

**Senator Michael G. Waddoups** proposes the following substitute bill:

**SALES AND USE TAX - FOOD AND FOOD INGREDIENTS**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Merlynn T. Newbold**

Senate Sponsor: \_\_\_\_\_

6	Cosponsors:	Wayne A. Harper	Aaron Tilton
7	Greg J. Curtis	Kory M. Holdaway	Stephen H. Urquhart
8	Brad L. Dee	Gregory H. Hughes	Mark W. Walker
9	Craig A. Frank	Patrick Painter	Peggy Wallace
10	Neil A. Hansen		

---

---

**LONG TITLE**

**General Description:**

This bill amends the Sales and Use Tax Act relating to food and food ingredients.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ reduces the state sales and use tax rate imposed on food and food ingredients under certain circumstances;
- ▶ addresses the state sales and use tax rate imposed:
  - on a bundled transaction involving food and food ingredients; or
  - if a seller sells food and food ingredients and prepared food at the same location;
- ▶ addresses the amount that a business location that collects and remits sales and use taxes monthly may retain as a seller discount; and
- ▶ makes technical changes.



27 **Monies Appropriated in this Bill:**

28 This bill appropriates:

- 29 ▶ \$6,000,000 from the General Fund for fiscal year 2006-07 only to the State Tax
- 30 Commission for distribution to certain sellers to reimburse some of their costs in
- 31 complying with the reduced sales and use tax rate imposed on food and food
- 32 ingredients.

33 **Other Special Clauses:**

34 This bill takes effect on January 1, 2007.

35 This bill coordinates with S.B. 233 by modifying substantive amendments.

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **11-41-102**, as enacted by Chapter 283, Laws of Utah 2004

39 **59-12-102**, as last amended by Chapters 158 and 246, Laws of Utah 2005

40 **59-12-103 (Effective 07/01/06)**, as last amended by Chapter 1, Laws of Utah 2005,

41 First Special Session

42 **59-12-108**, as last amended by Chapter 255, Laws of Utah 2004



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

45 Section 1. Section **11-41-102** is amended to read:

46 **11-41-102. Definitions.**

47 As used in this chapter:

48 (1) "Agreement" means an oral or written agreement between a:

49 (a) (i) county; or

50 (ii) municipality; and

51 (b) person.

52 (2) "Municipality" means a:

53 (a) city; or

54 (b) town.

55 (3) "Payment" includes:

56 (a) a payment;

57 (b) a rebate;

- 58 (c) a refund; or
- 59 (d) an amount similar to Subsections (3)(a) through (c).
- 60 (4) "Regional retail business" means a:
  - 61 (a) retail business that occupies a floor area of more than 80,000 square feet;
  - 62 (b) dealer as defined in Section 41-1a-102;
  - 63 (c) retail shopping facility that has at least two anchor tenants if the total number of
  - 64 anchor tenants in the shopping facility occupy a total floor area of more than 150,000 square
  - 65 feet; or
  - 66 (d) grocery store that occupies a floor area of more than 30,000 square feet.
- 67 (5) (a) "Sales and use tax" means a tax:
  - 68 (i) imposed on transactions within a:
    - 69 (A) county; or
    - 70 (B) municipality; and
  - 71 (ii) except as provided in Subsection (5)(b), authorized under Title 59, Chapter 12,
  - 72 Sales and Use Tax Act.
- 73 (b) Notwithstanding Subsection (5)(a)(ii), "sales and use tax" does not include a tax
- 74 authorized under:
  - 75 (i) Subsection 59-12-103(2)(a)(i);
  - 76 (ii) Subsection 59-12-103(2)(b)(i)(A);
  - 77 (iii) Subsection 59-12-103(2)(b)(ii)(A);
  - 78 [~~(iii)~~] (iv) Section 59-12-301;
  - 79 [~~(iv)~~] (v) Section 59-12-352;
  - 80 [~~(v)~~] (vi) Section 59-12-353;
  - 81 [~~(vi)~~] (vii) Section 59-12-603; or
  - 82 [~~(vii)~~] (viii) Section 59-12-1201.
- 83 (6) (a) "Sales and use tax incentive payment" means a payment of revenues:
  - 84 (i) to a person;
  - 85 (ii) by a:
    - 86 (A) county; or
    - 87 (B) municipality;
    - 88 (iii) to induce the person to locate or relocate a regional retail business within the:

- 89 (A) county; or
- 90 (B) municipality; and
- 91 (iv) that are derived from a sales and use tax.

92 (b) "Sales and use tax incentive payment" does not include funding for public  
93 infrastructure.

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

95 **59-12-102. Definitions.**

96 As used in this chapter:

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

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

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

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

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

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

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

106 (a) Subsection 59-12-103(2)(a)(i) or (2)(b)(ii)(A);

107 (b) Section 59-12-204;

108 (c) Section 59-12-401;

109 (d) Section 59-12-402;

110 (e) Section 59-12-501;

111 (f) Section 59-12-502;

112 (g) Section 59-12-703;

113 (h) Section 59-12-802;

114 (i) Section 59-12-804;

115 (j) Section 59-12-1001;

116 (k) Section 59-12-1102;

117 (l) Section 59-12-1302;

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

119 (n) Section 59-12-1503.

- 120 (5) "Aircraft" is as defined in Section 72-10-102.
- 121 (6) "Alcoholic beverage" means a beverage that:
- 122 (a) is suitable for human consumption; and
- 123 (b) contains .5% or more alcohol by volume.
- 124 (7) "Area agency on aging" is as defined in Section 62A-3-101.
- 125 (8) "Authorized carrier" means:
- 126 (a) in the case of vehicles operated over public highways, the holder of credentials
- 127 indicating that the vehicle is or will be operated pursuant to both the International Registration
- 128 Plan and the International Fuel Tax Agreement;
- 129 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating
- 130 certificate or air carrier's operating certificate; or
- 131 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling
- 132 stock, the holder of a certificate issued by the United States Surface Transportation Board.
- 133 (9) (a) Except as provided in Subsection (9)(b), "biomass energy" means any of the
- 134 following that is used as the primary source of energy to produce fuel or electricity:
- 135 (i) material from a plant or tree; or
- 136 (ii) other organic matter that is available on a renewable basis, including:
- 137 (A) slash and brush from forests and woodlands;
- 138 (B) animal waste;
- 139 (C) methane produced:
- 140 (I) at landfills; or
- 141 (II) as a byproduct of the treatment of wastewater residuals;
- 142 (D) aquatic plants; and
- 143 (E) agricultural products.
- 144 (b) "Biomass energy" does not include:
- 145 (i) black liquor;
- 146 (ii) treated woods; or
- 147 (iii) biomass from municipal solid waste other than methane produced:
- 148 (A) at landfills; or
- 149 (B) as a byproduct of the treatment of wastewater residuals.
- 150 (10) (a) "Bundled transaction" means the sale of two or more items of tangible personal

151 property if:

152 (i) one or more of the items of tangible personal property is food and food ingredients;

153 and

154 (ii) the items of tangible personal property are:

155 (A) distinct and identifiable;

156 (B) sold for one price that is not itemized; and

157 (C) not prepared food.

158 (b) "Bundled transaction" does not include the sale of tangible personal property if the  
159 sales price varies, or is negotiable, on the basis of the selection by the purchaser of the items of  
160 tangible personal property included in the transaction.

161 (c) For purposes of Subsection (10)(a)(ii)(A), tangible personal property that is distinct  
162 and identifiable does not include:

163 (i) packaging that:

164 (A) accompanies the sale of the tangible personal property; and

165 (B) is incidental or immaterial to the sale of the tangible personal property;

166 (ii) tangible personal property provided free of charge with the purchase of another  
167 item of tangible personal property; or

168 (iii) an item of tangible personal property included in the definition of "purchase  
169 price."

170 (d) For purposes of Subsection (10)(c)(ii), an item of tangible personal property is  
171 provided free of charge with the purchase of another item of tangible personal property if the  
172 sales price of the purchased item of tangible personal property does not vary depending on the  
173 inclusion of the tangible personal property provided free of charge.

174 ~~[(10)]~~ (11) "Certified automated system" means software certified by the governing  
175 board of the agreement in accordance with Section 59-12-102.1 that:

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

178 (i) on a transaction; and

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

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

182 (c) maintains a record of the transaction described in Subsection [~~(10)~~] (11)(a)(i).

183 [~~(11)~~] (12) "Certified service provider" means an agent certified:

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

185 and

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

189 [~~(12)~~] (13) (a) Subject to Subsection [~~(12)~~] (13)(b), "clothing" means all human  
190 wearing apparel suitable for general use.

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

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

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

196 [~~(13)~~] (14) (a) For purposes of Subsection 59-12-104(42), "coin-operated amusement  
197 device" means:

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

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

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

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

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

205 (ii) allows the seller to collect the sales and use tax at the time an amusement device is  
206 activated and operated by a person inserting coins into the device.

207 [~~(14)~~] (15) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or  
208 other fuels that does not constitute industrial use under Subsection [~~(34)~~] (35) or residential use  
209 under Subsection [~~(68)~~] (69).

210 [~~(15)~~] (16) (a) "Common carrier" means a person engaged in or transacting the  
211 business of transporting passengers, freight, merchandise, or other property for hire within this  
212 state.

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

216 (ii) For purposes of Subsection [~~(15)~~] (16)(b)(i), in accordance with Title 63, Chapter  
217 46a, Utah Administrative Rulemaking Act, the commission may make rules defining what  
218 constitutes a person's place of employment.

219 [~~(16)~~] (17) "Component part" includes:

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

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

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

225 (d) feed, seeds, and seedlings.

226 [~~(17)~~] (18) "Computer" means an electronic device that accepts information:

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

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

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

230 [~~(18)~~] (19) "Computer software" means a set of coded instructions designed to cause:

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

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

233 [~~(19)~~] (20) "Construction materials" means any tangible personal property that will be  
234 converted into real property.

235 [~~(20)~~] (21) "Delivered electronically" means delivered to a purchaser by means other  
236 than tangible storage media.

237 [~~(21)~~] (22) (a) "Delivery charge" means a charge:

238 (i) by a seller of:

239 (A) tangible personal property; or

240 (B) services; and

241 (ii) for preparation and delivery of the tangible personal property or services described  
242 in Subsection [~~(21)~~] (22)(a)(i) to a location designated by the purchaser.

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



- 244 (i) transportation;
- 245 (ii) shipping;
- 246 (iii) postage;
- 247 (iv) handling;
- 248 (v) crating; or
- 249 (vi) packing.
- 250 [~~(22)~~] (23) "Dietary supplement" means a product, other than tobacco, that:
- 251 (a) is intended to supplement the diet;
- 252 (b) contains one or more of the following dietary ingredients:
- 253 (i) a vitamin;
- 254 (ii) a mineral;
- 255 (iii) an herb or other botanical;
- 256 (iv) an amino acid;
- 257 (v) a dietary substance for use by humans to supplement the diet by increasing the total
- 258 dietary intake; or
- 259 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
- 260 described in Subsections [~~(22)~~] (23)(b)(i) through (v);
- 261 (c) (i) except as provided in Subsection [~~(22)~~] (23)(c)(ii), is intended for ingestion in:
- 262 (A) tablet form;
- 263 (B) capsule form;
- 264 (C) powder form;
- 265 (D) softgel form;
- 266 (E) gelcap form; or
- 267 (F) liquid form; or
- 268 (ii) notwithstanding Subsection [~~(22)~~] (23)(c)(i), if the product is not intended for
- 269 ingestion in a form described in Subsections [~~(22)~~] (23)(c)(i)(A) through (F), is not
- 270 represented:
- 271 (A) as conventional food; and
- 272 (B) for use as a sole item of:
- 273 (I) a meal; or
- 274 (II) the diet; and

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

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

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

278 [~~(23)~~] (24) (a) "Direct mail" means printed material delivered or distributed by United

279 States mail or other delivery service:

280 (i) to:

281 (A) a mass audience; or

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

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

284 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a

285 purchaser to a seller of direct mail for inclusion in a package containing the printed material.

286 (c) "Direct mail" does not include multiple items of printed material delivered to a

287 single address.

288 [~~(24)~~] (25) (a) "Drug" means a compound, substance, or preparation, or a component of

289 a compound, substance, or preparation that is:

290 (i) recognized in:

291 (A) the official United States Pharmacopoeia;

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

293 (C) the official National Formulary; or

294 (D) a supplement to a publication listed in Subsections [~~(24)~~] (25)(a)(i)(A) through

295 (C);

296 (ii) intended for use in the:

297 (A) diagnosis of disease;

298 (B) cure of disease;

299 (C) mitigation of disease;

300 (D) treatment of disease; or

301 (E) prevention of disease; or

302 (iii) intended to affect:

303 (A) the structure of the body; or

304 (B) any function of the body.

305 (b) "Drug" does not include:

- 306 (i) food and food ingredients;
- 307 (ii) a dietary supplement;
- 308 (iii) an alcoholic beverage; or
- 309 (iv) a prosthetic device.
- 310 ~~[(25)]~~ (26) (a) Except as provided in Subsection ~~[(25)]~~ (26)(c), "durable medical
- 311 equipment" means equipment that:
  - 312 (i) can withstand repeated use;
  - 313 (ii) is primarily and customarily used to serve a medical purpose;
  - 314 (iii) generally is not useful to a person in the absence of illness or injury; and
  - 315 (iv) is not worn in or on the body.
- 316 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 317 equipment described in Subsection ~~[(25)]~~ (26)(a).
- 318 (c) Notwithstanding Subsection ~~[(25)]~~ (26)(a), "durable medical equipment" does not
- 319 include mobility enhancing equipment.
- 320 ~~[(26)]~~ (27) "Electronic" means:
  - 321 (a) relating to technology; and
  - 322 (b) having:
    - 323 (i) electrical capabilities;
    - 324 (ii) digital capabilities;
    - 325 (iii) magnetic capabilities;
    - 326 (iv) wireless capabilities;
    - 327 (v) optical capabilities;
    - 328 (vi) electromagnetic capabilities; or
    - 329 (vii) capabilities similar to Subsections ~~[(26)]~~ (27)(b)(i) through (vi).
- 330 ~~[(27)]~~ (28) (a) "Food and food ingredients" means substances:
  - 331 (i) regardless of whether the substances are in:
    - 332 (A) liquid form;
    - 333 (B) concentrated form;
    - 334 (C) solid form;
    - 335 (D) frozen form;
    - 336 (E) dried form; or

- 337 (F) dehydrated form; and
- 338 (ii) that are:
- 339 (A) sold for:
- 340 (I) ingestion by humans; or
- 341 (II) chewing by humans; and
- 342 (B) consumed for the substance's:
- 343 (I) taste; or
- 344 (II) nutritional value.
- 345 (b) "Food and food ingredients" does not include:
- 346 (i) an alcoholic beverage;
- 347 (ii) tobacco; or
- 348 (iii) prepared food.
- 349 [~~(28)~~] (29) (a) "Fundraising sales" means sales:
- 350 (i) (A) made by a school; or
- 351 (B) made by a school student;
- 352 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 353 materials, or provide transportation; and
- 354 (iii) that are part of an officially sanctioned school activity.
- 355 (b) For purposes of Subsection [~~(28)~~] (29)(a)(iii), "officially sanctioned school activity"
- 356 means a school activity:
- 357 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 358 district governing the authorization and supervision of fundraising activities;
- 359 (ii) that does not directly or indirectly compensate an individual teacher or other
- 360 educational personnel by direct payment, commissions, or payment in kind; and
- 361 (iii) the net or gross revenues from which are deposited in a dedicated account
- 362 controlled by the school or school district.
- 363 [~~(29)~~] (30) "Geothermal energy" means energy contained in heat that continuously
- 364 flows outward from the earth that is used as the sole source of energy to produce electricity.
- 365 [~~(30)~~] (31) "Governing board of the agreement" means the governing board of the
- 366 agreement that is:
- 367 (a) authorized to administer the agreement; and

- 368 (b) established in accordance with the agreement.
- 369 [~~(31)~~] (32) (a) "Hearing aid" means:
- 370 (i) an instrument or device having an electronic component that is designed to:
- 371 (A) (I) improve impaired human hearing; or
- 372 (II) correct impaired human hearing; and
- 373 (B) (I) be worn in the human ear; or
- 374 (II) affixed behind the human ear;
- 375 (ii) an instrument or device that is surgically implanted into the cochlea; or
- 376 (iii) a telephone amplifying device.
- 377 (b) "Hearing aid" does not include:
- 378 (i) except as provided in Subsection [~~(31)~~] (32)(a)(i)(B) or [~~(31)~~] (32)(a)(ii), an
- 379 instrument or device having an electronic component that is designed to be worn on the body;
- 380 (ii) except as provided in Subsection [~~(31)~~] (32)(a)(iii), an assistive listening device or
- 381 system designed to be used by one individual, including:
- 382 (A) a personal amplifying system;
- 383 (B) a personal FM system;
- 384 (C) a television listening system; or
- 385 (D) a device or system similar to a device or system described in Subsections [~~(31)~~]
- 386 (32)(b)(ii)(A) through (C); or
- 387 (iii) an assistive listening device or system designed to be used by more than one
- 388 individual, including:
- 389 (A) a device or system installed in:
- 390 (I) an auditorium;
- 391 (II) a church;
- 392 (III) a conference room;
- 393 (IV) a synagogue; or
- 394 (V) a theater; or
- 395 (B) a device or system similar to a device or system described in Subsections [~~(31)~~]
- 396 (32)(b)(iii)(A)(I) through (V).
- 397 [~~(32)~~] (33) (a) "Hearing aid accessory" means a hearing aid:
- 398 (i) component;

- 399 (ii) attachment; or
- 400 (iii) accessory.
- 401 (b) "Hearing aid accessory" includes:
- 402 (i) a hearing aid neck loop;
- 403 (ii) a hearing aid cord;
- 404 (iii) a hearing aid ear mold;
- 405 (iv) hearing aid tubing;
- 406 (v) a hearing aid ear hook; or
- 407 (vi) a hearing aid remote control.
- 408 (c) "Hearing aid accessory" does not include:
- 409 (i) a component, attachment, or accessory designed to be used only with an:
- 410 (A) instrument or device described in Subsection [~~(31)~~] (32)(b)(i); or
- 411 (B) assistive listening device or system described in Subsection [~~(31)~~] (32)(b)(ii) or
- 412 (iii); or
- 413 (ii) a hearing aid battery.
- 414 [~~(33)~~] (34) "Hydroelectric energy" means water used as the sole source of energy to
- 415 produce electricity.
- 416 [~~(34)~~] (35) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil,
- 417 or other fuels:
- 418 (a) in mining or extraction of minerals;
- 419 (b) in agricultural operations to produce an agricultural product up to the time of
- 420 harvest or placing the agricultural product into a storage facility, including:
- 421 (i) commercial greenhouses;
- 422 (ii) irrigation pumps;
- 423 (iii) farm machinery;
- 424 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
- 425 registered under Title 41, Chapter 1a, Part 2, Registration; and
- 426 (v) other farming activities;
- 427 (c) in manufacturing tangible personal property at an establishment described in SIC
- 428 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
- 429 Executive Office of the President, Office of Management and Budget; or

430 (d) by a scrap recycler if:

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

434 (A) iron;

435 (B) steel;

436 (C) nonferrous metal;

437 (D) paper;

438 (E) glass;

439 (F) plastic;

440 (G) textile; or

441 (H) rubber; and

442 (ii) the new products under Subsection [~~(34)~~] (35)(d)(i) would otherwise be made with  
443 nonrecycled materials.

444 [~~(35)~~] (36) (a) Except as provided in Subsection [~~(35)~~] (36)(b), "installation charge"  
445 means a charge for installing tangible personal property.

446 (b) Notwithstanding Subsection [~~(35)~~] (36)(a), "installation charge" does not include a  
447 charge for repairs or renovations of tangible personal property.

448 [~~(36)~~] (37) (a) "Lease" or "rental" means a transfer of possession or control of tangible  
449 personal property for:

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

451 (B) an indeterminate term; and

452 (ii) consideration.

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

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

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

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

463 (A) upon completion of required payments; and

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

465 (I) \$100; or

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

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

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

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

473 (ii) maintenance of tangible personal property; or

474 (iii) inspection of tangible personal property.

475 [~~37~~] (38) "Load and leave" means delivery to a purchaser by use of a tangible storage  
476 media if the tangible storage media is not physically transferred to the purchaser.

477 [~~38~~] (39) "Local taxing jurisdiction" means a:

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

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

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

481 [~~39~~] (40) "Manufactured home" is as defined in Section 58-56-3.

482 [~~40~~] (41) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:

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

484 Industrial Classification Manual of the federal Executive Office of the President, Office of  
485 Management and Budget; or

486 (b) a scrap recycler if:

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

490 (A) iron;

491 (B) steel;



- 492 (C) nonferrous metal;
- 493 (D) paper;
- 494 (E) glass;
- 495 (F) plastic;
- 496 (G) textile; or
- 497 (H) rubber; and
- 498 (ii) the new products under Subsection [~~(40)~~] (41)(b)(i) would otherwise be made with
- 499 nonrecycled materials.

500 [~~(41)~~] (42) "Mobile home" is as defined in Section 58-56-3.

501 [~~(42)~~] (43) "Mobile telecommunications service" is as defined in the Mobile  
502 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

503 [~~(43)~~] (44) (a) Except as provided in Subsection [~~(43)~~] (44)(c), "mobility enhancing  
504 equipment" means equipment that is:

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

507 (ii) appropriate for use in a:

508 (A) home; or

509 (B) motor vehicle; and

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

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

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

515 (i) a motor vehicle;

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

518 (iii) durable medical equipment; or

519 (iv) a prosthetic device.

520 [~~(44)~~] (45) "Model 1 seller" means a seller that has selected a certified service provider  
521 as the seller's agent to perform all of the seller's sales and use tax functions for agreement sales  
522 and use taxes other than the seller's obligation under Section 59-12-107.4 to remit a tax on the

523 seller's own purchases.

524 [~~(45)~~] (46) "Model 2 seller" means a seller that:

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

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

529 (i) collected by the seller; and

530 (ii) to the appropriate local taxing jurisdiction.

531 [~~(46)~~] (47) (a) Subject to Subsection [~~(46)~~] (47)(b), "model 3 seller" means a seller that  
532 has:

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

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

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

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

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

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

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

541 [~~(47)~~] (48) "Modular home" means a modular unit as defined in Section 58-56-3.

542 [~~(48)~~] (49) "Motor vehicle" is as defined in Section 41-1a-102.

543 [~~(49)~~] (50) (a) "Other fuels" means products that burn independently to produce heat or  
544 energy.

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

547 [~~(50)~~] (51) "Pawnbroker" is as defined in Section 13-32a-102.

548 [~~(51)~~] (52) "Pawn transaction" is as defined in Section 13-32a-102.

549 [~~(52)~~] (53) (a) "Permanently attached to real property" means that for tangible personal  
550 property attached to real property:

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

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

553 (B) suggests that the tangible personal property will remain attached to the real

554 property in the same place over the useful life of the tangible personal property; or  
555 (ii) if the tangible personal property is detached from the real property, the detachment  
556 would:  
557 (A) cause substantial damage to the tangible personal property; or  
558 (B) require substantial alteration or repair of the real property to which the tangible  
559 personal property is attached.  
560 (b) "Permanently attached to real property" includes:  
561 (i) the attachment of an accessory to the tangible personal property if the accessory is:  
562 (A) essential to the operation of the tangible personal property; and  
563 (B) attached only to facilitate the operation of the tangible personal property; or  
564 (ii) a temporary detachment of tangible personal property from real property for a  
565 repair or renovation if the repair or renovation is performed where the tangible personal  
566 property and real property are located.  
567 (c) "Permanently attached to real property" does not include:  
568 (i) the attachment of portable or movable tangible personal property to real property if  
569 that portable or movable tangible personal property is attached to real property only for:  
570 (A) convenience;  
571 (B) stability; or  
572 (C) for an obvious temporary purpose; or  
573 (ii) the detachment of tangible personal property from real property other than the  
574 detachment described in Subsection [~~52~~] 53(b)(ii).  
575 [~~53~~] 54 "Person" includes any individual, firm, partnership, joint venture,  
576 association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county,  
577 city, municipality, district, or other local governmental entity of the state, or any group or  
578 combination acting as a unit.  
579 [~~54~~] 55 "Place of primary use":  
580 (a) for telephone service other than mobile telecommunications service, means the  
581 street address representative of where the purchaser's use of the telephone service primarily  
582 occurs, which shall be:  
583 (i) the residential street address of the purchaser; or  
584 (ii) the primary business street address of the purchaser; or

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

587 [~~55~~] 56 "Postproduction" means an activity related to the finishing or duplication of  
588 a medium described in Subsection 59-12-104(60)(a).

589 [~~56~~] 57 (a) "Prepared food" means:

590 (i) food:

591 (A) sold in a heated state; or

592 (B) heated by a seller;

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

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

597 (A) plate;

598 (B) knife;

599 (C) fork;

600 (D) spoon;

601 (E) glass;

602 (F) cup;

603 (G) napkin; or

604 (H) straw.

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

606 (i) food that a seller only:

607 (A) cuts;

608 (B) repackages; or

609 (C) pasteurizes; or

610 (ii) (A) the following:

611 (I) raw egg;

612 (II) raw fish;

613 (III) raw meat;

614 (IV) raw poultry; or

615 (V) a food containing an item described in Subsections [~~56~~] 57(b)(ii)(A)(I) through

616 (IV); and

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

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

622 (i) a container; or

623 (ii) packaging.

624 ~~[(57)]~~ (58) "Prescription" means an order, formula, or recipe that is issued:

625 (a) (i) orally;

626 (ii) in writing;

627 (iii) electronically; or

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

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

630 ~~[(58)]~~ (59) (a) Except as provided in Subsection ~~[(58)]~~ (59)(b)(ii) or (iii), "prewritten  
631 computer software" means computer software that is not designed and developed:

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

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

634 (b) "Prewritten computer software" includes:

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

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

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

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

642 (iii) notwithstanding Subsection ~~[(58)]~~ (59)(a) and except as provided in Subsection  
643 ~~[(58)]~~ (59)(c), prewritten computer software or a prewritten portion of prewritten computer  
644 software:

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

646 (B) if the modification or enhancement described in Subsection ~~[(58)]~~ (59)(b)(iii)(A) is

647 designed and developed to the specifications of a specific purchaser.

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

651 (i) reasonable; and

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

654 [~~(59)~~] (60) (a) "Prosthetic device" means a device that is worn on or in the body to:

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

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

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

658 (b) "Prosthetic device" includes:

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

660 (ii) replacement parts for a prosthetic device.

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

662 (i) corrective eyeglasses;

663 (ii) contact lenses;

664 (iii) hearing aids; or

665 (iv) dental prostheses.

666 [~~(60)~~] (61) (a) "Protective equipment" means an item:

667 (i) for human wear; and

668 (ii) that is:

669 (A) designed as protection:

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

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

672 (B) not suitable for general use.

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

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

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

677 under the agreement.

678            [~~(61)~~] (62) (a) "Purchase price" and "sales price" mean the total amount of  
679 consideration:

680            (i) valued in money; and  
681            (ii) for which tangible personal property or services are:

682            (A) sold;  
683            (B) leased; or  
684            (C) rented.

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

686            (i) the seller's cost of the tangible personal property or services sold;  
687            (ii) expenses of the seller, including:

688            (A) the cost of materials used;  
689            (B) a labor cost;  
690            (C) a service cost;  
691            (D) interest;  
692            (E) a loss;  
693            (F) the cost of transportation to the seller; or  
694            (G) a tax imposed on the seller; or

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

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

697            (i) a discount:

698            (A) in a form including:

699            (I) cash;  
700            (II) term; or  
701            (III) coupon;

702            (B) that is allowed by a seller;  
703            (C) taken by a purchaser on a sale; and  
704            (D) that is not reimbursed by a third party; or

705            (ii) the following if separately stated on an invoice, bill of sale, or similar document  
706 provided to the purchaser:

707            (A) the amount of a trade-in;  
708            (B) the following from credit extended on the sale of tangible personal property or

709 services:

- 710 (I) interest charges;
- 711 (II) financing charges; or
- 712 (III) carrying charges;
- 713 (C) a tax or fee legally imposed directly on the consumer;
- 714 (D) a delivery charge; or
- 715 (E) an installation charge.

716 [~~(62)~~] (63) "Purchaser" means a person to whom:

- 717 (a) a sale of tangible personal property is made; or
- 718 (b) a service is furnished.

719 [~~(63)~~] (64) "Regularly rented" means:

- 720 (a) rented to a guest for value three or more times during a calendar year; or
- 721 (b) advertised or held out to the public as a place that is regularly rented to guests for
- 722 value.

723 [~~(64)~~] (65) "Renewable energy" means:

- 724 (a) biomass energy;
- 725 (b) hydroelectric energy;
- 726 (c) geothermal energy;
- 727 (d) solar energy; or
- 728 (e) wind energy.

729 [~~(65)~~] (66) (a) "Renewable energy production facility" means a facility that:

- 730 (i) uses renewable energy to produce electricity; and
- 731 (ii) has a production capacity of 20 kilowatts or greater.
- 732 (b) A facility is a renewable energy production facility regardless of whether the

733 facility is:

- 734 (i) connected to an electric grid; or
- 735 (ii) located on the premises of an electricity consumer.

736 [~~(66)~~] (67) "Rental" is as defined in Subsection [~~(36)~~] (37).

737 [~~(67)~~] (68) "Repairs or renovations of tangible personal property" means:

- 738 (a) a repair or renovation of tangible personal property that is not permanently attached
- 739 to real property; or



740 (b) attaching tangible personal property to other tangible personal property if the other  
741 tangible personal property to which the tangible personal property is attached is not  
742 permanently attached to real property.

743 [~~(68)~~] (69) "Residential use" means the use in or around a home, apartment building,  
744 sleeping quarters, and similar facilities or accommodations.

745 [~~(69)~~] (70) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose  
746 other than:

747 (a) resale;

748 (b) sublease; or

749 (c) subrent.

750 [~~(70)~~] (71) (a) "Retailer" means any person engaged in a regularly organized business  
751 in tangible personal property or any other taxable transaction under Subsection 59-12-103(1),  
752 and who is selling to the user or consumer and not for resale.

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

755 [~~(71)~~] (72) (a) "Sale" means any transfer of title, exchange, or barter, conditional or  
756 otherwise, in any manner, of tangible personal property or any other taxable transaction under  
757 Subsection 59-12-103(1), for consideration.

758 (b) "Sale" includes:

759 (i) installment and credit sales;

760 (ii) any closed transaction constituting a sale;

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

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

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

768 [~~(72)~~] (73) "Sale at retail" is as defined in Subsection [~~(69)~~] (70).

769 [~~(73)~~] (74) "Sale-leaseback transaction" means a transaction by which title to tangible  
770 personal property that is subject to a tax under this chapter is transferred:

- 771 (a) by a purchaser-lessee;
- 772 (b) to a lessor;
- 773 (c) for consideration; and
- 774 (d) if:
  - 775 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
  - 776 of the tangible personal property;
  - 777 (ii) the sale of the tangible personal property to the lessor is intended as a form of
  - 778 financing:
    - 779 (A) for the property; and
    - 780 (B) to the purchaser-lessee; and
    - 781 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
    - 782 is required to:
      - 783 (A) capitalize the property for financial reporting purposes; and
      - 784 (B) account for the lease payments as payments made under a financing arrangement.
  - 785 [~~74~~] (75) "Sales price" is as defined in Subsection [~~61~~] (62).
  - 786 [~~75~~] (76) (a) "Sales relating to schools" means the following sales by, amounts paid
  - 787 to, or amounts charged by a school:
    - 788 (i) sales that are directly related to the school's educational functions or activities
    - 789 including:
      - 790 (A) the sale of:
        - 791 (I) textbooks;
        - 792 (II) textbook fees;
        - 793 (III) laboratory fees;
        - 794 (IV) laboratory supplies; or
        - 795 (V) safety equipment;
      - 796 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
    - 797 that:
      - 798 (I) a student is specifically required to wear as a condition of participation in a
      - 799 school-related event or school-related activity; and
      - 800 (II) is not readily adaptable to general or continued usage to the extent that it takes the
      - 801 place of ordinary clothing;

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

804 (I) food and food ingredients; or

805 (II) prepared food; or

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

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

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

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

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

812 (A) clothing;

813 (B) clothing accessories or equipment;

814 (C) protective equipment; or

815 (D) sports or recreational equipment; or

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

818 (A) other than a:

819 (I) school;

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

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

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

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

827 [~~(76)~~] (77) For purposes of this section and Section 59-12-104, "school" means:

828 (a) an elementary school or a secondary school that:

829 (i) is a:

830 (A) public school; or

831 (B) private school; and

832 (ii) provides instruction for one or more grades kindergarten through 12; or

- 833 (b) a public school district.
- 834 [~~(77)~~] (78) "Seller" means a person that makes a sale, lease, or rental of:
- 835 (a) tangible personal property; or
- 836 (b) a service.
- 837 [~~(78)~~] (79) (a) "Semiconductor fabricating or processing materials" means tangible
- 838 personal property:
- 839 (i) used primarily in the process of:
- 840 (A) (I) manufacturing a semiconductor; or
- 841 (II) fabricating a semiconductor; or
- 842 (B) maintaining an environment suitable for a semiconductor; or
- 843 (ii) consumed primarily in the process of:
- 844 (A) (I) manufacturing a semiconductor; or
- 845 (II) fabricating a semiconductor; or
- 846 (B) maintaining an environment suitable for a semiconductor.
- 847 (b) "Semiconductor fabricating or processing materials" includes:
- 848 (i) parts used in the repairs or renovations of tangible personal property described in
- 849 Subsection [~~(78)~~] (79)(a); or
- 850 (ii) a chemical, catalyst, or other material used to:
- 851 (A) produce or induce in a semiconductor a:
- 852 (I) chemical change; or
- 853 (II) physical change;
- 854 (B) remove impurities from a semiconductor; or
- 855 (C) improve the marketable condition of a semiconductor.
- 856 [~~(79)~~] (80) "Senior citizen center" means a facility having the primary purpose of
- 857 providing services to the aged as defined in Section 62A-3-101.
- 858 [~~(80)~~] (81) "Simplified electronic return" means the electronic return:
- 859 (a) described in Section 318(C) of the agreement; and
- 860 (b) approved by the governing board of the agreement.
- 861 [~~(81)~~] (82) "Solar energy" means the sun used as the sole source of energy for
- 862 producing electricity.
- 863 [~~(82)~~] (83) (a) "Sports or recreational equipment" means an item:

- 864 (i) designed for human use; and  
865 (ii) that is:  
866 (A) worn in conjunction with:  
867 (I) an athletic activity; or  
868 (II) a recreational activity; and  
869 (B) not suitable for general use.
- 870 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
871 commission shall make rules:  
872 (i) listing the items that constitute "sports or recreational equipment"; and  
873 (ii) that are consistent with the list of items that constitute "sports or recreational  
874 equipment" under the agreement.
- 875 [~~(83)~~] (84) "State" means the state of Utah, its departments, and agencies.  
876 [~~(84)~~] (85) "Storage" means any keeping or retention of tangible personal property or  
877 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose  
878 except sale in the regular course of business.
- 879 [~~(85)~~] (86) (a) "Tangible personal property" means personal property that:  
880 (i) may be:  
881 (A) seen;  
882 (B) weighed;  
883 (C) measured;  
884 (D) felt; or  
885 (E) touched; or  
886 (ii) is in any manner perceptible to the senses.
- 887 (b) "Tangible personal property" includes:  
888 (i) electricity;  
889 (ii) water;  
890 (iii) gas;  
891 (iv) steam; or  
892 (v) prewritten computer software.
- 893 [~~(86)~~] (87) (a) "Telephone service" means a two-way transmission:  
894 (i) by:

- 895 (A) wire;
- 896 (B) radio;
- 897 (C) lightwave; or
- 898 (D) other electromagnetic means; and
- 899 (ii) of one or more of the following:
  - 900 (A) a sign;
  - 901 (B) a signal;
  - 902 (C) writing;
  - 903 (D) an image;
  - 904 (E) sound;
  - 905 (F) a message;
  - 906 (G) data; or
  - 907 (H) other information of any nature.
- 908 (b) "Telephone service" includes:
  - 909 (i) mobile telecommunications service;
  - 910 (ii) private communications service; or
  - 911 (iii) automated digital telephone answering service.
- 912 (c) "Telephone service" does not include a service or a transaction that a state or a
- 913 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet
- 914 Tax Freedom Act, Pub. L. No. 105-277.
- 915 ~~[(87)]~~ (88) Notwithstanding where a call is billed or paid, "telephone service address"
- 916 means:
  - 917 (a) if the location described in this Subsection ~~[(87)]~~ (88)(a) is known, the location of
  - 918 the telephone service equipment:
    - 919 (i) to which a call is charged; and
    - 920 (ii) from which the call originates or terminates;
  - 921 (b) if the location described in Subsection ~~[(87)]~~ (88)(a) is not known but the location
  - 922 described in this Subsection ~~[(87)]~~ (88)(b) is known, the location of the origination point of the
  - 923 signal of the telephone service first identified by:
    - 924 (i) the telecommunications system of the seller; or
    - 925 (ii) if the system used to transport the signal is not that of the seller, information

926 received by the seller from its service provider; or

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

929 [~~88~~] (89) (a) "Telephone service provider" means a person that:

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

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

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

935 (i) that person; or

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

937 [~~89~~] (90) "Tobacco" means:

938 (a) a cigarette;

939 (b) a cigar;

940 (c) chewing tobacco;

941 (d) pipe tobacco; or

942 (e) any other item that contains tobacco.

943 [~~90~~] (91) (a) "Use" means the exercise of any right or power over tangible personal  
944 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that  
945 property, item, or service.

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

948 [~~91~~] (92) (a) Subject to Subsection [~~91~~] (92)(b), "vehicle" means the following that  
949 are required to be titled, registered, or titled and registered:

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

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

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

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

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

955 (i) a vehicle described in Subsection [~~91~~] (92)(a); or

956 (ii) (A) a locomotive;

- 957 (B) a freight car;
- 958 (C) railroad work equipment; or
- 959 (D) other railroad rolling stock.

960 [~~92~~] (93) "Vehicle dealer" means a person engaged in the business of buying, selling,  
961 or exchanging a vehicle as defined in Subsection [~~91~~] (92).

962 [~~93~~] (94) (a) Except as provided in Subsection [~~93~~] (94)(b), "waste energy facility"  
963 means a facility that generates electricity:

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

- 966 (A) tires;
- 967 (B) waste coal; or
- 968 (C) oil shale; and
- 969 (ii) in amounts greater than actually required for the operation of the facility.

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

- 971 (i) municipal solid waste;
- 972 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or
- 973 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

974 [~~94~~] (95) "Watercraft" means a vessel as defined in Section 73-18-2.

975 [~~95~~] (96) "Wind energy" means wind used as the sole source of energy to produce  
976 electricity.

977 [~~96~~] (97) "ZIP Code" means a Zoning Improvement Plan Code assigned to a  
978 geographic location by the United States Postal Service.

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

980 **59-12-103 (Effective 07/01/06). Sales and use tax base -- Rates -- Effective dates --**  
981 **Use of sales and use tax revenues.**

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

- 984 (a) retail sales of tangible personal property made within the state;
- 985 (b) amounts paid:
  - 986 (i) (A) to a common carrier; or
  - 987 (B) whether the following are municipally or privately owned, to a:



- 988 (I) telephone service provider; or
- 989 (II) telegraph corporation as defined in Section 54-2-1; and
- 990 (ii) for:
- 991 (A) all transportation;
- 992 (B) telephone service, other than mobile telecommunications service, that originates
- 993 and terminates within the boundaries of this state;
- 994 (C) mobile telecommunications service that originates and terminates within the
- 995 boundaries of one state only to the extent permitted by the Mobile Telecommunications
- 996 Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or
- 997 (D) telegraph service;
- 998 (c) sales of the following for commercial use:
- 999 (i) gas;
- 1000 (ii) electricity;
- 1001 (iii) heat;
- 1002 (iv) coal;
- 1003 (v) fuel oil; or
- 1004 (vi) other fuels;
- 1005 (d) sales of the following for residential use:
- 1006 (i) gas;
- 1007 (ii) electricity;
- 1008 (iii) heat;
- 1009 (iv) coal;
- 1010 (v) fuel oil; or
- 1011 (vi) other fuels;
- 1012 (e) sales of prepared food;
- 1013 (f) except as provided in Section 59-12-104, amounts paid or charged as admission or
- 1014 user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,
- 1015 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,
- 1016 fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit
- 1017 television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf
- 1018 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,

1019 tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises,  
1020 horseback rides, sports activities, or any other amusement, entertainment, recreation,  
1021 exhibition, cultural, or athletic activity;

1022 (g) amounts paid or charged for services for repairs or renovations of tangible personal  
1023 property, unless Section 59-12-104 provides for an exemption from sales and use tax for:

1024 (i) the tangible personal property; and

1025 (ii) parts used in the repairs or renovations of the tangible personal property described  
1026 in Subsection (1)(g)(i), whether or not any parts are actually used in the repairs or renovations  
1027 of that tangible personal property;

1028 (h) except as provided in Subsection 59-12-104(7), amounts paid or charged for  
1029 cleaning or washing of tangible personal property;

1030 (i) amounts paid or charged for tourist home, hotel, motel, or trailer court  
1031 accommodations and services that are regularly rented for less than 30 consecutive days;

1032 (j) amounts paid or charged for laundry or dry cleaning services;

1033 (k) amounts paid or charged for leases or rentals of tangible personal property if within  
1034 this state the tangible personal property is:

1035 (i) stored;

1036 (ii) used; or

1037 (iii) otherwise consumed;

1038 (l) amounts paid or charged for tangible personal property if within this state the  
1039 tangible personal property is:

1040 (i) stored;

1041 (ii) used; or

1042 (iii) consumed; and

1043 (m) amounts paid or charged for prepaid telephone calling cards.

1044 (2) (a) Except as provided in Subsection (2)(b) ~~or (f), [beginning on July 1, 2001,]~~ a  
1045 state tax and a local tax is imposed on a transaction described in Subsection (1) equal to the  
1046 sum of:

1047 (i) a state tax imposed on the transaction at a rate of 4.75%; and

1048 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the  
1049 transaction under this chapter other than this part.

1050 (b) (i) [~~Notwithstanding Subsection (2)(a), beginning on July 1, 2001, a~~] A state tax  
 1051 and a local tax is imposed on a transaction described in Subsection (1)(d) equal to the sum of:

1052 [(i)] (A) a state tax imposed on the transaction at a rate of 2%; and

1053 [(ii)] (B) a local tax equal to the sum of the tax rates a county, city, or town imposes on  
 1054 the transaction under this chapter other than this part.

1055 (ii) Except as provided in Subsection (2)(f), beginning on January 1, 2007, a state tax  
 1056 and a local tax is imposed on amounts paid or charged for food and food ingredients equal to  
 1057 the sum of:

1058 (A) a state tax imposed on the amounts paid or charged for food and food ingredients  
 1059 at a rate of 2.75%; and

1060 (B) a local tax equal to the sum of the tax rates a county, city, or town imposes on the  
 1061 amounts paid or charged for food and food ingredients under this chapter other than this part.

1062 (c) Subject to Subsections (2)(d) and (e), a tax rate repeal or tax rate change for a tax  
 1063 rate imposed under the following shall take effect on the first day of a calendar quarter:

1064 (i) Subsection (2)(a)(i); [~~or~~]

1065 (ii) Subsection (2)(b)(i)[~~:(A)~~]; or

1066 (iii) Subsection (2)(b)(ii)(A).

1067 (d) (i) For a transaction described in Subsection (2)(d)(iii), a tax rate increase shall take  
 1068 effect on the first day of the first billing period:

1069 (A) that begins after the effective date of the tax rate increase; and

1070 (B) if the billing period for the transaction begins before the effective date of a tax rate  
 1071 increase imposed under:

1072 (I) Subsection (2)(a)(i); or

1073 (II) Subsection (2)(b)(i)(A).

1074 (ii) For a transaction described in Subsection (2)(d)(iii), the repeal of a tax or a tax rate  
 1075 decrease shall take effect on the first day of the last billing period:

1076 (A) that began before the effective date of the repeal of the tax or the tax rate decrease;

1077 and

1078 (B) if the billing period for the transaction begins before the effective date of the repeal  
 1079 of the tax or the tax rate decrease imposed under:

1080 (I) Subsection (2)(a)(i); or

- 1081 (II) Subsection (2)(b)(i)(A).
- 1082 (iii) Subsections (2)(d)(i) and (ii) apply to transactions subject to a tax under:
- 1083 (A) Subsection (1)(b);
- 1084 (B) Subsection (1)(c);
- 1085 (C) Subsection (1)(d);
- 1086 (D) Subsection (1)(e);
- 1087 (E) Subsection (1)(f);
- 1088 (F) Subsection (1)(g);
- 1089 (G) Subsection (1)(h);
- 1090 (H) Subsection (1)(i);
- 1091 (I) Subsection (1)(j); or
- 1092 (J) Subsection (1)(k).
- 1093 (e) (i) If a tax due under Subsection (2)(a)(i) on a catalogue sale is computed on the
- 1094 basis of sales and use tax rates published in the catalogue, a tax rate repeal or change in a tax
- 1095 rate imposed under Subsection (2)(a)(i) takes effect:
- 1096 (A) on the first day of a calendar quarter; and
- 1097 (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change
- 1098 under Subsection (2)(a)(i).
- 1099 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
- 1100 the commission may by rule define the term "catalogue sale."
- 1101 (f) (i) If the price of a bundled transaction is attributable to items of tangible personal
- 1102 property and food and food ingredients, the tax imposed on the entire bundled transaction is the
- 1103 sum of the tax rates described in Subsection (2)(a).
- 1104 (ii) For a seller that sells food and food ingredients and prepared food at the same
- 1105 location:
- 1106 (A) if the location at which the food and food ingredients and prepared food is sold is a
- 1107 restaurant as defined in Section 59-12-602, the tax imposed on the food and food ingredients
- 1108 and prepared food is the sum of the tax rates described in Subsection (2)(a); or
- 1109 (B) if the location at which the food and food ingredients and prepared food is sold is
- 1110 not a restaurant as defined in Section 59-12-602, the tax imposed on the food and food
- 1111 ingredients and prepared food is the sum of the tax rates described in Subsection (2)(b)(ii).

1112 (3) (a) Except as provided in Subsections (4) through (7), the following state taxes  
1113 shall be deposited into the General Fund:

1114 (i) the tax imposed by Subsection (2)(a)(i); [~~or~~]

1115 (ii) the tax imposed by Subsection (2)(b)(i)[~~:(A)~~]; or

1116 (iii) the tax imposed by Subsection (2)(b)(ii)(A).

1117 (b) The local taxes described in Subsections (2)(a)(ii), (2)(b)(i)(B), and (2)(b)(ii)(B)  
1118 shall be distributed to a county, city, or town as provided in this chapter.

1119 (4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,  
1120 2003, the lesser of the following amounts shall be used as provided in Subsections (4)(b)  
1121 through (g):

1122 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

1123 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and

1124 (B) for the fiscal year; or

1125 (ii) \$17,500,000.

1126 (b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount  
1127 described in Subsection (4)(a) shall be transferred each year as dedicated credits to the  
1128 Department of Natural Resources to:

1129 (A) implement the measures described in Subsections 63-34-14(4)(a) through (d) to  
1130 protect sensitive plant and animal species; or

1131 (B) award grants, up to the amount authorized by the Legislature in an appropriations  
1132 act, to political subdivisions of the state to implement the measures described in Subsections  
1133 63-34-14(4)(a) through (d) to protect sensitive plant and animal species.

1134 (ii) Money transferred to the Department of Natural Resources under Subsection  
1135 (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other  
1136 person to list or attempt to have listed a species as threatened or endangered under the  
1137 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

1138 (iii) At the end of each fiscal year:

1139 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources  
1140 Conservation and Development Fund created in Section 73-10-24;

1141 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan  
1142 Program Subaccount created in Section 73-10c-5; and

1143 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan  
1144 Program Subaccount created in Section 73-10c-5.

1145 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in  
1146 Subsection (4)(b)(i) shall be deposited each year in the Agriculture Resource Development  
1147 Fund created in Section 4-18-6.

1148 (d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described  
1149 in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water  
1150 Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of  
1151 water rights.

1152 (ii) At the end of each fiscal year:

1153 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources  
1154 Conservation and Development Fund created in Section 73-10-24;

1155 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan  
1156 Program Subaccount created in Section 73-10c-5; and

1157 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan  
1158 Program Subaccount created in Section 73-10c-5.

1159 (e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described  
1160 in Subsection (4)(a) shall be deposited in the Water Resources Conservation and Development  
1161 Fund created in Section 73-10-24 for use by the Division of Water Resources.

1162 (ii) In addition to the uses allowed of the Water Resources Conservation and  
1163 Development Fund under Section 73-10-24, the Water Resources Conservation and  
1164 Development Fund may also be used to:

1165 (A) provide a portion of the local cost share, not to exceed in any fiscal year 50% of the  
1166 funds made available to the Division of Water Resources under this section, of potential project  
1167 features of the Central Utah Project;

1168 (B) conduct hydrologic and geotechnical investigations by the Department of Natural  
1169 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of  
1170 quantifying surface and ground water resources and describing the hydrologic systems of an  
1171 area in sufficient detail so as to enable local and state resource managers to plan for and  
1172 accommodate growth in water use without jeopardizing the resource;

1173 (C) fund state required dam safety improvements; and

1174 (D) protect the state's interest in interstate water compact allocations, including the  
1175 hiring of technical and legal staff.

1176 (f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described  
1177 in Subsection (4)(a) shall be deposited in the Utah Wastewater Loan Program Subaccount  
1178 created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

1179 (g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described  
1180 in Subsection (4)(a) shall be deposited in the Drinking Water Loan Program Subaccount  
1181 created in Section 73-10c-5 for use by the Division of Drinking Water to:

1182 (i) provide for the installation and repair of collection, treatment, storage, and  
1183 distribution facilities for any public water system, as defined in Section 19-4-102;

1184 (ii) develop underground sources of water, including springs and wells; and

1185 (iii) develop surface water sources.

1186 (5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,  
1187 2003, the lesser of the following amounts shall be used as provided in Subsections (5)(b)  
1188 through (d):

1189 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

1190 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and

1191 (B) for the fiscal year; or

1192 (ii) \$18,743,000.

1193 (b) (i) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described  
1194 in Subsection (5)(a) shall be deposited each year in the Transportation Corridor Preservation  
1195 Revolving Loan Fund created in Section 72-2-117.

1196 (ii) At least 50% of the money deposited in the Transportation Corridor Preservation  
1197 Revolving Loan Fund under Subsection (5)(b)(i) shall be used to fund loan applications made  
1198 by the Department of Transportation at the request of local governments.

1199 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in  
1200 Subsection (5)(a) shall be transferred each year as nonlapsing dedicated credits to the  
1201 Department of Transportation for the State Park Access Highways Improvement Program  
1202 created in Section 72-3-207.

1203 (d) For a fiscal year beginning on or after July 1, 2003, 94% of the amount described in  
1204 Subsection (5)(a) shall be deposited in the class B and class C roads account to be expended as

1205 provided in Title 72, Chapter 2, Transportation Finances Act, for the use of class B and C  
1206 roads.

1207 (6) (a) Notwithstanding Subsection (3)(a) and until Subsection (6)(b) applies,  
1208 beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial  
1209 Highway Fund Restricted Account created in Section 72-2-118 a portion of the taxes listed  
1210 under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate on the taxable  
1211 transactions under Subsection (1).

1212 (b) Notwithstanding Subsection (3)(a), when the highway general obligation bonds  
1213 have been paid off and the highway projects completed that are intended to be paid from  
1214 revenues deposited in the Centennial Highway Fund Restricted Account as determined by the  
1215 Executive Appropriations Committee under Subsection 72-2-118(6)(d), the Division of  
1216 Finance shall deposit into the Transportation Investment Fund of 2005 created by Section  
1217 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated  
1218 by a 1/64% tax rate on the taxable transactions under Subsection (1).

1219 (7) (a) Notwithstanding Subsection (3)(a), for fiscal years beginning on or after fiscal  
1220 year 2004-05, the commission shall each year on or before the September 30 immediately  
1221 following the last day of the fiscal year deposit the difference described in Subsection (7)(b)  
1222 into the Remote Sales Restricted Account created in Section 59-12-103.2 if that difference is  
1223 greater than \$0.

1224 (b) The difference described in Subsection (7)(a) is equal to the difference between:

1225 (i) the total amount of the following revenues the commission received from sellers  
1226 collecting a tax in accordance with Subsection 59-12-107(1)(b) for the fiscal year immediately  
1227 preceding the September 30 described in Subsection (7)(a):

1228 (A) revenues under Subsection (2)(a)(i); ~~and~~

1229 (B) revenues under Subsection (2)(b)(i)(A); and

1230 (C) revenues under Subsection (2)(b)(ii)(A); and

1231 (ii) \$7,279,673.

1232 (8) (a) Notwithstanding Subsection (3)(a), in addition to the amount deposited in  
1233 Subsection (6)(a), and until Subsection (8)(b) applies, for a fiscal year beginning on or after  
1234 July 1, 2005, the Division of Finance shall deposit \$59,594,700 of the revenues generated by  
1235 the taxes described in Subsections (2)(a)(i) ~~and~~, (2)(b)(i)(A), and (2)(b)(ii)(A) into the



1236 Centennial Highway Fund Restricted Account created by Section 72-2-118.

1237 (b) Notwithstanding Subsection (3)(a) and in addition to the amounts deposited under  
1238 Subsection (6)(b), when the highway general obligation bonds have been paid off and the  
1239 highway projects completed that are intended to be paid from revenues deposited in the  
1240 Centennial Highway Fund Restricted Account as determined by the Executive Appropriations  
1241 Committee under Subsection 72-2-118(6)(d), the Division of Finance shall deposit  
1242 \$59,594,700 of the revenues generated by the taxes described in Subsections (2)(a)(i) [~~and~~],  
1243 (2)(b)(i)(A), and (2)(b)(ii)(A) into the Transportation Investment Fund of 2005 created by  
1244 Section 72-2-124.

1245 Section 4. Section **59-12-108** is amended to read:

1246 **59-12-108. Monthly payment -- Penalty -- Amount of tax a seller may retain --**  
1247 **Certain amounts allocated to local taxing jurisdictions.**

1248 (1) (a) Notwithstanding Section 59-12-107, a seller that has a tax liability under this  
1249 chapter of \$50,000 or more for the previous calendar year shall:

1250 (i) file a return with the commission:

1251 (A) monthly on or before the last day of the month immediately following the month  
1252 for which the seller collects a tax under this chapter; and

1253 (B) for the month for which the seller collects a tax under this chapter; and

1254 (ii) (A) except as provided in Subsection (1)(a)(ii)(B) or (1)(c), remit with the return  
1255 required by Subsection (1)(a)(i) the amount the person is required to remit to the commission  
1256 for each tax, fee, or charge described in Subsection (1)(b):

1257 (I) if that seller's tax liability under this chapter for the previous calendar year is less  
1258 than \$96,000, by any method permitted by the commission; or

1259 (II) if that seller's tax liability under this chapter for the previous calendar year is  
1260 \$96,000 or more, by electronic funds transfer; or

1261 (B) notwithstanding Subsection (1)(a)(ii)(A), a seller shall remit electronically with the  
1262 return required by Subsection (1)(a)(i) the amount the person is required to remit to the  
1263 commission for each tax, fee, or charge described in Subsection (1)(b) if that seller:

1264 (I) is required by Section 59-12-107 to file the return electronically; or

1265 (II) (Aa) is required to collect and remit a tax under Subsection 59-12-107(1)(a); and

1266 (Bb) files a simplified electronic return.

1267 (b) Subsections (1)(a)(i) and (ii) apply to the following taxes, fees, or charges:  
1268 (i) a tax under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;  
1269 (ii) a fee under Section 19-6-716;  
1270 (iii) a fee under Section 19-6-805;  
1271 (iv) a charge under Section 69-2-5.5; or  
1272 (v) a tax under this chapter.

1273 (c) Notwithstanding Subsection (1)(a)(ii) and in accordance with Title 63, Chapter 46a,  
1274 Utah Administrative Rulemaking Act, the commission shall make rules providing for a method  
1275 for making same-day payments other than by electronic funds transfer if making payments by  
1276 electronic funds transfer fails.

1277 (d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
1278 commission shall establish by rule procedures and requirements for determining the amount a  
1279 seller is required to remit to the commission under this Subsection (1).

1280 (2) (a) Except as provided in Subsection (2)(b) or (c), a seller subject to Subsection (1)  
1281 or a seller described in Subsection (3) may retain each month an amount not to exceed:

1282 (i) 1.31% of any amounts the seller is required to remit to the commission for:

1283 (A) for a transaction described in Subsection 59-12-103(1) that is subject to the sum of  
1284 the tax rates described in Subsection 59-12-103(2)(a), the month for which the seller is filing a  
1285 return in accordance with Subsection (1); and

1286 (B) an agreement sales and use tax; and

1287 (ii) for a transaction described in Subsection 59-12-103(1) that is subject to the sum of  
1288 the tax rates described in Subsection 59-12-103(2)(b)(ii), the sum of:

1289 (A) 1.31% of any amounts the seller is required to remit to the commission in  
1290 accordance with Subsection 59-12-103(2)(b)(ii) for:

1291 (I) the month for which the seller is filing a return in accordance with Subsection (1);  
1292 and

1293 (II) an agreement sales and use tax; and

1294 (B) 1.31% of the difference between:

1295 (I) the amounts the seller would have been required to remit to the commission:

1296 (Aa) in accordance with Subsection 59-12-103(2)(a) if the transaction had been subject  
1297 to the sum of the tax rates described in Subsection 59-12-103(2)(a);

1298 (Bb) for the month for which the seller is filing a return in accordance with Subsection  
1299 (1); and  
1300 (Cc) for an agreement sales and use tax; and  
1301 (II) the amounts the seller is required to remit to the commission:  
1302 (Aa) in accordance with Subsection 59-12-103(2)(b)(ii);  
1303 (Bb) for the month for which the seller is filing a return in accordance with Subsection  
1304 (1); and  
1305 (Cc) for an agreement sales and use tax; and  
1306 [(ii)] (iii) 1% of any amounts the seller is required to remit to the commission:  
1307 (A) for the month for which the seller is filing a return in accordance with Subsection  
1308 (1); and  
1309 (B) under:  
1310 (I) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;  
1311 (II) Subsection 59-12-603(1)(a)(i); or  
1312 (III) Subsection 59-12-603(1)(a)(ii).  
1313 ~~[(b) Notwithstanding Subsection (2)(a), a]~~ (c) A state government entity that is  
1314 required to remit taxes monthly in accordance with Subsection (1) may not retain any amount  
1315 under Subsection (2)(a).  
1316 (3) A seller that has a tax liability under this chapter for the previous calendar year of  
1317 less than \$50,000 may:  
1318 (a) voluntarily meet the requirements of Subsection (1); and  
1319 (b) if the seller voluntarily meets the requirements of Subsection (1), retain the  
1320 amounts allowed by Subsection (2)(a).  
1321 (4) Penalties for late payment shall be as provided in Section 59-1-401.  
1322 (5) (a) For any amounts required to be remitted to the commission under this part, the  
1323 commission shall each month calculate an amount equal to the difference between:  
1324 (i) the total amount retained for that month by all sellers had the [percentage]  
1325 percentages listed under Subsection (2)(a)(i) and (ii) been 1.5%; and  
1326 (ii) the total amount retained for that month by all sellers at the [percentage]  
1327 percentages listed under Subsection (2)(a)(i) and (ii).  
1328 (b) The commission shall each month allocate the amount calculated under Subsection

1329 (5)(a) to each local taxing jurisdiction on the basis of the proportion of agreement sales and use  
1330 tax that the commission distributes to each local taxing jurisdiction for that month compared to  
1331 the total agreement sales and use tax that the commission distributes for that month to all local  
1332 taxing jurisdictions.

1333 Section 5. **Appropriation.**

1334 (1) Subject to Subsection (2), there is appropriated from the General Fund, for fiscal  
1335 year 2006-07 only, \$6,000,000 to the State Tax Commission for distribution to certain business  
1336 locations to reimburse some of the business location's costs in complying with the reduced  
1337 sales and use tax rate imposed on food and food ingredients.

1338 (2) The Legislature intends that the State Tax Commission may expend up to 2% of the  
1339 amount appropriated for administrative costs.

1340 (3) The Legislature intends that, to the extent funds are available, the State Tax  
1341 Commission distribute these monies as provided in Subsections (4) and (5).

1342 (4) (a) Except as provided in Subsection (4)(b), the State Tax Commission shall  
1343 reimburse a business location:

1344 (i) that:

1345 (A) in 2005, remitted taxes imposed by Title 59, Chapter 12, Sales and Use Tax Act, in  
1346 an amount greater than or equal to \$15,000 but less than or equal to \$500,000;

1347 (B) remitted sales and use taxes on food and food ingredients as defined in Section  
1348 59-12-102 to the State Tax Commission before March 1, 2006; and

1349 (C) submits a request for reimbursement to the State Tax Commission postmarked  
1350 before January 1, 2007;

1351 (ii) for the verifiable amounts that the business location actually expended:

1352 (A) after May 1, 2006, but on or before December 31, 2006; and

1353 (B) to purchase computer hardware and software to account for sales under the reduced  
1354 sales and use tax rate imposed on food and food ingredients; and

1355 (iii) in an amount that does not exceed the lesser of:

1356 (A) 50% of the verifiable amounts described in Subsection (4)(a)(ii); or

1357 (B) \$10,000.

1358 (b) If the total amount of requests for reimbursement under Subsection (4)(a) exceed  
1359 the monies that are available for reimbursement, the State Tax Commission shall reduce each

1360 claim by a pro rata share.

1361 (5) (a) Except as provided in Subsection (5)(b), if, after the State Tax Commission  
1362 makes the reimbursements required by Subsection (4), monies described in Subsection (1)  
1363 remain for reimbursement, the State Tax Commission shall reimburse a business location:

1364 (i) that:

1365 (A) in 2005, remitted taxes imposed by Title 59, Chapter 12, Sales and Use Tax Act, in  
1366 an amount greater than or equal to \$15,000;

1367 (B) remitted sales and use taxes on food and food ingredients as defined in Section  
1368 59-12-102 to the State Tax Commission before March 1, 2006; and

1369 (C) submits a request for reimbursement to the State Tax Commission postmarked  
1370 before January 1, 2007;

1371 (ii) for the verifiable amounts that the business location actually expended:

1372 (A) after May 1, 2006, but on or before December 31, 2006; and

1373 (B) for a business location that, in 2005, remitted taxes imposed by Title 59, Chapter  
1374 12, Sales and Use Tax Act:

1375 (I) in an amount greater than or equal to \$15,000 but less than or equal to \$500,000, for  
1376 amounts expended to purchase computer hardware, software, or programming:

1377 (Aa) to account for sales under the reduced sales and use tax rate imposed on food and  
1378 food ingredients; and

1379 (Bb) that were not reimbursed in accordance with Subsection (4); or

1380 (II) in an amount greater than \$500,000, for amounts expended to purchase computer  
1381 hardware, software, or programming to account for sales under the reduced sales and use tax  
1382 rate imposed on food and food ingredients; and

1383 (iii) in an amount that does not exceed 50% of the verifiable amounts described in  
1384 Subsection (5)(a)(ii).

1385 (b) If the total amount of requests for reimbursement under Subsection (5)(a) exceed  
1386 the monies that are available for reimbursement, the State Tax Commission shall reduce each  
1387 claim by a pro rata share.

1388 **Section 6. Effective date.**

1389 This bill takes effect on January 1, 2007.

1390 **Section 7. Coordinating H.B. 109 with S.B. 233 by modifying substantive**

1391 **language.**

1392 If this H.B. 109 and S.B. 233, Sales and Use Tax Revisions, both pass, and S.B. 233  
1393 repeals the definition of "agreement sales and use tax" and enacts the definition of "combined  
1394 sales and use tax" in Section 59-12-102, it is the intent of the Legislature that the Utah Code  
1395 database prepared for publication by the Office of Legislative Research and General Counsel  
1396 shall provide that:

1397 (1) the amendments made by H.B. 109 to the definition of "agreement sales and use  
1398 tax" in Section 59-12-102 not be given effect;

1399 (2) any reference to "agreement sales and use tax" enacted by H.B. 109 be changed to  
1400 "combined sales and use tax"; and

1401 (3) the definition of "combined sales and use tax" in S.B. 233 be amended so that it  
1402 includes a citation to "Subsection 59-12-103(2)(a)(i) or (2)(b)(ii)(A)".

**AMENDED NOTE**

**State Impact**

Passage of this bill could reduce the General Fund by \$35,000,000 in FY 2007 and by \$70,000,000 in FY 2008. There is an appropriation to the Tax Commission of \$6,000,000 to implement the provisions of the bill.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>
General Fund	\$0	\$0	(\$35,000,000)	(\$70,000,000)
General Fund, One-Time	\$6,000,000	\$0	\$0	\$0
<b>TOTAL</b>	<b>\$6,000,000</b>	<b>\$0</b>	<b>(\$35,000,000)</b>	<b>(\$70,000,000)</b>

---

---

**Individual and Business Impact**

Individuals could see a reduction in food tax purchases of 2 percent.

---

---