

PLEASE NOTE:

THIS DOCUMENT INCLUDES BOTH THE BILL AND ALSO A TRANSMITTAL LETTER THAT CONTAINS PASSED AMENDMENTS BUT NOT INCORPORATED INTO THE BILL.

May 24, 2006 (3:38pm)

Mr. President:

The House passed **H.B. 3004**, SALES AND USE TAX RELATING TO FOOD, by Representative B. Ferry, with the following amendments:

1. Page 39, Lines 1177 through 1202:

1177 (B) a local tax equal to the sum of the tax rates a county, city, or town imposes on
1178 the
1179 transaction under this chapter other than this part ~~{+}~~ ; or ~~{+}~~ ~~{-}~~
1177 (ii) ~~{(A)}~~ ~~{+}~~ if ~~{+}~~ ~~{H}~~ a seller collects a tax in accordance
1179 with Subsection 59-12-107(1)(b) on a
1180 transaction described in Subsection (1), a state tax and a local tax is imposed on the
1181 transaction
1182 equal to the sum of:
1182 ~~{+}~~ (A) ~~{+}~~ ~~{(H)}~~ a state tax imposed on the transaction at a rate of:
1183 ~~{+}~~ (I) ~~{+}~~ ~~{(Aa)}~~ 4.75% for a transaction other than a transaction
1184 described in Subsection
1184 (1)(d); ~~{+}~~ or ~~{+}~~
1185 ~~{+}~~ (II) ~~{+}~~ ~~{(Bb)}~~ 2% for a transaction described in Subsection
1185 (1)(d); ~~{+}~~ and ~~{+}~~ ~~{-or}~~
1186 ~~{(Cc)}~~ except as provided in Subsection (2)(b)(ii)(B), beginning on January 1,
2007,
1187 2.75% on the amounts paid or charged for food and food ingredients; and }
1188 ~~{+}~~ (B) ~~{+}~~ ~~{(H)}~~ a local tax imposed on the transaction at a rate
1189 equal to the sum of the
1190 following rates:
1190 ~~{+}~~ (I) ~~{+}~~ ~~{(Aa)}~~ the tax rate authorized by Section 59-12-204, but
1191 only if all of the counties,
1191 cities, and towns in the state impose the tax under Section 59-12-204; and
1192 ~~{+}~~ (II) ~~{+}~~ ~~{(Bb)}~~ the tax rate authorized by Section 59-12-1102, but
1193 only if all of the counties
1193 in the state impose the tax under Section 59-12-1102.
1194 ~~{(B)}~~ Notwithstanding Subsection (2)(b)(ii)(A)(I)(Cc), for a seller that collects

H.B. 3004

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a tax in
1195 accordance with Subsection 59-12-107(1)(b) on a bundled transaction, if the price of
the
1196 bundled transaction is attributable to food and food ingredients and tangible
personal property
1197 other than food and food ingredients, a state tax and a local tax is imposed on the
bundled
1198 transaction equal to the sum of:
1199 —(I) a state tax imposed on the bundled transaction at the tax rate described in
1200 Subsection (2)(b)(ii)(A)(I)(Aa); and
1201 —(H) a local tax imposed on the bundled transaction as provided in Subsection
1202 (2)(b)(ii)(A)(H). }

and returns it to the Senate for consideration.

Respectfully,

Sandy D. Tenney
Chief Clerk

1 **SALES AND USE TAX RELATING TO FOOD**

2 2006 THIRD SPECIAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ben C. Ferry**

5 Senate Sponsor: Lyle W. Hillyard

6

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Sales and Use Tax Act relating to food.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ modifies the definitions of:

- 13 • "bundled transaction";
- 14 • "food and food ingredients"; and
- 15 • "prepared food";

16 ▶ addresses the state sales and use tax rate applicable to amounts paid or charged for
17 food and food ingredients if a seller that does not have sufficient contacts with the
18 state to be required to collect and remit sales and use taxes voluntarily collects and
19 remits sales and use taxes on amounts paid or charged for food and food
20 ingredients;

21 ▶ repeals provisions relating to the taxation of a transaction involving the sale of food
22 and food ingredients at the same location;

23 ▶ modifies an effective date relating to an appropriation to the State Tax Commission
24 for distribution to certain sellers to reimburse some of their costs in complying with
25 the reduced sales and use tax rate imposed on food and food ingredients;

- 26 ▶ modifies provisions relating to that appropriation; and
- 27 ▶ makes technical changes.

28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 This bill provides an effective date.

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **59-12-102 (Effective 01/01/07)**, as last amended by Chapters 181, 182, 218, 219, 220,
35 231, 268, 282 and 346, Laws of Utah 2006

36 **59-12-103 (Effective 01/01/07)**, as last amended by Chapters 11, 135, 181, 182, 253
37 and 282, Laws of Utah 2006

38 **Uncodified Material Affected:**

39 AMENDS UNCODIFIED MATERIAL:

40 **Uncodified Section 5, Chapter 282, Laws of Utah 2006**

41 **Uncodified Section 6, Chapter 282, Laws of Utah 2006**

42

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

44 Section 1. Section **59-12-102 (Effective 01/01/07)** is amended to read:

45 **59-12-102 (Effective 01/01/07). Definitions.**

46 As used in this chapter:

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

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

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

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

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

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

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

56 (a) Subsection 59-12-103(2)(a)(i) or (2)(b)(iii)(A);

57 (b) Section 59-12-204;

58 (c) Section 59-12-401;



- 59 (d) Section 59-12-402;
- 60 (e) Section 59-12-501;
- 61 (f) Section 59-12-502;
- 62 (g) Section 59-12-703;
- 63 (h) Section 59-12-802;
- 64 (i) Section 59-12-804;
- 65 (j) Section 59-12-1001;
- 66 (k) Section 59-12-1102;
- 67 (l) Section 59-12-1302;
- 68 (m) Section 59-12-1402; or
- 69 (n) Section 59-12-1503.
- 70 (5) "Aircraft" is as defined in Section 72-10-102.
- 71 (6) "Alcoholic beverage" means a beverage that:
 - 72 (a) is suitable for human consumption; and
 - 73 (b) contains .5% or more alcohol by volume.
- 74 (7) "Area agency on aging" is as defined in Section 62A-3-101.
- 75 (8) "Assisted amusement device" means an amusement device, skill device, or ride
76 device that is started and stopped by an individual:
 - 77 (a) who is not the purchaser or renter of the right to use or operate the amusement
78 device, skill device, or ride device; and
 - 79 (b) at the direction of the seller of the right to use the amusement device, skill device,
80 or ride device.
- 81 (9) "Assisted cleaning or washing of tangible personal property" means cleaning or
82 washing of tangible personal property if the cleaning or washing labor is primarily performed
83 by an individual:
 - 84 (a) who is not the purchaser of the cleaning or washing of the tangible personal
85 property; and
 - 86 (b) at the direction of the seller of the cleaning or washing of the tangible personal
87 property.
- 88 (10) "Authorized carrier" means:
 - 89 (a) in the case of vehicles operated over public highways, the holder of credentials

90 indicating that the vehicle is or will be operated pursuant to both the International Registration
 91 Plan and the International Fuel Tax Agreement;

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

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

96 (11) (a) Except as provided in Subsection (11)(b), "biomass energy" means any of the
 97 following that is used as the primary source of energy to produce fuel or electricity:

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

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

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

101 (B) animal waste;

102 (C) methane produced:

103 (D) at landfills; or

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

105 (D) aquatic plants; and

106 (E) agricultural products.

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

108 (i) black liquor;

109 (ii) treated woods; or

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

111 (A) at landfills; or

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

113 (12) (a) "Bundled transaction" means the sale of two or more items of tangible personal
 114 property if:

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

116 and

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

118 (A) distinct and identifiable; and

119 (B) sold for one price that is not itemized[; ~~and~~].

120 [~~(C) not prepared food.~~]

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

124 (c) For purposes of Subsection (12)(a)(ii)(A), tangible personal property that is distinct
125 and identifiable does not include:

126 (i) packaging that:

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

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

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

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

133 (d) For purposes of Subsection (12)(c)(ii), an item of tangible personal property is
134 provided free of charge with the purchase of another item of tangible personal property if the
135 sales price of the purchased item of tangible personal property does not vary depending on the
136 inclusion of the tangible personal property provided free of charge.

137 (13) "Certified automated system" means software certified by the governing board of
138 the agreement in accordance with Section 59-12-102.1 that:

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

141 (i) on a transaction; and

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

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

145 (c) maintains a record of the transaction described in Subsection (13)(a)(i).

146 (14) "Certified service provider" means an agent certified:

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

148 and

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

152 (15) (a) Subject to Subsection (15)(b), "clothing" means all human wearing apparel
153 suitable for general use.

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

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

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

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

160 (17) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
161 fuels that does not constitute industrial use under Subsection (38) or residential use under
162 Subsection (75).

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

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

168 (ii) For purposes of Subsection (18)(b)(i), in accordance with Title 63, Chapter 46a,
169 Utah Administrative Rulemaking Act, the commission may make rules defining what
170 constitutes a person's place of employment.

171 (19) "Component part" includes:

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

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

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

177 (d) feed, seeds, and seedlings.

178 (20) "Computer" means an electronic device that accepts information:

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

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

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

182 (21) "Computer software" means a set of coded instructions designed to cause:

- 183 (a) a computer to perform a task; or
- 184 (b) automatic data processing equipment to perform a task.
- 185 (22) "Construction materials" means any tangible personal property that will be
- 186 converted into real property.
- 187 (23) "Delivered electronically" means delivered to a purchaser by means other than
- 188 tangible storage media.
- 189 (24) (a) "Delivery charge" means a charge:
- 190 (i) by a seller of:
- 191 (A) tangible personal property; or
- 192 (B) services; and
- 193 (ii) for preparation and delivery of the tangible personal property or services described
- 194 in Subsection (24)(a)(i) to a location designated by the purchaser.
- 195 (b) "Delivery charge" includes a charge for the following:
- 196 (i) transportation;
- 197 (ii) shipping;
- 198 (iii) postage;
- 199 (iv) handling;
- 200 (v) crating; or
- 201 (vi) packing.
- 202 (25) "Dietary supplement" means a product, other than tobacco, that:
- 203 (a) is intended to supplement the diet;
- 204 (b) contains one or more of the following dietary ingredients:
- 205 (i) a vitamin;
- 206 (ii) a mineral;
- 207 (iii) an herb or other botanical;
- 208 (iv) an amino acid;
- 209 (v) a dietary substance for use by humans to supplement the diet by increasing the total
- 210 dietary intake; or
- 211 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
- 212 described in Subsections (25)(b)(i) through (v);
- 213 (c) (i) except as provided in Subsection (25)(c)(ii), is intended for ingestion in:

- 214 (A) tablet form;
- 215 (B) capsule form;
- 216 (C) powder form;
- 217 (D) softgel form;
- 218 (E) gelcap form; or
- 219 (F) liquid form; or
- 220 (ii) notwithstanding Subsection (25)(c)(i), if the product is not intended for ingestion in
- 221 a form described in Subsections (25)(c)(i)(A) through (F), is not represented:
- 222 (A) as conventional food; and
- 223 (B) for use as a sole item of:
- 224 (I) a meal; or
- 225 (II) the diet; and
- 226 (d) is required to be labeled as a dietary supplement:
- 227 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 228 (ii) as required by 21 C.F.R. Sec. 101.36.
- 229 (26) (a) "Direct mail" means printed material delivered or distributed by United States
- 230 mail or other delivery service:
- 231 (i) to:
- 232 (A) a mass audience; or
- 233 (B) addressees on a mailing list provided by a purchaser of the mailing list; and
- 234 (ii) if the cost of the printed material is not billed directly to the recipients.
- 235 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
- 236 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 237 (c) "Direct mail" does not include multiple items of printed material delivered to a
- 238 single address.
- 239 (27) (a) "Drug" means a compound, substance, or preparation, or a component of a
- 240 compound, substance, or preparation that is:
- 241 (i) recognized in:
- 242 (A) the official United States Pharmacopoeia;
- 243 (B) the official Homeopathic Pharmacopoeia of the United States;
- 244 (C) the official National Formulary; or

- 245 (D) a supplement to a publication listed in Subsections (27)(a)(i)(A) through (C);
- 246 (ii) intended for use in the:
- 247 (A) diagnosis of disease;
- 248 (B) cure of disease;
- 249 (C) mitigation of disease;
- 250 (D) treatment of disease; or
- 251 (E) prevention of disease; or
- 252 (iii) intended to affect:
- 253 (A) the structure of the body; or
- 254 (B) any function of the body.
- 255 (b) "Drug" does not include:
- 256 (i) food and food ingredients;
- 257 (ii) a dietary supplement;
- 258 (iii) an alcoholic beverage; or
- 259 (iv) a prosthetic device.
- 260 (28) (a) Except as provided in Subsection (28)(c), "durable medical equipment" means
- 261 equipment that:
- 262 (i) can withstand repeated use;
- 263 (ii) is primarily and customarily used to serve a medical purpose;
- 264 (iii) generally is not useful to a person in the absence of illness or injury; and
- 265 (iv) is not worn in or on the body.
- 266 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 267 equipment described in Subsection (28)(a).
- 268 (c) Notwithstanding Subsection (28)(a), "durable medical equipment" does not include
- 269 mobility enhancing equipment.
- 270 (29) "Electronic" means:
- 271 (a) relating to technology; and
- 272 (b) having:
- 273 (i) electrical capabilities;
- 274 (ii) digital capabilities;
- 275 (iii) magnetic capabilities;

- 276 (iv) wireless capabilities;
- 277 (v) optical capabilities;
- 278 (vi) electromagnetic capabilities; or
- 279 (vii) capabilities similar to Subsections (29)(b)(i) through (vi).
- 280 (30) "Employee" is as defined in Section 59-10-401.
- 281 (31) (a) "Food and food ingredients" means substances:
- 282 (i) regardless of whether the substances are in:
- 283 (A) liquid form;
- 284 (B) concentrated form;
- 285 (C) solid form;
- 286 (D) frozen form;
- 287 (E) dried form; or
- 288 (F) dehydrated form; and
- 289 (ii) that are:
- 290 (A) sold for:
- 291 (I) ingestion by humans; or
- 292 (II) chewing by humans; and
- 293 (B) consumed for the substance's:
- 294 (I) taste; or
- 295 (II) nutritional value.
- 296 (b) "Food and food ingredients" includes an item described in Subsection (62)(b)(iii).
- 297 [~~(b)~~] (c) "Food and food ingredients" does not include:
- 298 (i) an alcoholic beverage;
- 299 (ii) tobacco; or
- 300 (iii) prepared food.
- 301 (32) (a) "Fundraising sales" means sales:
- 302 (i) (A) made by a school; or
- 303 (B) made by a school student;
- 304 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 305 materials, or provide transportation; and
- 306 (iii) that are part of an officially sanctioned school activity.

307 (b) For purposes of Subsection (32)(a)(iii), "officially sanctioned school activity"
308 means a school activity:

309 (i) that is conducted in accordance with a formal policy adopted by the school or school
310 district governing the authorization and supervision of fundraising activities;

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

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

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

317 (34) "Governing board of the agreement" means the governing board of the agreement
318 that is:

319 (a) authorized to administer the agreement; and

320 (b) established in accordance with the agreement.

321 (35) (a) "Hearing aid" means:

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

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

324 (II) correct impaired human hearing; and

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

326 (II) affixed behind the human ear;

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

328 (iii) a telephone amplifying device.

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

330 (i) except as provided in Subsection (35)(a)(i)(B) or (35)(a)(ii), an instrument or device
331 having an electronic component that is designed to be worn on the body;

332 (ii) except as provided in Subsection (35)(a)(iii), an assistive listening device or system
333 designed to be used by one individual, including:

334 (A) a personal amplifying system;

335 (B) a personal FM system;

336 (C) a television listening system; or

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

- 338 (35)(b)(ii)(A) through (C); or
339 (iii) an assistive listening device or system designed to be used by more than one
340 individual, including:
341 (A) a device or system installed in:
342 (I) an auditorium;
343 (II) a church;
344 (III) a conference room;
345 (IV) a synagogue; or
346 (V) a theater; or
347 (B) a device or system similar to a device or system described in Subsections
348 (35)(b)(iii)(A)(I) through (V).
- 349 (36) (a) "Hearing aid accessory" means a hearing aid:
350 (i) component;
351 (ii) attachment; or
352 (iii) accessory.
- 353 (b) "Hearing aid accessory" includes:
354 (i) a hearing aid neck loop;
355 (ii) a hearing aid cord;
356 (iii) a hearing aid ear mold;
357 (iv) hearing aid tubing;
358 (v) a hearing aid ear hook; or
359 (vi) a hearing aid remote control.
- 360 (c) "Hearing aid accessory" does not include:
361 (i) a component, attachment, or accessory designed to be used only with an:
362 (A) instrument or device described in Subsection (35)(b)(i); or
363 (B) assistive listening device or system described in Subsection (35)(b)(ii) or (iii); or
364 (ii) a hearing aid battery.
- 365 (37) "Hydroelectric energy" means water used as the sole source of energy to produce
366 electricity.
- 367 (38) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
368 other fuels:

- 369 (a) in mining or extraction of minerals;
- 370 (b) in agricultural operations to produce an agricultural product up to the time of
- 371 harvest or placing the agricultural product into a storage facility, including:
 - 372 (i) commercial greenhouses;
 - 373 (ii) irrigation pumps;
 - 374 (iii) farm machinery;
 - 375 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
 - 376 registered under Title 41, Chapter 1a, Part 2, Registration; and
 - 377 (v) other farming activities;
- 378 (c) in manufacturing tangible personal property at an establishment described in SIC
- 379 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
- 380 Executive Office of the President, Office of Management and Budget;
- 381 (d) by a scrap recycler if:
 - 382 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
 - 383 one or more of the following items into prepared grades of processed materials for use in new
 - 384 products:
 - 385 (A) iron;
 - 386 (B) steel;
 - 387 (C) nonferrous metal;
 - 388 (D) paper;
 - 389 (E) glass;
 - 390 (F) plastic;
 - 391 (G) textile; or
 - 392 (H) rubber; and
 - 393 (ii) the new products under Subsection (38)(d)(i) would otherwise be made with
 - 394 nonrecycled materials; or
- 395 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a
- 396 cogeneration facility as defined in Section 54-2-1.
- 397 (39) (a) Except as provided in Subsection (39)(b), "installation charge" means a charge
- 398 for installing tangible personal property.
- 399 (b) Notwithstanding Subsection (39)(a), "installation charge" does not include a charge

400 for repairs or renovations of tangible personal property.

401 (40) (a) "Lease" or "rental" means a transfer of possession or control of tangible
402 personal property for:

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

404 (B) an indeterminate term; and

405 (ii) consideration.

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

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

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

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

416 (A) upon completion of required payments; and

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

418 (I) \$100; or

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

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

423 (d) For purposes of Subsection (40)(c)(iii), an operator is necessary for equipment to
424 perform as designed if the operator's duties exceed the:

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

426 (ii) maintenance of tangible personal property; or

427 (iii) inspection of tangible personal property.

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

430 (42) "Local taxing jurisdiction" means a:

- 431 (a) county that is authorized to impose an agreement sales and use tax;
- 432 (b) city that is authorized to impose an agreement sales and use tax; or
- 433 (c) town that is authorized to impose an agreement sales and use tax.
- 434 (43) "Manufactured home" is as defined in Section 58-56-3.
- 435 (44) For purposes of Section 59-12-104, "manufacturing facility" means:
- 436 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
- 437 Industrial Classification Manual of the federal Executive Office of the President, Office of
- 438 Management and Budget;
- 439 (b) a scrap recycler if:
- 440 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 441 one or more of the following items into prepared grades of processed materials for use in new
- 442 products:
- 443 (A) iron;
- 444 (B) steel;
- 445 (C) nonferrous metal;
- 446 (D) paper;
- 447 (E) glass;
- 448 (F) plastic;
- 449 (G) textile; or
- 450 (H) rubber; and
- 451 (ii) the new products under Subsection (44)(b)(i) would otherwise be made with
- 452 nonrecycled materials; or
- 453 (c) a cogeneration facility as defined in Section 54-2-1.
- 454 (45) "Member of the immediate family of the producer" means a person who is related
- 455 to a producer described in Subsection 59-12-104(20)(a) as a:
- 456 (a) child or stepchild, regardless of whether the child or stepchild is:
- 457 (i) an adopted child or adopted stepchild; or
- 458 (ii) a foster child or foster stepchild;
- 459 (b) grandchild or stepgrandchild;
- 460 (c) grandparent or stepgrandparent;
- 461 (d) nephew or stepnephew;

- 462 (e) niece or stepniece;
- 463 (f) parent or stepparent;
- 464 (g) sibling or stepsibling;
- 465 (h) spouse;
- 466 (i) person who is the spouse of a person described in Subsections (45)(a) through (g);

467 or

- 468 (j) person similar to a person described in Subsections (45)(a) through (i) as
- 469 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah
- 470 Administrative Rulemaking Act.

471 (46) "Mobile home" is as defined in Section 58-56-3.

472 (47) "Mobile telecommunications service" is as defined in the Mobile
473 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

474 (48) (a) Except as provided in Subsection (48)(c), "mobility enhancing equipment"
475 means equipment that is:

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

478 (ii) appropriate for use in a:

479 (A) home; or

480 (B) motor vehicle; and

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

482 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
483 the equipment described in Subsection (48)(a).

484 (c) Notwithstanding Subsection (48)(a), "mobility enhancing equipment" does not
485 include:

486 (i) a motor vehicle;

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

489 (iii) durable medical equipment; or

490 (iv) a prosthetic device.

491 (49) "Model 1 seller" means a seller that has selected a certified service provider as the
492 seller's agent to perform all of the seller's sales and use tax functions for agreement sales and

493 use taxes other than the seller's obligation under Section 59-12-107.4 to remit a tax on the
494 seller's own purchases.

495 (50) "Model 2 seller" means a seller that:

496 (a) except as provided in Subsection (50)(b), has selected a certified automated system
497 to perform the seller's sales tax functions for agreement sales and use taxes; and

498 (b) notwithstanding Subsection (50)(a), retains responsibility for remitting all of the
499 sales tax:

500 (i) collected by the seller; and

501 (ii) to the appropriate local taxing jurisdiction.

502 (51) (a) Subject to Subsection (51)(b), "model 3 seller" means a seller that has:

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

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

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

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

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

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

509 (b) For purposes of Subsection (51)(a), "model 3 seller" includes an affiliated group of
510 sellers using the same proprietary system.

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

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

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

515 (55) (a) "Other fuels" means products that burn independently to produce heat or
516 energy.

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

519 (56) "Pawnbroker" is as defined in Section 13-32a-102.

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

521 (58) (a) "Permanently attached to real property" means that for tangible personal
522 property attached to real property:

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

- 524 (A) is essential to the use of the tangible personal property; and
- 525 (B) suggests that the tangible personal property will remain attached to the real
- 526 property in the same place over the useful life of the tangible personal property; or
- 527 (ii) if the tangible personal property is detached from the real property, the detachment
- 528 would:
- 529 (A) cause substantial damage to the tangible personal property; or
- 530 (B) require substantial alteration or repair of the real property to which the tangible
- 531 personal property is attached.
- 532 (b) "Permanently attached to real property" includes:
- 533 (i) the attachment of an accessory to the tangible personal property if the accessory is:
- 534 (A) essential to the operation of the tangible personal property; and
- 535 (B) attached only to facilitate the operation of the tangible personal property;
- 536 (ii) a temporary detachment of tangible personal property from real property for a
- 537 repair or renovation if the repair or renovation is performed where the tangible personal
- 538 property and real property are located; or
- 539 (iii) an attachment of the following tangible personal property to real property,
- 540 regardless of whether the attachment to real property is only through a line that supplies water,
- 541 electricity, gas, telephone, cable, or supplies a similar item as determined by the commission by
- 542 rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:
- 543 (A) property attached to oil, gas, or water pipelines, other than the property listed in
- 544 Subsection (58)(c)(iii);
- 545 (B) a hot water heater;
- 546 (C) a water softener system; or
- 547 (D) a water filtration system, other than a water filtration system manufactured as part
- 548 of a refrigerator.
- 549 (c) "Permanently attached to real property" does not include:
- 550 (i) the attachment of portable or movable tangible personal property to real property if
- 551 that portable or movable tangible personal property is attached to real property only for:
- 552 (A) convenience;
- 553 (B) stability; or
- 554 (C) for an obvious temporary purpose;

555 (ii) the detachment of tangible personal property from real property other than the
556 detachment described in Subsection (58)(b)(ii); or
557 (iii) an attachment of the following tangible personal property to real property if the
558 attachment to real property is only through a line that supplies water, electricity, gas, telephone,
559 cable, or supplies a similar item as determined by the commission by rule made in accordance
560 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

- 561 (A) a refrigerator;
- 562 (B) a washer;
- 563 (C) a dryer;
- 564 (D) a stove;
- 565 (E) a television;
- 566 (F) a computer;
- 567 (G) a telephone; or
- 568 (H) tangible personal property similar to Subsections (58)(c)(iii)(A) through (G) as
569 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah
570 Administrative Rulemaking Act.

571 (59) "Person" includes any individual, firm, partnership, joint venture, association,
572 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
573 municipality, district, or other local governmental entity of the state, or any group or
574 combination acting as a unit.

575 (60) "Place of primary use":

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

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

583 (61) "Postproduction" means an activity related to the finishing or duplication of a
584 medium described in Subsection 59-12-104(56)(a).

585 (62) (a) "Prepared food" means:

- 586 (i) food:
- 587 (A) sold in a heated state; or
- 588 (B) heated by a seller;
- 589 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 590 item; or
- 591 (iii) except as provided in Subsection (62)(c), food sold with an eating utensil provided
- 592 by the seller, including a:
- 593 (A) plate;
- 594 (B) knife;
- 595 (C) fork;
- 596 (D) spoon;
- 597 (E) glass;
- 598 (F) cup;
- 599 (G) napkin; or
- 600 (H) straw.
- 601 (b) "Prepared food" does not include:
- 602 (i) food that a seller only:
- 603 (A) cuts;
- 604 (B) repackages; or
- 605 (C) pasteurizes; or
- 606 (ii) (A) the following:
- 607 (I) raw egg;
- 608 (II) raw fish;
- 609 (III) raw meat;
- 610 (IV) raw poultry; or
- 611 (V) a food containing an item described in Subsections (62)(b)(ii)(A)(I) through (IV);
- 612 and
- 613 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 614 Food and Drug Administration's Food Code that a consumer cook the items described in
- 615 Subsection (62)(b)(ii)(A) to prevent food borne illness[-]; or
- 616 (iii) the following if sold without eating utensils provided by the seller:

617 (A) food and food ingredients sold by a seller if the seller's proper primary
618 classification under the 2002 North American Industry Classification System of the federal
619 Executive Office of the President, Office of Management and Budget, is manufacturing in
620 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
621 Manufacturing;

622 (B) food and food ingredients sold in an unheated state:

623 (I) by weight or volume; and

624 (II) as a single item; or

625 (C) a bakery item, including:

626 (I) a bagel;

627 (II) a bar;

628 (III) a biscuit;

629 (IV) bread;

630 (V) a bun;

631 (VI) a cake;

632 (VII) a cookie;

633 (VIII) a croissant;

634 (IX) a danish;

635 (X) a donut;

636 (XI) a muffin;

637 (XII) a pastry;

638 (XIII) a pie;

639 (XIV) a roll;

640 (XV) a tart;

641 (XVI) a torte; or

642 (XVII) a tortilla.

643 (c) Notwithstanding Subsection (62)(a)(iii), an eating utensil provided by the seller
644 does not include the following used to transport the food:

645 (i) a container; or

646 (ii) packaging.

647 (63) "Prescription" means an order, formula, or recipe that is issued:

- 648 (a) (i) orally;
- 649 (ii) in writing;
- 650 (iii) electronically; or
- 651 (iv) by any other manner of transmission; and
- 652 (b) by a licensed practitioner authorized by the laws of a state.
- 653 (64) (a) Except as provided in Subsection (64)(b)(ii) or (iii), "prewritten computer
654 software" means computer software that is not designed and developed:
- 655 (i) by the author or other creator of the computer software; and
- 656 (ii) to the specifications of a specific purchaser.
- 657 (b) "Prewritten computer software" includes:
- 658 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
659 software is not designed and developed:
- 660 (A) by the author or other creator of the computer software; and
- 661 (B) to the specifications of a specific purchaser;
- 662 (ii) notwithstanding Subsection (64)(a), computer software designed and developed by
663 the author or other creator of the computer software to the specifications of a specific purchaser
664 if the computer software is sold to a person other than the purchaser; or
- 665 (iii) notwithstanding Subsection (64)(a) and except as provided in Subsection (64)(c),
666 prewritten computer software or a prewritten portion of prewritten computer software:
- 667 (A) that is modified or enhanced to any degree; and
- 668 (B) if the modification or enhancement described in Subsection (64)(b)(iii)(A) is
669 designed and developed to the specifications of a specific purchaser.
- 670 (c) Notwithstanding Subsection (64)(b)(iii), "prewritten computer software" does not
671 include a modification or enhancement described in Subsection (64)(b)(iii) if the charges for
672 the modification or enhancement are:
- 673 (i) reasonable; and
- 674 (ii) separately stated on the invoice or other statement of price provided to the
675 purchaser.
- 676 (65) (a) "Prosthetic device" means a device that is worn on or in the body to:
- 677 (i) artificially replace a missing portion of the body;
- 678 (ii) prevent or correct a physical deformity or physical malfunction; or

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

- 710 (B) a labor cost;
- 711 (C) a service cost;
- 712 (D) interest;
- 713 (E) a loss;
- 714 (F) the cost of transportation to the seller; or
- 715 (G) a tax imposed on the seller; or
- 716 (iii) a charge by the seller for any service necessary to complete the sale.
- 717 (c) "Purchase price" and "sales price" do not include:
- 718 (i) a discount:
- 719 (A) in a form including:
- 720 (I) cash;
- 721 (II) term; or
- 722 (III) coupon;
- 723 (B) that is allowed by a seller;
- 724 (C) taken by a purchaser on a sale; and
- 725 (D) that is not reimbursed by a third party; or
- 726 (ii) the following if separately stated on an invoice, bill of sale, or similar document
- 727 provided to the purchaser:
- 728 (A) the amount of a trade-in;
- 729 (B) the following from credit extended on the sale of tangible personal property or
- 730 services:
- 731 (I) interest charges;
- 732 (II) financing charges; or
- 733 (III) carrying charges;
- 734 (C) a tax or fee legally imposed directly on the consumer;
- 735 (D) a delivery charge; or
- 736 (E) an installation charge.
- 737 (68) "Purchaser" means a person to whom:
- 738 (a) a sale of tangible personal property is made; or
- 739 (b) a service is furnished.
- 740 (69) "Regularly rented" means:

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

744 (70) "Renewable energy" means:

- 745 (a) biomass energy;
- 746 (b) hydroelectric energy;
- 747 (c) geothermal energy;
- 748 (d) solar energy; or
- 749 (e) wind energy.

750 (71) (a) "Renewable energy production facility" means a facility that:

- 751 (i) uses renewable energy to produce electricity; and
- 752 (ii) has a production capacity of 20 kilowatts or greater.

753 (b) A facility is a renewable energy production facility regardless of whether the
754 facility is:

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

757 (72) "Rental" is as defined in Subsection (40).

758 (73) "Repairs or renovations of tangible personal property" means:

- 759 (a) a repair or renovation of tangible personal property that is not permanently attached
760 to real property; or
- 761 (b) attaching tangible personal property to other tangible personal property if the other
762 tangible personal property to which the tangible personal property is attached is not
763 permanently attached to real property.

764 (74) "Research and development" means the process of inquiry or experimentation
765 aimed at the discovery of facts, devices, technologies, or applications and the process of
766 preparing those devices, technologies, or applications for marketing.

767 (75) "Residential use" means the use in or around a home, apartment building, sleeping
768 quarters, and similar facilities or accommodations.

769 (76) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
770 than:

- 771 (a) resale;

772 (b) sublease; or

773 (c) subrent.

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

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

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

782 (b) "Sale" includes:

783 (i) installment and credit sales;

784 (ii) any closed transaction constituting a sale;

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

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

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

792 (79) "Sale at retail" is as defined in Subsection (76).

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

795 (a) by a purchaser-lessee;

796 (b) to a lessor;

797 (c) for consideration; and

798 (d) if:

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

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

- 803 (A) for the property; and
- 804 (B) to the purchaser-lessee; and
- 805 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
- 806 is required to:
 - 807 (A) capitalize the property for financial reporting purposes; and
 - 808 (B) account for the lease payments as payments made under a financing arrangement.
- 809 (81) "Sales price" is as defined in Subsection (67).
- 810 (82) (a) "Sales relating to schools" means the following sales by, amounts paid to, or
- 811 amounts charged by a school:
 - 812 (i) sales that are directly related to the school's educational functions or activities
 - 813 including:
 - 814 (A) the sale of:
 - 815 (I) textbooks;
 - 816 (II) textbook fees;
 - 817 (III) laboratory fees;
 - 818 (IV) laboratory supplies; or
 - 819 (V) safety equipment;
 - 820 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
 - 821 that:
 - 822 (I) a student is specifically required to wear as a condition of participation in a
 - 823 school-related event or school-related activity; and
 - 824 (II) is not readily adaptable to general or continued usage to the extent that it takes the
 - 825 place of ordinary clothing;
 - 826 (C) sales of the following if the net or gross revenues generated by the sales are
 - 827 deposited into a school district fund or school fund dedicated to school meals:
 - 828 (I) food and food ingredients; or
 - 829 (II) prepared food; or
 - 830 (D) transportation charges for official school activities; or
 - 831 (ii) amounts paid to or amounts charged by a school for admission to a school-related
 - 832 event or school-related activity.
 - 833 (b) "Sales relating to schools" does not include:

- 834 (i) bookstore sales of items that are not educational materials or supplies;
835 (ii) except as provided in Subsection (82)(a)(i)(B):
836 (A) clothing;
837 (B) clothing accessories or equipment;
838 (C) protective equipment; or
839 (D) sports or recreational equipment; or
840 (iii) amounts paid to or amounts charged by a school for admission to a school-related
841 event or school-related activity if the amounts paid or charged are passed through to a person:
842 (A) other than a:
843 (I) school;
844 (II) nonprofit organization authorized by a school board or a governing body of a
845 private school to organize and direct a competitive secondary school activity; or
846 (III) nonprofit association authorized by a school board or a governing body of a
847 private school to organize and direct a competitive secondary school activity; and
848 (B) that is required to collect sales and use taxes under this chapter.
849 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
850 commission may make rules defining the term "passed through."
851 (83) For purposes of this section and Section 59-12-104, "school" means:
852 (a) an elementary school or a secondary school that:
853 (i) is a:
854 (A) public school; or
855 (B) private school; and
856 (ii) provides instruction for one or more grades kindergarten through 12; or
857 (b) a public school district.
858 (84) "Seller" means a person that makes a sale, lease, or rental of:
859 (a) tangible personal property; or
860 (b) a service.
861 (85) (a) "Semiconductor fabricating, processing, research, or development materials"
862 means tangible personal property:
863 (i) used primarily in the process of:
864 (A) (I) manufacturing a semiconductor;

- 865 (II) fabricating a semiconductor; or
- 866 (III) research or development of a:
 - 867 (Aa) semiconductor; or
 - 868 (Bb) semiconductor manufacturing process; or
 - 869 (B) maintaining an environment suitable for a semiconductor; or
 - 870 (ii) consumed primarily in the process of:
 - 871 (A) (I) manufacturing a semiconductor;
 - 872 (II) fabricating a semiconductor; or
 - 873 (III) research or development of a:
 - 874 (Aa) semiconductor; or
 - 875 (Bb) semiconductor manufacturing process; or
 - 876 (B) maintaining an environment suitable for a semiconductor.
 - 877 (b) "Semiconductor fabricating, processing, research, or development materials"
- 878 includes:
 - 879 (i) parts used in the repairs or renovations of tangible personal property described in
 - 880 Subsection (85)(a); or
 - 881 (ii) a chemical, catalyst, or other material used to:
 - 882 (A) produce or induce in a semiconductor a:
 - 883 (I) chemical change; or
 - 884 (II) physical change;
 - 885 (B) remove impurities from a semiconductor; or
 - 886 (C) improve the marketable condition of a semiconductor.
 - 887 (86) "Senior citizen center" means a facility having the primary purpose of providing
 - 888 services to the aged as defined in Section 62A-3-101.
 - 889 (87) "Simplified electronic return" means the electronic return:
 - 890 (a) described in Section 318(C) of the agreement; and
 - 891 (b) approved by the governing board of the agreement.
 - 892 (88) "Solar energy" means the sun used as the sole source of energy for producing
 - 893 electricity.
 - 894 (89) (a) "Sports or recreational equipment" means an item:
 - 895 (i) designed for human use; and

- 896 (ii) that is:
- 897 (A) worn in conjunction with:
- 898 (I) an athletic activity; or
- 899 (II) a recreational activity; and
- 900 (B) not suitable for general use.
- 901 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 902 commission shall make rules:
- 903 (i) listing the items that constitute "sports or recreational equipment"; and
- 904 (ii) that are consistent with the list of items that constitute "sports or recreational
- 905 equipment" under the agreement.
- 906 (90) "State" means the state of Utah, its departments, and agencies.
- 907 (91) "Storage" means any keeping or retention of tangible personal property or any
- 908 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except
- 909 sale in the regular course of business.
- 910 (92) (a) "Tangible personal property" means personal property that:
- 911 (i) may be:
- 912 (A) seen;
- 913 (B) weighed;
- 914 (C) measured;
- 915 (D) felt; or
- 916 (E) touched; or
- 917 (ii) is in any manner perceptible to the senses.
- 918 (b) "Tangible personal property" includes:
- 919 (i) electricity;
- 920 (ii) water;
- 921 (iii) gas;
- 922 (iv) steam; or
- 923 (v) prewritten computer software.
- 924 (93) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon
- 925 and require further processing other than mechanical blending before becoming finished
- 926 petroleum products.

927 (94) (a) "Telecommunications enabling or facilitating equipment, machinery, or
928 software" means an item listed in Subsection (94)(b) if that item is purchased or leased
929 primarily to enable or facilitate one or more of the following to function:

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

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

932 (b) The following apply to Subsection (94)(a):

933 (i) a pole;

934 (ii) software;

935 (iii) a supplementary power supply;

936 (iv) temperature or environmental equipment or machinery;

937 (v) test equipment;

938 (vi) a tower; or

939 (vii) equipment, machinery, or software that functions similarly to an item listed in
940 Subsections (94)(b)(i) through (vi) as determined by the commission by rule made in
941 accordance with Subsection (94)(c).

942 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
943 commission may by rule define what constitutes equipment, machinery, or software that
944 functions similarly to an item listed in Subsections (94)(b)(i) through (vi).

945 (95) "Telecommunications equipment, machinery, or software required for 911
946 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.
947 Sec. 20.18.

948 (96) "Telecommunications maintenance or repair equipment, machinery, or software"
949 means equipment, machinery, or software purchased or leased primarily to maintain or repair
950 one or more of the following, regardless of whether the equipment, machinery, or software is
951 purchased or leased as a spare part or as an upgrade or modification to one or more of the
952 following:

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

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

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

956 (97) (a) "Telecommunications switching or routing equipment, machinery, or software"
957 means an item listed in Subsection (97)(b) if that item is purchased or leased primarily for

958 switching or routing:

- 959 (i) voice communications;
- 960 (ii) data communications; or
- 961 (iii) telephone service.

962 (b) The following apply to Subsection (97)(a):

- 963 (i) a bridge;
- 964 (ii) a computer;
- 965 (iii) a cross connect;
- 966 (iv) a modem;
- 967 (v) a multiplexer;
- 968 (vi) plug in circuitry;
- 969 (vii) a router;
- 970 (viii) software;
- 971 (ix) a switch; or
- 972 (x) equipment, machinery, or software that functions similarly to an item listed in

973 Subsections (97)(b)(i) through (ix) as determined by the commission by rule made in
974 accordance with Subsection (97)(c).

975 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
976 commission may by rule define what constitutes equipment, machinery, or software that
977 functions similarly to an item listed in Subsections (97)(b)(i) through (ix).

978 (98) (a) "Telecommunications transmission equipment, machinery, or software" means
979 an item listed in Subsection (98)(b) if that item is purchased or leased primarily for sending,
980 receiving, or transporting:

- 981 (i) voice communications;
- 982 (ii) data communications; or
- 983 (iii) telephone service.

984 (b) The following apply to Subsection (98)(a):

- 985 (i) an amplifier;
- 986 (ii) a cable;
- 987 (iii) a closure;
- 988 (iv) a conduit;

- 989 (v) a controller;
- 990 (vi) a duplexer;
- 991 (vii) a filter;
- 992 (viii) an input device;
- 993 (ix) an input/output device;
- 994 (x) an insulator;
- 995 (xi) microwave machinery or equipment;
- 996 (xii) an oscillator;
- 997 (xiii) an output device;
- 998 (xiv) a pedestal;
- 999 (xv) a power converter;
- 000 (xvi) a power supply;
- 001 (xvii) a radio channel;
- 002 (xviii) a radio receiver;
- 003 (xix) a radio transmitter;
- 004 (xx) a repeater;
- 005 (xxi) software;
- 006 (xxii) a terminal;
- 007 (xxiii) a timing unit;
- 008 (xxiv) a transformer;
- 009 (xxv) a wire; or
- 010 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
- 011 Subsections (98)(b)(i) through (xxv) as determined by the commission by rule made in
- 012 accordance with Subsection (98)(c).

013 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
014 commission may by rule define what constitutes equipment, machinery, or software that
015 functions similarly to an item listed in Subsections (98)(b)(i) through (xxv).

- 016 (99) (a) "Telephone service" means a two-way transmission:
- 017 (i) by:
- 018 (A) wire;
- 019 (B) radio;

- 020 (C) lightwave; or
- 021 (D) other electromagnetic means; and
- 022 (ii) of one or more of the following:
- 023 (A) a sign;
- 024 (B) a signal;
- 025 (C) writing;
- 026 (D) an image;
- 027 (E) sound;
- 028 (F) a message;
- 029 (G) data; or
- 030 (H) other information of any nature.
- 031 (b) "Telephone service" includes:
- 032 (i) mobile telecommunications service;
- 033 (ii) private communications service; or
- 034 (iii) automated digital telephone answering service.
- 035 (c) "Telephone service" does not include a service or a transaction that a state or a
- 036 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet
- 037 Tax Freedom Act, Pub. L. No. 105-277.
- 038 (100) Notwithstanding where a call is billed or paid, "telephone service address"
- 039 means:
- 040 (a) if the location described in this Subsection (100)(a) is known, the location of the
- 041 telephone service equipment:
- 042 (i) to which a call is charged; and
- 043 (ii) from which the call originates or terminates;
- 044 (b) if the location described in Subsection (100)(a) is not known but the location
- 045 described in this Subsection (100)(b) is known, the location of the origination point of the
- 046 signal of the telephone service first identified by:
- 047 (i) the telecommunications system of the seller; or
- 048 (ii) if the system used to transport the signal is not that of the seller, information
- 049 received by the seller from its service provider; or
- 050 (c) if the locations described in Subsection (100)(a) or (b) are not known, the location

051 of a purchaser's primary place of use.

052 (101) (a) "Telephone service provider" means a person that:

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

054 (ii) engages in an activity described in Subsection (101)(a)(i) for the shared use with or
055 resale to any person of the telephone service.

056 (b) A person described in Subsection (101)(a) is a telephone service provider whether
057 or not the Public Service Commission of Utah regulates:

058 (i) that person; or

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

060 (102) "Tobacco" means:

061 (a) a cigarette;

062 (b) a cigar;

063 (c) chewing tobacco;

064 (d) pipe tobacco; or

065 (e) any other item that contains tobacco.

066 (103) "Unassisted amusement device" means an amusement device, skill device, or
067 ride device that is started and stopped by the purchaser or renter of the right to use or operate
068 the amusement device, skill device, or ride device.

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

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

074 (105) (a) Subject to Subsection (105)(b), "vehicle" means the following that are
075 required to be titled, registered, or titled and registered:

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

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

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

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

080 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

081 (i) a vehicle described in Subsection (105)(a); or

082 (ii) (A) a locomotive;

083 (B) a freight car;

084 (C) railroad work equipment; or

085 (D) other railroad rolling stock.

086 (106) "Vehicle dealer" means a person engaged in the business of buying, selling, or
087 exchanging a vehicle as defined in Subsection (105).

088 (107) (a) Except as provided in Subsection (107)(b), "waste energy facility" means a
089 facility that generates electricity:

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

092 (A) tires;

093 (B) waste coal; or

094 (C) oil shale; and

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

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

097 (i) municipal solid waste;

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

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

100 (108) "Watercraft" means a vessel as defined in Section 73-18-2.

101 (109) "Wind energy" means wind used as the sole source of energy to produce
102 electricity.

103 (110) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
104 location by the United States Postal Service.

105 Section 2. Section **59-12-103 (Effective 01/01/07)** is amended to read:

106 **59-12-103 (Effective 01/01/07). Sales and use tax base -- Rates -- Effective dates --**
107 **Use of sales and use tax revenues.**

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

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

111 (b) amounts paid:

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

113 (B) whether the following are municipally or privately owned, to a:
114 (I) telephone service provider; or
115 (II) telegraph corporation as defined in Section 54-2-1; and
116 (ii) for:
117 (A) telephone service, other than mobile telecommunications service, that originates
118 and terminates within the boundaries of this state;
119 (B) mobile telecommunications service that originates and terminates within the
120 boundaries of one state only to the extent permitted by the Mobile Telecommunications
121 Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or
122 (C) telegraph service;
123 (c) sales of the following for commercial use:
124 (i) gas;
125 (ii) electricity;
126 (iii) heat;
127 (iv) coal;
128 (v) fuel oil; or
129 (vi) other fuels;
130 (d) sales of the following for residential use:
131 (i) gas;
132 (ii) electricity;
133 (iii) heat;
134 (iv) coal;
135 (v) fuel oil; or
136 (vi) other fuels;
137 (e) sales of prepared food;
138 (f) except as provided in Section 59-12-104, amounts paid or charged as admission or
139 user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,
140 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,
141 fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit
142 television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf
143 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,

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

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

149 (i) the tangible personal property; and

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

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

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

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

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

160 (i) stored;

161 (ii) used; or

162 (iii) otherwise consumed;

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

165 (i) stored;

166 (ii) used; or

167 (iii) consumed; and

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

169 (2) (a) Except as provided in Subsection (2)(b) or (f), a state tax and a local tax is
170 imposed on a transaction described in Subsection (1) equal to the sum of:

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

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

174 (b) (i) A state tax and a local tax is imposed on a transaction described in Subsection

175 (1)(d) equal to the sum of:

176 (A) a state tax imposed on the transaction at a rate of 2%; and

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

179 (ii) ~~(A)~~ ~~[if]~~ If a seller collects a tax in accordance with Subsection 59-12-107(1)(b) on a
180 transaction described in Subsection (1), a state tax and a local tax is imposed on the transaction
181 equal to the sum of:

182 ~~[(A)]~~ (I) a state tax imposed on the transaction at a rate of:

183 ~~[(Aa)]~~ (Aa) 4.75% for a transaction other than a transaction described in Subsection

184 (1)(d); ~~[or]~~

185 ~~[(Bb)]~~ (Bb) 2% for a transaction described in Subsection (1)(d); ~~[and]~~ or

186 (Cc) except as provided in Subsection (2)(b)(ii)(B), beginning on January 1, 2007,

187 2.75% on the amounts paid or charged for food and food ingredients; and

188 ~~[(B)]~~ (II) a local tax imposed on the transaction at a rate equal to the sum of the
189 following rates:

190 ~~[(Aa)]~~ (Aa) the tax rate authorized by Section 59-12-204, but only if all of the counties,
191 cities, and towns in the state impose the tax under Section 59-12-204; and

192 ~~[(Bb)]~~ (Bb) the tax rate authorized by Section 59-12-1102, but only if all of the counties
193 in the state impose the tax under Section 59-12-1102.

194 (B) Notwithstanding Subsection (2)(b)(ii)(A)(I)(Cc), for a seller that collects a tax in
195 accordance with Subsection 59-12-107(1)(b) on a bundled transaction, if the price of the
196 bundled transaction is attributable to food and food ingredients and tangible personal property
197 other than food and food ingredients, a state tax and a local tax is imposed on the bundled
198 transaction equal to the sum of:

199 (I) a state tax imposed on the bundled transaction at the tax rate described in
200 Subsection (2)(b)(ii)(A)(I)(Aa); and

201 (II) a local tax imposed on the bundled transaction as provided in Subsection
202 (2)(b)(ii)(A)(II).

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

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

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

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

212 (i) Subsection (2)(a)(i);

213 (ii) Subsection (2)(b)(i)(A);

214 (iii) Subsection (2)(b)(ii)(A); or

215 (iv) Subsection (2)(b)(iii)(A).

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

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

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

221 (I) Subsection (2)(a)(i);

222 (II) Subsection (2)(b)(i)(A); or

223 (III) Subsection (2)(b)(ii)(A).

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

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

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

230 (I) Subsection (2)(a)(i);

231 (II) Subsection (2)(b)(i)(A); or

232 (III) Subsection (2)(b)(ii)(A).

233 (iii) Subsections (2)(d)(i) and (ii) apply to transactions subject to a tax under:

234 (A) Subsection (1)(b);

235 (B) Subsection (1)(c);

236 (C) Subsection (1)(d);

- 237 (D) Subsection (1)(e);
- 238 (E) Subsection (1)(f);
- 239 (F) Subsection (1)(g);
- 240 (G) Subsection (1)(h);
- 241 (H) Subsection (1)(i);
- 242 (I) Subsection (1)(j); or
- 243 (J) Subsection (1)(k).

244 (e) (i) If a tax due under Subsection (2)(a)(i) or (2)(b)(ii)(A) on a catalogue sale is
 245 computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal or
 246 change in a tax rate imposed under Subsection (2)(a)(i) or (2)(b)(ii)(A) takes effect:

- 247 (A) on the first day of a calendar quarter; and
- 248 (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change
 249 under Subsection (2)(a)(i) or (2)(b)(ii)(A).

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

252 (f) ~~[(†)]~~ If the price of a bundled transaction is attributable to ~~[items of]~~ food and food
 253 ingredients and tangible personal property ~~[and]~~ other than food and food ingredients, the tax
 254 imposed on the entire bundled transaction is the sum of the tax rates described in Subsection
 255 (2)(a).

256 ~~[(ii) For a seller that sells food and food ingredients and prepared food at the same
 257 location:]~~

258 ~~[(A) if the location at which the food and food ingredients and prepared food is sold is
 259 a restaurant as defined in Section 59-12-602, the tax imposed on the food and food ingredients
 260 and prepared food is the sum of the tax rates described in Subsection (2)(a); or]~~

261 ~~[(B) if the location at which the food and food ingredients and prepared food is sold is
 262 not a restaurant as defined in Section 59-12-602, the tax imposed on the food and food
 263 ingredients and prepared food is the sum of the tax rates described in Subsection (2)(b)(iii).]~~

264 (3) (a) Except as provided in Subsections (4) through (9), the following state taxes
 265 shall be deposited into the General Fund:

- 266 (i) the tax imposed by Subsection (2)(a)(i);
- 267 (ii) the tax imposed by Subsection (2)(b)(i)(A);

268 (iii) the tax imposed by Subsection (2)(b)(ii)(A); or

269 (iv) the tax imposed by Subsection (2)(b)(iii)(A).

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

272 (c) (i) Notwithstanding any provision of this chapter, each county, city, or town in the
273 state shall receive the county's, city's, or town's proportionate share of the revenues generated
274 by the local tax described in Subsection (2)(b)(ii)(B) as provided in Subsection (3)(c)(ii).

275 (ii) The commission shall determine a county's, city's, or town's proportionate share of
276 the revenues under Subsection (3)(c)(i) by:

277 (A) calculating an amount equal to the population of the unincorporated area of the
278 county, city, or town divided by the total population of the state; and

279 (B) multiplying the amount determined under Subsection (3)(c)(ii)(A) by the total
280 amount of revenues generated by the local tax under Subsection (2)(b)(ii)(B) for all counties,
281 cities, and towns.

282 (iii) (A) Except as provided in Subsection (3)(c)(iii)(B), population figures for
283 purposes of this section shall be derived from the most recent official census or census estimate
284 of the United States Census Bureau.

285 (B) If a needed population estimate is not available from the United States Census
286 Bureau, population figures shall be derived from the estimate from the Utah Population
287 Estimates Committee created by executive order of the governor.

288 (4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
289 2003, the lesser of the following amounts shall be used as provided in Subsections (4)(b)
290 through (g):

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

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

293 (B) for the fiscal year; or

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

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

298 (A) implement the measures described in Subsections 63-34-14(4)(a) through (d) to

299 protect sensitive plant and animal species; or

300 (B) award grants, up to the amount authorized by the Legislature in an appropriations
301 act, to political subdivisions of the state to implement the measures described in Subsections
302 63-34-14(4)(a) through (d) to protect sensitive plant and animal species.

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

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

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

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

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

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

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

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

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

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

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

328 (e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described
329 in Subsection (4)(a) shall be deposited in the Water Resources Conservation and Development

330 Fund created in Section 73-10-24 for use by the Division of Water Resources.

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

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

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

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

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

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

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

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

351 (iii) develop surface water sources.

352 (5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
353 2006, the difference between the following amounts shall be expended as provided in this
354 Subsection (5), if that difference is greater than \$1:

355 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the
356 fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

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

358 (b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:

359 (A) transferred each fiscal year to the Department of Natural Resources as dedicated
360 credits; and

361 (B) expended by the Department of Natural Resources for watershed rehabilitation or
362 restoration.

363 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described
364 in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund
365 created in Section 73-10-24.

366 (c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the
367 remaining difference described in Subsection (5)(a) shall be:

368 (A) transferred each fiscal year to the Division of Water Resources as dedicated
369 credits; and

370 (B) expended by the Division of Water Resources for cloud-seeding projects
371 authorized by Title 73, Chapter 15, Modification of Weather.

372 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described
373 in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund
374 created in Section 73-10-24.

375 (d) After making the transfers required by Subsections (5)(b) and (c), 94% of the
376 remaining difference described in Subsection (5)(a) shall be deposited into the Water
377 Resources Conservation and Development Fund created in Section 73-10-24 for use by the
378 Division of Water Resources for:

379 (i) preconstruction costs:

380 (A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter
381 26, Bear River Development Act; and

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

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

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

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

390 (e) Any unexpended monies described in Subsection (5)(d) that remain in the Water
391 Resources Conservation and Development Fund at the end of the fiscal year are nonlapsing.

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

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

399 (6) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
400 2003, the lesser of the following amounts shall be used as provided in Subsections (6)(b)
401 through (d):

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

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

404 (B) for the fiscal year; or

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

406 (b) (i) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described
407 in Subsection (6)(a) shall be deposited each year in the Transportation Corridor Preservation
408 Revolving Loan Fund created in Section 72-2-117.

409 (ii) At least 50% of the money deposited in the Transportation Corridor Preservation
410 Revolving Loan Fund under Subsection (6)(b)(i) shall be used to fund loan applications made
411 by the Department of Transportation at the request of local governments.

412 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in
413 Subsection (6)(a) shall be transferred each year as nonlapsing dedicated credits to the
414 Department of Transportation for the State Park Access Highways Improvement Program
415 created in Section 72-3-207.

416 (d) For a fiscal year beginning on or after July 1, 2003, 94% of the amount described in
417 Subsection (6)(a) shall be deposited in the class B and class C roads account to be expended as
418 provided in Title 72, Chapter 2, Transportation Finances Act, for the use of class B and C
419 roads.

420 (7) (a) Notwithstanding Subsection (3)(a) and until Subsection (7)(b) applies,
421 beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial
422 Highway Fund Restricted Account created in Section 72-2-118 a portion of the taxes listed

423 under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate on the taxable
424 transactions under Subsection (1).

425 (b) Notwithstanding Subsection (3)(a), when the highway general obligation bonds
426 have been paid off and the highway projects completed that are intended to be paid from
427 revenues deposited in the Centennial Highway Fund Restricted Account as determined by the
428 Executive Appropriations Committee under Subsection 72-2-118(6)(d), the Division of
429 Finance shall deposit into the Transportation Investment Fund of 2005 created by Section
430 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated
431 by a 1/64% tax rate on the taxable transactions under Subsection (1).

432 (8) (a) Notwithstanding Subsection (3)(a), for fiscal years beginning on or after fiscal
433 year 2004-05, the commission shall each year on or before the September 30 immediately
434 following the last day of the fiscal year deposit the difference described in Subsection (8)(b)
435 into the Remote Sales Restricted Account created in Section 59-12-103.2 if that difference is
436 greater than \$0.

437 (b) The difference described in Subsection (8)(a) is equal to the difference between:

438 (i) the total amount of the revenues under Subsections (2)(b)(ii)(A) and (2)(b)(iii)(A)
439 the commission received from sellers collecting a tax in accordance with Subsection
440 59-12-107(1)(b) for the fiscal year immediately preceding the September 30 described in
441 Subsection (8)(a); and

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

443 (9) (a) Notwithstanding Subsection (3)(a), in addition to the amount deposited in
444 Subsection (7)(a), and until Subsection (9)(b) applies, for a fiscal year beginning on or after
445 July 1, 2006, the Division of Finance shall deposit into the Centennial Highway Fund
446 Restricted Account created by Section 72-2-118 a portion of the taxes listed under Subsection
447 (3)(a) equal to 8.3% of the revenues collected from the taxes described in Subsections (2)(a)(i),
448 (2)(b)(i)(A), and (2)(b)(iii)(A), which represents a portion of the approximately 17% of sales
449 and use tax revenues generated annually by the sales and use tax on vehicles and
450 vehicle-related products.

451 (b) Notwithstanding Subsection (3)(a) and in addition to the amounts deposited under
452 Subsection (7)(b), when the highway general obligation bonds have been paid off and the
453 highway projects completed that are intended to be paid from revenues deposited in the

454 Centennial Highway Fund Restricted Account as determined by the Executive Appropriations
455 Committee under Subsection 72-2-118(6)(d), the Division of Finance shall deposit into the
456 Transportation Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes
457 listed under Subsection (3)(a) equal to 8.3% of the revenues collected from the taxes described
458 in Subsections (2)(a)(i), (2)(b)(i)(A), and (2)(b)(iii)(A), which represents a portion of the
459 approximately 17% of sales and use tax revenues generated annually by the sales and use tax
460 on vehicles and vehicle-related products.

461 Section 3. **Uncodified Section 5, Chapter 282, Laws of Utah 2006** is amended to
462 read:

463 Section 5. **Appropriation.**

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

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

470 (3) The Legislature intends that, to the extent funds are available, the State Tax
471 Commission distribute these monies as provided in Subsections (4) [~~and (5)~~] through (6).

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

474 (i) that:

475 (A) in 2005, remitted taxes imposed by Title 59, Chapter 12, Sales and Use Tax Act, in
476 an amount greater than or equal to \$15,000 but less than or equal to [~~\$500,000~~] \$150,000;

477 (B) remitted sales and use taxes on food and food ingredients as defined in Section
478 59-12-102 to the State Tax Commission before March 1, 2006; and

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

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

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

483 (B) to purchase computer hardware [~~and~~], software, or programming to account for
484 sales under the reduced sales and use tax rate imposed on food and food ingredients; and

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

486 (A) ~~[50%]~~ 75% of the verifiable amounts described in Subsection (4)(a)(ii); or

487 (B) ~~[\$10,000]~~ \$5,000.

488 (b) If the total amount of requests for reimbursement under Subsection (4)(a) exceed
489 the monies that are available for reimbursement, the State Tax Commission shall reduce each
490 claim by a pro rata share.

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

494 (i) that:

495 (A) in 2005, remitted taxes imposed by Title 59, Chapter 12, Sales and Use Tax Act, in
496 an amount greater than ~~[or equal to \$15,000]~~ \$150,000 but less than or equal to \$500,000;

497 (B) remitted sales and use taxes on food and food ingredients as defined in Section
498 59-12-102 to the State Tax Commission before March 1, 2006; and

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

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

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

503 (B) to purchase computer hardware, software, or programming to account for sales
504 under the reduced sales and use tax rate imposed on food and food ingredients; and

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

506 (A) 50% of the verifiable amounts described in Subsection (5)(a)(ii); or

507 (B) \$10,000.

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

511 (6) (a) Except as provided in Subsection (6)(b), if, after the State Tax Commission
512 makes the reimbursements required by Subsections (4) and (5), monies described in Subsection
513 (1) remain for reimbursement, the State Tax Commission shall reimburse a business location:

514 (i) that:

515 (A) in 2005, remitted taxes imposed by Title 59, Chapter 12, Sales and Use Tax Act, in

516 an amount greater than or equal to \$15,000;

517 (B) remitted sales and use taxes on food and food ingredients as defined in Section
518 59-12-102 to the State Tax Commission before March 1, 2006; and

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

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

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

523 (B) for a business location that, in 2005, remitted taxes imposed by Title 59, Chapter
524 12, Sales and Use Tax Act:

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

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

529 (Ab) that were not reimbursed in accordance with Subsection (4) or (5); or

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

533 (iii) in an amount that does not exceed 50% of the verifiable amounts described in
534 Subsection [~~(5)~~] (6)(a)(ii).

535 (b) If the total amount of requests for reimbursement under Subsection [~~(5)~~] (6)(a)
536 exceed the monies that are available for reimbursement, the State Tax Commission shall
537 reduce each claim by a pro rata share.

538 Section 4. **Uncodified Section 6, Chapter 282, Laws of Utah 2006** is amended to
539 read:

540 Section 6. **Effective date.**

541 [~~This~~] (1) Except as provided in Subsection (2), this bill takes effect on January 1,
542 2007.

543 (2) If approved by two-thirds of all the members elected to each house, the uncodified
544 Section 5, Appropriation, takes effect on July 1, 2006.

545 Section 5. **Effective date.**

546 (1) Except as provided in Subsection (2), this bill takes effect on January 1, 2007.

547 (2) If approved by two-thirds of all the members elected to each house, Section 3 of
548 this bill, which is the uncodified Section 5, Appropriation, in Chapter 282, Laws of Utah 2006,
549 takes effect on July 1, 2006.

Legislative Review Note

as of **5-19-06 12:03 PM**

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

Office of Legislative Research and General Counsel

Interim Committee Note

as of **05-22-06 10:40 AM**

The Revenue and Taxation Interim Committee recommended this bill.

Fiscal Note
Bill Number HB3004

Sales and Use Tax Relating to Food

24-May-06

9:06 AM

State Impact

The modifications and technical changes made by this bill generate no additional fiscal impact.

Individual and Business Impact

No net fiscal impact.

Office of the Legislative Fiscal Analyst