

30 **59-12-104**, as last amended by Chapters 158, 203, 209, 240 and 246, Laws of Utah

31 2005

32 **59-12-104.5**, as last amended by Chapter 303, Laws of Utah 2001

33 **59-12-105 (Portions Eff 07/01/06 See 59-1-1201)**, as last amended by Chapters 156

34 and 255, Laws of Utah 2004



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

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

38 **59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

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

42 (i) a tax commissioner;

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

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

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

49 (i) in accordance with judicial order;

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

51 (A) this title; or

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

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

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

57 (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may

58 admit in evidence, any portion of a return or of the facts shown by the return, as are specifically
59 pertinent to the action or proceeding.

60 (2) This section does not prohibit:

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

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

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

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

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

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

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

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

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

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

83 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and
84 corporate franchise tax, the commission may by rule, in accordance with Title 63, Chapter 46a,
85 Utah Administrative Rulemaking Act, provide for the issuance of information concerning the

86 identity and other information of taxpayers who have failed to file tax returns or to pay any tax
87 due.

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

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

96 (i) Chapter 13, Part 2, Motor Fuel; or

97 (ii) Chapter 13, Part 4, Aviation Fuel.

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

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

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

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

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

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

112 (A) reported to the commission under Section 59-14-212; or

113 (B) related to a violation under Section 59-14-211; and

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

116 (i) Notwithstanding Subsection (1), the commission shall, at the request of a committee
117 of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning
118 and Budget, provide to the committee or office the total amount of revenues collected by the
119 commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period
120 specified by the committee or office.

121 (j) Notwithstanding Subsection (1), the commission shall at the request of the
122 Legislature provide to the Legislature the total amount of sales or uses exempt under
123 Subsection 59-12-104~~(50)~~(47) reported to the commission in accordance with Section
124 59-12-105.

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

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

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

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

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

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

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

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

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

140 **59-12-102. Definitions.**

141 As used in this chapter:

- 142 (1) (a) "Admission or user fees" includes season passes.
- 143 (b) "Admission or user fees" does not include annual membership dues to private
144 organizations.
- 145 (2) "Agreement" means the Streamlined Sales and Use Tax Agreement described in
146 Section 59-12-102.1.
- 147 (3) "Agreement combined tax rate" means the sum of the tax rates:
- 148 (a) listed under Subsection (4); and
- 149 (b) that are imposed within a local taxing jurisdiction.
- 150 (4) "Agreement sales and use tax" means a tax imposed under:
- 151 (a) Subsection 59-12-103(2)(a)(i);
- 152 (b) Section 59-12-204;
- 153 (c) Section 59-12-401;
- 154 (d) Section 59-12-402;
- 155 (e) Section 59-12-501;
- 156 (f) Section 59-12-502;
- 157 (g) Section 59-12-703;
- 158 (h) Section 59-12-802;
- 159 (i) Section 59-12-804;
- 160 (j) Section 59-12-1001;
- 161 (k) Section 59-12-1102;
- 162 (l) Section 59-12-1302;
- 163 (m) Section 59-12-1402; or
- 164 (n) Section 59-12-1503.
- 165 (5) "Aircraft" is as defined in Section 72-10-102.
- 166 (6) "Alcoholic beverage" means a beverage that:
- 167 (a) is suitable for human consumption; and
- 168 (b) contains .5% or more alcohol by volume.
- 169 (7) "Area agency on aging" is as defined in Section 62A-3-101.

- 170 (8) "Authorized carrier" means:
- 171 (a) in the case of vehicles operated over public highways, the holder of credentials
- 172 indicating that the vehicle is or will be operated pursuant to both the International Registration
- 173 Plan and the International Fuel Tax Agreement;
- 174 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating
- 175 certificate or air carrier's operating certificate; or
- 176 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling
- 177 stock, the holder of a certificate issued by the United States Surface Transportation Board.
- 178 (9) (a) Except as provided in Subsection (9)(b), "biomass energy" means any of the
- 179 following that is used as the primary source of energy to produce fuel or electricity:
- 180 (i) material from a plant or tree; or
- 181 (ii) other organic matter that is available on a renewable basis, including:
- 182 (A) slash and brush from forests and woodlands;
- 183 (B) animal waste;
- 184 (C) methane produced:
- 185 (I) at landfills; or
- 186 (II) as a byproduct of the treatment of wastewater residuals;
- 187 (D) aquatic plants; and
- 188 (E) agricultural products.
- 189 (b) "Biomass energy" does not include:
- 190 (i) black liquor;
- 191 (ii) treated woods; or
- 192 (iii) biomass from municipal solid waste other than methane produced:
- 193 (A) at landfills; or
- 194 (B) as a byproduct of the treatment of wastewater residuals.
- 195 (10) "Certified automated system" means software certified by the governing board of
- 196 the agreement in accordance with Section 59-12-102.1 that:
- 197 (a) calculates the agreement sales and use tax imposed within a local taxing

198 jurisdiction:

199 (i) on a transaction; and

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

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

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

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

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

206 and

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

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

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

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

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

217 (13) (a) For purposes of Subsection 59-12-104[~~(42)~~](40), "coin-operated amusement
218 device" means:

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

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

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

223 (b) For purposes of Subsection 59-12-104[~~(42)~~](40), "coin-operated amusement
224 device" does not mean a coin-operated amusement device possessing a coinage mechanism
225 that:

226 (i) accepts and registers multiple denominations of coins; and
227 (ii) allows the seller to collect the sales and use tax at the time an amusement device is
228 activated and operated by a person inserting coins into the device.

229 (14) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
230 fuels that does not constitute industrial use under Subsection (34) or residential use under
231 Subsection (68).

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

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

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

240 (16) "Component part" includes:

- 241 (a) poultry, dairy, and other livestock feed, and their components;
- 242 (b) baling ties and twine used in the baling of hay and straw;
- 243 (c) fuel used for providing temperature control of orchards and commercial
244 greenhouses doing a majority of their business in wholesale sales, and for providing power for
245 off-highway type farm machinery; and
- 246 (d) feed, seeds, and seedlings.

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

- 248 (a) (i) in digital form; or
- 249 (ii) in a form similar to digital form; and
- 250 (b) manipulates that information for a result based on a sequence of instructions.

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

- 252 (a) a computer to perform a task; or
- 253 (b) automatic data processing equipment to perform a task.

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

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

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

259 (i) by a seller of:

260 (A) tangible personal property; or

261 (B) services; and

262 (ii) for preparation and delivery of the tangible personal property or services described
263 in Subsection (21)(a)(i) to a location designated by the purchaser.

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

265 (i) transportation;

266 (ii) shipping;

267 (iii) postage;

268 (iv) handling;

269 (v) crating; or

270 (vi) packing.

271 (22) "Dietary supplement" means a product, other than tobacco, that:

272 (a) is intended to supplement the diet;

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

274 (i) a vitamin;

275 (ii) a mineral;

276 (iii) an herb or other botanical;

277 (iv) an amino acid;

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

280 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
281 described in Subsections (22)(b)(i) through (v);

- 282 (c) (i) except as provided in Subsection (22)(c)(ii), is intended for ingestion in:
283 (A) tablet form;
284 (B) capsule form;
285 (C) powder form;
286 (D) softgel form;
287 (E) gelcap form; or
288 (F) liquid form; or
289 (ii) notwithstanding Subsection (22)(c)(i), if the product is not intended for ingestion in
290 a form described in Subsections (22)(c)(i)(A) through (F), is not represented:
291 (A) as conventional food; and
292 (B) for use as a sole item of:
293 (I) a meal; or
294 (II) the diet; and
295 (d) is required to be labeled as a dietary supplement:
296 (i) identifiable by the "Supplemental Facts" box found on the label; and
297 (ii) as required by 21 C.F.R. Sec. 101.36.
298 (23) (a) "Direct mail" means printed material delivered or distributed by United States
299 mail or other delivery service:
300 (i) to:
301 (A) a mass audience; or
302 (B) addressees on a mailing list provided by a purchaser of the mailing list; and
303 (ii) if the cost of the printed material is not billed directly to the recipients.
304 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
305 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
306 (c) "Direct mail" does not include multiple items of printed material delivered to a
307 single address.
308 (24) (a) "Drug" means a compound, substance, or preparation, or a component of a
309 compound, substance, or preparation that is:

- 310 (i) recognized in:
- 311 (A) the official United States Pharmacopoeia;
- 312 (B) the official Homeopathic Pharmacopoeia of the United States;
- 313 (C) the official National Formulary; or
- 314 (D) a supplement to a publication listed in Subsections (24)(a)(i)(A) through (C);
- 315 (ii) intended for use in the:
- 316 (A) diagnosis of disease;
- 317 (B) cure of disease;
- 318 (C) mitigation of disease;
- 319 (D) treatment of disease; or
- 320 (E) prevention of disease; or
- 321 (iii) intended to affect:
- 322 (A) the structure of the body; or
- 323 (B) any function of the body.
- 324 (b) "Drug" does not include:
- 325 (i) food and food ingredients;
- 326 (ii) a dietary supplement;
- 327 (iii) an alcoholic beverage; or
- 328 (iv) a prosthetic device.
- 329 (25) (a) Except as provided in Subsection (25)(c), "durable medical equipment" means
- 330 equipment that:
- 331 (i) can withstand repeated use;
- 332 (ii) is primarily and customarily used to serve a medical purpose;
- 333 (iii) generally is not useful to a person in the absence of illness or injury; and
- 334 (iv) is not worn in or on the body.
- 335 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 336 equipment described in Subsection (25)(a).
- 337 (c) Notwithstanding Subsection (25)(a), "durable medical equipment" does not include

- 338 mobility enhancing equipment.
- 339 (26) "Electronic" means:
- 340 (a) relating to technology; and
- 341 (b) having:
- 342 (i) electrical capabilities;
- 343 (ii) digital capabilities;
- 344 (iii) magnetic capabilities;
- 345 (iv) wireless capabilities;
- 346 (v) optical capabilities;
- 347 (vi) electromagnetic capabilities; or
- 348 (vii) capabilities similar to Subsections (26)(b)(i) through (vi).
- 349 (27) (a) "Food and food ingredients" means substances:
- 350 (i) regardless of whether the substances are in:
- 351 (A) liquid form;
- 352 (B) concentrated form;
- 353 (C) solid form;
- 354 (D) frozen form;
- 355 (E) dried form; or
- 356 (F) dehydrated form; and
- 357 (ii) that are:
- 358 (A) sold for:
- 359 (I) ingestion by humans; or
- 360 (II) chewing by humans; and
- 361 (B) consumed for the substance's:
- 362 (I) taste; or
- 363 (II) nutritional value.
- 364 (b) "Food and food ingredients" does not include:
- 365 (i) an alcoholic beverage;

- 366 (ii) tobacco; or
- 367 (iii) prepared food.
- 368 (28) (a) "Fundraising sales" means sales:
- 369 (i) (A) made by a school; or
- 370 (B) made by a school student;
- 371 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 372 materials, or provide transportation; and
- 373 (iii) that are part of an officially sanctioned school activity.
- 374 (b) For purposes of Subsection (28)(a)(iii), "officially sanctioned school activity"
- 375 means a school activity:
- 376 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 377 district governing the authorization and supervision of fundraising activities;
- 378 (ii) that does not directly or indirectly compensate an individual teacher or other
- 379 educational personnel by direct payment, commissions, or payment in kind; and
- 380 (iii) the net or gross revenues from which are deposited in a dedicated account
- 381 controlled by the school or school district.
- 382 (29) "Geothermal energy" means energy contained in heat that continuously flows
- 383 outward from the earth that is used as the sole source of energy to produce electricity.
- 384 (30) "Governing board of the agreement" means the governing board of the agreement
- 385 that is:
- 386 (a) authorized to administer the agreement; and
- 387 (b) established in accordance with the agreement.
- 388 (31) (a) "Hearing aid" means:
- 389 (i) an instrument or device having an electronic component that is designed to:
- 390 (A) (I) improve impaired human hearing; or
- 391 (II) correct impaired human hearing; and
- 392 (B) (I) be worn in the human ear; or
- 393 (II) affixed behind the human ear;

- 394 (ii) an instrument or device that is surgically implanted into the cochlea; or
- 395 (iii) a telephone amplifying device.
- 396 (b) "Hearing aid" does not include:
- 397 (i) except as provided in Subsection (31)(a)(i)(B) or (31)(a)(ii), an instrument or device
- 398 having an electronic component that is designed to be worn on the body;
- 399 (ii) except as provided in Subsection (31)(a)(iii), an assistive listening device or system
- 400 designed to be used by one individual, including:
- 401 (A) a personal amplifying system;
- 402 (B) a personal FM system;
- 403 (C) a television listening system; or
- 404 (D) a device or system similar to a device or system described in Subsections
- 405 (31)(b)(ii)(A) through (C); or
- 406 (iii) an assistive listening device or system designed to be used by more than one
- 407 individual, including:
- 408 (A) a device or system installed in:
- 409 (I) an auditorium;
- 410 (II) a church;
- 411 (III) a conference room;
- 412 (IV) a synagogue; or
- 413 (V) a theater; or
- 414 (B) a device or system similar to a device or system described in Subsections
- 415 (31)(b)(iii)(A)(I) through (V).
- 416 (32) (a) "Hearing aid accessory" means a hearing aid:
- 417 (i) component;
- 418 (ii) attachment; or
- 419 (iii) accessory.
- 420 (b) "Hearing aid accessory" includes:
- 421 (i) a hearing aid neck loop;

- 422 (ii) a hearing aid cord;
- 423 (iii) a hearing aid ear mold;
- 424 (iv) hearing aid tubing;
- 425 (v) a hearing aid ear hook; or
- 426 (vi) a hearing aid remote control.
- 427 (c) "Hearing aid accessory" does not include:
- 428 (i) a component, attachment, or accessory designed to be used only with an:
- 429 (A) instrument or device described in Subsection (31)(b)(i); or
- 430 (B) assistive listening device or system described in Subsection (31)(b)(ii) or (iii); or
- 431 (ii) a hearing aid battery.
- 432 (33) "Hydroelectric energy" means water used as the sole source of energy to produce
- 433 electricity.
- 434 (34) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
- 435 other fuels:
- 436 (a) in mining or extraction of minerals;
- 437 (b) in agricultural operations to produce an agricultural product up to the time of
- 438 harvest or placing the agricultural product into a storage facility, including:
- 439 (i) commercial greenhouses;
- 440 (ii) irrigation pumps;
- 441 (iii) farm machinery;
- 442 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
- 443 registered under Title 41, Chapter 1a, Part 2, Registration; and
- 444 (v) other farming activities;
- 445 (c) in manufacturing tangible personal property at an establishment described in SIC
- 446 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
- 447 Executive Office of the President, Office of Management and Budget; or
- 448 (d) by a scrap recycler if:
- 449 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process

450 one or more of the following items into prepared grades of processed materials for use in new
451 products:

- 452 (A) iron;
- 453 (B) steel;
- 454 (C) nonferrous metal;
- 455 (D) paper;
- 456 (E) glass;
- 457 (F) plastic;
- 458 (G) textile; or
- 459 (H) rubber; and

460 (ii) the new products under Subsection (34)(d)(i) would otherwise be made with
461 nonrecycled materials.

462 (35) (a) Except as provided in Subsection (35)(b), "installation charge" means a charge
463 for installing tangible personal property.

464 (b) Notwithstanding Subsection (35)(a), "installation charge" does not include a charge
465 for repairs or renovations of tangible personal property.

466 (36) (a) "Lease" or "rental" means a transfer of possession or control of tangible
467 personal property for:

- 468 (i) (A) a fixed term; or
- 469 (B) an indeterminate term; and
- 470 (ii) consideration.

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

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

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

478 payments;

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

480 transfer of title:

481 (A) upon completion of required payments; and

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

483 (I) \$100; or

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

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

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

487 designed.

488 (d) For purposes of Subsection (36)(c)(iii), an operator is necessary for equipment to

489 perform as designed if the operator's duties exceed the:

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

491 (ii) maintenance of tangible personal property; or

492 (iii) inspection of tangible personal property.

493 (37) "Load and leave" means delivery to a purchaser by use of a tangible storage media

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

495 (38) "Local taxing jurisdiction" means a:

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

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

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

499 (39) "Manufactured home" is as defined in Section 58-56-3.

500 (40) For purposes of [~~Subsection~~] Section 59-12-104[~~(14)~~], "manufacturing facility"

501 means:

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

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

504 Management and Budget; or

505 (b) a scrap recycler if:

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

- 509 (A) iron;
- 510 (B) steel;
- 511 (C) nonferrous metal;
- 512 (D) paper;
- 513 (E) glass;
- 514 (F) plastic;
- 515 (G) textile; or
- 516 (H) rubber; and

517 (ii) the new products under Subsection (40)(b)(i) would otherwise be made with
518 nonrecycled materials.

519 (41) "Mobile home" is as defined in Section 58-56-3.

520 (42) "Mobile telecommunications service" is as defined in the Mobile
521 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

522 (43) (a) Except as provided in Subsection (43)(c), "mobility enhancing equipment"
523 means equipment that is:

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

526 (ii) appropriate for use in a:

- 527 (A) home; or
- 528 (B) motor vehicle; and

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

530 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
531 the equipment described in Subsection (43)(a).

532 (c) Notwithstanding Subsection (43)(a), "mobility enhancing equipment" does not
533 include:

- 534 (i) a motor vehicle;
- 535 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
- 536 vehicle manufacturer;
- 537 (iii) durable medical equipment; or
- 538 (iv) a prosthetic device.
- 539 (44) "Model 1 seller" means a seller that has selected a certified service provider as the
- 540 seller's agent to perform all of the seller's sales and use tax functions for agreement sales and
- 541 use taxes other than the seller's obligation under Section 59-12-107.4 to remit a tax on the
- 542 seller's own purchases.
- 543 (45) "Model 2 seller" means a seller that:
- 544 (a) except as provided in Subsection (45)(b), has selected a certified automated system
- 545 to perform the seller's sales tax functions for agreement sales and use taxes; and
- 546 (b) notwithstanding Subsection (45)(a), retains responsibility for remitting all of the
- 547 sales tax:
 - 548 (i) collected by the seller; and
 - 549 (ii) to the appropriate local taxing jurisdiction.
- 550 (46) (a) Subject to Subsection (46)(b), "model 3 seller" means a seller that has:
 - 551 (i) sales in at least five states that are members of the agreement;
 - 552 (ii) total annual sales revenues of at least \$500,000,000;
 - 553 (iii) a proprietary system that calculates the amount of tax:
 - 554 (A) for an agreement sales and use tax; and
 - 555 (B) due to each local taxing jurisdiction; and
 - 556 (iv) entered into a performance agreement with the governing board of the agreement.
 - 557 (b) For purposes of Subsection (46)(a), "model 3 seller" includes an affiliated group of
 - 558 sellers using the same proprietary system.
- 559 (47) "Modular home" means a modular unit as defined in Section 58-56-3.
- 560 (48) "Motor vehicle" is as defined in Section 41-1a-102.
- 561 (49) (a) "Other fuels" means products that burn independently to produce heat or

562 energy.

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

565 (50) "Pawnbroker" is as defined in Section 13-32a-102.

566 (51) "Pawn transaction" is as defined in Section 13-32a-102.

567 (52) (a) "Permanently attached to real property" means that for tangible personal
568 property attached to real property:

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

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

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

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

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

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

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

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

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

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

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

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

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

588 (A) convenience;

589 (B) stability; or

590 (C) for an obvious temporary purpose; or

591 (ii) the detachment of tangible personal property from real property other than the
592 detachment described in Subsection (52)(b)(ii).

593 (53) "Person" includes any individual, firm, partnership, joint venture, association,
594 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
595 municipality, district, or other local governmental entity of the state, or any group or
596 combination acting as a unit.

597 (54) "Place of primary use":

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

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

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

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

605 (55) "Postproduction" means an activity related to the finishing or duplication of a
606 medium described in Subsection 59-12-104[~~(60)~~](57)(a).

607 (56) (a) "Prepared food" means:

608 (i) food:

609 (A) sold in a heated state; or

610 (B) heated by a seller;

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

613 (iii) except as provided in Subsection (56)(c), food sold with an eating utensil provided
614 by the seller, including a:

615 (A) plate;

616 (B) knife;

617 (C) fork;

- 618 (D) spoon;
- 619 (E) glass;
- 620 (F) cup;
- 621 (G) napkin; or
- 622 (H) straw.
- 623 (b) "Prepared food" does not include:
- 624 (i) food that a seller only:
- 625 (A) cuts;
- 626 (B) repackages; or
- 627 (C) pasteurizes; or
- 628 (ii) (A) the following:
- 629 (I) raw egg;
- 630 (II) raw fish;
- 631 (III) raw meat;
- 632 (IV) raw poultry; or
- 633 (V) a food containing an item described in Subsections (56)(b)(ii)(A)(I) through (IV);
- 634 and
- 635 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 636 Food and Drug Administration's Food Code that a consumer cook the items described in
- 637 Subsection (56)(b)(ii)(A) to prevent food borne illness.
- 638 (c) Notwithstanding Subsection (56)(a)(iii), an eating utensil provided by the seller
- 639 does not include the following used to transport the food:
- 640 (i) a container; or
- 641 (ii) packaging.
- 642 (57) "Prescription" means an order, formula, or recipe that is issued:
- 643 (a) (i) orally;
- 644 (ii) in writing;
- 645 (iii) electronically; or

646 (iv) by any other manner of transmission; and
647 (b) by a licensed practitioner authorized by the laws of a state.
648 (58) (a) Except as provided in Subsection (58)(b)(ii) or (iii), "prewritten computer
649 software" means computer software that is not designed and developed:
650 (i) by the author or other creator of the computer software; and
651 (ii) to the specifications of a specific purchaser.
652 (b) "Prewritten computer software" includes:
653 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
654 software is not designed and developed:
655 (A) by the author or other creator of the computer software; and
656 (B) to the specifications of a specific purchaser;
657 (ii) notwithstanding Subsection (58)(a), computer software designed and developed by
658 the author or other creator of the computer software to the specifications of a specific purchaser
659 if the computer software is sold to a person other than the purchaser; or
660 (iii) notwithstanding Subsection (58)(a) and except as provided in Subsection (58)(c),
661 prewritten computer software or a prewritten portion of prewritten computer software:
662 (A) that is modified or enhanced to any degree; and
663 (B) if the modification or enhancement described in Subsection (58)(b)(iii)(A) is
664 designed and developed to the specifications of a specific purchaser.
665 (c) Notwithstanding Subsection (58)(b)(iii), "prewritten computer software" does not
666 include a modification or enhancement described in Subsection (58)(b)(iii) if the charges for
667 the modification or enhancement are:
668 (i) reasonable; and
669 (ii) separately stated on the invoice or other statement of price provided to the
670 purchaser.
671 (59) (a) "Prosthetic device" means a device that is worn on or in the body to:
672 (i) artificially replace a missing portion of the body;
673 (ii) prevent or correct a physical deformity or physical malfunction; or

- 674 (iii) support a weak or deformed portion of the body.
- 675 (b) "Prosthetic device" includes:
- 676 (i) parts used in the repairs or renovation of a prosthetic device; or
- 677 (ii) replacement parts for a prosthetic device.
- 678 (c) "Prosthetic device" does not include:
- 679 (i) corrective eyeglasses;
- 680 (ii) contact lenses;
- 681 (iii) hearing aids; or
- 682 (iv) dental prostheses.
- 683 (60) (a) "Protective equipment" means an item:
- 684 (i) for human wear; and
- 685 (ii) that is:
- 686 (A) designed as protection:
- 687 (I) to the wearer against injury or disease; or
- 688 (II) against damage or injury of other persons or property; and
- 689 (B) not suitable for general use.
- 690 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 691 commission shall make rules:
- 692 (i) listing the items that constitute "protective equipment"; and
- 693 (ii) that are consistent with the list of items that constitute "protective equipment"
- 694 under the agreement.
- 695 (61) (a) "Purchase price" and "sales price" mean the total amount of consideration:
- 696 (i) valued in money; and
- 697 (ii) for which tangible personal property or services are:
- 698 (A) sold;
- 699 (B) leased; or
- 700 (C) rented.
- 701 (b) "Purchase price" and "sales price" include:

- 702 (i) the seller's cost of the tangible personal property or services sold;
- 703 (ii) expenses of the seller, including:
- 704 (A) the cost of materials used;
- 705 (B) a labor cost;
- 706 (C) a service cost;
- 707 (D) interest;
- 708 (E) a loss;
- 709 (F) the cost of transportation to the seller; or
- 710 (G) a tax imposed on the seller; or
- 711 (iii) a charge by the seller for any service necessary to complete the sale.
- 712 (c) "Purchase price" and "sales price" do not include:
- 713 (i) a discount:
- 714 (A) in a form including:
- 715 (I) cash;
- 716 (II) term; or
- 717 (III) coupon;
- 718 (B) that is allowed by a seller;
- 719 (C) taken by a purchaser on a sale; and
- 720 (D) that is not reimbursed by a third party; or
- 721 (ii) the following if separately stated on an invoice, bill of sale, or similar document
- 722 provided to the purchaser:
- 723 (A) the amount of a trade-in;
- 724 (B) the following from credit extended on the sale of tangible personal property or
- 725 services:
- 726 (I) interest charges;
- 727 (II) financing charges; or
- 728 (III) carrying charges;
- 729 (C) a tax or fee legally imposed directly on the consumer;

- 730 (D) a delivery charge; or
- 731 (E) an installation charge.
- 732 (62) "Purchaser" means a person to whom:
- 733 (a) a sale of tangible personal property is made; or
- 734 (b) a service is furnished.
- 735 (63) "Regularly rented" means:
- 736 (a) rented to a guest for value three or more times during a calendar year; or
- 737 (b) advertised or held out to the public as a place that is regularly rented to guests for
- 738 value.
- 739 (64) "Renewable energy" means:
- 740 (a) biomass energy;
- 741 (b) hydroelectric energy;
- 742 (c) geothermal energy;
- 743 (d) solar energy; or
- 744 (e) wind energy.
- 745 (65) (a) "Renewable energy production facility" means a facility that:
- 746 (i) uses renewable energy to produce electricity; and
- 747 (ii) has a production capacity of 20 kilowatts or greater.
- 748 (b) A facility is a renewable energy production facility regardless of whether the
- 749 facility is:
- 750 (i) connected to an electric grid; or
- 751 (ii) located on the premises of an electricity consumer.
- 752 (66) "Rental" is as defined in Subsection (36).
- 753 (67) "Repairs or renovations of tangible personal property" means:
- 754 (a) a repair or renovation of tangible personal property that is not permanently attached
- 755 to real property; or
- 756 (b) attaching tangible personal property to other tangible personal property if the other
- 757 tangible personal property to which the tangible personal property is attached is not

758 permanently attached to real property.

759 (68) "Residential use" means the use in or around a home, apartment building, sleeping
760 quarters, and similar facilities or accommodations.

761 (69) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
762 than:

763 (a) resale;

764 (b) sublease; or

765 (c) subrent.

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

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

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

774 (b) "Sale" includes:

775 (i) installment and credit sales;

776 (ii) any closed transaction constituting a sale;

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

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

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

784 (72) "Sale at retail" is as defined in Subsection (69).

785 (73) "Sale-leaseback transaction" means a transaction by which title to tangible

786 personal property that is subject to a tax under this chapter is transferred:

787 (a) by a purchaser-lessee;

788 (b) to a lessor;

789 (c) for consideration; and

790 (d) if:

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

792 of the tangible personal property;

793 (ii) the sale of the tangible personal property to the lessor is intended as a form of

794 financing:

795 (A) for the property; and

796 (B) to the purchaser-lessee; and

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

798 is required to:

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

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

801 (74) "Sales price" is as defined in Subsection (61).

802 (75) (a) "Sales relating to schools" means the following sales by, amounts paid to, or

803 amounts charged by a school:

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

805 including:

806 (A) the sale of:

807 (I) textbooks;

808 (II) textbook fees;

809 (III) laboratory fees;

810 (IV) laboratory supplies; or

811 (V) safety equipment;

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

813 that:

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

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

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

820 (I) food and food ingredients; or
821 (II) prepared food; or
822 (D) transportation charges for official school activities; or
823 (ii) amounts paid to or amounts charged by a school for admission to a school-related
824 event or school-related activity.

825 (b) "Sales relating to schools" does not include:
826 (i) bookstore sales of items that are not educational materials or supplies;
827 (ii) except as provided in Subsection (75)(a)(i)(B):
828 (A) clothing;
829 (B) clothing accessories or equipment;
830 (C) protective equipment; or
831 (D) sports or recreational equipment; or
832 (iii) amounts paid to or amounts charged by a school for admission to a school-related
833 event or school-related activity if the amounts paid or charged are passed through to a person:
834 (A) other than a:
835 (I) school;
836 (II) nonprofit organization authorized by a school board or a governing body of a
837 private school to organize and direct a competitive secondary school activity; or
838 (III) nonprofit association authorized by a school board or a governing body of a
839 private school to organize and direct a competitive secondary school activity; and
840 (B) that is required to collect sales and use taxes under this chapter.
841 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

842 commission may make rules defining the term "passed through."
843 (76) For purposes of this section and Section 59-12-104, "school" means:
844 (a) an elementary school or a secondary school that:
845 (i) is a:
846 (A) public school; or
847 (B) private school; and
848 (ii) provides instruction for one or more grades kindergarten through 12; or
849 (b) a public school district.
850 (77) "Seller" means a person that makes a sale, lease, or rental of:
851 (a) tangible personal property; or
852 (b) a service.
853 (78) (a) "Semiconductor fabricating or processing materials" means tangible personal
854 property:
855 (i) used primarily in the process of:
856 (A) (I) manufacturing a semiconductor; or
857 (II) fabricating a semiconductor; or
858 (B) maintaining an environment suitable for a semiconductor; or
859 (ii) consumed primarily in the process of:
860 (A) (I) manufacturing a semiconductor; or
861 (II) fabricating a semiconductor; or
862 (B) maintaining an environment suitable for a semiconductor.
863 (b) "Semiconductor fabricating or processing materials" includes:
864 (i) parts used in the repairs or renovations of tangible personal property described in
865 Subsection (78)(a); or
866 (ii) a chemical, catalyst, or other material used to:
867 (A) produce or induce in a semiconductor a:
868 (I) chemical change; or
869 (II) physical change;

- 870 (B) remove impurities from a semiconductor; or
- 871 (C) improve the marketable condition of a semiconductor.
- 872 (79) "Senior citizen center" means a facility having the primary purpose of providing
- 873 services to the aged as defined in Section 62A-3-101.
- 874 (80) "Simplified electronic return" means the electronic return:
- 875 (a) described in Section 318(C) of the agreement; and
- 876 (b) approved by the governing board of the agreement.
- 877 (81) "Solar energy" means the sun used as the sole source of energy for producing
- 878 electricity.
- 879 (82) (a) "Sports or recreational equipment" means an item:
- 880 (i) designed for human use; and
- 881 (ii) that is:
- 882 (A) worn in conjunction with:
- 883 (I) an athletic activity; or
- 884 (II) a recreational activity; and
- 885 (B) not suitable for general use.
- 886 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 887 commission shall make rules:
- 888 (i) listing the items that constitute "sports or recreational equipment"; and
- 889 (ii) that are consistent with the list of items that constitute "sports or recreational
- 890 equipment" under the agreement.
- 891 (83) "State" means the state of Utah, its departments, and agencies.
- 892 (84) "Storage" means any keeping or retention of tangible personal property or any
- 893 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except
- 894 sale in the regular course of business.
- 895 (85) (a) "Tangible personal property" means personal property that:
- 896 (i) may be:
- 897 (A) seen;

- 898 (B) weighed;
- 899 (C) measured;
- 900 (D) felt; or
- 901 (E) touched; or
- 902 (ii) is in any manner perceptible to the senses.
- 903 (b) "Tangible personal property" includes:
- 904 (i) electricity;
- 905 (ii) water;
- 906 (iii) gas;
- 907 (iv) steam; or
- 908 (v) prewritten computer software.
- 909 (86) (a) "Telephone service" means a two-way transmission:
- 910 (i) by:
- 911 (A) wire;
- 912 (B) radio;
- 913 (C) lightwave; or
- 914 (D) other electromagnetic means; and
- 915 (ii) of one or more of the following:
- 916 (A) a sign;
- 917 (B) a signal;
- 918 (C) writing;
- 919 (D) an image;
- 920 (E) sound;
- 921 (F) a message;
- 922 (G) data; or
- 923 (H) other information of any nature.
- 924 (b) "Telephone service" includes:
- 925 (i) mobile telecommunications service;

- 926 (ii) private communications service; or
- 927 (iii) automated digital telephone answering service.
- 928 (c) "Telephone service" does not include a service or a transaction that a state or a
- 929 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet
- 930 Tax Freedom Act, Pub. L. No. 105-277.
- 931 (87) Notwithstanding where a call is billed or paid, "telephone service address" means:
- 932 (a) if the location described in this Subsection (87)(a) is known, the location of the
- 933 telephone service equipment:
 - 934 (i) to which a call is charged; and
 - 935 (ii) from which the call originates or terminates;
- 936 (b) if the location described in Subsection (87)(a) is not known but the location
- 937 described in this Subsection (87)(b) is known, the location of the origination point of the signal
- 938 of the telephone service first identified by:
 - 939 (i) the telecommunications system of the seller; or
 - 940 (ii) if the system used to transport the signal is not that of the seller, information
 - 941 received by the seller from its service provider; or
 - 942 (c) if the locations described in Subsection (87)(a) or (b) are not known, the location of
 - 943 a purchaser's primary place of use.
- 944 (88) (a) "Telephone service provider" means a person that:
 - 945 (i) owns, controls, operates, or manages a telephone service; and
 - 946 (ii) engages in an activity described in Subsection (88)(a)(i) for the shared use with or
 - 947 resale to any person of the telephone service.
- 948 (b) A person described in Subsection (88)(a) is a telephone service provider whether or
- 949 not the Public Service Commission of Utah regulates:
 - 950 (i) that person; or
 - 951 (ii) the telephone service that the person owns, controls, operates, or manages.
- 952 (89) "Tobacco" means:
- 953 (a) a cigarette;

- 954 (b) a cigar;
- 955 (c) chewing tobacco;
- 956 (d) pipe tobacco; or
- 957 (e) any other item that contains tobacco.
- 958 (90) (a) "Use" means the exercise of any right or power over tangible personal property
- 959 under Subsection 59-12-103(1), incident to the ownership or the leasing of that property, item,
- 960 or service.
- 961 (b) "Use" does not include the sale, display, demonstration, or trial of that property in
- 962 the regular course of business and held for resale.
- 963 (91) (a) Subject to Subsection (91)(b), "vehicle" means the following that are required
- 964 to be titled, registered, or titled and registered:
- 965 (i) an aircraft as defined in Section 72-10-102;
- 966 (ii) a vehicle as defined in Section 41-1a-102;
- 967 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 968 (iv) a vessel as defined in Section 41-1a-102.
- 969 (b) For purposes of Subsection 59-12-104[(35)](33) only, "vehicle" includes:
- 970 (i) a vehicle described in Subsection (91)(a); or
- 971 (ii) (A) a locomotive;
- 972 (B) a freight car;
- 973 (C) railroad work equipment; or
- 974 (D) other railroad rolling stock.
- 975 (92) "Vehicle dealer" means a person engaged in the business of buying, selling, or
- 976 exchanging a vehicle as defined in Subsection (91).
- 977 (93) (a) Except as provided in Subsection (93)(b), "waste energy facility" means a
- 978 facility that generates electricity:
- 979 (i) using as the primary source of energy waste materials that would be placed in a
- 980 landfill or refuse pit if it were not used to generate electricity, including:
- 981 (A) tires;

- 982 (B) waste coal; or
- 983 (C) oil shale; and
- 984 (ii) in amounts greater than actually required for the operation of the facility.
- 985 (b) "Waste energy facility" does not include a facility that incinerates:
- 986 (i) municipal solid waste;
- 987 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or
- 988 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.
- 989 (94) "Watercraft" means a vessel as defined in Section 73-18-2.
- 990 (95) "Wind energy" means wind used as the sole source of energy to produce
- 991 electricity.
- 992 (96) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
- 993 location by the United States Postal Service.

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

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

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

- 999 (a) retail sales of tangible personal property made within the state;
- 1000 (b) amounts paid:
- 1001 (i) (A) to a common carrier; or
- 1002 (B) whether the following are municipally or privately owned, to a:
- 1003 (I) telephone service provider; or
- 1004 (II) telegraph corporation as defined in Section 54-2-1; and

(ii) for:

~~[(A) all transportation;]~~

~~[(B)]~~ (A) telephone service, other than mobile telecommunications service, that originates and terminates within the boundaries of this state;

~~[(C)]~~ (B) mobile telecommunications service that originates and terminates within the

1010 boundaries of one state only to the extent permitted by the Mobile Telecommunications
1011 Sourcing Act, 4 U.S.C. Sec.116 et seq.; or
1012 [~~(D)~~] (C) telegraph service;
1013 (c) sales of the following for commercial use:
1014 (i) gas;
1015 (ii) electricity;
1016 (iii) heat;
1017 (iv) coal;
1018 (v) fuel oil; or
1019 (vi) other fuels;
1020 (d) sales of the following for residential use:
1021 (i) gas;
1022 (ii) electricity;
1023 (iii) heat;
1024 (iv) coal;
1025 (v) fuel oil; or
1026 (vi) other fuels;
1027 (e) sales of prepared food;
1028 (f) except as provided in Section 59-12-104, amounts paid or charged as admission or
1029 user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,
1030 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,
1031 fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit
1032 television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf
1033 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,
1034 tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises,
1035 horseback rides, sports activities, or any other amusement, entertainment, recreation,
1036 exhibition, cultural, or athletic activity;
1037 (g) amounts paid or charged for services for repairs or renovations of tangible personal

1038 property, unless Section 59-12-104 provides for an exemption from sales and use tax for:

1039 (i) the tangible personal property; and

1040 (ii) parts used in the repairs or renovations of the tangible personal property described
1041 in Subsection (1)(g)(i), whether or not any parts are actually used in the repairs or renovations
1042 of that tangible personal property;

1043 (h) except as provided in Subsection 59-12-104(7), amounts paid or charged for
1044 cleaning or washing of tangible personal property;

1045 (i) amounts paid or charged for tourist home, hotel, motel, or trailer court
1046 accommodations and services that are regularly rented for less than 30 consecutive days;

1047 (j) amounts paid or charged for laundry or dry cleaning services;

1048 (k) amounts paid or charged for leases or rentals of tangible personal property if within
1049 this state the tangible personal property is:

1050 (i) stored;

1051 (ii) used; or

1052 (iii) otherwise consumed;

1053 (l) amounts paid or charged for tangible personal property if within this state the
1054 tangible personal property is:

1055 (i) stored;

1056 (ii) used; or

1057 (iii) consumed; and

1058 (m) amounts paid or charged for prepaid telephone calling cards.

1059 (2) (a) Except as provided in Subsection (2)(b), beginning on July 1, 2001, a state tax
1060 and a local tax is imposed on a transaction described in Subsection (1) equal to the sum of:

1061 (i) a state tax imposed on the transaction at a rate of 4.75%; and

1062 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
1063 transaction under this chapter other than this part.

1064 (b) Notwithstanding Subsection (2)(a), beginning on July 1, 2001, a state tax and a
1065 local tax is imposed on a transaction described in Subsection (1)(d) equal to the sum of:

- 1066 (i) a state tax imposed on the transaction at a rate of 2%; and
- 1067 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
- 1068 transaction under this chapter other than this part.
- 1069 (c) Subject to Subsections (2)(d) and (e), a tax rate repeal or tax rate change for a tax
- 1070 rate imposed under the following shall take effect on the first day of a calendar quarter:
- 1071 (i) Subsection (2)(a)(i); or
- 1072 (ii) Subsection (2)(b)(i).
- 1073 (d) (i) For a transaction described in Subsection (2)(d)(iii), a tax rate increase shall take
- 1074 effect on the first day of the first billing period:
- 1075 (A) that begins after the effective date of the tax rate increase; and
- 1076 (B) if the billing period for the transaction begins before the effective date of a tax rate
- 1077 increase imposed under:
- 1078 (I) Subsection (2)(a)(i); or
- 1079 (II) Subsection (2)(b)(i).
- 1080 (ii) For a transaction described in Subsection (2)(d)(iii), the repeal of a tax or a tax rate
- 1081 decrease shall take effect on the first day of the last billing period:
- 1082 (A) that began before the effective date of the repeal of the tax or the tax rate decrease;
- 1083 and
- 1084 (B) if the billing period for the transaction begins before the effective date of the repeal
- 1085 of the tax or the tax rate decrease imposed under:
- 1086 (I) Subsection (2)(a)(i); or
- 1087 (II) Subsection (2)(b)(i).
- 1088 (iii) Subsections (2)(d)(i) and (ii) apply to transactions subject to a tax under:
- 1089 (A) Subsection (1)(b);
- 1090 (B) Subsection (1)(c);
- 1091 (C) Subsection (1)(d);
- 1092 (D) Subsection (1)(e);
- 1093 (E) Subsection (1)(f);

1094 (F) Subsection (1)(g);

1095 (G) Subsection (1)(h);

1096 (H) Subsection (1)(i);

1097 (I) Subsection (1)(j); or

1098 (J) Subsection (1)(k).

1099 (e) (i) If a tax due under Subsection (2)(a)(i) on a catalogue sale is computed on the
1100 basis of sales and use tax rates published in the catalogue, a tax rate repeal or change in a tax
1101 rate imposed under Subsection (2)(a)(i) takes effect:

1102 (A) on the first day of a calendar quarter; and

1103 (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change
1104 under Subsection (2)(a)(i).

1105 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
1106 the commission may by rule define the term "catalogue sale."

1107 (3) (a) Except as provided in Subsections (4) through (7), the following state taxes
1108 shall be deposited into the General Fund:

1109 (i) the tax imposed by Subsection (2)(a)(i); or

1110 (ii) the tax imposed by Subsection (2)(b)(i).

1111 (b) The local taxes described in Subsections (2)(a)(ii) and (2)(b)(ii) shall be distributed
1112 to a county, city, or town as provided in this chapter.

1113 (4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
1114 2003, the lesser of the following amounts shall be used as provided in Subsections (4)(b)
1115 through (g):

1116 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

1117 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and

1118 (B) for the fiscal year; or

1119 (ii) \$17,500,000.

1120 (b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount
1121 described in Subsection (4)(a) shall be transferred each year as dedicated credits to the

1122 Department of Natural Resources to:

1123 (A) implement the measures described in Subsections 63-34-14(4)(a) through (d) to
1124 protect sensitive plant and animal species; or

1125 (B) award grants, up to the amount authorized by the Legislature in an appropriations
1126 act, to political subdivisions of the state to implement the measures described in Subsections
1127 63-34-14(4)(a) through (d) to protect sensitive plant and animal species.

1128 (ii) Money transferred to the Department of Natural Resources under Subsection
1129 (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other
1130 person to list or attempt to have listed a species as threatened or endangered under the
1131 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

1132 (iii) At the end of each fiscal year:

1133 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
1134 Conservation and Development Fund created in Section 73-10-24;

1135 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
1136 Program Subaccount created in Section 73-10c-5; and

1137 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
1138 Program Subaccount created in Section 73-10c-5.

1139 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in
1140 Subsection (4)(b)(i) shall be deposited each year in the Agriculture Resource Development
1141 Fund created in Section 4-18-6.

1142 (d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described
1143 in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water
1144 Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of
1145 water rights.

1146 (ii) At the end of each fiscal year:

1147 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
1148 Conservation and Development Fund created in Section 73-10-24;

1149 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan

1150 Program Subaccount created in Section 73-10c-5; and

1151 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
1152 Program Subaccount created in Section 73-10c-5.

1153 (e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described
1154 in Subsection (4)(a) shall be deposited in the Water Resources Conservation and Development
1155 Fund created in Section 73-10-24 for use by the Division of Water Resources.

1156 (ii) In addition to the uses allowed of the Water Resources Conservation and
1157 Development Fund under Section 73-10-24, the Water Resources Conservation and
1158 Development Fund may also be used to:

1159 (A) provide a portion of the local cost share, not to exceed in any fiscal year 50% of the
1160 funds made available to the Division of Water Resources under this section, of potential project
1161 features of the Central Utah Project;

1162 (B) conduct hydrologic and geotechnical investigations by the Department of Natural
1163 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of
1164 quantifying surface and ground water resources and describing the hydrologic systems of an
1165 area in sufficient detail so as to enable local and state resource managers to plan for and
1166 accommodate growth in water use without jeopardizing the resource;

1167 (C) fund state required dam safety improvements; and

1168 (D) protect the state's interest in interstate water compact allocations, including the
1169 hiring of technical and legal staff.

1170 (f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
1171 in Subsection (4)(a) shall be deposited in the Utah Wastewater Loan Program Subaccount
1172 created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

1173 (g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
1174 in Subsection (4)(a) shall be deposited in the Drinking Water Loan Program Subaccount
1175 created in Section 73-10c-5 for use by the Division of Drinking Water to:

1176 (i) provide for the installation and repair of collection, treatment, storage, and
1177 distribution facilities for any public water system, as defined in Section 19-4-102;

1178 (ii) develop underground sources of water, including springs and wells; and
1179 (iii) develop surface water sources.

1180 (5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
1181 2003, the lesser of the following amounts shall be used as provided in Subsections (5)(b)
1182 through (d):

1183 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:
1184 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and
1185 (B) for the fiscal year; or
1186 (ii) \$18,743,000.

1187 (b) (i) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described
1188 in Subsection (5)(a) shall be deposited each year in the Transportation Corridor Preservation
1189 Revolving Loan Fund created in Section 72-2-117.

1190 (ii) At least 50% of the money deposited in the Transportation Corridor Preservation
1191 Revolving Loan Fund under Subsection (5)(b)(i) shall be used to fund loan applications made
1192 by the Department of Transportation at the request of local governments.

1193 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in
1194 Subsection (5)(a) shall be transferred each year as nonlapsing dedicated credits to the
1195 Department of Transportation for the State Park Access Highways Improvement Program
1196 created in Section 72-3-207.

1197 (d) For a fiscal year beginning on or after July 1, 2003, 94% of the amount described in
1198 Subsection (5)(a) shall be deposited in the class B and class C roads account to be expended as
1199 provided in Title 72, Chapter 2, Transportation Finances Act, for the use of class B and C
1200 roads.

1201 (6) (a) Notwithstanding Subsection (3)(a) and until Subsection (6)(b) applies,
1202 beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial
1203 Highway Fund Restricted Account created in Section 72-2-118 a portion of the taxes listed
1204 under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate on the taxable
1205 transactions under Subsection (1).

1206 (b) Notwithstanding Subsection (3)(a), when the highway general obligation bonds
1207 have been paid off and the highway projects completed that are intended to be paid from
1208 revenues deposited in the Centennial Highway Fund Restricted Account as determined by the
1209 Executive Appropriations Committee under Subsection 72-2-118(6)(d), the Division of
1210 Finance shall deposit into the Transportation Investment Fund of 2005 created by Section
1211 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated
1212 by a 1/64% tax rate on the taxable transactions under Subsection (1).

1213 (7) (a) Notwithstanding Subsection (3)(a), for fiscal years beginning on or after fiscal
1214 year 2004-05, the commission shall each year on or before the September 30 immediately
1215 following the last day of the fiscal year deposit the difference described in Subsection (7)(b)
1216 into the Remote Sales Restricted Account created in Section 59-12-103.2 if that difference is
1217 greater than \$0.

1218 (b) The difference described in Subsection (7)(a) is equal to the difference between:

1219 (i) the total amount of the following revenues the commission received from sellers
1220 collecting a tax in accordance with Subsection 59-12-107(1)(b) for the fiscal year immediately
1221 preceding the September 30 described in Subsection (7)(a):

1222 (A) revenues under Subsection (2)(a)(i); and

1223 (B) revenues under Subsection (2)(b)(i); and

1224 (ii) \$7,279,673.

1225 (8) (a) Notwithstanding Subsection (3)(a), in addition to the amount deposited in
1226 Subsection (6)(a), and until Subsection (8)(b) applies, for a fiscal year beginning on or after
1227 July 1, 2005, the Division of Finance shall deposit \$59,594,700 of the revenues generated by
1228 the taxes described in Subsections (2)(a)(i) and (2)(b)(i) into the Centennial Highway Fund
1229 Restricted Account created by Section 72-2-118.

1230 (b) Notwithstanding Subsection (3)(a) and in addition to the amounts deposited under
1231 Subsection (6)(b), when the highway general obligation bonds have been paid off and the
1232 highway projects completed that are intended to be paid from revenues deposited in the
1233 Centennial Highway Fund Restricted Account as determined by the Executive Appropriations

1234 Committee under Subsection 72-2-118(6)(d), the Division of Finance shall deposit
1235 \$59,594,700 of the revenues generated by the taxes described in Subsections (2)(a)(i) and
1236 (2)(b)(i) into the Transportation Investment Fund of 2005 created by Section 72-2-124.

1237 Section 4. Section **59-12-104** is amended to read:

1238 **59-12-104. Exemptions.**

1239 The following sales and uses are exempt from the taxes imposed by this chapter:

1240 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
1241 under Chapter 13, Motor and Special Fuel Tax Act;

1242 (2) sales to the state, its institutions, and its political subdivisions; however, this
1243 exemption does not apply to sales of:

1244 (a) construction materials except:

1245 (i) construction materials purchased by or on behalf of institutions of the public
1246 education system as defined in Utah Constitution Article X, Section 2, provided the
1247 construction materials are clearly identified and segregated and installed or converted to real
1248 property which is owned by institutions of the public education system; and

1249 (ii) construction materials purchased by the state, its institutions, or its political
1250 subdivisions which are installed or converted to real property by employees of the state, its
1251 institutions, or its political subdivisions; or

1252 (b) tangible personal property in connection with the construction, operation,
1253 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities
1254 providing additional project capacity, as defined in Section 11-13-103;

1255 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:

1256 (i) the proceeds of each sale do not exceed \$1; and

1257 (ii) the seller or operator of the vending machine reports an amount equal to 150% of
1258 the cost of the item described in Subsection (3)(b) as goods consumed; and

1259 (b) Subsection (3)(a) applies to:

1260 (i) food and food ingredients; or

1261 (ii) prepared food;

- 1262 (4) sales of the following to a commercial airline carrier for in-flight consumption:
- 1263 (a) food and food ingredients;
- 1264 (b) prepared food; or
- 1265 (c) services related to Subsection (4)(a) or (b);
- 1266 (5) sales of parts and equipment for installation in aircraft operated by common carriers
- 1267 in interstate or foreign commerce;
- 1268 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
- 1269 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
- 1270 exhibitor, distributor, or commercial television or radio broadcaster;
- 1271 (7) sales of cleaning or washing of tangible personal property by a coin-operated
- 1272 laundry or dry cleaning machine;
- 1273 (8) sales made to or by religious or charitable institutions in the conduct of their regular
- 1274 religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are
- 1275 fulfilled;
- 1276 (9) sales of vehicles of a type required to be registered under the motor vehicle laws of
- 1277 this state which are made to bona fide nonresidents of this state and are not afterwards
- 1278 registered or used in this state except as necessary to transport them to the borders of this state;
- 1279 (10) (a) amounts paid for an item described in Subsection (10)(b) if:
- 1280 (i) the item is intended for human use; and
- 1281 (ii) (A) a prescription was issued for the item; or
- 1282 (B) the item was purchased by a hospital or other medical facility; and
- 1283 (b) (i) Subsection (10)(a) applies to:
- 1284 (A) a drug;
- 1285 (B) a syringe; or
- 1286 (C) a stoma supply; and
- 1287 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 1288 commission may by rule define the terms:
- 1289 (A) "syringe"; or

- 1290 (B) "stoma supply";
- 1291 (11) sales or use of property, materials, or services used in the construction of or
- 1292 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;
- 1293 (12) (a) sales of an item described in Subsection (12)(c) served by:
- 1294 (i) the following if the item described in Subsection (12)(c) is not available to the
- 1295 general public:
- 1296 (A) a church; or
- 1297 (B) a charitable institution;
- 1298 (ii) an institution of higher education if:
- 1299 (A) the item described in Subsection (12)(c) is not available to the general public; or
- 1300 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
- 1301 offered by the institution of higher education; or
- 1302 (b) sales of an item described in Subsection (12)(c) provided for a patient by:
- 1303 (i) a medical facility; or
- 1304 (ii) a nursing facility; and
- 1305 (c) Subsections (12)(a) and (b) apply to:
- 1306 (i) food and food ingredients;
- 1307 (ii) prepared food; or
- 1308 (iii) alcoholic beverages;
- 1309 (13) isolated or occasional sales by persons not regularly engaged in business, except
- 1310 the sale of vehicles or vessels required to be titled or registered under the laws of this state in
- 1311 which case the tax is based upon:
- 1312 (a) the bill of sale or other written evidence of value of the vehicle or vessel being sold;
- 1313 or
- 1314 (b) in the absence of a bill of sale or other written evidence of value, the then existing
- 1315 fair market value of the vehicle or vessel being sold as determined by the commission;
- 1316 (14) (a) the following purchases or leases by a manufacturer on or after July 1, 1995:
- 1317 (i) machinery and equipment:

- 1318 (A) used in the manufacturing process;
- 1319 (B) having an economic life of three or more years; and
- 1320 (C) used:
- 1321 (I) to manufacture an item sold as tangible personal property; and
- 1322 (II) in new or expanding operations in a manufacturing facility in the state; and
- 1323 (ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:
- 1324 (A) have an economic life of three or more years;
- 1325 (B) are used in the manufacturing process in a manufacturing facility in the state;
- 1326 (C) are used to replace or adapt an existing machine to extend the normal estimated
- 1327 useful life of the machine; and
- 1328 (D) do not include repairs and maintenance;
- 1329 (b) the rates for the exemption under Subsection (14)(a)(ii) are as follows:
- 1330 (i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in
- 1331 Subsection (14)(a)(ii) is exempt;
- 1332 (ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described
- 1333 in Subsection (14)(a)(ii) is exempt; and
- 1334 (iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection
- 1335 (14)(a)(ii) is exempt;
- 1336 (c) for purposes of this Subsection (14), the commission shall by rule define the terms
- 1337 "new or expanding operations" and "establishment"; and
- 1338 (d) on or before October 1, 1991, and every five years after October 1, 1991, the
- 1339 commission shall:
- 1340 (i) review the exemptions described in Subsection (14)(a) and make recommendations
- 1341 to the Revenue and Taxation Interim Committee concerning whether the exemptions should be
- 1342 continued, modified, or repealed; and
- 1343 (ii) include in its report:
- 1344 (A) the cost of the exemptions;
- 1345 (B) the purpose and effectiveness of the exemptions; and

1346 (C) the benefits of the exemptions to the state;
1347 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:
1348 (i) tooling;
1349 (ii) special tooling;
1350 (iii) support equipment;
1351 (iv) special test equipment; or
1352 (v) parts used in the repairs or renovations of tooling or equipment described in
1353 Subsections (15)(a)(i) through (iv); and
1354 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:
1355 (i) the tooling, equipment, or parts are used or consumed exclusively in the
1356 performance of any aerospace or electronics industry contract with the United States
1357 government or any subcontract under that contract; and
1358 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
1359 title to the tooling, equipment, or parts is vested in the United States government as evidenced
1360 by:
1361 (A) a government identification tag placed on the tooling, equipment, or parts; or
1362 (B) listing on a government-approved property record if placing a government
1363 identification tag on the tooling, equipment, or parts is impractical;
1364 [~~(16) intrastate movements of:~~
1365 [~~(a) freight by common carriers; or~~
1366 [~~(b) passengers:~~
1367 [~~(i) by taxicabs as described in SIC Code 4121 of the 1987 Standard Industrial~~
1368 ~~Classification Manual of the federal Executive Office of the President, Office of Management~~
1369 ~~and Budget;~~
1370 [~~(ii) transported by an establishment described in SIC Code 4111 of the 1987 Standard~~
1371 ~~Industrial Classification Manual of the federal Executive Office of the President, Office of~~
1372 ~~Management and Budget, if the transportation originates and terminates within a county of the~~
1373 ~~first, second, or third class; or]~~

1374 [~~(iii)~~ transported by the following described in SIC Code 4789 of the 1987 Standard
1375 Industrial Classification Manual of the federal Executive Office of the President, Office of
1376 Management and Budget:]

1377 [~~(A)~~ a horse-drawn cab; or]

1378 [~~(B)~~ a horse-drawn carriage;]

1379 [~~(17)~~] (16) sales of newspapers or newspaper subscriptions;

1380 [~~(18)~~] (17) (a) except as provided in Subsection [~~(18)~~] (17)(b), tangible personal
1381 property traded in as full or part payment of the purchase price, except that for purposes of
1382 calculating sales or use tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to
1383 other vehicles only, and the tax is based upon:

1384 (i) the bill of sale or other written evidence of value of the vehicle being sold and the
1385 vehicle being traded in; or

1386 (ii) in the absence of a bill of sale or other written evidence of value, the then existing
1387 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
1388 commission; and

1389 (b) notwithstanding Subsection [~~(18)~~] (17)(a), Subsection [~~(18)~~] (17)(a) does not apply
1390 to the following items of tangible personal property traded in as full or part payment of the
1391 purchase price:

1392 (i) money;

1393 (ii) electricity;

1394 (iii) water;

1395 (iv) gas; or

1396 (v) steam;

1397 [~~(19)~~] (18) (a) (i) except as provided in Subsection [~~(19)~~] (18)(b), sales of tangible
1398 personal property used or consumed primarily and directly in farming operations, regardless of
1399 whether the tangible personal property:

1400 (A) becomes part of real estate; or

1401 (B) is installed by a:

1402 (I) farmer;

1403 (II) contractor; or

1404 (III) subcontractor; or

1405 (ii) sales of parts used in the repairs or renovations of tangible personal property if the

1406 tangible personal property is exempt under Subsection [~~(19)~~] (18)(a)(i); and

1407 (b) notwithstanding Subsection [~~(19)~~] (18)(a), amounts paid or charged for the

1408 following tangible personal property are subject to the taxes imposed by this chapter:

1409 (i) (A) subject to Subsection [~~(19)~~] (18)(b)(i)(B), the following tangible personal

1410 property if the tangible personal property is used in a manner that is incidental to farming:

1411 (I) machinery;

1412 (II) equipment;

1413 (III) materials; or

1414 (IV) supplies; and

1415 (B) tangible personal property that is considered to be used in a manner that is

1416 incidental to farming includes:

1417 (I) hand tools; or

1418 (II) maintenance and janitorial equipment and supplies;

1419 (ii) (A) subject to Subsection [~~(19)~~] (18)(b)(ii)(B), tangible personal property if the

1420 tangible personal property is used in an activity other than farming; and

1421 (B) tangible personal property that is considered to be used in an activity other than

1422 farming includes:

1423 (I) office equipment and supplies; or

1424 (II) equipment and supplies used in:

1425 (Aa) the sale or distribution of farm products;

1426 (Bb) research; or

1427 (Cc) transportation; or

1428 (iii) a vehicle required to be registered by the laws of this state during the period ending

1429 two years after the date of the vehicle's purchase;

1430 [~~(20)~~] (19) sales of hay;

1431 [~~(21)~~] (20) exclusive sale of locally grown seasonal crops, seedling plants, or garden,
1432 farm, or other agricultural produce if sold by a producer during the harvest season;

1433 [~~(22)~~] (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is
1434 issued under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

1435 [~~(23)~~] (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
1436 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
1437 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
1438 manufacturer, processor, wholesaler, or retailer;

1439 [~~(24)~~] (23) property stored in the state for resale;

1440 [~~(25)~~] (24) property brought into the state by a nonresident for his or her own personal
1441 use or enjoyment while within the state, except property purchased for use in Utah by a
1442 nonresident living and working in Utah at the time of purchase;

1443 [~~(26)~~] (25) property purchased for resale in this state, in the regular course of business,
1444 either in its original form or as an ingredient or component part of a manufactured or
1445 compounded product;

1446 [~~(27)~~] (26) property upon which a sales or use tax was paid to some other state, or one
1447 of its subdivisions, except that the state shall be paid any difference between the tax paid and
1448 the tax imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is
1449 allowed if the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and
1450 Use Tax Act;

1451 [~~(28)~~] (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d)
1452 to a person for use in compounding a service taxable under the subsections;

1453 [~~(29)~~] (28) purchases made in accordance with the special supplemental nutrition
1454 program for women, infants, and children established in 42 U.S.C. Sec. 1786;

1455 [~~(30)~~] (29) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls,
1456 rollers, refractory brick, electric motors, or other replacement parts used in the furnaces, mills,
1457 or ovens of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial

1458 Classification Manual of the federal Executive Office of the President, Office of Management
1459 and Budget;

1460 ~~[(31)]~~ (30) sales of boats of a type required to be registered under Title 73, Chapter 18,
1461 State Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents
1462 of this state and are not thereafter registered or used in this state except as necessary to
1463 transport them to the borders of this state;

1464 ~~[(32)]~~ (31) sales of aircraft manufactured in Utah if sold for delivery and use outside
1465 Utah where a sales or use tax is not imposed, even if the title is passed in Utah;

1466 ~~[(33)]~~ (32) amounts paid for the purchase of telephone service for purposes of
1467 providing telephone service;

1468 ~~[(34)] fares charged to persons transported directly by a public transit district created~~
1469 ~~under the authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;]~~

1470 ~~[(35)]~~ (33) sales or leases of vehicles to, or use of vehicles by an authorized carrier;

1471 ~~[(36)]~~ (34) (a) 45% of the sales price of any new manufactured home; and

1472 (b) 100% of the sales price of any used manufactured home;

1473 ~~[(37)]~~ (35) sales relating to schools and fundraising sales;

1474 ~~[(38)]~~ (36) sales or rentals of durable medical equipment if:

1475 (a) a person presents a prescription for the durable medical equipment; and

1476 (b) the durable medical equipment is used for home use only;

1477 ~~[(39)]~~ (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as
1478 defined in Section 72-11-102; and

1479 (b) the commission shall by rule determine the method for calculating sales exempt
1480 under Subsection ~~[(39)]~~ (37)(a) that are not separately metered and accounted for in utility
1481 billings;

1482 ~~[(40)]~~ (38) sales to a ski resort of:

1483 (a) snowmaking equipment;

1484 (b) ski slope grooming equipment;

1485 (c) passenger ropeways as defined in Section 72-11-102; or

1486 (d) parts used in the repairs or renovations of equipment or passenger ropeways
1487 described in Subsections ~~[(40)]~~ (38)(a) through (c);
1488 ~~[(41)]~~ (39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for
1489 industrial use;
1490 ~~[(42)]~~ (40) sales or rentals of the right to use or operate for amusement, entertainment,
1491 or recreation a coin-operated amusement device as defined in Section 59-12-102;
1492 ~~[(43)]~~ (41) sales of cleaning or washing of tangible personal property by a
1493 coin-operated car wash machine;
1494 ~~[(44)]~~ (42) sales by the state or a political subdivision of the state, except state
1495 institutions of higher education as defined in Section 53B-3-102, of:
1496 (a) photocopies; or
1497 (b) other copies of records held or maintained by the state or a political subdivision of
1498 the state;
1499 ~~[(45) (a) amounts paid:]~~
1500 ~~[(i) to a person providing intrastate transportation to an employer's employee to or from~~
1501 ~~the employee's primary place of employment;]~~
1502 ~~[(ii) by an:]~~
1503 ~~[(A) employee; or]~~
1504 ~~[(B) employer; and]~~
1505 ~~[(iii) pursuant to a written contract between:]~~
1506 ~~[(A) the employer; and]~~
1507 ~~[(B) (f) the employee; or]~~
1508 ~~[(H) a person providing transportation to the employer's employee; and]~~
1509 ~~[(b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,~~
1510 ~~the commission may for purposes of Subsection (45)(a) make rules defining what constitutes~~
1511 ~~an employee's primary place of employment;]~~
1512 ~~[(46)]~~ (43) amounts paid for admission to an athletic event at an institution of higher
1513 education that is subject to the provisions of Title IX of the Education Amendments of 1972,

1514 20 U.S.C. Sec. 1681 et seq.;

1515 [~~(47)~~] (44) sales of telephone service charged to a prepaid telephone calling card;

1516 [~~(48)~~] (45) (a) sales of:

1517 (i) hearing aids;

1518 (ii) hearing aid accessories; or

1519 (iii) except as provided in Subsection [~~(48)~~] (45)(b), parts used in the repairs or

1520 renovations of hearing aids or hearing aid accessories; and

1521 (b) for purposes of this Subsection [~~(48)~~] (45), notwithstanding Subsection [~~(48)~~]

1522 (45)(a)(iii), "parts" does not include batteries;

1523 [~~(49)~~] (46) (a) sales made to or by:

1524 (i) an area agency on aging; or

1525 (ii) a senior citizen center owned by a county, city, or town; or

1526 (b) sales made by a senior citizen center that contracts with an area agency on aging;

1527 [~~(50)~~] (47) (a) beginning on July 1, 2001, through June 30, 2007, and subject to

1528 Subsection [~~(50)~~] (47)(b), a sale or lease of semiconductor fabricating or processing materials

1529 regardless of whether the semiconductor fabricating or processing materials:

1530 (i) actually come into contact with a semiconductor; or

1531 (ii) ultimately become incorporated into real property;

1532 (b) (i) beginning on July 1, 2001, through June 30, 2002, 10% of the sale or lease

1533 described in Subsection [~~(50)~~] (47)(a) is exempt;

1534 (ii) beginning on July 1, 2002, through June 30, 2003, 50% of the sale or lease

1535 described in Subsection [~~(50)~~] (47)(a) is exempt; and

1536 (iii) beginning on July 1, 2003, through June 30, 2007, the entire amount of the sale or

1537 lease described in Subsection [~~(50)~~] (47)(a) is exempt; and

1538 (c) each year on or before the November interim meeting, the Revenue and Taxation

1539 Interim Committee shall:

1540 (i) review the exemption described in this Subsection [~~(50)~~] (47) and make

1541 recommendations concerning whether the exemption should be continued, modified, or

1542 repealed; and

1543 (ii) include in the review under this Subsection [~~(50)~~] (47)(c):

1544 (A) the cost of the exemption;

1545 (B) the purpose and effectiveness of the exemption; and

1546 (C) the benefits of the exemption to the state;

1547 [~~(51)~~] (48) an amount paid by or charged to a purchaser for accommodations and

1548 services described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under

1549 Section 59-12-104.2;

1550 [~~(52)~~] (49) beginning on September 1, 2001, the lease or use of a vehicle issued a

1551 temporary sports event registration certificate in accordance with Section 41-3-306 for the

1552 event period specified on the temporary sports event registration certificate;

1553 [~~(53)~~] (50) sales or uses of electricity, if the sales or uses are:

1554 (a) made under a tariff adopted by the Public Service Commission of Utah only for

1555 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy

1556 source, as designated in the tariff by the Public Service Commission of Utah; and

1557 (b) for an amount of electricity that is:

1558 (i) unrelated to the amount of electricity used by the person purchasing the electricity

1559 under the tariff described in Subsection [~~(53)~~] (50)(a); and

1560 (ii) equivalent to the number of kilowatthours specified in the tariff described in

1561 Subsection [~~(53)~~] (50)(a) that may be purchased under the tariff described in Subsection [~~(53)~~]

1562 (50)(a);

1563 [~~(54)~~] (51) sales or rentals of mobility enhancing equipment if a person presents a

1564 prescription for the mobility enhancing equipment;

1565 [~~(55)~~] (52) sales of water in a:

1566 (a) pipe;

1567 (b) conduit;

1568 (c) ditch; or

1569 (d) reservoir;

1570 [~~(56)~~] (53) sales of currency or coinage that constitute legal tender of the United States
1571 or of a foreign nation;

1572 [~~(57)~~] (54) (a) sales of an item described in Subsection [~~(57)~~] (54)(b) if the item:

1573 (i) does not constitute legal tender of any nation; and

1574 (ii) has a gold, silver, or platinum content of 80% or more; and

1575 (b) Subsection [~~(57)~~] (54)(a) applies to a gold, silver, or platinum:

1576 (i) ingot;

1577 (ii) bar;

1578 (iii) medallion; or

1579 (iv) decorative coin;

1580 [~~(58)~~] (55) amounts paid on a sale-leaseback transaction;

1581 [~~(59)~~] (56) sales of a prosthetic device:

1582 (a) for use on or in a human;

1583 (b) for which a prescription is issued; and

1584 (c) to a person that presents a prescription for the prosthetic device;

1585 [~~(60)~~] (57) (a) except as provided in Subsection [~~(60)~~] (57)(b), purchases, leases, or

1586 rentals of machinery or equipment by an establishment described in Subsection [~~(60)~~] (57)(c) if

1587 the machinery or equipment is primarily used in the production or postproduction of the

1588 following media for commercial distribution:

1589 (i) a motion picture;

1590 (ii) a television program;

1591 (iii) a movie made for television;

1592 (iv) a music video;

1593 (v) a commercial;

1594 (vi) a documentary; or

1595 (vii) a medium similar to Subsections [~~(60)~~] (57)(a)(i) through (vi) as determined by

1596 the commission by administrative rule made in accordance with Subsection [~~(60)~~] (57)(d); or

1597 (b) notwithstanding Subsection [~~(60)~~] (57)(a), purchases, leases, or rentals of

1598 machinery or equipment by an establishment described in Subsection [~~(60)~~] (57)(c) that is used
1599 for the production or postproduction of the following are subject to the taxes imposed by this
1600 chapter:

1601 (i) a live musical performance;

1602 (ii) a live news program; or

1603 (iii) a live sporting event;

1604 (c) the following establishments listed in the 1997 North American Industry

1605 Classification System of the federal Executive Office of the President, Office of Management
1606 and Budget, apply to Subsections [~~(60)~~] (57)(a) and (b):

1607 (i) NAICS Code 512110; or

1608 (ii) NAICS Code 51219; and

1609 (d) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1610 commission may by rule:

1611 (i) prescribe what constitutes a medium similar to Subsections [~~(60)~~] (57)(a)(i) through
1612 (vi); or

1613 (ii) define:

1614 (A) "commercial distribution";

1615 (B) "live musical performance";

1616 (C) "live news program"; or

1617 (D) "live sporting event";

1618 [~~(61)~~] (58) (a) leases of seven or more years or purchases made on or after July 1, 2004
1619 but on or before June 30, 2009, of machinery or equipment that:

1620 (i) is leased or purchased for or by a facility that:

1621 (A) is a renewable energy production facility;

1622 (B) is located in the state; and

1623 (C) (I) becomes operational on or after July 1, 2004; or

1624 (II) has its generation capacity increased by one or more megawatts on or after July 1,
1625 2004 as a result of the use of the machinery or equipment;

1626 (ii) has an economic life of five or more years; and
1627 (iii) is used to make the facility or the increase in capacity of the facility described in
1628 Subsection [~~(61)~~] (58)(a)(i) operational up to the point of interconnection with an existing
1629 transmission grid including:
1630 (A) a wind turbine;
1631 (B) generating equipment;
1632 (C) a control and monitoring system;
1633 (D) a power line;
1634 (E) substation equipment;
1635 (F) lighting;
1636 (G) fencing;
1637 (H) pipes; or
1638 (I) other equipment used for locating a power line or pole; and
1639 (b) this Subsection [~~(61)~~] (58) does not apply to:
1640 (i) machinery or equipment used in construction of:
1641 (A) a new renewable energy production facility; or
1642 (B) the increase in the capacity of a renewable energy production facility;
1643 (ii) contracted services required for construction and routine maintenance activities;
1644 and
1645 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
1646 of the facility described in Subsection [~~(61)~~] (58)(a)(i)(C)(II), machinery or equipment used or
1647 acquired after:
1648 (A) the renewable energy production facility described in Subsection [~~(61)~~] (58)(a)(i) is
1649 operational as described in Subsection [~~(61)~~] (58)(a)(iii); or
1650 (B) the increased capacity described in Subsection [~~(61)~~] (58)(a)(i) is operational as
1651 described in Subsection [~~(61)~~] (58)(a)(iii);
1652 [~~(62)~~] (59) (a) leases of seven or more years or purchases made on or after July 1, 2004
1653 but on or before June 30, 2009, of machinery or equipment that:

- 1654 (i) is leased or purchased for or by a facility that:
- 1655 (A) is a waste energy production facility;
- 1656 (B) is located in the state; and
- 1657 (C) (I) becomes operational on or after July 1, 2004; or
- 1658 (II) has its generation capacity increased by one or more megawatts on or after July 1,
- 1659 2004 as a result of the use of the machinery or equipment;
- 1660 (ii) has an economic life of five or more years; and
- 1661 (iii) is used to make the facility or the increase in capacity of the facility described in
- 1662 Subsection [~~62~~] (59)(a)(i) operational up to the point of interconnection with an existing
- 1663 transmission grid including:
- 1664 (A) generating equipment;
- 1665 (B) a control and monitoring system;
- 1666 (C) a power line;
- 1667 (D) substation equipment;
- 1668 (E) lighting;
- 1669 (F) fencing;
- 1670 (G) pipes; or
- 1671 (H) other equipment used for locating a power line or pole; and
- 1672 (b) this Subsection [~~62~~] (59) does not apply to:
- 1673 (i) machinery or equipment used in construction of:
- 1674 (A) a new waste energy facility; or
- 1675 (B) the increase in the capacity of a waste energy facility;
- 1676 (ii) contracted services required for construction and routine maintenance activities;
- 1677 and
- 1678 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
- 1679 described in Subsection [~~62~~] (59)(a)(i)(C)(II), machinery or equipment used or acquired after:
- 1680 (A) the waste energy facility described in Subsection [~~62~~] (59)(a)(i) is operational as
- 1681 described in Subsection [~~62~~] (59)(a)(iii); or

1682 (B) the increased capacity described in Subsection [~~62~~] (59)(a)(i) is operational as
 1683 described in Subsection [~~62~~] (59)(a)(iii);
 1684 [~~63~~] (60) (a) leases of five or more years or purchases made on or after July 1, 2004
 1685 but on or before June 30, 2009, of machinery or equipment that:
 1686 (i) is leased or purchased for or by a facility that:
 1687 (A) is located in the state;
 1688 (B) produces fuel from biomass energy including:
 1689 (I) methanol; or
 1690 (II) ethanol; and
 1691 (C) (I) becomes operational on or after July 1, 2004; or
 1692 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004 as
 1693 a result of the installation of the machinery or equipment;
 1694 (ii) has an economic life of five or more years; and
 1695 (iii) is installed on the facility described in Subsection [~~63~~] (60)(a)(i);
 1696 (b) this Subsection [~~63~~] (60) does not apply to:
 1697 (i) machinery or equipment used in construction of:
 1698 (A) a new facility described in Subsection [~~63~~] (60)(a)(i); or
 1699 (B) the increase in capacity of the facility described in Subsection [~~63~~] (60)(a)(i); or
 1700 (ii) contracted services required for construction and routine maintenance activities;
 1701 and
 1702 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
 1703 described in Subsection [~~63~~] (60)(a)(i)(C)(II), machinery or equipment used or acquired after:
 1704 (A) the facility described in Subsection [~~63~~] (60)(a)(i) is operational; or
 1705 (B) the increased capacity described in Subsection [~~63~~] (60)(a)(i) is operational;
 1706 [~~64~~] (61) amounts paid to a purchaser as a rebate from the manufacturer of a new
 1707 vehicle for purchasing the new vehicle;
 1708 [~~65~~] (62) (a) subject to Subsection [~~65~~] (62)(b), sales of tangible personal property
 1709 to persons within this state that is subsequently shipped outside the state and incorporated

1710 pursuant to contract into and becomes a part of real property located outside of this state,
1711 except to the extent that the other state or political entity imposes a sales, use, gross receipts, or
1712 other similar transaction excise tax on it against which the other state or political entity allows
1713 a credit for taxes imposed by this chapter; and

1714 (b) the exemption provided for in Subsection [~~(65)~~] (62)(a):

1715 (i) is allowed only if the exemption is applied:

1716 (A) in calculating the purchase price of the tangible personal property; and

1717 (B) to a written contract that is in effect on July 1, 2004; and

1718 (ii) (A) does not apply beginning on the day on which the contract described in

1719 Subsection [~~(65)~~] (62)(b)(i):

1720 (I) is substantially modified; or

1721 (II) terminates; and

1722 (B) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
1723 the commission may by rule prescribe the circumstances under which a contract is substantially
1724 modified;

1725 [~~(66)~~] (63) purchases:

1726 (a) of one or more of the following items in printed or electronic format:

1727 (i) a list containing information that includes one or more:

1728 (A) names; or

1729 (B) addresses; or

1730 (ii) a database containing information that includes one or more:

1731 (A) names; or

1732 (B) addresses; and

1733 (b) used to send direct mail; and

1734 [~~(67)~~] (64) redemptions or repurchases of property by a person if that property was:

1735 (a) delivered to a pawnbroker as part of a pawn transaction; and

1736 (b) redeemed or repurchased within the time period established in a written agreement
1737 between the person and the pawnbroker for redeeming or repurchasing the property.

1738 Section 5. Section **59-12-104.5** is amended to read:

1739 **59-12-104.5. Review of sales and use tax exemptions.**

1740 (1) Beginning with the 2001 interim, the Utah Tax Review Commission, in cooperation
1741 with the governor's office and the tax commission, shall conduct a review of the sales and use
1742 tax exemptions created by Section 59-12-104 as provided in this section.

1743 (2) The Utah Tax Review Commission shall:

1744 (a) review each of the sales and use tax exemptions created by Section 59-12-104 one
1745 or more times every eight years; and

1746 (b) subject to Subsection (2)(a) and except as provided in Subsection (3), for each year
1747 select the exemptions that the Utah Tax Review Commission will review for that year.

1748 (3) Notwithstanding Subsection (2):

1749 (a) the Utah Tax Review Commission shall review Subsection 59-12-104[~~(29)~~](28)
1750 before October 1 of the year after the year in which Congress permits a state to participate in
1751 the special supplemental nutrition program under 42 U.S.C. Sec. 1786 even if state or local
1752 sales taxes are collected within the state on purchases of food under that program; and

1753 (b) the Utah Tax Review Commission shall review Subsection 59-12-104[~~(22)~~](21)
1754 before October 1 of the year after the year in which Congress permits a state to participate in
1755 the food stamp program under the Food Stamp Act, 7 U.S.C. Sec. 2011 et seq., even if state or
1756 local sales taxes are collected within the state on purchases of food under that program.

1757 (4) The Utah Tax Review Commission shall for each sales and use tax exemption the
1758 Utah Tax Review Commission reviews make a report to the governor and the Revenue and
1759 Taxation Interim Committee:

1760 (a) on or before the November interim meeting in the year in which the Utah Tax
1761 Review Commission reviews the sales and use tax exemption;

1762 (b) including:

1763 (i) a review of the cost of the sales and use tax exemption;

1764 (ii) a review of the following criteria for granting or extending incentives for
1765 businesses:

1766 (A) whether the business is willing to make a substantial capital investment in the state
1767 indicating that it will be a long-term member of the community in which the business is or will
1768 be located;

1769 (B) whether the business brings new dollars into the state, which generally means the
1770 business must export goods or services outside of the state, not just recirculate existing dollars;

1771 (C) subject to Subsection (5), whether the business pays higher than average wages in
1772 the area in which the business is or will be located, increasing the state's overall household
1773 income;

1774 (D) whether the same incentives offered to a new business locating in the state from
1775 another state are available to existing in-state businesses so as not to discriminate against the
1776 in-state businesses; and

1777 (E) whether the incentives clearly produce a positive return on investment as
1778 determined by state economic modeling formulas;

1779 (iii) a determination of whether the sales and use tax exemption is consistent with the
1780 Legislature's sales and use tax policy positions adopted in 1990 General Session H.J.R. 32;

1781 (iv) a review of the purpose of the sales and use tax exemption;

1782 (v) a review of the effectiveness of the sales and use tax exemption; and

1783 (vi) a review of the benefits of the sales and use tax exemption to the state;

1784 (c) recommending whether the sales and use tax exemption should be:

1785 (i) continued;

1786 (ii) modified; or

1787 (iii) repealed; and

1788 (d) reviewing any other issue the Utah Tax Review Commission determines to study.

1789 (5) For purposes of Subsection (4)(b)(ii)(C), in determining whether a business pays
1790 higher than average wages in the area in which the business is or will be located, the Utah Tax
1791 Review Commission may not include wages of the following in making average wage
1792 calculations:

1793 (a) wages of school district employees;

1794 (b) wages of county, city, or town employees;

1795 (c) wages of state employees; or

1796 (d) wages of federal government employees.

1797 Section 6. Section **59-12-105 (Portions Eff 07/01/06 See 59-1-1201)** is amended to

1798 read:

1799 **59-12-105 (Portions Eff 07/01/06 See 59-1-1201). Certain exempt sales to be**
1800 **reported -- Report by seller that files a simplified electronic return -- Penalties.**

1801 (1) An owner or purchaser shall report to the commission the amount of sales or uses
1802 exempt under Subsection 59-12-104(14) or [~~50~~](47).

1803 (2) (a) A seller that files a simplified electronic return with the commission shall file a
1804 report containing the information described in Subsection (2)(b).

1805 (b) The report required by Subsection (2)(a) shall contain the following amounts:

1806 (i) for each store location that the seller has within 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)(i)(A) and the
1810 amount described in Subsection (2)(b)(i)(B);

1811 (ii) for the total amount of sales that the seller makes from a location in the state other
1812 than a fixed place of business in the state:

1813 (A) the total amount of sales;

1814 (B) the total amount of sales that are exempt from a tax imposed by this chapter; and

1815 (C) the difference between the amount described in Subsection (2)(b)(ii)(A) and the
1816 amount described in Subsection (2)(b)(ii)(B); and

1817 (iii) for the total amount of sales that the seller makes where inventory is shipped from
1818 a location outside the state:

1819 (A) the total amount of sales;

1820 (B) the total amount of sales that are exempt from a tax imposed by this chapter; and

1821 (C) the difference between the amount described in Subsection (2)(b)(iii)(A) and the

1822 amount described in Subsection (2)(b)(iii)(B).

1823 (3) (a) A report required by Subsection (1) or (2) shall be filed:

1824 (i) with the commission; and

1825 (ii) on a form prescribed by the commission.

1826 (b) A report required by Subsection (2) shall be filed electronically.

1827 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1828 commission shall make rules providing:

1829 (i) the information required to be included in the reports described in Subsections (1)
1830 and (2); and

1831 (ii) one or more due dates for filing the reports described in:

1832 (A) Subsection (1); and

1833 (B) Subsection (2).

1834 (4) (a) Notwithstanding Section 59-1-401, and except as provided in Subsections (4)(b)
1835 and (6), if the owner or purchaser fails to report the full amount of the exemptions granted
1836 under Subsection 59-12-104(14) or [~~50~~] (47) on the report required by Subsection (1), the
1837 commission shall impose a penalty equal to the lesser of:

1838 (i) 10% of the sales and use tax that would have been imposed if the exemption had not
1839 applied; or

1840 (ii) \$1,000.

1841 (b) Notwithstanding Subsection (4)(a)(i), the commission may not impose a penalty
1842 under Subsection (4)(a)(i) if the owner or purchaser files an amended report:

1843 (i) containing the amount of the exemption; and

1844 (ii) before the owner or purchaser receives a notice of audit from the commission.

1845 (5) Notwithstanding Section 59-1-401, and except as provided in Subsection (6), if a
1846 seller fails to report the amounts required by Subsection (2), the commission shall impose a
1847 penalty of \$1,000.

1848 (6) (a) Notwithstanding Subsection (4)(a) or (5), the commission may waive, reduce, or
1849 compromise a penalty imposed under this section if the commission finds there are reasonable

1850 grounds for the waiver, reduction, or compromise.

1851 (b) If the commission waives, reduces, or compromises a penalty under Subsection

1852 (6)(a), the commission shall make a record of the grounds for waiving, reducing, or

1853 compromising the penalty.

1854 Section 7. **Effective date.**

1855 This bill takes effect on July 1, 2006.