

SALES AND USE TAX MODIFICATIONS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ben C. Ferry

Senate Sponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill amends the Sales and Use Tax Act.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ addresses the tax rates at which a seller that does not have sufficient contacts with the state to be required to collect and remit sales and use taxes may voluntarily collect and remit sales and use taxes on:
 - food and food ingredients; or
 - a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients;
- ▶ addresses the effective dates of sales and use tax repeals, changes, or increases for certain taxes and transactions;
- ▶ addresses the distribution of the local taxes that are voluntarily collected and remitted by a seller that does not have sufficient contacts with the state to be required to collect and remit sales and use taxes;
- ▶ addresses the revenues to be deposited into the:
 - Centennial Highway Fund Restricted Account; and
 - Transportation Investment Fund of 2005;
- ▶ addresses the calculation of the credit for certain repossessions of a motor vehicle;



28 ▶ addresses the calculation of the amount a seller that collects and remits sales and
29 use taxes on a monthly basis may retain;

30 ▶ provides that the portion of the tax under the Tourism, Recreation, Cultural, and
31 Convention Facilities Tax part, that is imposed on sales by restaurants, is imposed
32 on sales of prepared food and food and food ingredients;

33 ▶ modifies an appropriation to the State Tax Commission to provide that ~~§~~ [;] :

33a • ~~§~~ in addition

34 to other purposes allowed in the appropriation language, monies may be expended

35 to reimburse certain ~~§~~ [sellers] business locations ~~§~~ for expenditures to pay for in-house

35a programming to

36 account for sales under the reduced sales and use tax rate imposed on food and food

37 ingredients; and

37a ~~§~~ • the deadline for a business location to submit a request for reimbursement to the State

37b Tax Commission is extended from before January 1, 2007, to before April 1, 2007; and ~~§~~

38 ▶ makes technical changes.

39 **Monies Appropriated in this Bill:**

40 None

41 **Other Special Clauses:**

42 This bill provides an ~~§~~ immediate ~~§~~ effective date and provides for retrospective
42a operation.

43 **Utah Code Sections Affected:**

44 AMENDS:

45 **10-1-405**, as last amended by Chapter 253, Laws of Utah 2006

46 **11-41-102**, as last amended by Chapter 282, Laws of Utah 2006

47 **59-12-102**, as last amended by Chapter 1, Laws of Utah 2006, Fourth Special Session

48 **59-12-103**, as last amended by Chapter 9, Laws of Utah 2006, Third Special Session

49 **59-12-104.3**, as last amended by Chapter 253, Laws of Utah 2006

50 **59-12-108**, as last amended by Chapters 253 and 282, Laws of Utah 2006

51 **59-12-603**, as last amended by Chapters 134 and 253, Laws of Utah 2006

52 **Uncodified Material Affected:**

53 AMENDS UNCODIFIED MATERIAL:

54 **Uncodified Section 3, Chapter 9, Laws of Utah 2006, Third Special Session**

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

57 Section 1. Section **10-1-405** is amended to read:

58 **10-1-405. Collection of taxes by commission -- Uniform interlocal agreement --**

59 **Rulemaking authority -- Charge for services.**

60 (1) Subject to the other provisions of this section, the commission shall collect,
61 enforce, and administer any municipal telecommunications license tax imposed under this part
62 pursuant to:

63 (a) the same procedures used in the administration, collection, and enforcement of the
64 state sales and use tax under:

65 (i) Title 59, Chapter 1, General Taxation Policies; and

66 (ii) Title 59, Chapter 12, Part 1, Tax Collection:

67 (A) except for:

68 (I) Subsection 59-12-103(2)(~~e~~)(h);

69 (II) Section 59-12-104;

70 (III) Section 59-12-104.1;

71 (IV) Section 59-12-104.2; and

72 (V) Section 59-12-107.1; and

73 (B) except that for purposes of Section 59-12-110, the term "taxpayer" may include a
74 customer from whom a municipal telecommunications license tax is recovered in accordance
75 with Subsection 10-1-403(2); and

76 (b) a uniform interlocal agreement:

77 (i) between:

78 (A) the municipality that imposes the municipal telecommunications license tax; and

79 (B) the commission;

80 (ii) that is executed under Title 11, Chapter 13, Interlocal Cooperation Act;

81 (iii) that complies with Subsection (2)(a); and

82 (iv) that is developed by rule in accordance with Subsection (2)(b).

83 (2) (a) The uniform interlocal agreement described in Subsection (1) shall provide that
84 the commission shall:

85 (i) transmit monies collected under this part:

86 (A) monthly; and

87 (B) by electronic funds transfer by the commission to the municipality;

88 (ii) conduct audits of the municipal telecommunications license tax;

89 (iii) charge the municipality for the commission's services under this section in an

90 amount:

91 (A) sufficient to reimburse the commission for the cost to the commission in rendering
92 the services; and

93 (B) that may not exceed an amount equal to 1.5% of the municipal telecommunications
94 license tax imposed by the ordinance of the municipality; and

95 (iv) collect, enforce, and administer the municipal telecommunications license tax
96 authorized under this part pursuant to the same procedures used in the administration,
97 collection, and enforcement of the state sales and use tax as provided in Subsection (1)(a).

98 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
99 commission shall develop a uniform interlocal agreement that meets the requirements of this
100 section.

101 (3) The administrative fee charged under Subsection (2)(a) shall be:

102 (a) deposited in the Sales and Use Tax Administrative Fees Account; and

103 (b) used for administration of municipal telecommunications license taxes under this
104 part.

105 Section 2. Section **11-41-102** is amended to read:

106 **11-41-102. Definitions.**

107 As used in this chapter:

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

109 (a) (i) county; or

110 (ii) municipality; and

111 (b) person.

112 (2) "Municipality" means a:

113 (a) city; or

114 (b) town.

115 (3) "Payment" includes:

116 (a) a payment;

117 (b) a rebate;

118 (c) a refund; or

119 (d) an amount similar to Subsections (3)(a) through (c).

120 (4) "Regional retail business" means a:

- 121 (a) retail business that occupies a floor area of more than 80,000 square feet;
- 122 (b) dealer as defined in Section 41-1a-102;
- 123 (c) retail shopping facility that has at least two anchor tenants if the total number of
 124 anchor tenants in the shopping facility occupy a total floor area of more than 150,000 square
 125 feet; or
- 126 (d) grocery store that occupies a floor area of more than 30,000 square feet.
- 127 (5) (a) "Sales and use tax" means a tax:
- 128 (i) imposed on transactions within a:
- 129 (A) county; or
- 130 (B) municipality; and
- 131 (ii) except as provided in Subsection (5)(b), authorized under Title 59, Chapter 12,
 132 Sales and Use Tax Act.
- 133 (b) Notwithstanding Subsection (5)(a)(ii), "sales and use tax" does not include a tax
 134 authorized under:
- 135 (i) Subsection 59-12-103(2)(a)(i);
- 136 (ii) Subsection 59-12-103(2)(b)(i)[~~(A)~~];
- 137 (iii) Subsection 59-12-103(2)[~~(b)~~](iii)(A)](c)(i);
- 138 (iv) Subsection 59-12-103(2)(d)(i);
- 139 (v) Subsection 59-12-103(2)(e)(ii)(A);
- 140 (vi) Subsection 59-12-103(2)(e)(iii)(A);
- 141 [~~(iv)~~] (vii) Section 59-12-301;
- 142 [~~(v)~~] (viii) Section 59-12-352;
- 143 [~~(vi)~~] (ix) Section 59-12-353;
- 144 [~~(vii)~~] (x) Section 59-12-603; or
- 145 [~~(viii)~~] (xi) Section 59-12-1201.
- 146 (6) (a) "Sales and use tax incentive payment" means a payment of revenues:
- 147 (i) to a person;
- 148 (ii) by a:
- 149 (A) county; or
- 150 (B) municipality;
- 151 (iii) to induce the person to locate or relocate a regional retail business within the:

- 152 (A) county; or
- 153 (B) municipality; and
- 154 (iv) that are derived from a sales and use tax.

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

157 Section 3. Section **59-12-102** is amended to read:

158 **59-12-102. Definitions.**

159 As used in this chapter:

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

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

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

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

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

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

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

169 (a) Subsection 59-12-103(2)(a)(i) [~~or (2)(b)(iii)(A)~~];

170 (b) Subsection 59-12-103(2)(b)(i);

171 (c) Subsection 59-12-103(2)(c)(i);

172 (d) Subsection 59-12-103(2)(d)(i);

173 (e) Subsection 59-12-103(2)(e)(ii)(A);

174 (f) Subsection 59-12-103(2)(e)(iii)(A);

175 [~~(b)~~] (g) Section 59-12-204;

176 [~~(c)~~] (h) Section 59-12-401;

177 [~~(d)~~] (i) Section 59-12-402;

178 [~~(e)~~] (j) Section 59-12-501;

179 [~~(f)~~] (k) Section 59-12-502;

180 [~~(g)~~] (l) Section 59-12-703;

181 [~~(h)~~] (m) Section 59-12-802;

182 [~~(i)~~] (n) Section 59-12-804;

- 183 [~~(j)~~] (o) Section 59-12-1001;
- 184 [~~(k)~~] (p) Section 59-12-1102;
- 185 [~~(l)~~] (q) Section 59-12-1302;
- 186 [~~(m)~~] (r) Section 59-12-1402; or
- 187 [~~(n)~~] (s) Section 59-12-1503.
- 188 (5) "Aircraft" is as defined in Section 72-10-102.
- 189 (6) "Alcoholic beverage" means a beverage that:
- 190 (a) is suitable for human consumption; and
- 191 (b) contains .5% or more alcohol by volume.
- 192 (7) "Area agency on aging" is as defined in Section 62A-3-101.
- 193 (8) "Assisted amusement device" means an amusement device, skill device, or ride
- 194 device that is started and stopped by an individual:
- 195 (a) who is not the purchaser or renter of the right to use or operate the amusement
- 196 device, skill device, or ride device; and
- 197 (b) at the direction of the seller of the right to use the amusement device, skill device,
- 198 or ride device.
- 199 (9) "Assisted cleaning or washing of tangible personal property" means cleaning or
- 200 washing of tangible personal property if the cleaning or washing labor is primarily performed
- 201 by an individual:
- 202 (a) who is not the purchaser of the cleaning or washing of the tangible personal
- 203 property; and
- 204 (b) at the direction of the seller of the cleaning or washing of the tangible personal
- 205 property.
- 206 (10) "Authorized carrier" means:
- 207 (a) in the case of vehicles operated over public highways, the holder of credentials
- 208 indicating that the vehicle is or will be operated pursuant to both the International Registration
- 209 Plan and the International Fuel Tax Agreement;
- 210 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating
- 211 certificate or air carrier's operating certificate; or
- 212 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling
- 213 stock, the holder of a certificate issued by the United States Surface Transportation Board.

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

- 216 (i) material from a plant or tree; or
- 217 (ii) other organic matter that is available on a renewable basis, including:
 - 218 (A) slash and brush from forests and woodlands;
 - 219 (B) animal waste;
 - 220 (C) methane produced:
 - 221 (I) at landfills; or
 - 222 (II) as a byproduct of the treatment of wastewater residuals;
 - 223 (D) aquatic plants; and
 - 224 (E) agricultural products.

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

- 226 (i) black liquor;
- 227 (ii) treated woods; or
- 228 (iii) biomass from municipal solid waste other than methane produced:
 - 229 (A) at landfills; or
 - 230 (B) as a byproduct of the treatment of wastewater residuals.

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

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

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

- 236 (A) distinct and identifiable; and
- 237 (B) sold for one price that is not itemized.

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

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

- 243 (i) packaging that:
 - 244 (A) accompanies the sale of the tangible personal property; and

245 (B) is incidental or immaterial to the sale of the tangible personal property;
246 (ii) tangible personal property provided free of charge with the purchase of another
247 item of tangible personal property; or
248 (iii) an item of tangible personal property included in the definition of "purchase
249 price."

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

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

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

258 (i) on a transaction; and

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

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

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

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

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

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

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

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

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

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

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

277 (17) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
278 fuels that does not constitute industrial use under Subsection (39) or residential use under
279 Subsection (76).

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

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

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

288 (19) "Component part" includes:

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

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

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

294 (d) feed, seeds, and seedlings.

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

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

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

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

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

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

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

302 (22) "Construction materials" means any tangible personal property that will be
303 converted into real property.

304 (23) "Delivered electronically" means delivered to a purchaser by means other than
305 tangible storage media.

306 (24) (a) "Delivery charge" means a charge:

- 307 (i) by a seller of:
- 308 (A) tangible personal property; or
- 309 (B) services; and
- 310 (ii) for preparation and delivery of the tangible personal property or services described
- 311 in Subsection (24)(a)(i) to a location designated by the purchaser.
- 312 (b) "Delivery charge" includes a charge for the following:
- 313 (i) transportation;
- 314 (ii) shipping;
- 315 (iii) postage;
- 316 (iv) handling;
- 317 (v) crating; or
- 318 (vi) packing.
- 319 (25) "Dietary supplement" means a product, other than tobacco, that:
- 320 (a) is intended to supplement the diet;
- 321 (b) contains one or more of the following dietary ingredients:
- 322 (i) a vitamin;
- 323 (ii) a mineral;
- 324 (iii) an herb or other botanical;
- 325 (iv) an amino acid;
- 326 (v) a dietary substance for use by humans to supplement the diet by increasing the total
- 327 dietary intake; or
- 328 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
- 329 described in Subsections (25)(b)(i) through (v);
- 330 (c) (i) except as provided in Subsection (25)(c)(ii), is intended for ingestion in:
- 331 (A) tablet form;
- 332 (B) capsule form;
- 333 (C) powder form;
- 334 (D) softgel form;
- 335 (E) gelcap form; or
- 336 (F) liquid form; or
- 337 (ii) notwithstanding Subsection (25)(c)(i), if the product is not intended for ingestion in

338 a form described in Subsections (25)(c)(i)(A) through (F), is not represented:

339 (A) as conventional food; and

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

341 (I) a meal; or

342 (II) the diet; and

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

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

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

346 (26) (a) "Direct mail" means printed material delivered or distributed by United States
347 mail or other delivery service:

348 (i) to:

349 (A) a mass audience; or

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

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

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

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

356 (27) (a) "Drug" means a compound, substance, or preparation, or a component of a
357 compound, substance, or preparation that is:

358 (i) recognized in:

359 (A) the official United States Pharmacopoeia;

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

361 (C) the official National Formulary; or

362 (D) a supplement to a publication listed in Subsections (27)(a)(i)(A) through (C);

363 (ii) intended for use in the:

364 (A) diagnosis of disease;

365 (B) cure of disease;

366 (C) mitigation of disease;

367 (D) treatment of disease; or

368 (E) prevention of disease; or

- 369 (iii) intended to affect:
- 370 (A) the structure of the body; or
- 371 (B) any function of the body.
- 372 (b) "Drug" does not include:
- 373 (i) food and food ingredients;
- 374 (ii) a dietary supplement;
- 375 (iii) an alcoholic beverage; or
- 376 (iv) a prosthetic device.
- 377 (28) (a) Except as provided in Subsection (28)(c), "durable medical equipment" means
- 378 equipment that:
- 379 (i) can withstand repeated use;
- 380 (ii) is primarily and customarily used to serve a medical purpose;
- 381 (iii) generally is not useful to a person in the absence of illness or injury; and
- 382 (iv) is not worn in or on the body.
- 383 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 384 equipment described in Subsection (28)(a).
- 385 (c) Notwithstanding Subsection (28)(a), "durable medical equipment" does not include
- 386 mobility enhancing equipment.
- 387 (29) "Electronic" means:
- 388 (a) relating to technology; and
- 389 (b) having:
- 390 (i) electrical capabilities;
- 391 (ii) digital capabilities;
- 392 (iii) magnetic capabilities;
- 393 (iv) wireless capabilities;
- 394 (v) optical capabilities;
- 395 (vi) electromagnetic capabilities; or
- 396 (vii) capabilities similar to Subsections (29)(b)(i) through (vi).
- 397 (30) "Employee" is as defined in Section 59-10-401.
- 398 (31) "Fixed guideway" means a public transit facility that uses and occupies:
- 399 (a) rail for the use of public transit; or

- 400 (b) a separate right-of-way for the use of public transit.
- 401 (32) (a) "Food and food ingredients" means substances:
- 402 (i) regardless of whether the substances are in:
- 403 (A) liquid form;
- 404 (B) concentrated form;
- 405 (C) solid form;
- 406 (D) frozen form;
- 407 (E) dried form; or
- 408 (F) dehydrated form; and
- 409 (ii) that are:
- 410 (A) sold for:
- 411 (I) ingestion by humans; or
- 412 (II) chewing by humans; and
- 413 (B) consumed for the substance's:
- 414 (I) taste; or
- 415 (II) nutritional value.
- 416 (b) "Food and food ingredients" includes an item described in Subsection (63)(b)(iii).
- 417 (c) "Food and food ingredients" does not include:
- 418 (i) an alcoholic beverage;
- 419 (ii) tobacco; or
- 420 (iii) prepared food.
- 421 (33) (a) "Fundraising sales" means sales:
- 422 (i) (A) made by a school; or
- 423 (B) made by a school student;
- 424 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 425 materials, or provide transportation; and
- 426 (iii) that are part of an officially sanctioned school activity.
- 427 (b) For purposes of Subsection (33)(a)(iii), "officially sanctioned school activity"
- 428 means a school activity:
- 429 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 430 district governing the authorization and supervision of fundraising activities;

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

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

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

437 (35) "Governing board of the agreement" means the governing board of the agreement
438 that is:

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

441 (36) (a) "Hearing aid" means:

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

- 443 (A) (I) improve impaired human hearing; or
- 444 (II) correct impaired human hearing; and
- 445 (B) (I) be worn in the human ear; or
- 446 (II) affixed behind the human ear;

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

448 (iii) a telephone amplifying device.

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

450 (i) except as provided in Subsection (36)(a)(i)(B) or (36)(a)(ii), an instrument or device
451 having an electronic component that is designed to be worn on the body;

452 (ii) except as provided in Subsection (36)(a)(iii), an assistive listening device or system
453 designed to be used by one individual, including:

- 454 (A) a personal amplifying system;
- 455 (B) a personal FM system;
- 456 (C) a television listening system; or
- 457 (D) a device or system similar to a device or system described in Subsections
458 (36)(b)(ii)(A) through (C); or

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

461 (A) a device or system installed in:

- 462 (I) an auditorium;
- 463 (II) a church;
- 464 (III) a conference room;
- 465 (IV) a synagogue; or
- 466 (V) a theater; or
- 467 (B) a device or system similar to a device or system described in Subsections
- 468 (36)(b)(iii)(A)(I) through (V).
- 469 (37) (a) "Hearing aid accessory" means a hearing aid:
- 470 (i) component;
- 471 (ii) attachment; or
- 472 (iii) accessory.
- 473 (b) "Hearing aid accessory" includes:
- 474 (i) a hearing aid neck loop;
- 475 (ii) a hearing aid cord;
- 476 (iii) a hearing aid ear mold;
- 477 (iv) hearing aid tubing;
- 478 (v) a hearing aid ear hook; or
- 479 (vi) a hearing aid remote control.
- 480 (c) "Hearing aid accessory" does not include:
- 481 (i) a component, attachment, or accessory designed to be used only with an:
- 482 (A) instrument or device described in Subsection (36)(b)(i); or
- 483 (B) assistive listening device or system described in Subsection (36)(b)(ii) or (iii); or
- 484 (ii) a hearing aid battery.
- 485 (38) "Hydroelectric energy" means water used as the sole source of energy to produce
- 486 electricity.
- 487 (39) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
- 488 other fuels:
- 489 (a) in mining or extraction of minerals;
- 490 (b) in agricultural operations to produce an agricultural product up to the time of
- 491 harvest or placing the agricultural product into a storage facility, including:
- 492 (i) commercial greenhouses;

- 493 (ii) irrigation pumps;
- 494 (iii) farm machinery;
- 495 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
496 registered under Title 41, Chapter 1a, Part 2, Registration; and
- 497 (v) other farming activities;
- 498 (c) in manufacturing tangible personal property at an establishment described in SIC
499 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
500 Executive Office of the President, Office of Management and Budget;
- 501 (d) by a scrap recycler if:
- 502 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
503 one or more of the following items into prepared grades of processed materials for use in new
504 products:
- 505 (A) iron;
- 506 (B) steel;
- 507 (C) nonferrous metal;
- 508 (D) paper;
- 509 (E) glass;
- 510 (F) plastic;
- 511 (G) textile; or
- 512 (H) rubber; and
- 513 (ii) the new products under Subsection (39)(d)(i) would otherwise be made with
514 nonrecycled materials; or
- 515 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a
516 cogeneration facility as defined in Section 54-2-1.
- 517 (40) (a) Except as provided in Subsection (40)(b), "installation charge" means a charge
518 for installing tangible personal property.
- 519 (b) Notwithstanding Subsection (40)(a), "installation charge" does not include a charge
520 for repairs or renovations of tangible personal property.
- 521 (41) (a) "Lease" or "rental" means a transfer of possession or control of tangible
522 personal property for:
- 523 (i) (A) a fixed term; or

524 (B) an indeterminate term; and
525 (ii) consideration.
526 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
527 amount of consideration may be increased or decreased by reference to the amount realized
528 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
529 Code.
530 (c) "Lease" or "rental" does not include:
531 (i) a transfer of possession or control of property under a security agreement or
532 deferred payment plan that requires the transfer of title upon completion of the required
533 payments;
534 (ii) a transfer of possession or control of property under an agreement that requires the
535 transfer of title:
536 (A) upon completion of required payments; and
537 (B) if the payment of an option price does not exceed the greater of:
538 (I) \$100; or
539 (II) 1% of the total required payments; or
540 (iii) providing tangible personal property along with an operator for a fixed period of
541 time or an indeterminate period of time if the operator is necessary for equipment to perform as
542 designed.
543 (d) For purposes of Subsection (41)(c)(iii), an operator is necessary for equipment to
544 perform as designed if the operator's duties exceed the:
545 (i) set-up of tangible personal property;
546 (ii) maintenance of tangible personal property; or
547 (iii) inspection of tangible personal property.
548 (42) "Load and leave" means delivery to a purchaser by use of a tangible storage media
549 if the tangible storage media is not physically transferred to the purchaser.
550 (43) "Local taxing jurisdiction" means a:
551 (a) county that is authorized to impose an agreement sales and use tax;
552 (b) city that is authorized to impose an agreement sales and use tax; or
553 (c) town that is authorized to impose an agreement sales and use tax.
554 (44) "Manufactured home" is as defined in Section 58-56-3.

- 555 (45) For purposes of Section 59-12-104, "manufacturing facility" means:
- 556 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
- 557 Industrial Classification Manual of the federal Executive Office of the President, Office of
- 558 Management and Budget;
- 559 (b) a scrap recycler if:
- 560 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 561 one or more of the following items into prepared grades of processed materials for use in new
- 562 products:
- 563 (A) iron;
- 564 (B) steel;
- 565 (C) nonferrous metal;
- 566 (D) paper;
- 567 (E) glass;
- 568 (F) plastic;
- 569 (G) textile; or
- 570 (H) rubber; and
- 571 (ii) the new products under Subsection (45)(b)(i) would otherwise be made with
- 572 nonrecycled materials; or
- 573 (c) a cogeneration facility as defined in Section 54-2-1.
- 574 (46) "Member of the immediate family of the producer" means a person who is related
- 575 to a producer described in Subsection 59-12-104(20)(a) as a:
- 576 (a) child or stepchild, regardless of whether the child or stepchild is:
- 577 (i) an adopted child or adopted stepchild; or
- 578 (ii) a foster child or foster stepchild;
- 579 (b) grandchild or stepgrandchild;
- 580 (c) grandparent or stepgrandparent;
- 581 (d) nephew or stepnephew;
- 582 (e) niece or stepniece;
- 583 (f) parent or stepparent;
- 584 (g) sibling or stepsibling;
- 585 (h) spouse;

586 (i) person who is the spouse of a person described in Subsections (46)(a) through (g);
587 or

588 (j) person similar to a person described in Subsections (46)(a) through (i) as
589 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah
590 Administrative Rulemaking Act.

591 (47) "Mobile home" is as defined in Section 58-56-3.

592 (48) "Mobile telecommunications service" is as defined in the Mobile
593 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

594 (49) (a) Except as provided in Subsection (49)(c), "mobility enhancing equipment"
595 means equipment that is:

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

598 (ii) appropriate for use in a:

599 (A) home; or

600 (B) motor vehicle; and

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

602 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
603 the equipment described in Subsection (49)(a).

604 (c) Notwithstanding Subsection (49)(a), "mobility enhancing equipment" does not
605 include:

606 (i) a motor vehicle;

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

609 (iii) durable medical equipment; or

610 (iv) a prosthetic device.

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

615 (51) "Model 2 seller" means a seller that:

616 (a) except as provided in Subsection (51)(b), has selected a certified automated system

- 617 to perform the seller's sales tax functions for agreement sales and use taxes; and
- 618 (b) notwithstanding Subsection (51)(a), retains responsibility for remitting all of the
- 619 sales tax:
- 620 (i) collected by the seller; and
- 621 (ii) to the appropriate local taxing jurisdiction.
- 622 (52) (a) Subject to Subsection (52)(b), "model 3 seller" means a seller that has:
- 623 (i) sales in at least five states that are members of the agreement;
- 624 (ii) total annual sales revenues of at least \$500,000,000;
- 625 (iii) a proprietary system that calculates the amount of tax:
- 626 (A) for an agreement sales and use tax; and
- 627 (B) due to each local taxing jurisdiction; and
- 628 (iv) entered into a performance agreement with the governing board of the agreement.
- 629 (b) For purposes of Subsection (52)(a), "model 3 seller" includes an affiliated group of
- 630 sellers using the same proprietary system.
- 631 (53) "Modular home" means a modular unit as defined in Section 58-56-3.
- 632 (54) "Motor vehicle" is as defined in Section 41-1a-102.
- 633 (55) "Oil shale" means a group of fine black to dark brown shales containing
- 634 bituminous material that yields petroleum upon distillation.
- 635 (56) (a) "Other fuels" means products that burn independently to produce heat or
- 636 energy.
- 637 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible
- 638 personal property.
- 639 (57) "Pawnbroker" is as defined in Section 13-32a-102.
- 640 (58) "Pawn transaction" is as defined in Section 13-32a-102.
- 641 (59) (a) "Permanently attached to real property" means that for tangible personal
- 642 property attached to real property:
- 643 (i) the attachment of the tangible personal property to the real property:
- 644 (A) is essential to the use of the tangible personal property; and
- 645 (B) suggests that the tangible personal property will remain attached to the real
- 646 property in the same place over the useful life of the tangible personal property; or
- 647 (ii) if the tangible personal property is detached from the real property, the detachment

648 would:

- 649 (A) cause substantial damage to the tangible personal property; or
- 650 (B) require substantial alteration or repair of the real property to which the tangible
- 651 personal property is attached.

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

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

- 654 (A) essential to the operation of the tangible personal property; and
- 655 (B) attached only to facilitate the operation of the tangible personal property;

656 (ii) a temporary detachment of tangible personal property from real property for a

657 repair or renovation if the repair or renovation is performed where the tangible personal

658 property and real property are located; or

659 (iii) an attachment of the following tangible personal property to real property,

660 regardless of whether the attachment to real property is only through a line that supplies water,

661 electricity, gas, telephone, cable, or supplies a similar item as determined by the commission by

662 rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

663 (A) property attached to oil, gas, or water pipelines, other than the property listed in

664 Subsection (59)(c)(iii);

665 (B) a hot water heater;

666 (C) a water softener system; or

667 (D) a water filtration system, other than a water filtration system manufactured as part

668 of a refrigerator.

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

670 (i) the attachment of portable or movable tangible personal property to real property if

671 that portable or movable tangible personal property is attached to real property only for:

672 (A) convenience;

673 (B) stability; or

674 (C) for an obvious temporary purpose;

675 (ii) the detachment of tangible personal property from real property other than the

676 detachment described in Subsection (59)(b)(ii); or

677 (iii) an attachment of the following tangible personal property to real property if the

678 attachment to real property is only through a line that supplies water, electricity, gas, telephone,

679 cable, or supplies a similar item as determined by the commission by rule made in accordance
680 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

681 (A) a refrigerator;

682 (B) a washer;

683 (C) a dryer;

684 (D) a stove;

685 (E) a television;

686 (F) a computer;

687 (G) a telephone; or

688 (H) tangible personal property similar to Subsections (59)(c)(iii)(A) through (G) as
689 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah
690 Administrative Rulemaking Act.

691 (60) "Person" includes any individual, firm, partnership, joint venture, association,
692 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
693 municipality, district, or other local governmental entity of the state, or any group or
694 combination acting as a unit.

695 (61) "Place of primary use":

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

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

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

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

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

705 (63) (a) "Prepared food" means:

706 (i) food:

707 (A) sold in a heated state; or

708 (B) heated by a seller;

709 (ii) two or more food ingredients mixed or combined by the seller for sale as a single

710 item; or
711 (iii) except as provided in Subsection (63)(c), food sold with an eating utensil provided
712 by the seller, including a:
713 (A) plate;
714 (B) knife;
715 (C) fork;
716 (D) spoon;
717 (E) glass;
718 (F) cup;
719 (G) napkin; or
720 (H) straw.
721 (b) "Prepared food" does not include:
722 (i) food that a seller only:
723 (A) cuts;
724 (B) repackages; or
725 (C) pasteurizes; or
726 (ii) (A) the following:
727 (I) raw egg;
728 (II) raw fish;
729 (III) raw meat;
730 (IV) raw poultry; or
731 (V) a food containing an item described in Subsections (63)(b)(ii)(A)(I) through (IV);
732 and
733 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
734 Food and Drug Administration's Food Code that a consumer cook the items described in
735 Subsection (63)(b)(ii)(A) to prevent food borne illness; or
736 (iii) the following if sold without eating utensils provided by the seller:
737 (A) food and food ingredients sold by a seller if the seller's proper primary
738 classification under the 2002 North American Industry Classification System of the federal
739 Executive Office of the President, Office of Management and Budget, is manufacturing in
740 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla

741 Manufacturing;

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

743 (I) by weight or volume; and

744 (II) as a single item; or

745 (C) a bakery item, including:

746 (I) a bagel;

747 (II) a bar;

748 (III) a biscuit;

749 (IV) bread;

750 (V) a bun;

751 (VI) a cake;

752 (VII) a cookie;

753 (VIII) a croissant;

754 (IX) a danish;

755 (X) a donut;

756 (XI) a muffin;

757 (XII) a pastry;

758 (XIII) a pie;

759 (XIV) a roll;

760 (XV) a tart;

761 (XVI) a torte; or

762 (XVII) a tortilla.

763 (c) Notwithstanding Subsection (63)(a)(iii), an eating utensil provided by the seller
764 does not include the following used to transport the food:

765 (i) a container; or

766 (ii) packaging.

767 (64) "Prescription" means an order, formula, or recipe that is issued:

768 (a) (i) orally;

769 (ii) in writing;

770 (iii) electronically; or

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

772 (b) by a licensed practitioner authorized by the laws of a state.
773 (65) (a) Except as provided in Subsection (65)(b)(ii) or (iii), "prewritten computer
774 software" means computer software that is not designed and developed:
775 (i) by the author or other creator of the computer software; and
776 (ii) to the specifications of a specific purchaser.
777 (b) "Prewritten computer software" includes:
778 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
779 software is not designed and developed:
780 (A) by the author or other creator of the computer software; and
781 (B) to the specifications of a specific purchaser;
782 (ii) notwithstanding Subsection (65)(a), computer software designed and developed by
783 the author or other creator of the computer software to the specifications of a specific purchaser
784 if the computer software is sold to a person other than the purchaser; or
785 (iii) notwithstanding Subsection (65)(a) and except as provided in Subsection (65)(c),
786 prewritten computer software or a prewritten portion of prewritten computer software:
787 (A) that is modified or enhanced to any degree; and
788 (B) if the modification or enhancement described in Subsection (65)(b)(iii)(A) is
789 designed and developed to the specifications of a specific purchaser.
790 (c) Notwithstanding Subsection (65)(b)(iii), "prewritten computer software" does not
791 include a modification or enhancement described in Subsection (65)(b)(iii) if the charges for
792 the modification or enhancement are:
793 (i) reasonable; and
794 (ii) separately stated on the invoice or other statement of price provided to the
795 purchaser.
796 (66) (a) "Prosthetic device" means a device that is worn on or in the body to:
797 (i) artificially replace a missing portion of the body;
798 (ii) prevent or correct a physical deformity or physical malfunction; or
799 (iii) support a weak or deformed portion of the body.
800 (b) "Prosthetic device" includes:
801 (i) parts used in the repairs or renovation of a prosthetic device; or
802 (ii) replacement parts for a prosthetic device.

- 803 (c) "Prosthetic device" does not include:
- 804 (i) corrective eyeglasses;
- 805 (ii) contact lenses;
- 806 (iii) hearing aids; or
- 807 (iv) dental prostheses.
- 808 (67) (a) "Protective equipment" means an item:
- 809 (i) for human wear; and
- 810 (ii) that is:
- 811 (A) designed as protection:
- 812 (I) to the wearer against injury or disease; or
- 813 (II) against damage or injury of other persons or property; and
- 814 (B) not suitable for general use.
- 815 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 816 commission shall make rules:
- 817 (i) listing the items that constitute "protective equipment"; and
- 818 (ii) that are consistent with the list of items that constitute "protective equipment"
- 819 under the agreement.
- 820 (68) (a) "Purchase price" and "sales price" mean the total amount of consideration:
- 821 (i) valued in money; and
- 822 (ii) for which tangible personal property or services are:
- 823 (A) sold;
- 824 (B) leased; or
- 825 (C) rented.
- 826 (b) "Purchase price" and "sales price" include:
- 827 (i) the seller's cost of the tangible personal property or services sold;
- 828 (ii) expenses of the seller, including:
- 829 (A) the cost of materials used;
- 830 (B) a labor cost;
- 831 (C) a service cost;
- 832 (D) interest;
- 833 (E) a loss;

- 834 (F) the cost of transportation to the seller; or
- 835 (G) a tax imposed on the seller; or
- 836 (iii) a charge by the seller for any service necessary to complete the sale.
- 837 (c) "Purchase price" and "sales price" do not include:
- 838 (i) a discount:
- 839 (A) in a form including:
- 840 (I) cash;
- 841 (II) term; or
- 842 (III) coupon;
- 843 (B) that is allowed by a seller;
- 844 (C) taken by a purchaser on a sale; and
- 845 (D) that is not reimbursed by a third party; or
- 846 (ii) the following if separately stated on an invoice, bill of sale, or similar document
- 847 provided to the purchaser:
- 848 (A) the amount of a trade-in;
- 849 (B) the following from credit extended on the sale of tangible personal property or
- 850 services:
- 851 (I) interest charges;
- 852 (II) financing charges; or
- 853 (III) carrying charges;
- 854 (C) a tax or fee legally imposed directly on the consumer;
- 855 (D) a delivery charge; or
- 856 (E) an installation charge.
- 857 (69) "Purchaser" means a person to whom:
- 858 (a) a sale of tangible personal property is made; or
- 859 (b) a service is furnished.
- 860 (70) "Regularly rented" means:
- 861 (a) rented to a guest for value three or more times during a calendar year; or
- 862 (b) advertised or held out to the public as a place that is regularly rented to guests for
- 863 value.
- 864 (71) "Renewable energy" means:

- 865 (a) biomass energy;
- 866 (b) hydroelectric energy;
- 867 (c) geothermal energy;
- 868 (d) solar energy; or
- 869 (e) wind energy.
- 870 (72) (a) "Renewable energy production facility" means a facility that:
- 871 (i) uses renewable energy to produce electricity; and
- 872 (ii) has a production capacity of 20 kilowatts or greater.
- 873 (b) A facility is a renewable energy production facility regardless of whether the
- 874 facility is:
- 875 (i) connected to an electric grid; or
- 876 (ii) located on the premises of an electricity consumer.
- 877 (73) "Rental" is as defined in Subsection (41).
- 878 (74) "Repairs or renovations of tangible personal property" means:
- 879 (a) a repair or renovation of tangible personal property that is not permanently attached
- 880 to real property; or
- 881 (b) attaching tangible personal property to other tangible personal property if the other
- 882 tangible personal property to which the tangible personal property is attached is not
- 883 permanently attached to real property.
- 884 (75) "Research and development" means the process of inquiry or experimentation
- 885 aimed at the discovery of facts, devices, technologies, or applications and the process of
- 886 preparing those devices, technologies, or applications for marketing.
- 887 (76) "Residential use" means the use in or around a home, apartment building, sleeping
- 888 quarters, and similar facilities or accommodations.
- 889 (77) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
- 890 than:
- 891 (a) resale;
- 892 (b) sublease; or
- 893 (c) subrent.
- 894 (78) (a) "Retailer" means any person engaged in a regularly organized business in
- 895 tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and

896 who is selling to the user or consumer and not for resale.

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

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

902 (b) "Sale" includes:

903 (i) installment and credit sales;

904 (ii) any closed transaction constituting a sale;

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

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

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

912 (80) "Sale at retail" is as defined in Subsection (77).

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

915 (a) by a purchaser-lessee;

916 (b) to a lessor;

917 (c) for consideration; and

918 (d) if:

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

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

923 (A) for the property; and

924 (B) to the purchaser-lessee; and

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

- 927 (A) capitalize the property for financial reporting purposes; and
- 928 (B) account for the lease payments as payments made under a financing arrangement.
- 929 (82) "Sales price" is as defined in Subsection (68).
- 930 (83) (a) "Sales relating to schools" means the following sales by, amounts paid to, or
- 931 amounts charged by a school:
- 932 (i) sales that are directly related to the school's educational functions or activities
- 933 including:
- 934 (A) the sale of:
- 935 (I) textbooks;
- 936 (II) textbook fees;
- 937 (III) laboratory fees;
- 938 (IV) laboratory supplies; or
- 939 (V) safety equipment;
- 940 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
- 941 that:
- 942 (I) a student is specifically required to wear as a condition of participation in a
- 943 school-related event or school-related activity; and
- 944 (II) is not readily adaptable to general or continued usage to the extent that it takes the
- 945 place of ordinary clothing;
- 946 (C) sales of the following if the net or gross revenues generated by the sales are
- 947 deposited into a school district fund or school fund dedicated to school meals:
- 948 (I) food and food ingredients; or
- 949 (II) prepared food; or
- 950 (D) transportation charges for official school activities; or
- 951 (ii) amounts paid to or amounts charged by a school for admission to a school-related
- 952 event or school-related activity.
- 953 (b) "Sales relating to schools" does not include:
- 954 (i) bookstore sales of items that are not educational materials or supplies;
- 955 (ii) except as provided in Subsection (83)(a)(i)(B):
- 956 (A) clothing;
- 957 (B) clothing accessories or equipment;

- 958 (C) protective equipment; or
- 959 (D) sports or recreational equipment; or
- 960 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 961 event or school-related activity if the amounts paid or charged are passed through to a person:
- 962 (A) other than a:
- 963 (I) school;
- 964 (II) nonprofit organization authorized by a school board or a governing body of a
- 965 private school to organize and direct a competitive secondary school activity; or
- 966 (III) nonprofit association authorized by a school board or a governing body of a
- 967 private school to organize and direct a competitive secondary school activity; and
- 968 (B) that is required to collect sales and use taxes under this chapter.
- 969 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 970 commission may make rules defining the term "passed through."
- 971 (84) For purposes of this section and Section 59-12-104, "school" means:
- 972 (a) an elementary school or a secondary school that:
- 973 (i) is a:
- 974 (A) public school; or
- 975 (B) private school; and
- 976 (ii) provides instruction for one or more grades kindergarten through 12; or
- 977 (b) a public school district.
- 978 (85) "Seller" means a person that makes a sale, lease, or rental of:
- 979 (a) tangible personal property; or
- 980 (b) a service.
- 981 (86) (a) "Semiconductor fabricating, processing, research, or development materials"
- 982 means tangible personal property:
- 983 (i) used primarily in the process of:
- 984 (A) (I) manufacturing a semiconductor;
- 985 (II) fabricating a semiconductor; or
- 986 (III) research or development of a:
- 987 (Aa) semiconductor; or
- 988 (Bb) semiconductor manufacturing process; or

- 989 (B) maintaining an environment suitable for a semiconductor; or
- 990 (ii) consumed primarily in the process of:
- 991 (A) (I) manufacturing a semiconductor;
- 992 (II) fabricating a semiconductor; or
- 993 (III) research or development of a:
- 994 (Aa) semiconductor; or
- 995 (Bb) semiconductor manufacturing process; or
- 996 (B) maintaining an environment suitable for a semiconductor.
- 997 (b) "Semiconductor fabricating, processing, research, or development materials"
- 998 includes:
- 999 (i) parts used in the repairs or renovations of tangible personal property described in
- 1000 Subsection (86)(a); or
- 1001 (ii) a chemical, catalyst, or other material used to:
- 1002 (A) produce or induce in a semiconductor a:
- 1003 (I) chemical change; or
- 1004 (II) physical change;
- 1005 (B) remove impurities from a semiconductor; or
- 1006 (C) improve the marketable condition of a semiconductor.
- 1007 (87) "Senior citizen center" means a facility having the primary purpose of providing
- 1008 services to the aged as defined in Section 62A-3-101.
- 1009 (88) "Simplified electronic return" means the electronic return:
- 1010 (a) described in Section 318(C) of the agreement; and
- 1011 (b) approved by the governing board of the agreement.
- 1012 (89) "Solar energy" means the sun used as the sole source of energy for producing
- 1013 electricity.
- 1014 (90) (a) "Sports or recreational equipment" means an item:
- 1015 (i) designed for human use; and
- 1016 (ii) that is:
- 1017 (A) worn in conjunction with:
- 1018 (I) an athletic activity; or
- 1019 (II) a recreational activity; and

- 1020 (B) not suitable for general use.
- 1021 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 1022 commission shall make rules:
 - 1023 (i) listing the items that constitute "sports or recreational equipment"; and
 - 1024 (ii) that are consistent with the list of items that constitute "sports or recreational
 - 1025 equipment" under the agreement.
- 1026 (91) "State" means the state of Utah, its departments, and agencies.
- 1027 (92) "Storage" means any keeping or retention of tangible personal property or any
- 1028 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except
- 1029 sale in the regular course of business.
- 1030 (93) (a) "Tangible personal property" means personal property that:
 - 1031 (i) may be:
 - 1032 (A) seen;
 - 1033 (B) weighed;
 - 1034 (C) measured;
 - 1035 (D) felt; or
 - 1036 (E) touched; or
 - 1037 (ii) is in any manner perceptible to the senses.
- 1038 (b) "Tangible personal property" includes:
 - 1039 (i) electricity;
 - 1040 (ii) water;
 - 1041 (iii) gas;
 - 1042 (iv) steam; or
 - 1043 (v) prewritten computer software.
- 1044 (94) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon
- 1045 and require further processing other than mechanical blending before becoming finished
- 1046 petroleum products.
- 1047 (95) (a) "Telecommunications enabling or facilitating equipment, machinery, or
- 1048 software" means an item listed in Subsection (95)(b) if that item is purchased or leased
- 1049 primarily to enable or facilitate one or more of the following to function:
 - 1050 (i) telecommunications switching or routing equipment, machinery, or software; or

1051 (ii) telecommunications transmission equipment, machinery, or software.

1052 (b) The following apply to Subsection (95)(a):

1053 (i) a pole;

1054 (ii) software;

1055 (iii) a supplementary power supply;

1056 (iv) temperature or environmental equipment or machinery;

1057 (v) test equipment;

1058 (vi) a tower; or

1059 (vii) equipment, machinery, or software that functions similarly to an item listed in

1060 Subsections (95)(b)(i) through (vi) as determined by the commission by rule made in

1061 accordance with Subsection (95)(c).

1062 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

1063 commission may by rule define what constitutes equipment, machinery, or software that

1064 functions similarly to an item listed in Subsections (95)(b)(i) through (vi).

1065 (96) "Telecommunications equipment, machinery, or software required for 911

1066 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.

1067 Sec. 20.18.

1068 (97) "Telecommunications maintenance or repair equipment, machinery, or software"

1069 means equipment, machinery, or software purchased or leased primarily to maintain or repair

1070 one or more of the following, regardless of whether the equipment, machinery, or software is

1071 purchased or leased as a spare part or as an upgrade or modification to one or more of the

1072 following:

1073 (a) telecommunications enabling or facilitating equipment, machinery, or software;

1074 (b) telecommunications switching or routing equipment, machinery, or software; or

1075 (c) telecommunications transmission equipment, machinery, or software.

1076 (98) (a) "Telecommunications switching or routing equipment, machinery, or software"

1077 means an item listed in Subsection (98)(b) if that item is purchased or leased primarily for

1078 switching or routing:

1079 (i) voice communications;

1080 (ii) data communications; or

1081 (iii) telephone service.

1082 (b) The following apply to Subsection (98)(a):

- 1083 (i) a bridge;
- 1084 (ii) a computer;
- 1085 (iii) a cross connect;
- 1086 (iv) a modem;
- 1087 (v) a multiplexer;
- 1088 (vi) plug in circuitry;
- 1089 (vii) a router;
- 1090 (viii) software;
- 1091 (ix) a switch; or

1092 (x) equipment, machinery, or software that functions similarly to an item listed in
1093 Subsections (98)(b)(i) through (ix) as determined by the commission by rule made in
1094 accordance with Subsection (98)(c).

1095 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1096 commission may by rule define what constitutes equipment, machinery, or software that
1097 functions similarly to an item listed in Subsections (98)(b)(i) through (ix).

1098 (99) (a) "Telecommunications transmission equipment, machinery, or software" means
1099 an item listed in Subsection (99)(b) if that item is purchased or leased primarily for sending,
1100 receiving, or transporting:

- 1101 (i) voice communications;
- 1102 (ii) data communications; or
- 1103 (iii) telephone service.

1104 (b) The following apply to Subsection (99)(a):

- 1105 (i) an amplifier;
- 1106 (ii) a cable;
- 1107 (iii) a closure;
- 1108 (iv) a conduit;
- 1109 (v) a controller;
- 1110 (vi) a duplexer;
- 1111 (vii) a filter;
- 1112 (viii) an input device;

- 1113 (ix) an input/output device;
- 1114 (x) an insulator;
- 1115 (xi) microwave machinery or equipment;
- 1116 (xii) an oscillator;
- 1117 (xiii) an output device;
- 1118 (xiv) a pedestal;
- 1119 (xv) a power converter;
- 1120 (xvi) a power supply;
- 1121 (xvii) a radio channel;
- 1122 (xviii) a radio receiver;
- 1123 (xix) a radio transmitter;
- 1124 (xx) a repeater;
- 1125 (xxi) software;
- 1126 (xxii) a terminal;
- 1127 (xxiii) a timing unit;
- 1128 (xxiv) a transformer;
- 1129 (xxv) a wire; or
- 1130 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
- 1131 Subsections (99)(b)(i) through (xxv) as determined by the commission by rule made in
- 1132 accordance with Subsection (99)(c).

1133 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1134 commission may by rule define what constitutes equipment, machinery, or software that
1135 functions similarly to an item listed in Subsections (99)(b)(i) through (xxv).

1136 (100) (a) "Telephone service" means a two-way transmission:

- 1137 (i) by:
 - 1138 (A) wire;
 - 1139 (B) radio;
 - 1140 (C) lightwave; or
 - 1141 (D) other electromagnetic means; and
- 1142 (ii) of one or more of the following:
 - 1143 (A) a sign;

- 1144 (B) a signal;
- 1145 (C) writing;
- 1146 (D) an image;
- 1147 (E) sound;
- 1148 (F) a message;
- 1149 (G) data; or
- 1150 (H) other information of any nature.
- 1151 (b) "Telephone service" includes:
- 1152 (i) mobile telecommunications service;
- 1153 (ii) private communications service; or
- 1154 (iii) automated digital telephone answering service.
- 1155 (c) "Telephone service" does not include a service or a transaction that a state or a
- 1156 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet
- 1157 Tax Freedom Act, Pub. L. No. 105-277.
- 1158 (101) Notwithstanding where a call is billed or paid, "telephone service address"
- 1159 means:
- 1160 (a) if the location described in this Subsection (101)(a) is known, the location of the
- 1161 telephone service equipment:
- 1162 (i) to which a call is charged; and
- 1163 (ii) from which the call originates or terminates;
- 1164 (b) if the location described in Subsection (101)(a) is not known but the location
- 1165 described in this Subsection (101)(b) is known, the location of the origination point of the
- 1166 signal of the telephone service first identified by:
- 1167 (i) the telecommunications system of the seller; or
- 1168 (ii) if the system used to transport the signal is not that of the seller, information
- 1169 received by the seller from its service provider; or
- 1170 (c) if the locations described in Subsection (101)(a) or (b) are not known, the location
- 1171 of a purchaser's primary place of use.
- 1172 (102) (a) "Telephone service provider" means a person that:
- 1173 (i) owns, controls, operates, or manages a telephone service; and
- 1174 (ii) engages in an activity described in Subsection (102)(a)(i) for the shared use with or

1175 resale to any person of the telephone service.

1176 (b) A person described in Subsection (102)(a) is a telephone service provider whether
1177 or not the Public Service Commission of Utah regulates:

1178 (i) that person; or

1179 (ii) the telephone service that the person owns, controls, operates, or manages.

1180 (103) "Tobacco" means:

1181 (a) a cigarette;

1182 (b) a cigar;

1183 (c) chewing tobacco;

1184 (d) pipe tobacco; or

1185 (e) any other item that contains tobacco.

1186 (104) "Unassisted amusement device" means an amusement device, skill device, or
1187 ride device that is started and stopped by the purchaser or renter of the right to use or operate
1188 the amusement device, skill device, or ride device.

1189 (105) (a) "Use" means the exercise of any right or power over tangible personal
1190 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that
1191 property, item, or service.

1192 (b) "Use" does not include the sale, display, demonstration, or trial of that property in
1193 the regular course of business and held for resale.

1194 (106) (a) Subject to Subsection (106)(b), "vehicle" means the following that are
1195 required to be titled, registered, or titled and registered:

1196 (i) an aircraft as defined in Section 72-10-102;

1197 (ii) a vehicle as defined in Section 41-1a-102;

1198 (iii) an off-highway vehicle as defined in Section 41-22-2; or

1199 (iv) a vessel as defined in Section 41-1a-102.

1200 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

1201 (i) a vehicle described in Subsection (106)(a); or

1202 (ii) (A) a locomotive;

1203 (B) a freight car;

1204 (C) railroad work equipment; or

1205 (D) other railroad rolling stock.

1206 (107) "Vehicle dealer" means a person engaged in the business of buying, selling, or
1207 exchanging a vehicle as defined in Subsection (106).

1208 (108) (a) Except as provided in Subsection (108)(b), "waste energy facility" means a
1209 facility that generates electricity:

1210 (i) using as the primary source of energy waste materials that would be placed in a
1211 landfill or refuse pit if it were not used to generate electricity, including:

1212 (A) tires;

1213 (B) waste coal; or

1214 (C) oil shale; and

1215 (ii) in amounts greater than actually required for the operation of the facility.

1216 (b) "Waste energy facility" does not include a facility that incinerates:

1217 (i) municipal solid waste;

1218 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or

1219 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1220 (109) "Watercraft" means a vessel as defined in Section 73-18-2.

1221 (110) "Wind energy" means wind used as the sole source of energy to produce
1222 electricity.

1223 (111) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
1224 location by the United States Postal Service.

1225 Section 4. Section **59-12-103** is amended to read:

1226 **59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use**
1227 **tax revenues.**

1228 (1) A tax is imposed on the purchaser as provided in this part for amounts paid or
1229 charged for the following transactions:

1230 (a) retail sales of tangible personal property made within the state;

1231 (b) amounts paid:

1232 (i) (A) to a common carrier; or

1233 (B) whether the following are municipally or privately owned, to a:

1234 (I) telephone service provider; or

1235 (II) telegraph corporation as defined in Section 54-2-1; and

1236 (ii) for:

- 1237 (A) telephone service, other than mobile telecommunications service, that originates
- 1238 and terminates within the boundaries of this state;
- 1239 (B) mobile telecommunications service that originates and terminates within the
- 1240 boundaries of one state only to the extent permitted by the Mobile Telecommunications
- 1241 Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or
- 1242 (C) telegraph service;
- 1243 (c) sales of the following for commercial use:
- 1244 (i) gas;
- 1245 (ii) electricity;
- 1246 (iii) heat;
- 1247 (iv) coal;
- 1248 (v) fuel oil; or
- 1249 (vi) other fuels;
- 1250 (d) sales of the following for residential use:
- 1251 (i) gas;
- 1252 (ii) electricity;
- 1253 (iii) heat;
- 1254 (iv) coal;
- 1255 (v) fuel oil; or
- 1256 (vi) other fuels;
- 1257 (e) sales of prepared food;
- 1258 (f) except as provided in Section 59-12-104, amounts paid or charged as admission or
- 1259 user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,
- 1260 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,
- 1261 fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit
- 1262 television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf
- 1263 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,
- 1264 tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises,
- 1265 horseback rides, sports activities, or any other amusement, entertainment, recreation,
- 1266 exhibition, cultural, or athletic activity;
- 1267 (g) amounts paid or charged for services for repairs or renovations of tangible personal

1268 property, unless Section 59-12-104 provides for an exemption from sales and use tax for:

1269 (i) the tangible personal property; and

1270 (ii) parts used in the repairs or renovations of the tangible personal property described
1271 in Subsection (1)(g)(i), whether or not any parts are actually used in the repairs or renovations
1272 of that tangible personal property;

1273 (h) except as provided in Subsection 59-12-104(7), amounts paid or charged for
1274 assisted cleaning or washing of tangible personal property;

1275 (i) amounts paid or charged for tourist home, hotel, motel, or trailer court
1276 accommodations and services that are regularly rented for less than 30 consecutive days;

1277 (j) amounts paid or charged for laundry or dry cleaning services;

1278 (k) amounts paid or charged for leases or rentals of tangible personal property if within
1279 this state the tangible personal property is:

1280 (i) stored;

1281 (ii) used; or

1282 (iii) otherwise consumed;

1283 (l) amounts paid or charged for tangible personal property if within this state the
1284 tangible personal property is:

1285 (i) stored;

1286 (ii) used; or

1287 (iii) consumed; and

1288 (m) amounts paid or charged for prepaid telephone calling cards.

1289 (2) (a) Except as provided in ~~[Subsection]~~ Subsections (2)(b) [or (f);] through (e) a
1290 state tax and a local tax is imposed on a transaction described in Subsection (1) equal to the
1291 sum of:

1292 (i) a state tax imposed on the transaction at a tax rate of 4.75%; and

1293 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
1294 transaction under this chapter other than this part.

1295 (b) ~~[(i) A]~~ Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is
1296 imposed on a transaction described in Subsection (1)(d) equal to the sum of:

1297 ~~[(A)]~~ (i) a state tax imposed on the transaction at a tax rate of 2%; and

1298 ~~[(B)]~~ (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on

1299 the transaction under this chapter other than this part~~[; or]~~.

1300 (c) Except as provided in Subsection (2)(d) or (e), beginning on January 1, 2007, a
 1301 state tax and a local tax is imposed on amounts paid or charged for food and food ingredients
 1302 equal to the sum of:

1303 (i) a state tax imposed on the amounts paid or charged for food and food ingredients at
 1304 a tax rate of 2.75%; and

1305 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
 1306 amounts paid or charged for food and food ingredients under this chapter other than this part.

1307 ~~[(ii) if]~~ (d) Except as provided in Subsection (2)(e), if a seller collects a tax in
 1308 accordance with Subsection 59-12-107(1)(b) on a transaction described in Subsection (1), a
 1309 state tax and a local tax is imposed on the transaction equal to the sum of:

1310 ~~[(A)]~~ (i) a state tax imposed on the transaction at a tax rate of:

1311 ~~[(H)]~~ (A) 4.75% for a transaction other than a transaction described in Subsection

1312 ~~[(+)(d)]~~ (2)(d)(i)(B) or (2)(d)(i)(C); ~~[or]~~

1313 ~~[(H)]~~ (B) 2% for a transaction described in Subsection (1)(d); ~~[and]~~ or

1314 (C) beginning on January 1, 2007, 2.75% on the amounts paid or charged for food and
 1315 food ingredients; and

1316 ~~[(B)]~~ (ii) a local tax imposed on the transaction at a tax rate equal to the sum of the
 1317 following tax rates:

1318 ~~[(H)]~~ (A) the tax rate authorized by Section 59-12-204, but only if all of the counties,
 1319 cities, and towns in the state impose the tax ~~[under]~~ authorized by Section 59-12-204; and

1320 ~~[(H)]~~ (B) the tax rate authorized by Section 59-12-1102, but only if all of the counties
 1321 in the state impose the tax ~~[under]~~ authorized by Section 59-12-1102.

1322 ~~[(iii) Except as provided in Subsection (2)(f), beginning on January 1, 2007, a state tax~~
 1323 ~~and a local tax is imposed on amounts paid or charged for food and food ingredients equal to~~
 1324 ~~the sum of:]~~

1325 ~~[(A) a state tax imposed on the amounts paid or charged for food and food ingredients~~
 1326 ~~at a rate of 2.75%; and]~~

1327 ~~[(B) a local tax equal to the sum of the tax rates a county, city, or town imposes on the~~
 1328 ~~amounts paid or charged for food and food ingredients under this chapter other than this part.]~~

1329 (e) (i) A state tax and a local tax is imposed on an entire bundled transaction as

1330 provided in this Subsection (2)(e) if the bundled transaction is attributable to food and food
 1331 ingredients and tangible personal property other than food and food ingredients.

1332 (ii) If the tax on a bundled transaction described in Subsection (2)(e)(i) is collected by a
 1333 seller other than a seller that collects a tax in accordance with Subsection 59-12-107(1)(b),
 1334 beginning on January 1, 2007, a state tax and a local tax is imposed on the entire bundled
 1335 transaction equal to the sum of:

1336 (A) a state tax imposed on the entire bundled transaction at the tax rate described in
 1337 Subsection (2)(a)(i); and

1338 (B) a local tax imposed on the entire bundled transaction at the sum of the tax rates
 1339 described in Subsection (2)(a)(ii).

1340 (iii) If the tax on a bundled transaction described in Subsection (2)(e)(i) is collected by
 1341 a seller in accordance with Subsection 59-12-107(1)(b), beginning on January 1, 2007, a state
 1342 tax and a local tax is imposed on the entire bundled transaction equal to the sum of:

1343 (A) a state tax imposed on the entire bundled transaction at the tax rate described in
 1344 Subsection (2)(d)(i)(A); and

1345 (B) a local tax imposed on the entire bundled transaction at a tax rate equal to the sum
 1346 of the following tax rates:

1347 (I) the tax rate authorized by Section 59-12-204, but only if all of the counties, cities,
 1348 and towns in the state impose the tax authorized by Section 59-12-204; and

1349 (II) the tax rate authorized by Section 59-12-1102, but only if all of the counties in the
 1350 state impose the tax authorized by Section 59-12-1102.

1351 ~~(f)~~ (f) Subject to Subsections (2)~~(d)~~(g) and ~~(h)~~ (h), a tax rate repeal or tax rate
 1352 change for a tax rate imposed under the following shall take effect on the first day of a calendar
 1353 quarter:

1354 (i) Subsection (2)(a)(i);

1355 (ii) Subsection (2)(b)(i)~~(A)~~;

1356 (iii) Subsection (2)~~(b)(ii)(A)~~(c)(i); ~~or~~

1357 (iv) Subsection (2)~~(b)(iii)(A)~~(d)(i);

1358 (v) Subsection (2)(e)(ii)(A); or

1359 (vi) Subsection (2)(e)(iii)(A).

1360 ~~(g)~~ (g) (i) For a transaction described in Subsection (2)~~(d)~~(g)(iii), a tax rate increase

1361 shall take effect on the first day of the first billing period[~~:(A)~~] that begins after the effective
 1362 date of the tax rate increase[~~;~~and (B)~~]; and (B)] if the billing period for the transaction begins before the
 1363 effective date of a tax rate increase imposed under:~~

- 1364 ~~(A)~~ (A) Subsection (2)(a)(i);
- 1365 ~~(B)~~ (B) Subsection (2)(b)(i)[~~(A)~~]; [~~or~~]
- 1366 ~~(C)~~ (C) Subsection (2)[~~(b)(ii)(A)~~];(c)(i);
- 1367 (D) Subsection (2)(d)(i);
- 1368 (E) Subsection (2)(e)(ii)(A); or
- 1369 (F) Subsection (2)(e)(iii)(A).

1370 (ii) For a transaction described in Subsection (2)[~~(d)~~](g)(iii), the repeal of a tax or a tax
 1371 rate decrease shall take effect on the first day of the last billing period[~~:(A)~~] that began before
 1372 the effective date of the repeal of the tax or the tax rate decrease[~~;~~and (B)~~]; and (B)] if the billing period
 1373 for the transaction begins before the effective date of the repeal of the tax or the tax rate
 1374 decrease imposed under:~~

- 1375 ~~(A)~~ (A) Subsection (2)(a)(i);
- 1376 ~~(B)~~ (B) Subsection (2)(b)(i)[~~(A)~~]; [~~or~~]
- 1377 ~~(C)~~ (C) Subsection (2)[~~(b)(ii)(A)~~];(c)(i);
- 1378 (D) Subsection (2)(d)(i);
- 1379 (E) Subsection (2)(e)(ii)(A); or
- 1380 (F) Subsection (2)(e)(iii)(A).

1381 (iii) Subsections (2)[~~(d)~~](g)(i) and (ii) apply to transactions subject to a tax under:

- 1382 (A) Subsection (1)(b);
- 1383 (B) Subsection (1)(c);
- 1384 (C) Subsection (1)(d);
- 1385 (D) Subsection (1)(e);
- 1386 (E) Subsection (1)(f);
- 1387 (F) Subsection (1)(g);
- 1388 (G) Subsection (1)(h);
- 1389 (H) Subsection (1)(i);
- 1390 (I) Subsection (1)(j); or
- 1391 (J) Subsection (1)(k).

- 1392 ~~[(e) (i) If a tax due under Subsection (2)(a)(i) or (2)(b)(ii)(A)]~~
 1393 (h) (i) For a tax rate described in Subsection (2)(h)(ii), if a tax due on a catalogue sale
 1394 is computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal
 1395 or change in a tax rate ~~[imposed under Subsection (2)(a)(i) or (2)(b)(ii)(A)]~~ takes effect:
 1396 (A) on the first day of a calendar quarter; and
 1397 (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change
 1398 ~~[under Subsection (2)(a)(i) or (2)(b)(ii)(A)].~~
 1399 (ii) Subsection (2)(h)(i) applies to the tax rates described in the following:
 1400 (A) Subsection (2)(a)(i);
 1401 (B) Subsection (2)(b)(i);
 1402 (C) Subsection (2)(c)(i);
 1403 (D) Subsection (2)(d)(i);
 1404 (E) Subsection (2)(e)(ii)(A); or
 1405 (F) Subsection (2)(e)(iii)(A).
 1406 ~~[(ii)]~~ (iii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
 1407 Act, the commission may by rule define the term "catalogue sale."
 1408 ~~[(f) If the price of a bundled transaction is attributable to food and food ingredients and~~
 1409 ~~tangible personal property other than food and food ingredients, the tax imposed on the entire~~
 1410 ~~bundled transaction is the sum of the tax rates described in Subsection (2)(a).]~~
 1411 (3) (a) Except as provided in Subsections (4) through (9), the following state taxes
 1412 shall be deposited into the General Fund:
 1413 (i) the tax imposed by Subsection (2)(a)(i);
 1414 (ii) the tax imposed by Subsection (2)(b)(i)~~[(A)]~~;
 1415 (iii) the tax imposed by Subsection (2)~~[(b)(ii)(A)]~~[(c)(i)]; ~~[or]~~
 1416 (iv) the tax imposed by Subsection (2)~~[(b)(iii)(A)]~~ (d)(i);
 1417 (v) the tax imposed by Subsection (2)(e)(ii)(A); and
 1418 (vi) the tax imposed by Subsection (2)(e)(iii)(A).
 1419 (b) The following local taxes ~~[described in Subsections (2)(a)(ii), (2)(b)(i)(B), and~~
 1420 ~~(2)(b)(iii)(B)]~~ shall be distributed to a county, city, or town as provided in this chapter~~[-]~~:
 1421 (i) the tax imposed by Subsection (2)(a)(ii);
 1422 (ii) the tax imposed by Subsection (2)(b)(ii);

1423 (iii) the tax imposed by Subsection (2)(c)(ii); and

1424 (iv) the tax imposed by Subsection (2)(e)(ii)(B).

1425 (c) (i) Notwithstanding any provision of this chapter, each county, city, or town in the
1426 state shall receive the county's, city's, or town's proportionate share of the revenues generated
1427 by the following local [tax described in Subsection (2)(b)(ii)(B)] taxes as provided in
1428 Subsection (3)(c)(ii)[-];

1429 (A) the local tax described in Subsection (2)(d)(ii); and

1430 (B) the local tax described in Subsection (2)(e)(iii)(B).

1431 (ii) ~~[The]~~ For revenues generated by a tax described in Subsection (3)(c)(i), the
1432 commission shall determine a county's, city's, or town's proportionate share of the revenues
1433 [under Subsection (3)(c)(i)] by:

1434 (A) calculating an amount equal to the population of the unincorporated area of the
1435 county, city, or town divided by the total population of the state; and

1436 (B) multiplying the amount determined under Subsection (3)(c)(ii)(A) by the total
1437 amount of revenues generated by the ~~[local tax under Subsection (2)(b)(ii)(B)]~~ taxes described
1438 in Subsection (3)(c)(i) for all counties, cities, and towns.

1439 (iii) (A) Except as provided in Subsection (3)(c)(iii)(B), population figures for
1440 purposes of this section shall be derived from the most recent official census or census estimate
1441 of the United States Census Bureau.

1442 (B) If a needed population estimate is not available from the United States Census
1443 Bureau, population figures shall be derived from the estimate from the Utah Population
1444 Estimates Committee created by executive order of the governor.

1445 (4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
1446 2003, the lesser of the following amounts shall be used as provided in Subsections (4)(b)
1447 through (g):

1448 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

1449 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and

1450 (B) for the fiscal year; or

1451 (ii) \$17,500,000.

1452 (b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount
1453 described in Subsection (4)(a) shall be transferred each year as dedicated credits to the

1454 Department of Natural Resources to:

1455 (A) implement the measures described in Subsections 63-34-14(4)(a) through (d) to
1456 protect sensitive plant and animal species; or

1457 (B) award grants, up to the amount authorized by the Legislature in an appropriations
1458 act, to political subdivisions of the state to implement the measures described in Subsections
1459 63-34-14(4)(a) through (d) to protect sensitive plant and animal species.

1460 (ii) Money transferred to the Department of Natural Resources under Subsection
1461 (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other
1462 person to list or attempt to have listed a species as threatened or endangered under the
1463 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

1464 (iii) At the end of each fiscal year:

1465 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
1466 Conservation and Development Fund created in Section 73-10-24;

1467 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
1468 Program Subaccount created in Section 73-10c-5; and

1469 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
1470 Program Subaccount created in Section 73-10c-5.

1471 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in
1472 Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund
1473 created in Section 4-18-6.

1474 (d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described
1475 in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water
1476 Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of
1477 water rights.

1478 (ii) At the end of each fiscal year:

1479 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
1480 Conservation and Development Fund created in Section 73-10-24;

1481 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
1482 Program Subaccount created in Section 73-10c-5; and

1483 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
1484 Program Subaccount created in Section 73-10c-5.

1485 (e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described
1486 in Subsection (4)(a) shall be deposited in the Water Resources Conservation and Development
1487 Fund created in Section 73-10-24 for use by the Division of Water Resources.

1488 (ii) In addition to the uses allowed of the Water Resources Conservation and
1489 Development Fund under Section 73-10-24, the Water Resources Conservation and
1490 Development Fund may also be used to:

1491 (A) conduct hydrologic and geotechnical investigations by the Division of Water
1492 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of
1493 quantifying surface and ground water resources and describing the hydrologic systems of an
1494 area in sufficient detail so as to enable local and state resource managers to plan for and
1495 accommodate growth in water use without jeopardizing the resource;

1496 (B) fund state required dam safety improvements; and

1497 (C) protect the state's interest in interstate water compact allocations, including the
1498 hiring of technical and legal staff.

1499 (f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
1500 in Subsection (4)(a) shall be deposited in the Utah Wastewater Loan Program Subaccount
1501 created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

1502 (g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
1503 in Subsection (4)(a) shall be deposited in the Drinking Water Loan Program Subaccount
1504 created in Section 73-10c-5 for use by the Division of Drinking Water to:

1505 (i) provide for the installation and repair of collection, treatment, storage, and
1506 distribution facilities for any public water system, as defined in Section 19-4-102;

1507 (ii) develop underground sources of water, including springs and wells; and

1508 (iii) develop surface water sources.

1509 (5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
1510 2006, the difference between the following amounts shall be expended as provided in this
1511 Subsection (5), if that difference is greater than \$1:

1512 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the
1513 fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

1514 (ii) \$17,500,000.

1515 (b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:

1516 (A) transferred each fiscal year to the Department of Natural Resources as dedicated
1517 credits; and

1518 (B) expended by the Department of Natural Resources for watershed rehabilitation or
1519 restoration.

1520 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described
1521 in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund
1522 created in Section 73-10-24.

1523 (c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the
1524 remaining difference described in Subsection (5)(a) shall be:

1525 (A) transferred each fiscal year to the Division of Water Resources as dedicated
1526 credits; and

1527 (B) expended by the Division of Water Resources for cloud-seeding projects
1528 authorized by Title 73, Chapter 15, Modification of Weather.

1529 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described
1530 in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund
1531 created in Section 73-10-24.

1532 (d) After making the transfers required by Subsections (5)(b) and (c), 94% of the
1533 remaining difference described in Subsection (5)(a) shall be deposited into the Water
1534 Resources Conservation and Development Fund created in Section 73-10-24 for use by the
1535 Division of Water Resources for:

1536 (i) preconstruction costs:

1537 (A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter
1538 26, Bear River Development Act; and

1539 (B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project
1540 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

1541 (ii) the cost of employing a civil engineer to oversee any project authorized by Title 73,
1542 Chapter 26, Bear River Development Act;

1543 (iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project
1544 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

1545 (iv) other uses authorized under Sections 73-10-24, 73-10-25.1, 73-10-30, and
1546 Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

1547 (e) Any unexpended monies described in Subsection (5)(d) that remain in the Water
1548 Resources Conservation and Development Fund at the end of the fiscal year are nonlapsing.

1549 (f) After making the transfers required by Subsections (5)(b) and (c) and subject to
1550 Subsection (5)(g), 6% of the remaining difference described in Subsection (5)(a) shall be
1551 transferred each year as dedicated credits to the Division of Water Rights to cover the costs
1552 incurred for employing additional technical staff for the administration of water rights.

1553 (g) At the end of each fiscal year, any unexpended dedicated credits described in
1554 Subsection (5)(f) over \$150,000 lapse to the Water Resources Conservation and Development
1555 Fund created in Section 73-10-24.

1556 (6) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
1557 2003, the lesser of the following amounts shall be used as provided in Subsections (6)(b)
1558 through (d):

1559 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

1560 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and

1561 (B) for the fiscal year; or

1562 (ii) \$18,743,000.

1563 (b) (i) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described
1564 in Subsection (6)(a) shall be deposited each year in the Transportation Corridor Preservation
1565 Revolving Loan Fund created in Section 72-2-117.

1566 (ii) At least 50% of the money deposited in the Transportation Corridor Preservation
1567 Revolving Loan Fund under Subsection (6)(b)(i) shall be used to fund loan applications made
1568 by the Department of Transportation at the request of local governments.

1569 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in
1570 Subsection (6)(a) shall be transferred each year as nonlapsing dedicated credits to the
1571 Department of Transportation for the State Park Access Highways Improvement Program
1572 created in Section 72-3-207.

1573 (d) For a fiscal year beginning on or after July 1, 2003, 94% of the amount described in
1574 Subsection (6)(a) shall be deposited in the class B and class C roads account to be expended as
1575 provided in Title 72, Chapter 2, Transportation Finances Act, for the use of class B and C
1576 roads.

1577 (7) (a) Notwithstanding Subsection (3)(a) and until Subsection (7)(b) applies,

1578 beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial
1579 Highway Fund Restricted Account created in Section 72-2-118 a portion of the taxes listed
1580 under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate on the taxable
1581 transactions under Subsection (1).

1582 (b) Notwithstanding Subsection (3)(a), when the highway general obligation bonds
1583 have been paid off and the highway projects completed that are intended to be paid from
1584 revenues deposited in the Centennial Highway Fund Restricted Account as determined by the
1585 Executive Appropriations Committee under Subsection 72-2-118(6)(d), the Division of
1586 Finance shall deposit into the Transportation Investment Fund of 2005 created by Section
1587 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated
1588 by a 1/64% tax rate on the taxable transactions under Subsection (1).

1589 (8) (a) Notwithstanding Subsection (3)(a), for fiscal years beginning on or after fiscal
1590 year 2004-05, the commission shall each year on or before the September 30 immediately
1591 following the last day of the fiscal year deposit the difference described in Subsection (8)(b)
1592 into the Remote Sales Restricted Account created in Section 59-12-103.2 if that difference is
1593 greater than \$0.

1594 (b) The difference described in Subsection (8)(a) is equal to the difference between:

1595 (i) the total amount of the revenues [~~under Subsections (2)(b)(ii)(A) and (2)(b)(iii)(A)~~]
1596 the commission received from sellers collecting [~~a tax in accordance with Subsection~~
1597 ~~59-12-107(1)(b)] the taxes described in Subsections (2)(d)(i) and (2)(e)(iii)(A) for the fiscal
1598 year immediately preceding the September 30 described in Subsection (8)(a); and~~

1599 (ii) \$7,279,673.

1600 (9) (a) Notwithstanding Subsection (3)(a), in addition to the amount deposited in
1601 Subsection (7)(a), and until Subsection (9)(b) applies, for a fiscal year beginning on or after
1602 July 1, [~~2006~~] 2007, the Division of Finance shall deposit into the Centennial Highway Fund
1603 Restricted Account created by Section 72-2-118 a portion of the taxes listed under Subsection
1604 (3)(a) equal to 8.3% of the revenues collected from the following taxes [~~described in~~
1605 ~~Subsections (2)(a)(i), (2)(b)(i)(A), and (2)(b)(iii)(A)~~], which represents a portion of the
1606 approximately 17% of sales and use tax revenues generated annually by the sales and use tax
1607 on vehicles and vehicle-related products[-]:

1608 (i) the tax imposed by Subsection (2)(a)(i);

1609 (ii) the tax imposed by Subsection (2)(b)(i);

1610 (iii) the tax imposed by Subsection (2)(c)(i); and

1611 (iv) the tax imposed by Subsection (2)(e)(ii)(A).

1612 (b) Notwithstanding Subsection (3)(a) and in addition to the amounts deposited under

1613 Subsection (7)(b), when the highway general obligation bonds have been paid off and the

1614 highway projects completed that are intended to be paid from revenues deposited in the

1615 Centennial Highway Fund Restricted Account as determined by the Executive Appropriations

1616 Committee under Subsection 72-2-118(6)(d), the Division of Finance shall deposit into the

1617 Transportation Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes

1618 listed under Subsection (3)(a) equal to 8.3% of the revenues collected from the following taxes

1619 [~~described in Subsections (2)(a)(i), (2)(b)(i)(A), and (2)(b)(iii)(A)~~], which represents a portion

1620 of the approximately 17% of sales and use tax revenues generated annually by the sales and use

1621 tax on vehicles and vehicle-related products[-];

1622 (i) the tax imposed by Subsection (2)(a)(i);

1623 (ii) the tax imposed by Subsection (2)(b)(i);

1624 (iii) the tax imposed by Subsection (2)(c)(i); and

1625 (iv) the tax imposed by Subsection (2)(e)(ii)(A).

1626 Section 5. Section **59-12-104.3** is amended to read:

1627 **59-12-104.3. Credit for certain repossessions of a motor vehicle.**

1628 (1) (a) Subject to Subsections (2) and (3), a seller that collects a tax under this chapter

1629 on the sale of a motor vehicle may claim a credit for a tax under this chapter for a motor

1630 vehicle that:

1631 (i) has been repossessed; and

1632 (ii) that the seller resells.

1633 (b) A seller of a motor vehicle other than the seller that collects a tax under this chapter

1634 on the sale of that motor vehicle may claim a credit for a tax under this chapter:

1635 (i) for a motor vehicle that the seller:

1636 (A) repossessed; and

1637 (B) resells; and

1638 (ii) if the seller that collected the tax under this chapter on that motor vehicle:

1639 (A) is no longer doing business in this state; and

1640 (B) does not owe a tax under this chapter.

1641 (2) The amount of the credit allowed by Subsection (1) is equal to the product of:

1642 (a) the portion of the motor vehicle's purchase price that:

1643 (i) was subject to a tax under this chapter; and

1644 (ii) remains unpaid after the motor vehicle is resold; and

1645 (b) the sum of the tax [rate] rates imposed:

1646 ~~[(i) (A) for a seller that collects a tax in accordance with Subsection 59-12-107(1)(b);~~

1647 ~~described in Subsection 59-12-103(2)(b)(ii); or]~~

1648 ~~[(B) for a seller other than a seller described in Subsection (2)(b)(i)(A), described in~~

1649 ~~Subsection 59-12-103(2)(a);]~~

1650 (i) under this chapter;

1651 (ii) ~~[imposed]~~ on the motor vehicle's purchase price; and

1652 (iii) ~~[imposed]~~ on the date the motor vehicle was purchased by the person that owns the

1653 motor vehicle at the time of the repossession.

1654 (3) If a seller recovers any portion of a motor vehicle's unpaid purchase price that is

1655 used to calculate a credit allowed by Subsection (1)(b), the seller shall report and remit a tax

1656 under this chapter to the commission:

1657 (a) on the portion of the motor vehicle's unpaid purchase price that:

1658 (i) the seller recovers; and

1659 (ii) is used to calculate the credit allowed by Subsection (1)(b); and

1660 (b) on a return filed for the time period for which the portion of the motor vehicle's

1661 unpaid purchase price is recovered.

1662 Section 6. Section **59-12-108** is amended to read:

1663 **59-12-108. Monthly payment -- Penalty -- Amount of tax a seller may retain --**

1664 **Certain amounts allocated to local taxing jurisdictions.**

1665 (1) (a) Notwithstanding Section 59-12-107, a seller that has a tax liability under this

1666 chapter of \$50,000 or more for the previous calendar year shall:

1667 (i) file a return with the commission:

1668 (A) monthly on or before the last day of the month immediately following the month

1669 for which the seller collects a tax under this chapter; and

1670 (B) for the month for which the seller collects a tax under this chapter; and

1671 (ii) remit with the return required by Subsection (1)(a)(i) the amount the person is
 1672 required to remit to the commission for each tax, fee, or charge described in Subsection (1)(b):

1673 (A) if that seller's tax liability under this chapter for the previous calendar year is less
 1674 than \$96,000, by any method permitted by the commission; or

1675 (B) if that seller's tax liability under this chapter for the previous calendar year is
 1676 \$96,000 or more, by electronic funds transfer.

1677 (b) Subsections (1)(a)(i) and (ii) apply to the following taxes, fees, or charges:

1678 (i) a tax under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

1679 (ii) a fee under Section 19-6-716;

1680 (iii) a fee under Section 19-6-805;

1681 (iv) a charge under Section 69-2-5.5; or

1682 (v) a tax under this chapter.

1683 (c) Notwithstanding Subsection (1)(a)(ii) and in accordance with Title 63, Chapter 46a,
 1684 Utah Administrative Rulemaking Act, the commission shall make rules providing for a method
 1685 for making same-day payments other than by electronic funds transfer if making payments by
 1686 electronic funds transfer fails.

1687 (d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
 1688 commission shall establish by rule procedures and requirements for determining the amount a
 1689 seller is required to remit to the commission under this Subsection (1).

1690 (2) (a) Except as provided in Subsection [~~(2)(b)~~] (3), a seller subject to Subsection (1)
 1691 or a seller described in Subsection [~~(3)~~] (4) may retain each month ~~[an]~~ the amount ~~[not to~~
 1692 ~~exceed:]~~ allowed by this Subsection (2).

1693 [~~(i)~~] (b) A seller subject to Subsection (1) or a seller described in Subsection (4) may
 1694 retain each month 1.31% of any amounts the seller is required to remit to the commission:

1695 [~~(A)~~] (i) for a transaction described in Subsection 59-12-103(1) that is subject to [the
 1696 sum of the tax rates described in Subsection 59-12-103(2)(a)] a state tax and a local tax
 1697 imposed in accordance with the following, for the month for which the seller is filing a return
 1698 in accordance with Subsection (1)[~~;~~ and]:

1699 (A) Subsection 59-12-103(2)(a);

1700 (B) Subsection 59-12-103(2)(b);

1701 (C) Subsection 59-12-103(2)(d), except for the state tax and the local tax imposed on

1702 the amounts paid or charged for food and food ingredients in accordance with Subsections
1703 59-12-103(2)(d)(i)(C) and (2)(d)(ii); and
1704 (D) Subsection 59-12-103(2)(e); and
1705 ~~[(B)]~~ (ii) for an agreement sales and use tax~~[; and]~~.
1706 ~~[(ii)]~~ (c) (i) A seller subject to Subsection (1) or a seller described in Subsection (4)
1707 may retain each month the amount calculated under Subsection (2)(c)(ii) for a transaction
1708 described in Subsection 59-12-103(1) that is subject to ~~[the sum of the tax rates described in~~
1709 ~~Subsection 59-12-103(2)(b)(iii), the sum of:]~~ the state tax and the local tax imposed in
1710 accordance with Subsection 59-12-103(2)(c).
1711 (ii) For purposes of Subsection (2)(c)(i), the amount a seller may retain is an amount
1712 equal to the sum of:
1713 (A) 1.31% of any amounts the seller is required to remit to the commission ~~[in~~
1714 ~~accordance with Subsection 59-12-103(2)(b)(iii)]~~ for:
1715 (I) the state tax and the local tax imposed in accordance with Subsection
1716 59-12-103(2)(c);
1717 ~~[(F)]~~ (II) the month for which the seller is filing a return in accordance with Subsection
1718 (1); and
1719 ~~[(H)]~~ (III) an agreement sales and use tax; and
1720 (B) 1.31% of the difference between:
1721 (I) the amounts the seller would have been required to remit to the commission:
1722 (Aa) in accordance with Subsection 59-12-103(2)(a) if the transaction had been subject
1723 to the ~~[sum of the tax rates described in]~~ state tax and the local tax imposed in accordance with
1724 Subsection 59-12-103(2)(a);
1725 (Bb) for the month for which the seller is filing a return in accordance with Subsection
1726 (1); and
1727 (Cc) for an agreement sales and use tax; and
1728 (II) the amounts the seller is required to remit to the commission for:
1729 (Aa) the state tax and the local tax imposed in accordance with Subsection
1730 59-12-103(2)~~[(b)(iii)]~~(c);
1731 (Bb) ~~[for]~~ the month for which the seller is filing a return in accordance with
1732 Subsection (1); and

1733 (Cc) [~~for~~] an agreement sales and use tax[~~; and~~].

1734 (d) (i) A seller subject to Subsection (1) or a seller described in Subsection (4) may

1735 retain each month the amount calculated under Subsection (2)(d)(ii) for a transaction described

1736 in Subsection 59-12-103(1) that is subject to the state tax and the local tax imposed on the

1737 amounts paid or charged for food and food ingredients in accordance with Subsections

1738 59-12-103(2)(d)(i)(C) and (2)(d)(ii).

1739 (ii) For purposes of Subsection (2)(d)(i), the amount a seller may retain is an amount

1740 equal to the sum of:

1741 (A) 1.31% of any amounts the seller is required to remit to the commission for:

1742 (I) the state tax and the local tax imposed on the amounts paid or charged for food and

1743 food ingredients in accordance with Subsections 59-12-103(2)(d)(i)(C) and (2)(d)(ii);

1744 (II) the month for which the seller is filing a return in accordance with Subsection (1);

1745 and

1746 (III) an agreement sales and use tax; and

1747 (B) 1.31% of the difference between:

1748 (I) the amounts the seller would have been required to remit to the commission:

1749 (Aa) in accordance with Subsections 59-12-103(2)(d)(i)(A) and (2)(d)(ii) if the

1750 transaction had been subject to the state tax and the local tax imposed in accordance with

1751 Subsections 59-12-103(2)(d)(i)(A) and (2)(d)(ii);

1752 (Bb) for the month for which the seller is filing a return in accordance with Subsection

1753 (1); and

1754 (Cc) for an agreement sales and use tax; and

1755 (II) the amounts the seller is required to remit to the commission for:

1756 (Aa) the state tax and the local tax imposed in accordance with Subsections

1757 59-12-103(2)(d)(i)(C) and (2)(d)(ii);

1758 (Bb) the month for which the seller is filing a return in accordance with Subsection (1);

1759 and

1760 (Cc) an agreement sales and use tax.

1761 [~~(iii)~~] (e) A seller subject to Subsection (1) or a seller described in Subsection (4) may

1762 retain each month 1% of any amounts the seller is required to remit to the commission:

1763 [~~(A)~~] (i) for the month for which the seller is filing a return in accordance with

1764 Subsection (1); and
1765 ~~[(B)]~~ (ii) under:
1766 ~~[(A)]~~ (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
1767 ~~[(B)]~~ (B) Subsection 59-12-603(1)(a)(i)(A); or
1768 ~~[(C)]~~ (C) Subsection 59-12-603(1)(a)(i)(B).
1769 ~~[(3)]~~ (3) A state government entity that is required to remit taxes monthly in
1770 accordance with Subsection (1) may not retain any amount under Subsection (2)~~[(a)]~~.
1771 ~~[(4)]~~ (4) A seller that has a tax liability under this chapter for the previous calendar
1772 year of less than \$50,000 may:
1773 (a) voluntarily meet the requirements of Subsection (1); and
1774 (b) if the seller voluntarily meets the requirements of Subsection (1), retain the
1775 amounts allowed by Subsection (2)~~[(a)]~~.
1776 ~~[(4)]~~ (5) Penalties for late payment shall be as provided in Section 59-1-401.
1777 ~~[(5)]~~ (6) (a) For any amounts required to be remitted to the commission under this part,
1778 the commission shall each month calculate an amount equal to the difference between:
1779 (i) the total amount retained for that month by all sellers had the percentages listed
1780 under ~~[Subsection (2)(a)(i) and (ii)]~~ Subsections (2)(b), (2)(c)(ii), and (2)(d)(ii) been 1.5%; and
1781 (ii) the total amount retained for that month by all sellers at the percentages listed
1782 under ~~[Subsection (2)(a)(i) and (ii)]~~ Subsections (2)(b), (2)(c)(ii), and (2)(d)(ii).
1783 (b) The commission shall each month allocate the amount calculated under Subsection
1784 ~~[(5)]~~ (6)(a) to each county, city, and town on the basis of the proportion of agreement sales and
1785 use tax that the commission distributes to each county, city, and town for that month compared
1786 to the total agreement sales and use tax that the commission distributes for that month to all
1787 counties, cities, and towns.
1788 Section 7. Section **59-12-603** is amended to read:
1789 **59-12-603. County tax -- Bases -- Rates -- Use of revenues -- Collection --**
1790 **Adoption of ordinance required -- Administration -- Distribution -- Enactment or repeal**
1791 **of tax or tax rate change -- Effective date -- Notice requirements.**
1792 (1) (a) In addition to any other taxes, a county legislative body may, as provided in this
1793 part, impose a tax as follows:
1794 (i) (A) a county legislative body of any county may impose a tax of not to exceed 3%

1795 on all short-term leases and rentals of motor vehicles not exceeding 30 days, except for leases
1796 and rentals of motor vehicles made for the purpose of temporarily replacing a person's motor
1797 vehicle that is being repaired pursuant to a repair or an insurance agreement; and

1798 (B) beginning on or after January 1, 1999, a county legislative body of any county
1799 imposing a tax under Subsection (1)(a)(i)(A) may, in addition to imposing the tax under
1800 Subsection (1)(a)(i)(A), impose a tax of not to exceed 4% on all short-term leases and rentals
1801 of motor vehicles not exceeding 30 days, except for leases and rentals of motor vehicles made
1802 for the purpose of temporarily replacing a person's motor vehicle that is being repaired pursuant
1803 to a repair or an insurance agreement;

1804 (ii) a county legislative body of any county may impose a tax of not to exceed 1% of all
1805 sales of [~~prepared foods and beverages~~] the following that are sold by [~~restaurants; and~~] a
1806 restaurant:

1807 (A) prepared food; or

1808 (B) food and food ingredients; and

1809 (iii) a county legislative body of any county may impose a tax of not to exceed .5% on
1810 charges for the accommodations and services described in Subsection 59-12-103(1)(i).

1811 (b) A tax imposed under Subsection (1)(a) is in addition to the transient room tax
1812 authorized under Part 3, Transient Room Tax, and is subject to the audit provisions of Section
1813 17-31-5.5.

1814 (2) (a) Subject to Subsection (2)(b), revenue from the imposition of the taxes provided
1815 for in Subsections (1)(a)(i) through (iii) may be used for the purposes of:

1816 (i) financing tourism promotion; and

1817 (ii) the development, operation, and maintenance of tourist, recreation, cultural, and
1818 convention facilities as defined in Section 59-12-602.

1819 (b) A county of the first class shall expend at least \$450,000 each year of the revenues
1820 from the imposition of a tax authorized by Subsection (1)(a)(iii) within the county to fund a
1821 marketing and ticketing system designed to:

1822 (i) promote tourism in ski areas within the county by persons that do not reside within
1823 the state; and

1824 (ii) combine the sale of:

1825 (A) ski lift tickets; and

1826 (B) accommodations and services described in Subsection 59-12-103(1)(i).
1827 (3) The tax imposed under Subsection (1)(a)(iii) shall be in addition to the tax imposed
1828 under Part 3, Transient Room Tax, and may be imposed only by a county of the first class.
1829 (4) A tax imposed under this part may be pledged as security for bonds, notes, or other
1830 evidences of indebtedness incurred by a county under Title 11, Chapter 14, Local Government
1831 Bonding Act, to finance tourism, recreation, cultural, and convention facilities.
1832 (5) (a) In order to impose the tax under Subsection (1), each county legislative body
1833 shall annually adopt an ordinance imposing the tax.
1834 (b) The ordinance under Subsection (5)(a) shall include provisions substantially the
1835 same as those contained in Part 1, Tax Collection, except that the tax shall be imposed only on
1836 those items and sales described in Subsection (1).
1837 (c) The name of the county as the taxing agency shall be substituted for that of the state
1838 where necessary, and an additional license is not required if one has been or is issued under
1839 Section 59-12-106.
1840 (6) In order to maintain in effect its tax ordinance adopted under this part, each county
1841 legislative body shall, within 30 days of any amendment of any applicable provisions of Part 1,
1842 Tax Collection, adopt amendments to its tax ordinance to conform with the applicable
1843 amendments to Part 1, Tax Collection.
1844 (7) (a) (i) Except as provided in Subsection (7)(a)(ii), a tax authorized under this part
1845 shall be administered, collected, and enforced in accordance with:
1846 (A) the same procedures used to administer, collect, and enforce the tax under:
1847 (I) Part 1, Tax Collection; or
1848 (II) Part 2, Local Sales and Use Tax Act; and
1849 (B) Chapter 1, General Taxation Policies.
1850 (ii) A tax under this part is not subject to Section 59-12-107.1 or Subsections
1851 59-12-205(2) through (7).
1852 (b) Except as provided in Subsection (7)(c):
1853 (i) for a tax under this part other than the tax under Subsection (1)(a)(i)(B), the
1854 commission shall distribute the revenues to the county imposing the tax; and
1855 (ii) for a tax under Subsection (1)(a)(i)(B), the commission shall distribute the revenues
1856 according to the distribution formula provided in Subsection (8).

1857 (c) Notwithstanding Subsection (7)(b), the commission shall deduct from the
1858 distributions under Subsection (7)(b) an administrative charge for collecting the tax as provided
1859 in Section 59-12-206.

1860 (8) The commission shall distribute the revenues generated by the tax under Subsection
1861 (1)(a)(i)(B) to each county collecting a tax under Subsection (1)(a)(i)(B) according to the
1862 following formula:

1863 (a) the commission shall distribute 70% of the revenues based on the percentages
1864 generated by dividing the revenues collected by each county under Subsection (1)(a)(i)(B) by
1865 the total revenues collected by all counties under Subsection (1)(a)(i)(B); and

1866 (b) the commission shall distribute 30% of the revenues based on the percentages
1867 generated by dividing the population of each county collecting a tax under Subsection
1868 (1)(a)(i)(B) by the total population of all counties collecting a tax under Subsection (1)(a)(i)(B).

1869 (9) (a) For purposes of this Subsection (9):

1870 (i) "Annexation" means an annexation to a county under Title 17, Chapter 2,
1871 Annexation to County.

1872 (ii) "Annexing area" means an area that is annexed into a county.

1873 (b) (i) Except as provided in Subsection (9)(c), if, on or after July 1, 2004, a county
1874 enacts or repeals a tax or changes the rate of a tax under this part, the enactment, repeal, or
1875 change shall take effect:

1876 (A) on the first day of a calendar quarter; and

1877 (B) after a 90-day period beginning on the date the commission receives notice meeting
1878 the requirements of Subsection (9)(b)(ii) from the county.

1879 (ii) The notice described in Subsection (9)(b)(i)(B) shall state:

1880 (A) that the county will enact or repeal a tax or change the rate of a tax under this part;

1881 (B) the statutory authority for the tax described in Subsection (9)(b)(ii)(A);

1882 (C) the effective date of the tax described in Subsection (9)(b)(ii)(A); and

1883 (D) if the county enacts the tax or changes the rate of the tax described in Subsection
1884 (9)(b)(ii)(A), the rate of the tax.

1885 (c) (i) Notwithstanding Subsection (9)(b)(i), for a transaction described in Subsection
1886 (9)(c)(iii), the enactment of a tax or a tax rate increase shall take effect on the first day of the
1887 first billing period:

1888 (A) that begins after the effective date of the enactment of the tax or the tax rate
1889 increase; and

1890 (B) if the billing period for the transaction begins before the effective date of the
1891 enactment of the tax or the tax rate increase imposed under Subsection (1).

1892 (ii) Notwithstanding Subsection (9)(b)(i), for a transaction described in Subsection
1893 (9)(c)(iii), the repeal of a tax or a tax rate decrease shall take effect on the first day of the last
1894 billing period:

1895 (A) that began before the effective date of the repeal of the tax or the tax rate decrease;
1896 and

1897 (B) if the billing period for the transaction begins before the effective date of the repeal
1898 of the tax or the tax rate decrease imposed under Subsection (1).

1899 (iii) Subsections (9)(c)(i) and (ii) apply to transactions subject to a tax under:

1900 (A) Subsection 59-12-103(1)(e);

1901 (B) Subsection 59-12-103(1)(i); or

1902 (C) Subsection 59-12-103(1)(k).

1903 (d) (i) Except as provided in Subsection (9)(e), if, for an annexation that occurs on or
1904 after July 1, 2004, the annexation will result in the enactment, repeal, or change in the rate of a
1905 tax under this part for an annexing area, the enactment, repeal, or change shall take effect:

1906 (A) on the first day of a calendar quarter; and

1907 (B) after a 90-day period beginning on the date the commission receives notice meeting
1908 the requirements of Subsection (9)(d)(ii) from the county that annexes the annexing area.

1909 (ii) The notice described in Subsection (9)(d)(i)(B) shall state:

1910 (A) that the annexation described in Subsection (9)(d)(i) will result in an enactment,
1911 repeal, or change in the rate of a tax under this part for the annexing area;

1912 (B) the statutory authority for the tax described in Subsection (9)(d)(ii)(A);

1913 (C) the effective date of the tax described in Subsection (9)(d)(ii)(A); and

1914 (D) if the county enacts the tax or changes the rate of the tax described in Subsection
1915 (9)(d)(ii)(A), the rate of the tax.

1916 (e) (i) Notwithstanding Subsection (9)(d)(i), for a transaction described in Subsection
1917 (9)(e)(iii), the enactment of a tax or a tax rate increase shall take effect on the first day of the
1918 first billing period:

1919 (A) that begins after the effective date of the enactment of the tax or the tax rate
1920 increase; and

1921 (B) if the billing period for the transaction begins before the effective date of the
1922 enactment of the tax or the tax rate increase imposed under Subsection (1).

1923 (ii) Notwithstanding Subsection (9)(d)(i), for a transaction described in Subsection
1924 (9)(e)(iii), the repeal of a tax or a tax rate decrease shall take effect on the first day of the last
1925 billing period:

1926 (A) that began before the effective date of the repeal of the tax or the tax rate decrease;
1927 and

1928 (B) if the billing period for the transaction begins before the effective date of the repeal
1929 of the tax or the tax rate decrease imposed under Subsection (1).

1930 (iii) Subsections (9)(e)(i) and (ii) apply to transactions subject to a tax under:

1931 (A) Subsection 59-12-103(1)(e);

1932 (B) Subsection 59-12-103(1)(i); or

1933 (C) Subsection 59-12-103(1)(k).

1934 Section 8. **Uncodified Section 3, Chapter 9, Laws of Utah 2006, Third Special**
1935 **Session**, which amends Uncodified Section 5, Chapter 282, Laws of Utah 2006, is amended to
1936 read:

1937 Section 5. **Appropriation.**

1938 (1) Subject to Subsection (2), there is appropriated from the General Fund, for fiscal
1939 year 2006-07 only, \$6,000,000 to the State Tax Commission for distribution to certain business
1940 locations to reimburse some of the business location's costs in complying with the reduced
1941 sales and use tax rate imposed on food and food ingredients.

1942 (2) The Legislature intends that the State Tax Commission may expend up to 2% of the
1943 amount appropriated for administrative costs.

1944 (3) The Legislature intends that, to the extent funds are available, the State Tax
1945 Commission distribute these monies as provided in Subsections (4) through (6).

1946 (4) (a) Except as provided in Subsection (4)(b), the State Tax Commission shall
1947 reimburse a business location:

1948 (i) that:

1949 (A) in 2005, remitted taxes imposed by Title 59, Chapter 12, Sales and Use Tax Act, in

1950 an amount greater than or equal to \$15,000 but less than or equal to \$150,000;

1951 (B) remitted sales and use taxes on food and food ingredients as defined in Section

1952 59-12-102 to the State Tax Commission before March 1, 2006; and

1953 (C) submits a request for reimbursement to the State Tax Commission postmarked

1954 before ~~§~~ **→** [January] April ~~←~~ **§** 1, 2007;

1955 (ii) for the verifiable amounts that the business location actually expended:

1956 (A) after May 1, 2006, but on or before December 31, 2006; and

1957 (B) to:

1958 (I) purchase computer hardware, software, or programming to account for sales under

1959 the reduced sales and use tax rate imposed on food and food ingredients; ~~and~~ or

1960 (II) pay for in-house programming to account for sales under the reduced sales and use

1961 tax rate imposed on food and food ingredients; and

1962 (iii) in an amount that does not exceed the lesser of:

1963 (A) 75% of the verifiable amounts described in Subsection (4)(a)(ii); or

1964 (B) \$5,000.

1965 (b) If the total amount of requests for reimbursement under Subsection (4)(a) exceed

1966 the monies that are available for reimbursement, the State Tax Commission shall reduce each

1967 claim by a pro rata share.

1968 (5) (a) Except as provided in Subsection (5)(b), if, after the State Tax Commission

1969 makes the reimbursements required by Subsection (4), monies described in Subsection (1)

1970 remain for reimbursement, the State Tax Commission shall reimburse a business location:

1971 (i) that:

1972 (A) in 2005, remitted taxes imposed by Title 59, Chapter 12, Sales and Use Tax Act, in

1973 an amount greater than \$150,000 but less than or equal to \$500,000;

1974 (B) remitted sales and use taxes on food and food ingredients as defined in Section

1975 59-12-102 to the State Tax Commission before March 1, 2006; and

1976 (C) submits a request for reimbursement to the State Tax Commission postmarked

1977 before ~~§~~ **→** [January] April ~~←~~ **§** 1, 2007;

1978 (ii) for the verifiable amounts that the business location actually expended:

1979 (A) after May 1, 2006, but on or before December 31, 2006; and

1980 (B) to:

1981 (I) purchase computer hardware, software, or programming to account for sales under
 1982 the reduced sales and use tax rate imposed on food and food ingredients; [~~and~~] or
 1983 (II) pay for in-house programming to account for sales under the reduced sales and use
 1984 tax rate imposed on food and food ingredients; and
 1985 (iii) in an amount that does not exceed the lesser of:
 1986 (A) 50% of the verifiable amounts described in Subsection (5)(a)(ii); or
 1987 (B) \$10,000.
 1988 (b) If the total amount of requests for reimbursement under Subsection (5)(a) exceed
 1989 the monies that are available for reimbursement, the State Tax Commission shall reduce each
 1990 claim by a pro rata share.
 1991 (6) (a) Except as provided in Subsection (6)(b), if, after the State Tax Commission
 1992 makes the reimbursements required by Subsections (4) and (5), monies described in Subsection
 1993 (1) remain for reimbursement, the State Tax Commission shall reimburse a business location:
 1994 (i) that:
 1995 (A) in 2005, remitted taxes imposed by Title 59, Chapter 12, Sales and Use Tax Act, in
 1996 an amount greater than or equal to \$15,000;
 1997 (B) remitted sales and use taxes on food and food ingredients as defined in Section
 1998 59-12-102 to the State Tax Commission before March 1, 2006; and
 1999 (C) submits a request for reimbursement to the State Tax Commission postmarked
 2000 before ~~§~~ → [January] April ← ~~§~~ 1, 2007;
 2001 (ii) for the verifiable amounts that the business location actually expended:
 2002 (A) after May 1, 2006, but on or before December 31, 2006; and
 2003 (B) for a business location that, in 2005, remitted taxes imposed by Title 59, Chapter
 2004 12, Sales and Use Tax Act:
 2005 (I) in an amount greater than or equal to \$15,000 but less than or equal to \$500,000, for
 2006 amounts expended that were not reimbursed in accordance with Subsection (4) or (5), to:
 2007 (Aa) purchase computer hardware, software, or programming[:~~(Aa)~~] to account for
 2008 sales under the reduced sales and use tax rate imposed on food and food ingredients; [~~and~~] or
 2009 [~~(Bb) that were not reimbursed in accordance with Subsection (4) or (5); or~~]
 2010 (Bb) pay for in-house programming to account for sales under the reduced sales and
 2011 use tax rate imposed on food and food ingredients; or

2012 (II) in an amount greater than \$500,000, for amounts expended to;

2013 (Aa) purchase computer hardware, software, or programming to account for sales

2014 under the reduced sales and use tax rate imposed on food and food ingredients; ~~and~~ or

2015 (Bb) pay for in-house programming to account for sales under the reduced sales and

2016 use tax rate imposed on food and food ingredients; and

2017 (iii) in an amount that does not exceed 50% of the verifiable amounts described in

2018 Subsection (6)(a)(ii).

2019 (b) If the total amount of requests for reimbursement under Subsection (6)(a) exceed

2020 the monies that are available for reimbursement, the State Tax Commission shall reduce each

2021 claim by a pro rata share.

2022 Section 9. **Effective date -- Retrospective operation.**

2023 ~~§→ [(1) Except as provided in Subsection (2), if] If ←§~~ approved by two-thirds of all the

2023a members

2024 elected to each house, this bill:

2025 ~~§→ [(a)] (1) ←§~~ takes effect upon approval by the governor, or the day following the

2026 constitutional

2027 time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in

2028 the case of a veto, the date of veto override; and

2028 ~~§→ [(b)] (2) ←§~~ has retrospective operation to January 1, 2007.

2029 ~~§→ [(2) If approved by two-thirds of all the members elected to each house, the~~

2030 ~~amendments to Section 8 of this bill, which is the Uncodified Section 3, Chapter 9, Laws of~~

2031 ~~Utah 2006, Third Special Session, which amends Uncodified Section 5, Chapter 282, Laws of~~

2032 ~~Utah 2006, take effect upon approval by the governor, or the day following the constitutional~~

2033 ~~time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in~~

2034 ~~the case of a veto, the date of veto override.] ←§~~

Legislative Review Note
as of 11-15-06 2:37 PM

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-18-06 1:07 PM

The Revenue and Taxation Interim Committee recommended this bill.

H.B. 27 - Sales and Use Tax Modifications

Fiscal Note

2007 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations nor impact state revenues.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

1/5/2007, 8:15:09 AM, Lead Analyst: Wilko, A.

Office of the Legislative Fiscal Analyst