used to fund loan applications made
1217 by the Department of Transportation at the request of local governments.

1218 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in
1219 Subsection (5)(a) shall be transferred each year as nonlapsing dedicated credits to the
1220 Department of Transportation for the State Park Access Highways Improvement Program
1221 created in Section 72-3-207.

1222 (d) For a fiscal year beginning on or after July 1, 2003, 94% of the amount described in
1223 Subsection (5)(a) shall be deposited in the class B and class C roads account to be expended as
1224 provided in Title 72, Chapter 2, Transportation Finances Act, for the use of class B and C
1225 roads.

1226 (6) (a) Notwithstanding Subsection (3)(a) and until Subsection (6)(b) applies,
1227 beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial
1228 Highway Fund Restricted Account created in Section 72-2-118 a portion of the taxes listed
1229 under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate on the taxable
1230 transactions under Subsection (1).

1231 (b) Notwithstanding Subsection (3)(a), when the highway general obligation bonds
1232 have been paid off and the highway projects completed that are intended to be paid from
1233 revenues deposited in the Centennial Highway Fund Restricted Account as determined by the
1234 Executive Appropriations Committee under Subsection 72-2-118(6)(d), the Division of
1235 Finance shall deposit into the Transportation Investment Fund of 2005 created by Section
1236 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated

1237 by a 1/64% tax rate on the taxable transactions under Subsection (1).

1238 (7) (a) Notwithstanding Subsection (3)(a), for fiscal years beginning on or after fiscal
1239 year 2004-05, the commission shall each year on or before the September 30 immediately
1240 following the last day of the fiscal year deposit the difference described in Subsection (7)(b)
1241 into the Remote Sales Restricted Account created in Section 59-12-103.2 if that difference is
1242 greater than \$0.

1243 (b) The difference described in Subsection (7)(a) is equal to the difference between:

1244 (i) the total amount of the following revenues the commission received from sellers
1245 collecting a tax in accordance with Subsection 59-12-107(1)(b) for the fiscal year immediately
1246 preceding the September 30 described in Subsection (7)(a):

1247 (A) revenues under Subsection (2)(a)(i); and

1248 (B) revenues under Subsection (2)(b)(i); and

1249 (ii) \$7,279,673.

1250 (8) (a) Notwithstanding Subsection (3)(a), in addition to the amount deposited in
1251 Subsection (6)(a), and until Subsection (8)(b) applies, for a fiscal year beginning on or after
1252 July 1, 2005, the Division of Finance shall deposit \$59,594,700 of the revenues generated by
1253 the taxes described in Subsections (2)(a)(i) and (2)(b)(i) into the Centennial Highway Fund
1254 Restricted Account created by Section 72-2-118.

1255 (b) Notwithstanding Subsection (3)(a) and in addition to the amounts deposited under
1256 Subsection (6)(b), when the highway general obligation bonds have been paid off and the
1257 highway projects completed that are intended to be paid from revenues deposited in the
1258 Centennial Highway Fund Restricted Account as determined by the Executive Appropriations
1259 Committee under Subsection 72-2-118(6)(d), the Division of Finance shall deposit
1260 \$59,594,700 of the revenues generated by the taxes described in Subsections (2)(a)(i) and
1261 (2)(b)(i) into the Transportation Investment Fund of 2005 created by Section 72-2-124.

1262 Section 4. Section **59-12-104** is amended to read:

1263 **59-12-104. Exemptions.**

1264 The following sales and uses are exempt from the taxes imposed by this chapter:

1265 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
1266 under Chapter 13, Motor and Special Fuel Tax Act;

1267 (2) sales to the state, its institutions, and its political subdivisions; however, this

1268 exemption does not apply to sales of:

1269 (a) construction materials except:

1270 (i) construction materials purchased by or on behalf of institutions of the public
1271 education system as defined in Utah Constitution Article X, Section 2, provided the
1272 construction materials are clearly identified and segregated and installed or converted to real
1273 property which is owned by institutions of the public education system; and

1274 (ii) construction materials purchased by the state, its institutions, or its political
1275 subdivisions which are installed or converted to real property by employees of the state, its
1276 institutions, or its political subdivisions; or

1277 (b) tangible personal property in connection with the construction, operation,
1278 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities
1279 providing additional project capacity, as defined in Section 11-13-103;

1280 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:

1281 (i) the proceeds of each sale do not exceed \$1; and

1282 (ii) the seller or operator of the vending machine reports an amount equal to 150% of
1283 the cost of the item described in Subsection (3)(b) as goods consumed; and

1284 (b) Subsection (3)(a) applies to:

1285 (i) food and food ingredients; or

1286 (ii) prepared food;

1287 (4) sales of the following to a commercial airline carrier for in-flight consumption:

1288 (a) food and food ingredients;

1289 (b) prepared food; or

1290 (c) services related to Subsection (4)(a) or (b);

1291 (5) sales of parts and equipment for installation in aircraft operated by common carriers
1292 in interstate or foreign commerce;

1293 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
1294 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
1295 exhibitor, distributor, or commercial television or radio broadcaster;

1296 (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal
1297 property [by a coin-operated laundry or dry cleaning machine] if the cleaning or washing of the
1298 tangible personal property is not assisted cleaning or washing of tangible personal property;

1299 (b) if a seller that sells at the same business location assisted cleaning or washing of
1300 tangible personal property and cleaning or washing of tangible personal property that is not
1301 assisted cleaning or washing of tangible personal property, the exemption described in
1302 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning
1303 or washing of the tangible personal property; and

1304 (c) for purposes of Subsection (7)(b) and in accordance with Title 63, Chapter 46a,
1305 Utah Administrative Rulemaking Act, the commission may make rules:

1306 (i) governing the circumstances under which sales are at the same business location;
1307 and

1308 (ii) establishing the procedures and requirements for a seller to separately account for
1309 sales of assisted cleaning or washing of tangible personal property;

1310 (8) sales made to or by religious or charitable institutions in the conduct of their regular
1311 religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are
1312 fulfilled;

1313 (9) sales of vehicles of a type required to be registered under the motor vehicle laws of
1314 this state which are made to bona fide nonresidents of this state and are not afterwards
1315 registered or used in this state except as necessary to transport them to the borders of this state;

1316 (10) (a) amounts paid for an item described in Subsection (10)(b) if:

1317 (i) the item is intended for human use; and

1318 (ii) (A) a prescription was issued for the item; or

1319 (B) the item was purchased by a hospital or other medical facility; and

1320 (b) (i) Subsection (10)(a) applies to:

1321 (A) a drug;

1322 (B) a syringe; or

1323 (C) a stoma supply; and

1324 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1325 commission may by rule define the terms:

1326 (A) "syringe"; or

1327 (B) "stoma supply";

1328 (11) sales or use of property, materials, or services used in the construction of or
1329 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

- 1330 (12) (a) sales of an item described in Subsection (12)(c) served by:
- 1331 (i) the following if the item described in Subsection (12)(c) is not available to the
- 1332 general public:
- 1333 (A) a church; or
- 1334 (B) a charitable institution;
- 1335 (ii) an institution of higher education if:
- 1336 (A) the item described in Subsection (12)(c) is not available to the general public; or
- 1337 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
- 1338 offered by the institution of higher education; or
- 1339 (b) sales of an item described in Subsection (12)(c) provided for a patient by:
- 1340 (i) a medical facility; or
- 1341 (ii) a nursing facility; and
- 1342 (c) Subsections (12)(a) and (b) apply to:
- 1343 (i) food and food ingredients;
- 1344 (ii) prepared food; or
- 1345 (iii) alcoholic beverages;
- 1346 (13) isolated or occasional sales by persons not regularly engaged in business, except
- 1347 the sale of vehicles or vessels required to be titled or registered under the laws of this state in
- 1348 which case the tax is based upon:
- 1349 (a) the bill of sale or other written evidence of value of the vehicle or vessel being sold;
- 1350 or
- 1351 (b) in the absence of a bill of sale or other written evidence of value, the then existing
- 1352 fair market value of the vehicle or vessel being sold as determined by the commission;
- 1353 (14) (a) the following purchases or leases by a manufacturer on or after July 1, 1995:
- 1354 (i) machinery and equipment:
- 1355 (A) used in the manufacturing process;
- 1356 (B) having an economic life of three or more years; and
- 1357 (C) used:
- 1358 (I) to manufacture an item sold as tangible personal property; and
- 1359 (II) in new or expanding operations in a manufacturing facility in the state; and
- 1360 (ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:

- 1361 (A) have an economic life of three or more years;
- 1362 (B) are used in the manufacturing process in a manufacturing facility in the state;
- 1363 (C) are used to replace or adapt an existing machine to extend the normal estimated
1364 useful life of the machine; and
- 1365 (D) do not include repairs and maintenance;
- 1366 (b) the rates for the exemption under Subsection (14)(a)(ii) are as follows:
- 1367 (i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in
1368 Subsection (14)(a)(ii) is exempt;
- 1369 (ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described
1370 in Subsection (14)(a)(ii) is exempt; and
- 1371 (iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection
1372 (14)(a)(ii) is exempt;
- 1373 (c) for purposes of this Subsection (14), the commission shall by rule define the terms
1374 "new or expanding operations" and "establishment"; and
- 1375 (d) on or before October 1, 1991, and every five years after October 1, 1991, the
1376 commission shall:
- 1377 (i) review the exemptions described in Subsection (14)(a) and make recommendations
1378 to the Revenue and Taxation Interim Committee concerning whether the exemptions should be
1379 continued, modified, or repealed; and
- 1380 (ii) include in its report:
- 1381 (A) the cost of the exemptions;
- 1382 (B) the purpose and effectiveness of the exemptions; and
- 1383 (C) the benefits of the exemptions to the state;
- 1384 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:
- 1385 (i) tooling;
- 1386 (ii) special tooling;
- 1387 (iii) support equipment;
- 1388 (iv) special test equipment; or
- 1389 (v) parts used in the repairs or renovations of tooling or equipment described in
1390 Subsections (15)(a)(i) through (iv); and
- 1391 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:

1392 (i) the tooling, equipment, or parts are used or consumed exclusively in the
1393 performance of any aerospace or electronics industry contract with the United States
1394 government or any subcontract under that contract; and
1395 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
1396 title to the tooling, equipment, or parts is vested in the United States government as evidenced
1397 by:
1398 (A) a government identification tag placed on the tooling, equipment, or parts; or
1399 (B) listing on a government-approved property record if placing a government
1400 identification tag on the tooling, equipment, or parts is impractical;
1401 (16) intrastate movements of:
1402 (a) freight by common carriers; or
1403 (b) passengers:
1404 (i) by taxicabs as described in SIC Code 4121 of the 1987 Standard Industrial
1405 Classification Manual of the federal Executive Office of the President, Office of Management
1406 and Budget;
1407 (ii) transported by an establishment described in SIC Code 4111 of the 1987 Standard
1408 Industrial Classification Manual of the federal Executive Office of the President, Office of
1409 Management and Budget, if the transportation originates and terminates within a county of the
1410 first, second, or third class; or
1411 (iii) transported by the following described in SIC Code 4789 of the 1987 Standard
1412 Industrial Classification Manual of the federal Executive Office of the President, Office of
1413 Management and Budget:
1414 (A) a horse-drawn cab; or
1415 (B) a horse-drawn carriage;
1416 (17) sales of newspapers or newspaper subscriptions;
1417 (18) (a) except as provided in Subsection (18)(b), tangible personal property traded in
1418 as full or part payment of the purchase price, except that for purposes of calculating sales or use
1419 tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and
1420 the tax is based upon:
1421 (i) the bill of sale or other written evidence of value of the vehicle being sold and the
1422 vehicle being traded in; or

1423 (ii) in the absence of a bill of sale or other written evidence of value, the then existing
1424 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
1425 commission; and

1426 (b) notwithstanding Subsection (18)(a), Subsection (18)(a) does not apply to the
1427 following items of tangible personal property traded in as full or part payment of the purchase
1428 price:

1429 (i) money;

1430 (ii) electricity;

1431 (iii) water;

1432 (iv) gas; or

1433 (v) steam;

1434 (19) (a) (i) except as provided in Subsection (19)(b), sales of tangible personal property
1435 used or consumed primarily and directly in farming operations, regardless of whether the
1436 tangible personal property:

1437 (A) becomes part of real estate; or

1438 (B) is installed by a:

1439 (I) farmer;

1440 (II) contractor; or

1441 (III) subcontractor; or

1442 (ii) sales of parts used in the repairs or renovations of tangible personal property if the
1443 tangible personal property is exempt under Subsection (19)(a)(i); and

1444 (b) notwithstanding Subsection (19)(a), amounts paid or charged for the following
1445 tangible personal property are subject to the taxes imposed by this chapter:

1446 (i) (A) subject to Subsection (19)(b)(i)(B), the following tangible personal property if
1447 the tangible personal property is used in a manner that is incidental to farming:

1448 (I) machinery;

1449 (II) equipment;

1450 (III) materials; or

1451 (IV) supplies; and

1452 (B) tangible personal property that is considered to be used in a manner that is
1453 incidental to farming includes:

- 1454 (I) hand tools; or
- 1455 (II) maintenance and janitorial equipment and supplies;
- 1456 (ii) (A) subject to Subsection (19)(b)(ii)(B), tangible personal property if the tangible
- 1457 personal property is used in an activity other than farming; and
- 1458 (B) tangible personal property that is considered to be used in an activity other than
- 1459 farming includes:
 - 1460 (I) office equipment and supplies; or
 - 1461 (II) equipment and supplies used in:
 - 1462 (Aa) the sale or distribution of farm products;
 - 1463 (Bb) research; or
 - 1464 (Cc) transportation; or
 - 1465 (iii) a vehicle required to be registered by the laws of this state during the period ending
 - 1466 two years after the date of the vehicle's purchase;
 - 1467 (20) sales of hay;
 - 1468 (21) exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or
 - 1469 other agricultural produce if sold by a producer during the harvest season;
 - 1470 (22) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
 - 1471 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;
 - 1472 (23) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
 - 1473 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
 - 1474 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
 - 1475 manufacturer, processor, wholesaler, or retailer;
 - 1476 (24) property stored in the state for resale;
 - 1477 (25) property brought into the state by a nonresident for his or her own personal use or
 - 1478 enjoyment while within the state, except property purchased for use in Utah by a nonresident
 - 1479 living and working in Utah at the time of purchase;
 - 1480 (26) property purchased for resale in this state, in the regular course of business, either
 - 1481 in its original form or as an ingredient or component part of a manufactured or compounded
 - 1482 product;
 - 1483 (27) property upon which a sales or use tax was paid to some other state, or one of its
 - 1484 subdivisions, except that the state shall be paid any difference between the tax paid and the tax

1485 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if
1486 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax
1487 Act;

1488 (28) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a
1489 person for use in compounding a service taxable under the subsections;

1490 (29) purchases made in accordance with the special supplemental nutrition program for
1491 women, infants, and children established in 42 U.S.C. Sec. 1786;

1492 (30) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers,
1493 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens
1494 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification
1495 Manual of the federal Executive Office of the President, Office of Management and Budget;

1496 (31) sales of boats of a type required to be registered under Title 73, Chapter 18, State
1497 Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of
1498 this state and are not thereafter registered or used in this state except as necessary to transport
1499 them to the borders of this state;

1500 (32) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah
1501 where a sales or use tax is not imposed, even if the title is passed in Utah;

1502 (33) amounts paid for the purchase of telephone service for purposes of providing
1503 telephone service;

1504 (34) fares charged to persons transported directly by a public transit district created
1505 under the authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;

1506 (35) sales or leases of vehicles to, or use of vehicles by an authorized carrier;

1507 (36) (a) 45% of the sales price of any new manufactured home; and

1508 (b) 100% of the sales price of any used manufactured home;

1509 (37) sales relating to schools and fundraising sales;

1510 (38) sales or rentals of durable medical equipment if:

1511 (a) a person presents a prescription for the durable medical equipment; and

1512 (b) the durable medical equipment is used for home use only;

1513 (39) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
1514 Section 72-11-102; and

1515 (b) the commission shall by rule determine the method for calculating sales exempt

1516 under Subsection (39)(a) that are not separately metered and accounted for in utility billings;

1517 (40) sales to a ski resort of:

1518 (a) snowmaking equipment;

1519 (b) ski slope grooming equipment;

1520 (c) passenger ropeways as defined in Section 72-11-102; or

1521 (d) parts used in the repairs or renovations of equipment or passenger ropeways

1522 described in Subsections (40)(a) through (c);

1523 (41) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

1524 (42) ~~(a) subject to Subsection (42)(b),~~ sales or rentals of the right to use or operate for

1525 amusement, entertainment, or recreation ~~[a coin-operated]~~ an unassisted amusement device as

1526 defined in Section 59-12-102;

1527 (b) if a seller that sells or rents at the same business location the right to use or operate

1528 for amusement, entertainment, or recreation one or more unassisted amusement devices and

1529 one or more assisted amusement devices, the exemption described in Subsection (42)(a)

1530 applies if the seller separately accounts for the sales or rentals of the right to use or operate for

1531 amusement, entertainment, or recreation for the assisted amusement devices; and

1532 (c) for purposes of Subsection (42)(b) and in accordance with Title 63, Chapter 46a,

1533 Utah Administrative Rulemaking Act, the commission may make rules:

1534 (i) governing the circumstances under which sales are at the same business location;

1535 and

1536 (ii) establishing the procedures and requirements for a seller to separately account for

1537 the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for

1538 assisted amusement devices;

1539 ~~[(43) sales of cleaning or washing of tangible personal property by a coin-operated car~~

1540 ~~wash machine;]~~

1541 ~~[(44)] (43)~~ sales by the state or a political subdivision of the state, except state

1542 institutions of higher education as defined in Section 53B-3-102, of:

1543 (a) photocopies; or

1544 (b) other copies of records held or maintained by the state or a political subdivision of

1545 the state;

1546 ~~[(45)] (44)~~ (a) amounts paid:

- 1547 (i) to a person providing intrastate transportation to an employer's employee to or from
1548 the employee's primary place of employment;
- 1549 (ii) by an:
- 1550 (A) employee; or
- 1551 (B) employer; and
- 1552 (iii) pursuant to a written contract between:
- 1553 (A) the employer; and
- 1554 (B) (I) the employee; or
- 1555 (II) a person providing transportation to the employer's employee; and
- 1556 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1557 commission may for purposes of Subsection [~~(45)~~] (44)(a) make rules defining what constitutes
1558 an employee's primary place of employment;
- 1559 [~~(46)~~] (45) amounts paid for admission to an athletic event at an institution of higher
1560 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
1561 20 U.S.C. Sec. 1681 et seq.;
- 1562 [~~(47)~~] (46) sales of telephone service charged to a prepaid telephone calling card;
- 1563 [~~(48)~~] (47) (a) sales of:
- 1564 (i) hearing aids;
- 1565 (ii) hearing aid accessories; or
- 1566 (iii) except as provided in Subsection [~~(48)~~] (47)(b), parts used in the repairs or
1567 renovations of hearing aids or hearing aid accessories; and
- 1568 (b) for purposes of this Subsection [~~(48)~~] (47), notwithstanding Subsection [~~(48)~~]
1569 (47)(a)(iii), "parts" does not include batteries;
- 1570 [~~(49)~~] (48) (a) sales made to or by:
- 1571 (i) an area agency on aging; or
- 1572 (ii) a senior citizen center owned by a county, city, or town; or
- 1573 (b) sales made by a senior citizen center that contracts with an area agency on aging;
- 1574 [~~(50)~~] (49) (a) beginning on July 1, 2001, through June 30, 2007, and subject to
1575 Subsection [~~(50)~~] (49)(b), a sale or lease of semiconductor fabricating or processing materials
1576 regardless of whether the semiconductor fabricating or processing materials:
1577 (i) actually come into contact with a semiconductor; or

1578 (ii) ultimately become incorporated into real property;
1579 (b) (i) beginning on July 1, 2001, through June 30, 2002, 10% of the sale or lease
1580 described in Subsection [~~50~~] (49)(a) is exempt;
1581 (ii) beginning on July 1, 2002, through June 30, 2003, 50% of the sale or lease
1582 described in Subsection [~~50~~] (49)(a) is exempt; and
1583 (iii) beginning on July 1, 2003, through June 30, 2007, the entire amount of the sale or
1584 lease described in Subsection [~~50~~] (49)(a) is exempt; and
1585 (c) each year on or before the November interim meeting, the Revenue and Taxation
1586 Interim Committee shall:
1587 (i) review the exemption described in this Subsection [~~50~~] (49) and make
1588 recommendations concerning whether the exemption should be continued, modified, or
1589 repealed; and
1590 (ii) include in the review under this Subsection [~~50~~] (49)(c):
1591 (A) the cost of the exemption;
1592 (B) the purpose and effectiveness of the exemption; and
1593 (C) the benefits of the exemption to the state;
1594 [~~51~~] (50) an amount paid by or charged to a purchaser for accommodations and
1595 services described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under
1596 Section 59-12-104.2;
1597 [~~52~~] (51) beginning on September 1, 2001, the lease or use of a vehicle issued a
1598 temporary sports event registration certificate in accordance with Section 41-3-306 for the
1599 event period specified on the temporary sports event registration certificate;
1600 [~~53~~] (52) sales or uses of electricity, if the sales or uses are:
1601 (a) made under a tariff adopted by the Public Service Commission of Utah only for
1602 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy
1603 source, as designated in the tariff by the Public Service Commission of Utah; and
1604 (b) for an amount of electricity that is:
1605 (i) unrelated to the amount of electricity used by the person purchasing the electricity
1606 under the tariff described in Subsection [~~53~~] (52)(a); and
1607 (ii) equivalent to the number of kilowatthours specified in the tariff described in
1608 Subsection [~~53~~] (52)(a) that may be purchased under the tariff described in Subsection [~~53~~]

1609 (52)(a);
1610 ~~[(54)]~~ (53) sales or rentals of mobility enhancing equipment if a person presents a
1611 prescription for the mobility enhancing equipment;
1612 ~~[(55)]~~ (54) sales of water in a:
1613 (a) pipe;
1614 (b) conduit;
1615 (c) ditch; or
1616 (d) reservoir;
1617 ~~[(56)]~~ (55) sales of currency or coinage that constitute legal tender of the United States
1618 or of a foreign nation;
1619 ~~[(57)]~~ (56) (a) sales of an item described in Subsection ~~[(57)]~~ (56)(b) if the item:
1620 (i) does not constitute legal tender of any nation; and
1621 (ii) has a gold, silver, or platinum content of 80% or more; and
1622 (b) Subsection ~~[(57)]~~ (56)(a) applies to a gold, silver, or platinum:
1623 (i) ingot;
1624 (ii) bar;
1625 (iii) medallion; or
1626 (iv) decorative coin;
1627 ~~[(58)]~~ (57) amounts paid on a sale-leaseback transaction;
1628 ~~[(59)]~~ (58) sales of a prosthetic device:
1629 (a) for use on or in a human;
1630 (b) for which a prescription is issued; and
1631 (c) to a person that presents a prescription for the prosthetic device;
1632 ~~[(60)]~~ (59) (a) except as provided in Subsection ~~[(60)]~~ (59)(b), purchases, leases, or
1633 rentals of machinery or equipment by an establishment described in Subsection ~~[(60)]~~ (59)(c) if
1634 the machinery or equipment is primarily used in the production or postproduction of the
1635 following media for commercial distribution:
1636 (i) a motion picture;
1637 (ii) a television program;
1638 (iii) a movie made for television;
1639 (iv) a music video;

1640 (v) a commercial;

1641 (vi) a documentary; or

1642 (vii) a medium similar to Subsections [~~60~~] (59)(a)(i) through (vi) as determined by

1643 the commission by administrative rule made in accordance with Subsection [~~60~~] (59)(d); or

1644 (b) notwithstanding Subsection [~~60~~] (59)(a), purchases, leases, or rentals of

1645 machinery or equipment by an establishment described in Subsection [~~60~~] (59)(c) that is used

1646 for the production or postproduction of the following are subject to the taxes imposed by this

1647 chapter:

1648 (i) a live musical performance;

1649 (ii) a live news program; or

1650 (iii) a live sporting event;

1651 (c) the following establishments listed in the 1997 North American Industry

1652 Classification System of the federal Executive Office of the President, Office of Management

1653 and Budget, apply to Subsections [~~60~~] (59)(a) and (b):

1654 (i) NAICS Code 512110; or

1655 (ii) NAICS Code 51219; and

1656 (d) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

1657 commission may by rule:

1658 (i) prescribe what constitutes a medium similar to Subsections [~~60~~] (59)(a)(i) through

1659 (vi); or

1660 (ii) define:

1661 (A) "commercial distribution";

1662 (B) "live musical performance";

1663 (C) "live news program"; or

1664 (D) "live sporting event";

1665 [~~61~~] (60) (a) leases of seven or more years or purchases made on or after July 1, 2004

1666 but on or before June 30, 2009, of machinery or equipment that:

1667 (i) is leased or purchased for or by a facility that:

1668 (A) is a renewable energy production facility;

1669 (B) is located in the state; and

1670 (C) (I) becomes operational on or after July 1, 2004; or

1671 (II) has its generation capacity increased by one or more megawatts on or after July 1,
1672 2004 as a result of the use of the machinery or equipment;

1673 (ii) has an economic life of five or more years; and

1674 (iii) is used to make the facility or the increase in capacity of the facility described in
1675 Subsection [~~(61)~~] (60)(a)(i) operational up to the point of interconnection with an existing
1676 transmission grid including:

1677 (A) a wind turbine;

1678 (B) generating equipment;

1679 (C) a control and monitoring system;

1680 (D) a power line;

1681 (E) substation equipment;

1682 (F) lighting;

1683 (G) fencing;

1684 (H) pipes; or

1685 (I) other equipment used for locating a power line or pole; and

1686 (b) this Subsection [~~(61)~~] (60) does not apply to:

1687 (i) machinery or equipment used in construction of:

1688 (A) a new renewable energy production facility; or

1689 (B) the increase in the capacity of a renewable energy production facility;

1690 (ii) contracted services required for construction and routine maintenance activities;

1691 and

1692 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
1693 of the facility described in Subsection [~~(61)~~] (60)(a)(i)(C)(II), machinery or equipment used or
1694 acquired after:

1695 (A) the renewable energy production facility described in Subsection [~~(61)~~] (60)(a)(i) is
1696 operational as described in Subsection [~~(61)~~] (60)(a)(iii); or

1697 (B) the increased capacity described in Subsection [~~(61)~~] (60)(a)(i) is operational as
1698 described in Subsection [~~(61)~~] (60)(a)(iii);

1699 [~~(62)~~] (61) (a) leases of seven or more years or purchases made on or after July 1, 2004
1700 but on or before June 30, 2009, of machinery or equipment that:

1701 (i) is leased or purchased for or by a facility that:

1702 (A) is a waste energy production facility;
1703 (B) is located in the state; and
1704 (C) (I) becomes operational on or after July 1, 2004; or
1705 (II) has its generation capacity increased by one or more megawatts on or after July 1,
1706 2004 as a result of the use of the machinery or equipment;
1707 (ii) has an economic life of five or more years; and
1708 (iii) is used to make the facility or the increase in capacity of the facility described in
1709 Subsection [~~62~~] (61)(a)(i) operational up to the point of interconnection with an existing
1710 transmission grid including:
1711 (A) generating equipment;
1712 (B) a control and monitoring system;
1713 (C) a power line;
1714 (D) substation equipment;
1715 (E) lighting;
1716 (F) fencing;
1717 (G) pipes; or
1718 (H) other equipment used for locating a power line or pole; and
1719 (b) this Subsection [~~62~~] (61) does not apply to:
1720 (i) machinery or equipment used in construction of:
1721 (A) a new waste energy facility; or
1722 (B) the increase in the capacity of a waste energy facility;
1723 (ii) contracted services required for construction and routine maintenance activities;
1724 and
1725 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
1726 described in Subsection [~~62~~] (61)(a)(i)(C)(II), machinery or equipment used or acquired after:
1727 (A) the waste energy facility described in Subsection [~~62~~] (61)(a)(i) is operational as
1728 described in Subsection [~~62~~] (61)(a)(iii); or
1729 (B) the increased capacity described in Subsection [~~62~~] (61)(a)(i) is operational as
1730 described in Subsection [~~62~~] (61)(a)(iii);
1731 [~~63~~] (62) (a) leases of five or more years or purchases made on or after July 1, 2004
1732 but on or before June 30, 2009, of machinery or equipment that:

- 1733 (i) is leased or purchased for or by a facility that:
- 1734 (A) is located in the state;
- 1735 (B) produces fuel from biomass energy including:
- 1736 (I) methanol; or
- 1737 (II) ethanol; and
- 1738 (C) (I) becomes operational on or after July 1, 2004; or
- 1739 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004 as
- 1740 a result of the installation of the machinery or equipment;
- 1741 (ii) has an economic life of five or more years; and
- 1742 (iii) is installed on the facility described in Subsection ~~[(63)]~~ (62)(a)(i);
- 1743 (b) this Subsection ~~[(63)]~~ (62) does not apply to:
- 1744 (i) machinery or equipment used in construction of:
- 1745 (A) a new facility described in Subsection ~~[(63)]~~ (62)(a)(i); or
- 1746 (B) the increase in capacity of the facility described in Subsection ~~[(63)]~~ (62)(a)(i); or
- 1747 (ii) contracted services required for construction and routine maintenance activities;
- 1748 and
- 1749 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
- 1750 described in Subsection ~~[(63)]~~ (62)(a)(i)(C)(II), machinery or equipment used or acquired after:
- 1751 (A) the facility described in Subsection ~~[(63)]~~ (62)(a)(i) is operational; or
- 1752 (B) the increased capacity described in Subsection ~~[(63)]~~ (62)(a)(i) is operational;
- 1753 ~~[(64)]~~ (63) amounts paid to a purchaser as a rebate from the manufacturer of a new
- 1754 vehicle for purchasing the new vehicle;
- 1755 ~~[(65)]~~ (64) (a) subject to Subsection ~~[(65)]~~ (64)(b), sales of tangible personal property
- 1756 to persons within this state that is subsequently shipped outside the state and incorporated
- 1757 pursuant to contract into and becomes a part of real property located outside of this state,
- 1758 except to the extent that the other state or political entity imposes a sales, use, gross receipts, or
- 1759 other similar transaction excise tax on it against which the other state or political entity allows
- 1760 a credit for taxes imposed by this chapter; and
- 1761 (b) the exemption provided for in Subsection ~~[(65)]~~ (64)(a):
- 1762 (i) is allowed only if the exemption is applied:
- 1763 (A) in calculating the purchase price of the tangible personal property; and

- 1764 (B) to a written contract that is in effect on July 1, 2004; and
- 1765 (ii) (A) does not apply beginning on the day on which the contract described in
- 1766 Subsection [~~(65)~~] (64)(b)(i):
- 1767 (I) is substantially modified; or
- 1768 (II) terminates; and
- 1769 (B) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
- 1770 the commission may by rule prescribe the circumstances under which a contract is substantially
- 1771 modified;
- 1772 [~~(66)~~] (65) purchases:
- 1773 (a) of one or more of the following items in printed or electronic format:
- 1774 (i) a list containing information that includes one or more:
- 1775 (A) names; or
- 1776 (B) addresses; or
- 1777 (ii) a database containing information that includes one or more:
- 1778 (A) names; or
- 1779 (B) addresses; and
- 1780 (b) used to send direct mail; and
- 1781 [~~(67)~~] (66) redemptions or repurchases of property by a person if that property was:
- 1782 (a) delivered to a pawnbroker as part of a pawn transaction; and
- 1783 (b) redeemed or repurchased within the time period established in a written agreement
- 1784 between the person and the pawnbroker for redeeming or repurchasing the property.
- 1785 Section 5. Section **59-12-105 (Portions Eff 07/01/06 See 59-1-1201)** is amended to
- 1786 read:
- 1787 **59-12-105 (Portions Eff 07/01/06 See 59-1-1201). Certain exempt sales to be**
- 1788 **reported -- Report by seller that files a simplified electronic return -- Penalties.**
- 1789 (1) An owner or purchaser shall report to the commission the amount of sales or uses
- 1790 exempt under Subsection 59-12-104(14) or [~~(50)~~] (49).
- 1791 (2) (a) A seller that files a simplified electronic return with the commission shall file a
- 1792 report containing the information described in Subsection (2)(b).
- 1793 (b) The report required by Subsection (2)(a) shall contain the following amounts:
- 1794 (i) for each store location that the seller has within the state:

- 1795 (A) the total amount of sales;
- 1796 (B) the total amount of sales that are exempt from a tax imposed by this chapter; and
- 1797 (C) the difference between the amount described in Subsection (2)(b)(i)(A) and the
- 1798 amount described in Subsection (2)(b)(i)(B);
- 1799 (ii) for the total amount of sales that the seller makes from a location in the state other
- 1800 than a fixed place of business in the state:
- 1801 (A) the total amount of sales;
- 1802 (B) the total amount of sales that are exempt from a tax imposed by this chapter; and
- 1803 (C) the difference between the amount described in Subsection (2)(b)(ii)(A) and the
- 1804 amount described in Subsection (2)(b)(ii)(B); and
- 1805 (iii) for the total amount of sales that the seller makes where inventory is shipped from
- 1806 a location outside the state:
- 1807 (A) the total amount of sales;
- 1808 (B) the total amount of sales that are exempt from a tax imposed by this chapter; and
- 1809 (C) the difference between the amount described in Subsection (2)(b)(iii)(A) and the
- 1810 amount described in Subsection (2)(b)(iii)(B).
- 1811 (3) (a) A report required by Subsection (1) or (2) shall be filed:
- 1812 (i) with the commission; and
- 1813 (ii) on a form prescribed by the commission.
- 1814 (b) A report required by Subsection (2) shall be filed electronically.
- 1815 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 1816 commission shall make rules providing:
- 1817 (i) the information required to be included in the reports described in Subsections (1)
- 1818 and (2); and
- 1819 (ii) one or more due dates for filing the reports described in:
- 1820 (A) Subsection (1); and
- 1821 (B) Subsection (2).
- 1822 (4) (a) Notwithstanding Section 59-1-401, and except as provided in Subsections (4)(b)
- 1823 and (6), if the owner or purchaser fails to report the full amount of the exemptions granted
- 1824 under Subsection 59-12-104(14) or [~~50~~] (49) on the report required by Subsection (1), the
- 1825 commission shall impose a penalty equal to the lesser of:

1826 (i) 10% of the sales and use tax that would have been imposed if the exemption had not
1827 applied; or

1828 (ii) \$1,000.

1829 (b) Notwithstanding Subsection (4)(a)(i), the commission may not impose a penalty
1830 under Subsection (4)(a)(i) if the owner or purchaser files an amended report:

1831 (i) containing the amount of the exemption; and

1832 (ii) before the owner or purchaser receives a notice of audit from the commission.

1833 (5) Notwithstanding Section 59-1-401, and except as provided in Subsection (6), if a
1834 seller fails to report the amounts required by Subsection (2), the commission shall impose a
1835 penalty of \$1,000.

1836 (6) (a) Notwithstanding Subsection (4)(a) or (5), the commission may waive, reduce, or
1837 compromise a penalty imposed under this section if the commission finds there are reasonable
1838 grounds for the waiver, reduction, or compromise.

1839 (b) If the commission waives, reduces, or compromises a penalty under Subsection
1840 (6)(a), the commission shall make a record of the grounds for waiving, reducing, or
1841 compromising the penalty.

1842 Section 6. **Effective date.**

1843 This bill takes effect on July 1, 2006.

Legislative Review Note
as of 11-29-05 7:13 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Mixed Membership Committee Note
as of 12-21-05 2:51 PM

The Tax Reform Task Force recommended this bill.

Membership:	13 legislators	2 non-legislators		
Legislative Vote:	5 voting for	3 voting against	5 absent	

Fiscal Note
Bill Number HB0051

**Sales and Use Taxation of Amusement Devices and
Cleaning or Washing of Tangible Personal Property**

06-Feb-06
11:31 AM

AMENDED NOTE

State Impact

Passage of this bill could decrease the General Fund by approximately \$5,000 annually.
There is a corresponding loss of local revenue of \$1,900 annually.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>
General Fund	\$0	\$0	(\$5,000)	(\$5,000)
Local Revenue	\$0	\$0	(\$1,900)	(\$1,900)
TOTAL	\$0	\$0	(\$6,900)	(\$6,900)

Individual and Business Impact

Certain entities will receive a tax reduction.

Office of the Legislative Fiscal Analyst