

1 **SALES AND USE TAX EXEMPTIONS FOR**
2 **CERTAIN GOVERNMENTAL ENTITIES AND**
3 **ENTITIES WITHIN THE STATE SYSTEMS**
4 **OF PUBLIC AND HIGHER EDUCATION**

5 2007 GENERAL SESSION

6 STATE OF UTAH

7 **Chief Sponsor: Howard A. Stephenson**

8 House Sponsor: Wayne A. Harper

9
10 **LONG TITLE**

11 **General Description:**

12 This bill amends the Sales and Use Tax Act relating to sales and use tax exemptions for
13 certain governmental entities and entities within the state systems of public and higher
14 education.

15 **Highlighted Provisions:**

16 This bill:

17 ▶ defines:

- 18 • "governmental entity"; and
- 19 • "publication";

20 ▶ clarifies the definition of "school" to include the Electronic High School for
21 purposes of the sales and use tax exemptions for sales relating to schools and
22 fundraising sales;

23 ▶ modifies the sales and use tax exemption for photocopies to provide an exemption
24 for sales of photocopies by a governmental entity or an entity within the state
25 system of public education;

26 ▶ provides a sales and use tax exemption for sales of publications by a governmental
27 entity;

28 ▶ grants rulemaking authority to the State Tax Commission to define the term
29 "photocopy"; and

30 ▶ makes technical changes.

31 **Monies Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 This bill takes effect on July 1, 2007.

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **59-12-102**, as last amended by Chapter 1, Laws of Utah 2006, Fourth Special Session

38 **59-12-104**, as last amended by Chapters 181, 182, 217, 218, 219, 220, 246, 268 and

39 346, Laws of Utah 2006



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

42 Section 1. Section **59-12-102** is amended to read:

43 **59-12-102. Definitions.**

44 As used in this chapter:

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

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

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

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

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

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

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

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

55 (b) Section 59-12-204;

56 (c) Section 59-12-401;

57 (d) Section 59-12-402;

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

86 (10) "Authorized carrier" means:

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

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

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

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

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

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

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

99 (B) animal waste;

100 (C) methane produced:

101 (I) at landfills; or

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

103 (D) aquatic plants; and

104 (E) agricultural products.

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

106 (i) black liquor;

107 (ii) treated woods; or

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

109 (A) at landfills; or

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

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

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

114 and

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

116 (A) distinct and identifiable; and

117 (B) sold for one price that is not itemized.

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

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

123 (i) packaging that:

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

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

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

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

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

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

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

138 (i) on a transaction; and

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

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

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

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

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

145 and

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

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

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

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

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

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

157 (17) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
158 fuels that does not constitute industrial use under Subsection [~~(39)~~] (40) or residential use
159 under Subsection (76).

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

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

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

168 (19) "Component part" includes:

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

- 170 (b) baling ties and twine used in the baling of hay and straw;
- 171 (c) fuel used for providing temperature control of orchards and commercial
- 172 greenhouses doing a majority of their business in wholesale sales, and for providing power for
- 173 off-highway type farm machinery; and
- 174 (d) feed, seeds, and seedlings.
- 175 (20) "Computer" means an electronic device that accepts information:
- 176 (a) (i) in digital form; or
- 177 (ii) in a form similar to digital form; and
- 178 (b) manipulates that information for a result based on a sequence of instructions.
- 179 (21) "Computer software" means a set of coded instructions designed to cause:
- 180 (a) a computer to perform a task; or
- 181 (b) automatic data processing equipment to perform a task.
- 182 (22) "Construction materials" means any tangible personal property that will be
- 183 converted into real property.
- 184 (23) "Delivered electronically" means delivered to a purchaser by means other than
- 185 tangible storage media.
- 186 (24) (a) "Delivery charge" means a charge:
- 187 (i) by a seller of:
- 188 (A) tangible personal property; or
- 189 (B) services; and
- 190 (ii) for preparation and delivery of the tangible personal property or services described
- 191 in Subsection (24)(a)(i) to a location designated by the purchaser.
- 192 (b) "Delivery charge" includes a charge for the following:
- 193 (i) transportation;
- 194 (ii) shipping;
- 195 (iii) postage;
- 196 (iv) handling;
- 197 (v) crating; or

- 198 (vi) packing.
- 199 (25) "Dietary supplement" means a product, other than tobacco, that:
- 200 (a) is intended to supplement the diet;
- 201 (b) contains one or more of the following dietary ingredients:
- 202 (i) a vitamin;
- 203 (ii) a mineral;
- 204 (iii) an herb or other botanical;
- 205 (iv) an amino acid;
- 206 (v) a dietary substance for use by humans to supplement the diet by increasing the total
- 207 dietary intake; or
- 208 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
- 209 described in Subsections (25)(b)(i) through (v);
- 210 (c) (i) except as provided in Subsection (25)(c)(ii), is intended for ingestion in:
- 211 (A) tablet form;
- 212 (B) capsule form;
- 213 (C) powder form;
- 214 (D) softgel form;
- 215 (E) gelcap form; or
- 216 (F) liquid form; or
- 217 (ii) notwithstanding Subsection (25)(c)(i), if the product is not intended for ingestion in
- 218 a form described in Subsections (25)(c)(i)(A) through (F), is not represented:
- 219 (A) as conventional food; and
- 220 (B) for use as a sole item of:
- 221 (I) a meal; or
- 222 (II) the diet; and
- 223 (d) is required to be labeled as a dietary supplement:
- 224 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 225 (ii) as required by 21 C.F.R. Sec. 101.36.

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

228 (i) to:

229 (A) a mass audience; or

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

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

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

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

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

238 (i) recognized in:

239 (A) the official United States Pharmacopoeia;

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

241 (C) the official National Formulary; or

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

243 (ii) intended for use in the:

244 (A) diagnosis of disease;

245 (B) cure of disease;

246 (C) mitigation of disease;

247 (D) treatment of disease; or

248 (E) prevention of disease; or

249 (iii) intended to affect:

250 (A) the structure of the body; or

251 (B) any function of the body.

252 (b) "Drug" does not include:

253 (i) food and food ingredients;

254 (ii) a dietary supplement;

255 (iii) an alcoholic beverage; or

256 (iv) a prosthetic device.

257 (28) (a) Except as provided in Subsection (28)(c), "durable medical equipment" means
258 equipment that:

259 (i) can withstand repeated use;

260 (ii) is primarily and customarily used to serve a medical purpose;

261 (iii) generally is not useful to a person in the absence of illness or injury; and

262 (iv) is not worn in or on the body.

263 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
264 equipment described in Subsection (28)(a).

265 (c) Notwithstanding Subsection (28)(a), "durable medical equipment" does not include
266 mobility enhancing equipment.

267 (29) "Electronic" means:

268 (a) relating to technology; and

269 (b) having:

270 (i) electrical capabilities;

271 (ii) digital capabilities;

272 (iii) magnetic capabilities;

273 (iv) wireless capabilities;

274 (v) optical capabilities;

275 (vi) electromagnetic capabilities; or

276 (vii) capabilities similar to Subsections (29)(b)(i) through (vi).

277 (30) "Employee" is as defined in Section 59-10-401.

278 (31) "Fixed guideway" means a public transit facility that uses and occupies:

279 (a) rail for the use of public transit; or

280 (b) a separate right-of-way for the use of public transit.

281 (32) (a) "Food and food ingredients" means substances:

- 282 (i) regardless of whether the substances are in:
- 283 (A) liquid form;
- 284 (B) concentrated form;
- 285 (C) solid form;
- 286 (D) frozen form;
- 287 (E) dried form; or
- 288 (F) dehydrated form; and
- 289 (ii) that are:
- 290 (A) sold for:
- 291 (I) ingestion by humans; or
- 292 (II) chewing by humans; and
- 293 (B) consumed for the substance's:
- 294 (I) taste; or
- 295 (II) nutritional value.
- 296 (b) "Food and food ingredients" includes an item described in Subsection [~~(63)~~
- 297 (64)(b)(iii).
- 298 (c) "Food and food ingredients" does not include:
- 299 (i) an alcoholic beverage;
- 300 (ii) tobacco; or
- 301 (iii) prepared food.
- 302 (33) (a) "Fundraising sales" means sales:
- 303 (i) (A) made by a school; or
- 304 (B) made by a school student;
- 305 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 306 materials, or provide transportation; and
- 307 (iii) that are part of an officially sanctioned school activity.
- 308 (b) For purposes of Subsection (33)(a)(iii), "officially sanctioned school activity"
- 309 means a school activity:

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

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

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

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

318 (35) "Governing board of the agreement" means the governing board of the agreement
319 that is:

320 (a) authorized to administer the agreement; and

321 (b) established in accordance with the agreement.

322 (36) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:

323 (i) the executive branch of the state, including all departments, institutions, boards,
324 divisions, bureaus, offices, commissions, and committees;

325 (ii) the judicial branch of the state, including the courts, the Judicial Council, the
326 Office of the Court Administrator, and similar administrative units in the judicial branch;

327 (iii) the legislative branch of the state, including the House of Representatives, the
328 Senate, the Legislative Printing Office, the Office of Legislative Research and General
329 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal
330 Analyst;

331 (iv) the National Guard;

332 (v) an independent entity as defined in Section 63E-1-102; or

333 (vi) a political subdivision as defined in Section 17B-2-101.

334 (b) "Governmental entity" does not include the state systems of public and higher
335 education, including:

336 (i) a college campus of the Utah College of Applied Technology;

337 (ii) a school;

- 338 (iii) the State Board of Education;
- 339 (iv) the State Board of Regents; or
- 340 (v) a state institution of higher education as defined in Section 53B-3-102.
- 341 [~~36~~] (37) (a) "Hearing aid" means:
- 342 (i) an instrument or device having an electronic component that is designed to:
- 343 (A) (I) improve impaired human hearing; or
- 344 (II) correct impaired human hearing; and
- 345 (B) (I) be worn in the human ear; or
- 346 (II) affixed behind the human ear;
- 347 (ii) an instrument or device that is surgically implanted into the cochlea; or
- 348 (iii) a telephone amplifying device.
- 349 (b) "Hearing aid" does not include:
- 350 (i) except as provided in Subsection [~~36~~] (37)(a)(i)(B) or [~~36~~] (37)(a)(ii), an
- 351 instrument or device having an electronic component that is designed to be worn on the body;
- 352 (ii) except as provided in Subsection [~~36~~] (37)(a)(iii), an assistive listening device or
- 353 system designed to be used by one individual, including:
- 354 (A) a personal amplifying system;
- 355 (B) a personal FM system;
- 356 (C) a television listening system; or
- 357 (D) a device or system similar to a device or system described in Subsections [~~36~~]
- 358 (37)(b)(ii)(A) through (C); or
- 359 (iii) an assistive listening device or system designed to be used by more than one
- 360 individual, including:
- 361 (A) a device or system installed in:
- 362 (I) an auditorium;
- 363 (II) a church;
- 364 (III) a conference room;
- 365 (IV) a synagogue; or

366 (V) a theater; or
367 (B) a device or system similar to a device or system described in Subsections [~~(36)~~
368 ~~(37)~~(b)(iii)(A)(I) through (V).
369 [~~(37)~~] (38) (a) "Hearing aid accessory" means a hearing aid:
370 (i) component;
371 (ii) attachment; or
372 (iii) accessory.
373 (b) "Hearing aid accessory" includes:
374 (i) a hearing aid neck loop;
375 (ii) a hearing aid cord;
376 (iii) a hearing aid ear mold;
377 (iv) hearing aid tubing;
378 (v) a hearing aid ear hook; or
379 (vi) a hearing aid remote control.
380 (c) "Hearing aid accessory" does not include:
381 (i) a component, attachment, or accessory designed to be used only with an:
382 (A) instrument or device described in Subsection [~~(36)~~] ~~(37)~~(b)(i); or
383 (B) assistive listening device or system described in Subsection [~~(36)~~] ~~(37)~~(b)(ii) or
384 (iii); or
385 (ii) a hearing aid battery.
386 [~~(38)~~] (39) "Hydroelectric energy" means water used as the sole source of energy to
387 produce electricity.
388 [~~(39)~~] (40) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil,
389 or other fuels:
390 (a) in mining or extraction of minerals;
391 (b) in agricultural operations to produce an agricultural product up to the time of
392 harvest or placing the agricultural product into a storage facility, including:
393 (i) commercial greenhouses;

394 (ii) irrigation pumps;
395 (iii) farm machinery;
396 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
397 registered under Title 41, Chapter 1a, Part 2, Registration; and
398 (v) other farming activities;
399 (c) in manufacturing tangible personal property at an establishment described in SIC
400 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
401 Executive Office of the President, Office of Management and Budget;
402 (d) by a scrap recycler if:
403 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
404 one or more of the following items into prepared grades of processed materials for use in new
405 products:
406 (A) iron;
407 (B) steel;
408 (C) nonferrous metal;
409 (D) paper;
410 (E) glass;
411 (F) plastic;
412 (G) textile; or
413 (H) rubber; and
414 (ii) the new products under Subsection [~~39~~] (40)(d)(i) would otherwise be made with
415 nonrecycled materials; or
416 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a
417 cogeneration facility as defined in Section 54-2-1.
418 [~~40~~] (41) (a) Except as provided in Subsection [~~40~~] (41)(b), "installation charge"
419 means a charge for installing tangible personal property.
420 (b) Notwithstanding Subsection [~~40~~] (41)(a), "installation charge" does not include a
421 charge for repairs or renovations of tangible personal property.

422 [~~(41)~~] (42) (a) "Lease" or "rental" means a transfer of possession or control of tangible
423 personal property for:

- 424 (i) (A) a fixed term; or
- 425 (B) an indeterminate term; and
- 426 (ii) consideration.

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

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

- 432 (i) a transfer of possession or control of property under a security agreement or
433 deferred payment plan that requires the transfer of title upon completion of the required
434 payments;

- 435 (ii) a transfer of possession or control of property under an agreement that requires the
436 transfer of title:

- 437 (A) upon completion of required payments; and

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

- 439 (I) \$100; or

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

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

- 444 (d) For purposes of Subsection [~~(41)~~] (42)(c)(iii), an operator is necessary for
445 equipment to perform as designed if the operator's duties exceed the:

- 446 (i) set-up of tangible personal property;
- 447 (ii) maintenance of tangible personal property; or
- 448 (iii) inspection of tangible personal property.

449 [~~(42)~~] (43) "Load and leave" means delivery to a purchaser by use of a tangible storage

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

451 [~~(43)~~] (44) "Local taxing jurisdiction" means a:

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

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

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

455 [~~(44)~~] (45) "Manufactured home" is as defined in Section 58-56-3.

456 [~~(45)~~] (46) For purposes of Section 59-12-104, "manufacturing facility" means:

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

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

459 Management and Budget;

460 (b) a scrap recycler if:

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

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

463 products:

464 (A) iron;

465 (B) steel;

466 (C) nonferrous metal;

467 (D) paper;

468 (E) glass;

469 (F) plastic;

470 (G) textile; or

471 (H) rubber; and

472 (ii) the new products under Subsection [~~(45)~~] (46)(b)(i) would otherwise be made with

473 nonrecycled materials; or

474 (c) a cogeneration facility as defined in Section 54-2-1.

475 [~~(46)~~] (47) "Member of the immediate family of the producer" means a person who is

476 related to a producer described in Subsection 59-12-104(20)(a) as a:

477 (a) child or stepchild, regardless of whether the child or stepchild is:

- 478 (i) an adopted child or adopted stepchild; or
- 479 (ii) a foster child or foster stepchild;
- 480 (b) grandchild or stepgrandchild;
- 481 (c) grandparent or stepgrandparent;
- 482 (d) nephew or stepnephew;
- 483 (e) niece or stepniece;
- 484 (f) parent or stepparent;
- 485 (g) sibling or stepsibling;
- 486 (h) spouse;
- 487 (i) person who is the spouse of a person described in Subsections [~~(46)~~] (47)(a) through
- 488 (g); or
- 489 (j) person similar to a person described in Subsections [~~(46)~~] (47)(a) through (i) as
- 490 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah
- 491 Administrative Rulemaking Act.
- 492 [~~(47)~~] (48) "Mobile home" is as defined in Section 58-56-3.
- 493 [~~(48)~~] (49) "Mobile telecommunications service" is as defined in the Mobile
- 494 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
- 495 [~~(49)~~] (50) (a) Except as provided in Subsection [~~(49)~~] (50)(c), "mobility enhancing
- 496 equipment" means equipment that is:
- 497 (i) primarily and customarily used to provide or increase the ability to move from one
- 498 place to another;
- 499 (ii) appropriate for use in a:
- 500 (A) home; or
- 501 (B) motor vehicle; and
- 502 (iii) not generally used by persons with normal mobility.
- 503 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
- 504 the equipment described in Subsection [~~(49)~~] (50)(a).
- 505 (c) Notwithstanding Subsection [~~(49)~~] (50)(a), "mobility enhancing equipment" does

506 not include:

507 (i) a motor vehicle;

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

510 (iii) durable medical equipment; or

511 (iv) a prosthetic device.

512 ~~[(50)]~~ (51) "Model 1 seller" means a seller that has selected a certified service provider
513 as the seller's agent to perform all of the seller's sales and use tax functions for agreement sales
514 and use taxes other than the seller's obligation under Section 59-12-107.4 to remit a tax on the
515 seller's own purchases.

516 ~~[(51)]~~ (52) "Model 2 seller" means a seller that:

517 (a) except as provided in Subsection ~~[(51)]~~ (52)(b), has selected a certified automated
518 system to perform the seller's sales tax functions for agreement sales and use taxes; and

519 (b) notwithstanding Subsection ~~[(51)]~~ (52)(a), retains responsibility for remitting all of
520 the sales tax:

521 (i) collected by the seller; and

522 (ii) to the appropriate local taxing jurisdiction.

523 ~~[(52)]~~ (53) (a) Subject to Subsection ~~[(52)]~~ (53)(b), "model 3 seller" means a seller that
524 has:

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

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

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

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

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

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

531 (b) For purposes of Subsection ~~[(52)]~~ (53)(a), "model 3 seller" includes an affiliated
532 group of sellers using the same proprietary system.

533 ~~[(53)]~~ (54) "Modular home" means a modular unit as defined in Section 58-56-3.

534 [~~54~~] (55) "Motor vehicle" is as defined in Section 41-1a-102.

535 [~~55~~] (56) "Oil shale" means a group of fine black to dark brown shales containing
536 bituminous material that yields petroleum upon distillation.

537 [~~56~~] (57) (a) "Other fuels" means products that burn independently to produce heat or
538 energy.

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

541 [~~57~~] (58) "Pawnbroker" is as defined in Section 13-32a-102.

542 [~~58~~] (59) "Pawn transaction" is as defined in Section 13-32a-102.

543 [~~59~~] (60) (a) "Permanently attached to real property" means that for tangible personal
544 property attached to real property:

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

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

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

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

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

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

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

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

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

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

558 (ii) a temporary detachment of tangible personal property from real property for a
559 repair or renovation if the repair or renovation is performed where the tangible personal
560 property and real property are located; or

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

562 regardless of whether the attachment to real property is only through a line that supplies water,
563 electricity, gas, telephone, cable, or supplies a similar item as determined by the commission by
564 rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

565 (A) property attached to oil, gas, or water pipelines, other than the property listed in
566 Subsection [~~59~~] (60)(c)(iii);

567 (B) a hot water heater;

568 (C) a water softener system; or

569 (D) a water filtration system, other than a water filtration system manufactured as part
570 of a refrigerator.

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

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

574 (A) convenience;

575 (B) stability; or

576 (C) for an obvious temporary purpose;

577 (ii) the detachment of tangible personal property from real property other than the
578 detachment described in Subsection [~~59~~] (60)(b)(ii); or

579 (iii) an attachment of the following tangible personal property to real property if the
580 attachment to real property is only through a line that supplies water, electricity, gas, telephone,
581 cable, or supplies a similar item as determined by the commission by rule made in accordance
582 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

583 (A) a refrigerator;

584 (B) a washer;

585 (C) a dryer;

586 (D) a stove;

587 (E) a television;

588 (F) a computer;

589 (G) a telephone; or

590 (H) tangible personal property similar to Subsections [~~59~~] (60)(c)(iii)(A) through (G)
591 as determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah
592 Administrative Rulemaking Act.

593 [~~60~~] (61) "Person" includes any individual, firm, partnership, joint venture,
594 association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county,
595 city, municipality, district, or other local governmental entity of the state, or any group or
596 combination acting as a unit.

597 [~~61~~] (62) "Place of primary use":

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

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

605 [~~62~~] (63) "Postproduction" means an activity related to the finishing or duplication of
606 a medium described in Subsection 59-12-104(56)(a).

607 [~~63~~] (64) (a) "Prepared food" means:

- 608 (i) food:
 - 609 (A) sold in a heated state; or
 - 610 (B) heated by a seller;
- 611 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
612 item; or
- 613 (iii) except as provided in Subsection [~~63~~] (64)(c), food sold with an eating utensil
614 provided by the seller, including a:
 - 615 (A) plate;
 - 616 (B) knife;
 - 617 (C) fork;

- 618 (D) spoon;
- 619 (E) glass;
- 620 (F) cup;
- 621 (G) napkin; or
- 622 (H) straw.
- 623 (b) "Prepared food" does not include:
- 624 (i) food that a seller only:
- 625 (A) cuts;
- 626 (B) repackages; or
- 627 (C) pasteurizes; or
- 628 (ii) (A) the following:
- 629 (I) raw egg;
- 630 (II) raw fish;
- 631 (III) raw meat;
- 632 (IV) raw poultry; or
- 633 (V) a food containing an item described in Subsections [~~63~~] (64)(b)(ii)(A)(I) through
- 634 (IV); and
- 635 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 636 Food and Drug Administration's Food Code that a consumer cook the items described in
- 637 Subsection [~~63~~] (64)(b)(ii)(A) to prevent food borne illness; or
- 638 (iii) the following if sold without eating utensils provided by the seller:
- 639 (A) food and food ingredients sold by a seller if the seller's proper primary
- 640 classification under the 2002 North American Industry Classification System of the federal
- 641 Executive Office of the President, Office of Management and Budget, is manufacturing in
- 642 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
- 643 Manufacturing;
- 644 (B) food and food ingredients sold in an unheated state:
- 645 (I) by weight or volume; and

- 646 (II) as a single item; or
- 647 (C) a bakery item, including:
- 648 (I) a bagel;
- 649 (II) a bar;
- 650 (III) a biscuit;
- 651 (IV) bread;
- 652 (V) a bun;
- 653 (VI) a cake;
- 654 (VII) a cookie;
- 655 (VIII) a croissant;
- 656 (IX) a danish;
- 657 (X) a donut;
- 658 (XI) a muffin;
- 659 (XII) a pastry;
- 660 (XIII) a pie;
- 661 (XIV) a roll;
- 662 (XV) a tart;
- 663 (XVI) a torte; or
- 664 (XVII) a tortilla.
- 665 (c) Notwithstanding Subsection [~~(63)~~] (64)(a)(iii), an eating utensil provided by the
- 666 seller does not include the following used to transport the food:
- 667 (i) a container; or
- 668 (ii) packaging.
- 669 [~~(64)~~] (65) "Prescription" means an order, formula, or recipe that is issued:
- 670 (a) (i) orally;
- 671 (ii) in writing;
- 672 (iii) electronically; or
- 673 (iv) by any other manner of transmission; and

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

675 [~~(65)~~] (66) (a) Except as provided in Subsection [~~(65)~~] (66)(b)(ii) or (iii), "prewritten
676 computer software" means computer software that is not designed and developed:

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

679 (b) "Prewritten computer software" includes:

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

682 (A) by the author or other creator of the computer software; and
683 (B) to the specifications of a specific purchaser;

684 (ii) notwithstanding Subsection [~~(65)~~] (66)(a), computer software designed and
685 developed by the author or other creator of the computer software to the specifications of a
686 specific purchaser if the computer software is sold to a person other than the purchaser; or
687 (iii) notwithstanding Subsection [~~(65)~~] (66)(a) and except as provided in Subsection
688 [~~(65)~~] (66)(c), prewritten computer software or a prewritten portion of prewritten computer
689 software:

690 (A) that is modified or enhanced to any degree; and
691 (B) if the modification or enhancement described in Subsection [~~(65)~~] (66)(b)(iii)(A) is
692 designed and developed to the specifications of a specific purchaser.

693 (c) Notwithstanding Subsection [~~(65)~~] (66)(b)(iii), "prewritten computer software"
694 does not include a modification or enhancement described in Subsection [~~(65)~~] (66)(b)(iii) if
695 the charges for the modification or enhancement are:

696 (i) reasonable; and
697 (ii) separately stated on the invoice or other statement of price provided to the
698 purchaser.

699 [~~(66)~~] (67) (a) "Prosthetic device" means a device that is worn on or in the body to:

700 (i) artificially replace a missing portion of the body;
701 (ii) prevent or correct a physical deformity or physical malfunction; or

- 702 (iii) support a weak or deformed portion of the body.
- 703 (b) "Prosthetic device" includes:
- 704 (i) parts used in the repairs or renovation of a prosthetic device; or
- 705 (ii) replacement parts for a prosthetic device.
- 706 (c) "Prosthetic device" does not include:
- 707 (i) corrective eyeglasses;
- 708 (ii) contact lenses;
- 709 (iii) hearing aids; or
- 710 (iv) dental prostheses.
- 711 [~~67~~] (68) (a) "Protective equipment" means an item:
- 712 (i) for human wear; and
- 713 (ii) that is:
- 714 (A) designed as protection:
- 715 (I) to the wearer against injury or disease; or
- 716 (II) against damage or injury of other persons or property; and
- 717 (B) not suitable for general use.
- 718 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 719 commission shall make rules:
- 720 (i) listing the items that constitute "protective equipment"; and
- 721 (ii) that are consistent with the list of items that constitute "protective equipment"
- 722 under the agreement.
- 723 (69) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or
- 724 printed matter, other than a photocopy:
- 725 (i) regardless of:
- 726 (A) characteristics;
- 727 (B) copyright;
- 728 (C) form;
- 729 (D) format;

- 730 (E) method of reproduction; or
- 731 (F) source; and
- 732 (ii) made available in printed or electronic format.
- 733 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 734 commission may by rule define the term "photocopy."
- 735 [~~68~~] (70) (a) "Purchase price" and "sales price" mean the total amount of
- 736 consideration:
- 737 (i) valued in money; and
- 738 (ii) for which tangible personal property or services are:
- 739 (A) sold;
- 740 (B) leased; or
- 741 (C) rented.
- 742 (b) "Purchase price" and "sales price" include:
- 743 (i) the seller's cost of the tangible personal property or services sold;
- 744 (ii) expenses of the seller, including:
- 745 (A) the cost of materials used;
- 746 (B) a labor cost;
- 747 (C) a service cost;
- 748 (D) interest;
- 749 (E) a loss;
- 750 (F) the cost of transportation to the seller; or
- 751 (G) a tax imposed on the seller; or
- 752 (iii) a charge by the seller for any service necessary to complete the sale.
- 753 (c) "Purchase price" and "sales price" do not include:
- 754 (i) a discount:
- 755 (A) in a form including:
- 756 (I) cash;
- 757 (II) term; or

758 (III) coupon;
759 (B) that is allowed by a seller;
760 (C) taken by a purchaser on a sale; and
761 (D) that is not reimbursed by a third party; or
762 (ii) the following if separately stated on an invoice, bill of sale, or similar document
763 provided to the purchaser:

764 (A) the amount of a trade-in;
765 (B) the following from credit extended on the sale of tangible personal property or
766 services:

767 (I) interest charges;
768 (II) financing charges; or
769 (III) carrying charges;
770 (C) a tax or fee legally imposed directly on the consumer;
771 (D) a delivery charge; or
772 (E) an installation charge.

773 [~~(69)~~] (71) "Purchaser" means a person to whom:

774 (a) a sale of tangible personal property is made; or
775 (b) a service is furnished.

776 [~~(70)~~] (72) "Regularly rented" means:

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

780 [~~(71)~~] (73) "Renewable energy" means:

781 (a) biomass energy;
782 (b) hydroelectric energy;
783 (c) geothermal energy;
784 (d) solar energy; or
785 (e) wind energy.

786 [~~(72)~~] (74) (a) "Renewable energy production facility" means a facility that:
787 (i) uses renewable energy to produce electricity; and
788 (ii) has a production capacity of 20 kilowatts or greater.
789 (b) A facility is a renewable energy production facility regardless of whether the
790 facility is:
791 (i) connected to an electric grid; or
792 (ii) located on the premises of an electricity consumer.
793 [~~(73)~~] (75) "Rental" is as defined in Subsection [~~(41)~~] (42).
794 [~~(74)~~] (76) "Repairs or renovations of tangible personal property" means:
795 (a) a repair or renovation of tangible personal property that is not permanently attached
796 to real property; or
797 (b) attaching tangible personal property to other tangible personal property if the other
798 tangible personal property to which the tangible personal property is attached is not
799 permanently attached to real property.
800 [~~(75)~~] (77) "Research and development" means the process of inquiry or
801 experimentation aimed at the discovery of facts, devices, technologies, or applications and the
802 process of preparing those devices, technologies, or applications for marketing.
803 [~~(76)~~] (78) "Residential use" means the use in or around a home, apartment building,
804 sleeping quarters, and similar facilities or accommodations.
805 [~~(77)~~] (79) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose
806 other than:
807 (a) resale;
808 (b) sublease; or
809 (c) subrent.
810 [~~(78)~~] (80) (a) "Retailer" means any person engaged in a regularly organized business
811 in tangible personal property or any other taxable transaction under Subsection 59-12-103(1),
812 and who is selling to the user or consumer and not for resale.
813 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly

814 engaged in the business of selling to users or consumers within the state.

815 ~~[(79)]~~ (81) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
816 otherwise, in any manner, of tangible personal property or any other taxable transaction under
817 Subsection 59-12-103(1), for consideration.

818 (b) "Sale" includes:

819 (i) installment and credit sales;

820 (ii) any closed transaction constituting a sale;

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

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

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

828 ~~[(80)]~~ (82) "Sale at retail" is as defined in Subsection ~~[(77)]~~ (79).

829 ~~[(81)]~~ (83) "Sale-leaseback transaction" means a transaction by which title to tangible
830 personal property that is subject to a tax under this chapter is transferred:

831 (a) by a purchaser-lessee;

832 (b) to a lessor;

833 (c) for consideration; and

834 (d) if:

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

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

839 (A) for the property; and

840 (B) to the purchaser-lessee; and

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

842 is required to:

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

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

845 ~~[(82)]~~ (84) "Sales price" is as defined in Subsection ~~[(68)]~~ (70).

846 ~~[(83)]~~ (85) (a) "Sales relating to schools" means the following sales by, amounts paid
847 to, or amounts charged by a school:

848 (i) sales that are directly related to the school's educational functions or activities,
849 including:

850 (A) the sale of:

851 (I) textbooks;

852 (II) textbook fees;

853 (III) laboratory fees;

854 (IV) laboratory supplies; or

855 (V) safety equipment;

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

857 that:

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

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

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

864 (I) food and food ingredients; or

865 (II) prepared food; or

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

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

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

- 870 (i) bookstore sales of items that are not educational materials or supplies;
- 871 (ii) except as provided in Subsection [~~(83)~~] (85)(a)(i)(B):
- 872 (A) clothing;
- 873 (B) clothing accessories or equipment;
- 874 (C) protective equipment; or
- 875 (D) sports or recreational equipment; or
- 876 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 877 event or school-related activity if the amounts paid or charged are passed through to a person:
- 878 (A) other than a:
- 879 (I) school;
- 880 (II) nonprofit organization authorized by a school board or a governing body of a
- 881 private school to organize and direct a competitive secondary school activity; or
- 882 (III) nonprofit association authorized by a school board or a governing body of a
- 883 private school to organize and direct a competitive secondary school activity; and
- 884 (B) that is required to collect sales and use taxes under this chapter.
- 885 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 886 commission may make rules defining the term "passed through."
- 887 [~~(84)~~] (86) For purposes of this section and Section 59-12-104, "school":
- 888 (a) means:
- 889 [~~(a)~~] (i) an elementary school or a secondary school that:
- 890 [~~(i)~~] (A) is a:
- 891 [~~(A)~~] (I) public school; or
- 892 [~~(B)~~] (II) private school; and
- 893 [~~(ii)~~] (B) provides instruction for one or more grades kindergarten through 12; or
- 894 [~~(b)~~] (ii) a public school district[-]; and
- 895 (b) includes the Electronic High School as defined in Section 53A-15-1002.
- 896 [~~(85)~~] (87) "Seller" means a person that makes a sale, lease, or rental of:
- 897 (a) tangible personal property; or

898 (b) a service.

899 [~~86~~] (88) (a) "Semiconductor fabricating, processing, research, or development

900 materials" means tangible personal property:

901 (i) used primarily in the process of:

902 (A) (I) manufacturing a semiconductor;

903 (II) fabricating a semiconductor; or

904 (III) research or development of a:

905 (Aa) semiconductor; or

906 (Bb) semiconductor manufacturing process; or

907 (B) maintaining an environment suitable for a semiconductor; or

908 (ii) consumed primarily in the process of:

909 (A) (I) manufacturing a semiconductor;

910 (II) fabricating a semiconductor; or

911 (III) research or development of a:

912 (Aa) semiconductor; or

913 (Bb) semiconductor manufacturing process; or

914 (B) maintaining an environment suitable for a semiconductor.

915 (b) "Semiconductor fabricating, processing, research, or development materials"

916 includes:

917 (i) parts used in the repairs or renovations of tangible personal property described in

918 Subsection [~~86~~] (88)(a); or

919 (ii) a chemical, catalyst, or other material used to:

920 (A) produce or induce in a semiconductor a:

921 (I) chemical change; or

922 (II) physical change;

923 (B) remove impurities from a semiconductor; or

924 (C) improve the marketable condition of a semiconductor.

925 [~~87~~] (89) "Senior citizen center" means a facility having the primary purpose of

926 providing services to the aged as defined in Section 62A-3-101.

927 [~~(88)~~] (90) "Simplified electronic return" means the electronic return:

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

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

930 [~~(89)~~] (91) "Solar energy" means the sun used as the sole source of energy for
931 producing electricity.

932 [~~(90)~~] (92) (a) "Sports or recreational equipment" means an item:

933 (i) designed for human use; and

934 (ii) that is:

935 (A) worn in conjunction with:

936 (I) an athletic activity; or

937 (II) a recreational activity; and

938 (B) not suitable for general use.

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

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

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

944 [~~(91)~~] (93) "State" means the state of Utah, its departments, and agencies.

945 [~~(92)~~] (94) "Storage" means any keeping or retention of tangible personal property or
946 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose
947 except sale in the regular course of business.

948 [~~(93)~~] (95) (a) "Tangible personal property" means personal property that:

949 (i) may be:

950 (A) seen;

951 (B) weighed;

952 (C) measured;

953 (D) felt; or

954 (E) touched; or
955 (ii) is in any manner perceptible to the senses.

956 (b) "Tangible personal property" includes:

957 (i) electricity;

958 (ii) water;

959 (iii) gas;

960 (iv) steam; or

961 (v) prewritten computer software.

962 [~~94~~] 96 "Tar sands" means impregnated sands that yield mixtures of liquid
963 hydrocarbon and require further processing other than mechanical blending before becoming
964 finished petroleum products.

965 [~~95~~] 97 (a) "Telecommunications enabling or facilitating equipment, machinery, or
966 software" means an item listed in Subsection [~~95~~] 97(b) if that item is purchased or leased
967 primarily to enable or facilitate one or more of the following to function:

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

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

970 (b) The following apply to Subsection [~~95~~] 97(a):

971 (i) a pole;

972 (ii) software;

973 (iii) a supplementary power supply;

974 (iv) temperature or environmental equipment or machinery;

975 (v) test equipment;

976 (vi) a tower; or

977 (vii) equipment, machinery, or software that functions similarly to an item listed in
978 Subsections [~~95~~] 97(b)(i) through (vi) as determined by the commission by rule made in
979 accordance with Subsection [~~95~~] 97(c).

980 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
981 commission may by rule define what constitutes equipment, machinery, or software that

982 functions similarly to an item listed in Subsections [~~(95)~~] (97)(b)(i) through (vi).

983 [~~(96)~~] (98) "Telecommunications equipment, machinery, or software required for 911
984 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.
985 Sec. 20.18.

986 [~~(97)~~] (99) "Telecommunications maintenance or repair equipment, machinery, or
987 software" means equipment, machinery, or software purchased or leased primarily to maintain
988 or repair one or more of the following, regardless of whether the equipment, machinery, or
989 software is purchased or leased as a spare part or as an upgrade or modification to one or more
990 of the following:

- 991 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 992 (b) telecommunications switching or routing equipment, machinery, or software; or
- 993 (c) telecommunications transmission equipment, machinery, or software.

994 [~~(98)~~] (100) (a) "Telecommunications switching or routing equipment, machinery, or
995 software" means an item listed in Subsection [~~(98)~~] (100)(b) if that item is purchased or leased
996 primarily for switching or routing:

- 997 (i) voice communications;
- 998 (ii) data communications; or
- 999 (iii) telephone service.

1000 (b) The following apply to Subsection [~~(98)~~] (100)(a):

- 1001 (i) a bridge;
- 1002 (ii) a computer;
- 1003 (iii) a cross connect;
- 1004 (iv) a modem;
- 1005 (v) a multiplexer;
- 1006 (vi) plug in circuitry;
- 1007 (vii) a router;
- 1008 (viii) software;
- 1009 (ix) a switch; or

1010 (x) equipment, machinery, or software that functions similarly to an item listed in
1011 Subsections [~~98~~] (100)(b)(i) through (ix) as determined by the commission by rule made in
1012 accordance with Subsection [~~98~~] (100)(c).

1013 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1014 commission may by rule define what constitutes equipment, machinery, or software that
1015 functions similarly to an item listed in Subsections [~~98~~] (100)(b)(i) through (ix).

1016 [~~99~~] (101) (a) "Telecommunications transmission equipment, machinery, or
1017 software" means an item listed in Subsection [~~99~~] (101)(b) if that item is purchased or leased
1018 primarily for sending, receiving, or transporting:

- 1019 (i) voice communications;
- 1020 (ii) data communications; or
- 1021 (iii) telephone service.

1022 (b) The following apply to Subsection [~~99~~] (101)(a):

- 1023 (i) an amplifier;
- 1024 (ii) a cable;
- 1025 (iii) a closure;
- 1026 (iv) a conduit;
- 1027 (v) a controller;
- 1028 (vi) a duplexer;
- 1029 (vii) a filter;
- 1030 (viii) an input device;
- 1031 (ix) an input/output device;
- 1032 (x) an insulator;
- 1033 (xi) microwave machinery or equipment;
- 1034 (xii) an oscillator;
- 1035 (xiii) an output device;
- 1036 (xiv) a pedestal;
- 1037 (xv) a power converter;

- 1038 (xvi) a power supply;
- 1039 (xvii) a radio channel;
- 1040 (xviii) a radio receiver;
- 1041 (xix) a radio transmitter;
- 1042 (xx) a repeater;
- 1043 (xxi) software;
- 1044 (xxii) a terminal;
- 1045 (xxiii) a timing unit;
- 1046 (xxiv) a transformer;
- 1047 (xxv) a wire; or
- 1048 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
- 1049 Subsections [~~99~~] (101)(b)(i) through (xxv) as determined by the commission by rule made in
- 1050 accordance with Subsection [~~99~~] (101)(c).

1051 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

1052 commission may by rule define what constitutes equipment, machinery, or software that

1053 functions similarly to an item listed in Subsections [~~99~~] (101)(b)(i) through (xxv).

1054 [~~100~~] (102) (a) "Telephone service" means a two-way transmission:

- 1055 (i) by:
- 1056 (A) wire;
- 1057 (B) radio;
- 1058 (C) lightwave; or
- 1059 (D) other electromagnetic means; and
- 1060 (ii) of one or more of the following:
- 1061 (A) a sign;
- 1062 (B) a signal;
- 1063 (C) writing;
- 1064 (D) an image;
- 1065 (E) sound;

1066 (F) a message;

1067 (G) data; or

1068 (H) other information of any nature.

1069 (b) "Telephone service" includes:

1070 (i) mobile telecommunications service;

1071 (ii) private communications service; or

1072 (iii) automated digital telephone answering service.

1073 (c) "Telephone service" does not include a service or a transaction that a state or a

1074 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet

1075 Tax Freedom Act, Pub. L. No. 105-277.

1076 [~~(101)~~] (103) Notwithstanding where a call is billed or paid, "telephone service

1077 address" means:

1078 (a) if the location described in this Subsection [~~(101)~~] (103)(a) is known, the location

1079 of the telephone service equipment:

1080 (i) to which a call is charged; and

1081 (ii) from which the call originates or terminates;

1082 (b) if the location described in Subsection [~~(101)~~] (103)(a) is not known but the

1083 location described in this Subsection [~~(101)~~] (103)(b) is known, the location of the origination

1084 point of the signal of the telephone service first identified by:

1085 (i) the telecommunications system of the seller; or

1086 (ii) if the system used to transport the signal is not that of the seller, information

1087 received by the seller from its service provider; or

1088 (c) if the locations described in Subsection [~~(101)~~] (103)(a) or (b) are not known, the

1089 location of a purchaser's primary place of use.

1090 [~~(102)~~] (104) (a) "Telephone service provider" means a person that:

1091 (i) owns, controls, operates, or manages a telephone service; and

1092 (ii) engages in an activity described in Subsection [~~(102)~~] (104)(a)(i) for the shared use

1093 with or resale to any person of the telephone service.

1094 (b) A person described in Subsection [~~(102)~~] (104)(a) is a telephone service provider
1095 whether or not the Public Service Commission of Utah regulates:

1096 (i) that person; or

1097 (ii) the telephone service that the person owns, controls, operates, or manages.

1098 [~~(103)~~] (105) "Tobacco" means:

1099 (a) a cigarette;

1100 (b) a cigar;

1101 (c) chewing tobacco;

1102 (d) pipe tobacco; or

1103 (e) any other item that contains tobacco.

1104 [~~(104)~~] (106) "Unassisted amusement device" means an amusement device, skill
1105 device, or ride device that is started and stopped by the purchaser or renter of the right to use or
1106 operate the amusement device, skill device, or ride device.

1107 [~~(105)~~] (107) (a) "Use" means the exercise of any right or power over tangible personal
1108 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that
1109 property, item, or service.

1110 (b) "Use" does not include the sale, display, demonstration, or trial of that property in
1111 the regular course of business and held for resale.

1112 [~~(106)~~] (108) (a) Subject to Subsection [~~(106)~~] (108)(b), "vehicle" means the following
1113 that are required to be titled, registered, or titled and registered:

1114 (i) an aircraft as defined in Section 72-10-102;

1115 (ii) a vehicle as defined in Section 41-1a-102;

1116 (iii) an off-highway vehicle as defined in Section 41-22-2; or

1117 (iv) a vessel as defined in Section 41-1a-102.

1118 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

1119 (i) a vehicle described in Subsection [~~(106)~~] (108)(a); or

1120 (ii) (A) a locomotive;

1121 (B) a freight car;

1122 (C) railroad work equipment; or

1123 (D) other railroad rolling stock.

1124 [~~(107)~~] (109) "Vehicle dealer" means a person engaged in the business of buying,
1125 selling, or exchanging a vehicle as defined in Subsection [~~(106)~~] (108).

1126 [~~(108)~~] (110) (a) Except as provided in Subsection [~~(108)~~] (110)(b), "waste energy
1127 facility" means a facility that generates electricity:

1128 (i) using as the primary source of energy waste materials that would be placed in a
1129 landfill or refuse pit if it were not used to generate electricity, including:

1130 (A) tires;

1131 (B) waste coal; or

1132 (C) oil shale; and

1133 (ii) in amounts greater than actually required for the operation of the facility.

1134 (b) "Waste energy facility" does not include a facility that incinerates:

1135 (i) municipal solid waste;

1136 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or

1137 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1138 [~~(109)~~] (111) "Watercraft" means a vessel as defined in Section 73-18-2.

1139 [~~(110)~~] (112) "Wind energy" means wind used as the sole source of energy to produce
1140 electricity.

1141 [~~(111)~~] (113) "ZIP Code" means a Zoning Improvement Plan Code assigned to a
1142 geographic location by the United States Postal Service.

1143 Section 2. Section **59-12-104** is amended to read:

1144 **59-12-104. Exemptions.**

1145 The following sales and uses are exempt from the taxes imposed by this chapter:

1146 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
1147 under Chapter 13, Motor and Special Fuel Tax Act;

1148 (2) sales to the state, its institutions, and its political subdivisions; however, this
1149 exemption does not apply to sales of:

- 1150 (a) construction materials except:
- 1151 (i) construction materials purchased by or on behalf of institutions of the public
- 1152 education system as defined in Utah Constitution Article X, Section 2, provided the
- 1153 construction materials are clearly identified and segregated and installed or converted to real
- 1154 property which is owned by institutions of the public education system; and
- 1155 (ii) construction materials purchased by the state, its institutions, or its political
- 1156 subdivisions which are installed or converted to real property by employees of the state, its
- 1157 institutions, or its political subdivisions; or
- 1158 (b) tangible personal property in connection with the construction, operation,
- 1159 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities
- 1160 providing additional project capacity, as defined in Section 11-13-103;
- 1161 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:
- 1162 (i) the proceeds of each sale do not exceed \$1; and
- 1163 (ii) the seller or operator of the vending machine reports an amount equal to 150% of
- 1164 the cost of the item described in Subsection (3)(b) as goods consumed; and
- 1165 (b) Subsection (3)(a) applies to:
- 1166 (i) food and food ingredients; or
- 1167 (ii) prepared food;
- 1168 (4) sales of the following to a commercial airline carrier for in-flight consumption:
- 1169 (a) food and food ingredients;
- 1170 (b) prepared food; or
- 1171 (c) services related to Subsection (4)(a) or (b);
- 1172 (5) sales of parts and equipment for installation in aircraft operated by common carriers
- 1173 in interstate or foreign commerce;
- 1174 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
- 1175 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
- 1176 exhibitor, distributor, or commercial television or radio broadcaster;
- 1177 (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal

1178 property if the cleaning or washing of the tangible personal property is not assisted cleaning or
1179 washing of tangible personal property;

1180 (b) if a seller that sells at the same business location assisted cleaning or washing of
1181 tangible personal property and cleaning or washing of tangible personal property that is not
1182 assisted cleaning or washing of tangible personal property, the exemption described in
1183 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning
1184 or washing of the tangible personal property; and

1185 (c) for purposes of Subsection (7)(b) and in accordance with Title 63, Chapter 46a,
1186 Utah Administrative Rulemaking Act, the commission may make rules:

1187 (i) governing the circumstances under which sales are at the same business location;
1188 and

1189 (ii) establishing the procedures and requirements for a seller to separately account for
1190 sales of assisted cleaning or washing of tangible personal property;

1191 (8) sales made to or by religious or charitable institutions in the conduct of their regular
1192 religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are
1193 fulfilled;

1194 (9) sales of a vehicle of a type required to be registered under the motor vehicle laws of
1195 this state if the vehicle is both not:

1196 (a) registered in this state; and

1197 (b) used in this state except as necessary to transport the vehicle to the borders of this
1198 state;

1199 (10) (a) amounts paid for an item described in Subsection (10)(b) if:

1200 (i) the item is intended for human use; and

1201 (ii) (A) a prescription was issued for the item; or

1202 (B) the item was purchased by a hospital or other medical facility; and

1203 (b) (i) Subsection (10)(a) applies to:

1204 (A) a drug;

1205 (B) a syringe; or

1206 (C) a stoma supply; and
1207 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1208 commission may by rule define the terms:
1209 (A) "syringe"; or
1210 (B) "stoma supply";
1211 (11) sales or use of property, materials, or services used in the construction of or
1212 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;
1213 (12) (a) sales of an item described in Subsection (12)(c) served by:
1214 (i) the following if the item described in Subsection (12)(c) is not available to the
1215 general public:
1216 (A) a church; or
1217 (B) a charitable institution;
1218 (ii) an institution of higher education if:
1219 (A) the item described in Subsection (12)(c) is not available to the general public; or
1220 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
1221 offered by the institution of higher education; or
1222 (b) sales of an item described in Subsection (12)(c) provided for a patient by:
1223 (i) a medical facility; or
1224 (ii) a nursing facility; and
1225 (c) Subsections (12)(a) and (b) apply to:
1226 (i) food and food ingredients;
1227 (ii) prepared food; or
1228 (iii) alcoholic beverages;
1229 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property
1230 by a person:
1231 (i) regardless of the number of transactions involving the sale of that tangible personal
1232 property by that person; and
1233 (ii) not regularly engaged in the business of selling that type of tangible personal

1234 property;

1235 (b) this Subsection (13) does not apply if:

1236 (i) the sale is one of a series of sales of a character to indicate that the person is
1237 regularly engaged in the business of selling that type of tangible personal property;

1238 (ii) the person holds that person out as regularly engaged in the business of selling that
1239 type of tangible personal property;

1240 (iii) the person sells an item of tangible personal property that the person purchased as
1241 a sale that is exempt under Subsection (25); or

1242 (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of
1243 this state in which case the tax is based upon:

1244 (A) the bill of sale or other written evidence of value of the vehicle or vessel being
1245 sold; or

1246 (B) in the absence of a bill of sale or other written evidence of value, the fair market
1247 value of the vehicle or vessel being sold at the time of the sale as determined by the
1248 commission; and

1249 (c) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1250 commission shall make rules establishing the circumstances under which:

1251 (i) a person is regularly engaged in the business of selling a type of tangible personal
1252 property;

1253 (ii) a sale of tangible personal property is one of a series of sales of a character to
1254 indicate that a person is regularly engaged in the business of selling that type of tangible
1255 personal property; or

1256 (iii) a person holds that person out as regularly engaged in the business of selling a type
1257 of tangible personal property;

1258 (14) (a) except as provided in Subsection (14)(b), amounts paid or charged on or after
1259 July 1, 2006, for a purchase or lease by a manufacturing facility other than a cogeneration
1260 facility, for the following:

1261 (i) machinery and equipment that:

- 1262 (A) is used:
- 1263 (I) for a manufacturing facility other than a manufacturing facility that is a scrap
1264 recycler described in Subsection 59-12-102[(45)](46)(b):
- 1265 (Aa) in the manufacturing process; and
- 1266 (Bb) to manufacture an item sold as tangible personal property; or
- 1267 (II) for a manufacturing facility that is a scrap recycler described in Subsection
1268 59-12-102[(45)](46)(b), to process an item sold as tangible personal property; and
- 1269 (B) has an economic life of three or more years; and
- 1270 (ii) normal operating repair or replacement parts that:
- 1271 (A) have an economic life of three or more years; and
- 1272 (B) are used:
- 1273 (I) for a manufacturing facility in the state other than a manufacturing facility that is a
1274 scrap recycler described in Subsection 59-12-102[(45)](46)(b), in the manufacturing process;
- 1275 or
- 1276 (II) for a manufacturing facility in the state that is a scrap recycler described in
1277 Subsection 59-12-102[(45)](46)(b), to process an item sold as tangible personal property;
- 1278 (b) (i) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a
1279 manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006,
1280 for the following:
- 1281 (A) machinery and equipment that:
- 1282 (I) is used:
- 1283 (Aa) in the manufacturing process; and
- 1284 (Bb) to manufacture an item sold as tangible personal property; and
- 1285 (II) has an economic life of three or more years; and
- 1286 (B) normal operating repair or replacement parts that:
- 1287 (I) are used in the manufacturing process in a manufacturing facility in the state; and
- 1288 (II) have an economic life of three or more years; and
- 1289 (ii) for amounts paid or charged on or after July 1, 2005, but on or before June 30,

1290 2006, for a purchase or lease described in Subsection (14)(b)(i), a cogeneration facility may
1291 claim the exemption allowed by Subsection (14)(b)(i) by filing for a refund:

- 1292 (A) for sales and use taxes paid under this chapter on the purchase or lease payment;
- 1293 and
- 1294 (B) in accordance with Section 59-12-110;
- 1295 (c) for purposes of this Subsection (14) and in accordance with Title 63, Chapter 46a,
1296 Utah Administrative Rulemaking Act, the commission:
 - 1297 (i) shall by rule define the term "establishment"; and
 - 1298 (ii) may by rule define what constitutes processing an item sold as tangible personal
1299 property; and
- 1300 (d) on or before October 1, 1991, and every five years after October 1, 1991, the
1301 commission shall:
 - 1302 (i) review the exemptions described in this Subsection (14) and make
1303 recommendations to the Revenue and Taxation Interim Committee concerning whether the
1304 exemptions should be continued, modified, or repealed; and
 - 1305 (ii) include in its report:
 - 1306 (A) the cost of the exemptions;
 - 1307 (B) the purpose and effectiveness of the exemptions; and
 - 1308 (C) the benefits of the exemptions to the state;

1309 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:

- 1310 (i) tooling;
- 1311 (ii) special tooling;
- 1312 (iii) support equipment;
- 1313 (iv) special test equipment; or
- 1314 (v) parts used in the repairs or renovations of tooling or equipment described in
1315 Subsections (15)(a)(i) through (iv); and

- 1316 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:
 - 1317 (i) the tooling, equipment, or parts are used or consumed exclusively in the

1318 performance of any aerospace or electronics industry contract with the United States
1319 government or any subcontract under that contract; and
1320 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
1321 title to the tooling, equipment, or parts is vested in the United States government as evidenced
1322 by:
1323 (A) a government identification tag placed on the tooling, equipment, or parts; or
1324 (B) listing on a government-approved property record if placing a government
1325 identification tag on the tooling, equipment, or parts is impractical;
1326 (16) sales of newspapers or newspaper subscriptions;
1327 (17) (a) except as provided in Subsection (17)(b), tangible personal property traded in
1328 as full or part payment of the purchase price, except that for purposes of calculating sales or use
1329 tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and
1330 the tax is based upon:
1331 (i) the bill of sale or other written evidence of value of the vehicle being sold and the
1332 vehicle being traded in; or
1333 (ii) in the absence of a bill of sale or other written evidence of value, the then existing
1334 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
1335 commission; and
1336 (b) notwithstanding Subsection (17)(a), Subsection (17)(a) does not apply to the
1337 following items of tangible personal property traded in as full or part payment of the purchase
1338 price:
1339 (i) money;
1340 (ii) electricity;
1341 (iii) water;
1342 (iv) gas; or
1343 (v) steam;
1344 (18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property
1345 used or consumed primarily and directly in farming operations, regardless of whether the

1346 tangible personal property:

1347 (A) becomes part of real estate; or

1348 (B) is installed by a:

1349 (I) farmer;

1350 (II) contractor; or

1351 (III) subcontractor; or

1352 (ii) sales of parts used in the repairs or renovations of tangible personal property if the

1353 tangible personal property is exempt under Subsection (18)(a)(i); and

1354 (b) notwithstanding Subsection (18)(a), amounts paid or charged for the following

1355 tangible personal property are subject to the taxes imposed by this chapter:

1356 (i) (A) subject to Subsection (18)(b)(i)(B), the following tangible personal property if

1357 the tangible personal property is used in a manner that is incidental to farming:

1358 (I) machinery;

1359 (II) equipment;

1360 (III) materials; or

1361 (IV) supplies; and

1362 (B) tangible personal property that is considered to be used in a manner that is

1363 incidental to farming includes:

1364 (I) hand tools; or

1365 (II) maintenance and janitorial equipment and supplies;

1366 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property if the tangible

1367 personal property is used in an activity other than farming; and

1368 (B) tangible personal property that is considered to be used in an activity other than

1369 farming includes:

1370 (I) office equipment and supplies; or

1371 (II) equipment and supplies used in:

1372 (Aa) the sale or distribution of farm products;

1373 (Bb) research; or

1374 (Cc) transportation; or
1375 (iii) a vehicle required to be registered by the laws of this state during the period ending
1376 two years after the date of the vehicle's purchase;
1377 (19) sales of hay;
1378 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or
1379 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or
1380 garden, farm, or other agricultural produce is sold by:
1381 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other
1382 agricultural produce;
1383 (b) an employee of the producer described in Subsection (20)(a); or
1384 (c) a member of the immediate family of the producer described in Subsection (20)(a);
1385 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
1386 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;;
1387 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
1388 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
1389 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
1390 manufacturer, processor, wholesaler, or retailer;
1391 (23) property stored in the state for resale;
1392 (24) property brought into the state by a nonresident for his or her own personal use or
1393 enjoyment while within the state, except property purchased for use in Utah by a nonresident
1394 living and working in Utah at the time of purchase;
1395 (25) property purchased for resale in this state, in the regular course of business, either
1396 in its original form or as an ingredient or component part of a manufactured or compounded
1397 product;
1398 (26) property upon which a sales or use tax was paid to some other state, or one of its
1399 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
1400 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if
1401 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax

1402 Act;

1403 (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a

1404 person for use in compounding a service taxable under the subsections;

1405 (28) purchases made in accordance with the special supplemental nutrition program for

1406 women, infants, and children established in 42 U.S.C. Sec. 1786;

1407 (29) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers,

1408 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens

1409 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification

1410 Manual of the federal Executive Office of the President, Office of Management and Budget;

1411 (30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State

1412 Boating Act, a boat trailer, or an outboard motor if the boat, trailer, or outboard motor is both

1413 not:

1414 (a) registered in this state; and

1415 (b) used in this state except as necessary to transport the boat, boat trailer, or outboard

1416 motor to the borders of this state;

1417 (31) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah

1418 where a sales or use tax is not imposed, even if the title is passed in Utah;

1419 (32) amounts paid for the purchase of telephone service for purposes of providing

1420 telephone service;

1421 (33) sales or leases of vehicles to, or use of vehicles by an authorized carrier;

1422 (34) (a) 45% of the sales price of any new manufactured home; and

1423 (b) 100% of the sales price of any used manufactured home;

1424 (35) sales relating to schools and fundraising sales;

1425 (36) sales or rentals of durable medical equipment if:

1426 (a) a person presents a prescription for the durable medical equipment; and

1427 (b) the durable medical equipment is used for home use only;

1428 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in

1429 Section 72-11-102; and

1430 (b) the commission shall by rule determine the method for calculating sales exempt
1431 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;
1432 (38) sales to a ski resort of:
1433 (a) snowmaking equipment;
1434 (b) ski slope grooming equipment;
1435 (c) passenger ropeways as defined in Section 72-11-102; or
1436 (d) parts used in the repairs or renovations of equipment or passenger ropeways
1437 described in Subsections (38)(a) through (c);
1438 (39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
1439 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for
1440 amusement, entertainment, or recreation an unassisted amusement device as defined in Section
1441 59-12-102;
1442 (b) if a seller that sells or rents at the same business location the right to use or operate
1443 for amusement, entertainment, or recreation one or more unassisted amusement devices and
1444 one or more assisted amusement devices, the exemption described in Subsection (40)(a)
1445 applies if the seller separately accounts for the sales or rentals of the right to use or operate for
1446 amusement, entertainment, or recreation for the assisted amusement devices; and
1447 (c) for purposes of Subsection (40)(b) and in accordance with Title 63, Chapter 46a,
1448 Utah Administrative Rulemaking Act, the commission may make rules:
1449 (i) governing the circumstances under which sales are at the same business location;
1450 and
1451 (ii) establishing the procedures and requirements for a seller to separately account for
1452 the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for
1453 assisted amusement devices;
1454 ~~[(41) sales by the state or a political subdivision of the state, except state institutions of~~
1455 ~~higher education as defined in Section 53B-3-102, of:]~~
1456 ~~[(a) photocopies; or]~~
1457 ~~[(b) other copies of records held or maintained by the state or a political subdivision of~~

1458 ~~the state;]~~
1459 (41) (a) sales of photocopies by:
1460 (i) a governmental entity; or
1461 (ii) an entity within the state system of public education, including:
1462 (A) a school; or
1463 (B) the State Board of Education; or
1464 (b) sales of publications by a governmental entity;
1465 (42) amounts paid for admission to an athletic event at an institution of higher
1466 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
1467 20 U.S.C. Sec. 1681 et seq.;

1468 (43) sales of telephone service charged to a prepaid telephone calling card;
1469 (44) (a) sales of:
1470 (i) hearing aids;
1471 (ii) hearing aid accessories; or
1472 (iii) except as provided in Subsection (44)(b), parts used in the repairs or renovations
1473 of hearing aids or hearing aid accessories; and
1474 (b) for purposes of this Subsection (44), notwithstanding Subsection (44)(a)(iii),
1475 "parts" does not include batteries;

1476 (45) (a) sales made to or by:
1477 (i) an area agency on aging; or
1478 (ii) a senior citizen center owned by a county, city, or town; or
1479 (b) sales made by a senior citizen center that contracts with an area agency on aging;

1480 (46) sales or leases of semiconductor fabricating, processing, research, or development
1481 materials regardless of whether the semiconductor fabricating, processing, research, or
1482 development materials:
1483 (a) actually come into contact with a semiconductor; or
1484 (b) ultimately become incorporated into real property;

1485 (47) an amount paid by or charged to a purchaser for accommodations and services

1486 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
1487 59-12-104.2;

1488 (48) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary
1489 sports event registration certificate in accordance with Section 41-3-306 for the event period
1490 specified on the temporary sports event registration certificate;

1491 (49) sales or uses of electricity, if the sales or uses are:

1492 (a) made under a tariff adopted by the Public Service Commission of Utah only for
1493 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy
1494 source, as designated in the tariff by the Public Service Commission of Utah; and

1495 (b) for an amount of electricity that is:

1496 (i) unrelated to the amount of electricity used by the person purchasing the electricity
1497 under the tariff described in Subsection (49)(a); and

1498 (ii) equivalent to the number of kilowatthours specified in the tariff described in
1499 Subsection (49)(a) that may be purchased under the tariff described in Subsection (49)(a);

1500 (50) sales or rentals of mobility enhancing equipment if a person presents a
1501 prescription for the mobility enhancing equipment;

1502 (51) sales of water in a:

1503 (a) pipe;

1504 (b) conduit;

1505 (c) ditch; or

1506 (d) reservoir;

1507 (52) sales of currency or coinage that constitute legal tender of the United States or of a
1508 foreign nation;

1509 (53) (a) sales of an item described in Subsection (53)(b) if the item:

1510 (i) does not constitute legal tender of any nation; and

1511 (ii) has a gold, silver, or platinum content of 80% or more; and

1512 (b) Subsection (53)(a) applies to a gold, silver, or platinum:

1513 (i) ingot;

1514 (ii) bar;

1515 (iii) medallion; or

1516 (iv) decorative coin;

1517 (54) amounts paid on a sale-leaseback transaction;

1518 (55) sales of a prosthetic device:

1519 (a) for use on or in a human;

1520 (b) for which a prescription is issued; and

1521 (c) to a person that presents a prescription for the prosthetic device;

1522 (56) (a) except as provided in Subsection (56)(b), purchases, leases, or rentals of

1523 machinery or equipment by an establishment described in Subsection (56)(c) if the machinery

1524 or equipment is primarily used in the production or postproduction of the following media for

1525 commercial distribution:

1526 (i) a motion picture;

1527 (ii) a television program;

1528 (iii) a movie made for television;

1529 (iv) a music video;

1530 (v) a commercial;

1531 (vi) a documentary; or

1532 (vii) a medium similar to Subsections (56)(a)(i) through (vi) as determined by the

1533 commission by administrative rule made in accordance with Subsection (56)(d); or

1534 (b) notwithstanding Subsection (56)(a), purchases, leases, or rentals of machinery or

1535 equipment by an establishment described in Subsection (56)(c) that is used for the production

1536 or postproduction of the following are subject to the taxes imposed by this chapter:

1537 (i) a live musical performance;

1538 (ii) a live news program; or

1539 (iii) a live sporting event;

1540 (c) the following establishments listed in the 1997 North American Industry

1541 Classification System of the federal Executive Office of the President, Office of Management

1542 and Budget, apply to Subsections (56)(a) and (b):

1543 (i) NAICS Code 512110; or

1544 (ii) NAICS Code 51219; and

1545 (d) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

1546 commission may by rule:

1547 (i) prescribe what constitutes a medium similar to Subsections (56)(a)(i) through (vi);

1548 or

1549 (ii) define:

1550 (A) "commercial distribution";

1551 (B) "live musical performance";

1552 (C) "live news program"; or

1553 (D) "live sporting event";

1554 (57) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on

1555 or before June 30, 2009, of machinery or equipment that:

1556 (i) is leased or purchased for or by a facility that:

1557 (A) is a renewable energy production facility;

1558 (B) is located in the state; and

1559 (C) (I) becomes operational on or after July 1, 2004; or

1560 (II) has its generation capacity increased by one or more megawatts on or after July 1,

1561 2004 as a result of the use of the machinery or equipment;

1562 (ii) has an economic life of five or more years; and

1563 (iii) is used to make the facility or the increase in capacity of the facility described in

1564 Subsection (57)(a)(i) operational up to the point of interconnection with an existing

1565 transmission grid including:

1566 (A) a wind turbine;

1567 (B) generating equipment;

1568 (C) a control and monitoring system;

1569 (D) a power line;

- 1570 (E) substation equipment;
- 1571 (F) lighting;
- 1572 (G) fencing;
- 1573 (H) pipes; or
- 1574 (I) other equipment used for locating a power line or pole; and
- 1575 (b) this Subsection (57) does not apply to:
 - 1576 (i) machinery or equipment used in construction of:
 - 1577 (A) a new renewable energy production facility; or
 - 1578 (B) the increase in the capacity of a renewable energy production facility;
 - 1579 (ii) contracted services required for construction and routine maintenance activities;
- 1580 and
 - 1581 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
 - 1582 of the facility described in Subsection (57)(a)(i)(C)(II), machinery or equipment used or
 - 1583 acquired after:
 - 1584 (A) the renewable energy production facility described in Subsection (57)(a)(i) is
 - 1585 operational as described in Subsection (57)(a)(iii); or
 - 1586 (B) the increased capacity described in Subsection (57)(a)(i) is operational as described
 - 1587 in Subsection (57)(a)(iii);
- 1588 (58) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on
- 1589 or before June 30, 2009, of machinery or equipment that:
 - 1590 (i) is leased or purchased for or by a facility that:
 - 1591 (A) is a waste energy production facility;
 - 1592 (B) is located in the state; and
 - 1593 (C) (I) becomes operational on or after July 1, 2004; or
 - 1594 (II) has its generation capacity increased by one or more megawatts on or after July 1,
 - 1595 2004 as a result of the use of the machinery or equipment;
 - 1596 (ii) has an economic life of five or more years; and
 - 1597 (iii) is used to make the facility or the increase in capacity of the facility described in

- 1598 Subsection (58)(a)(i) operational up to the point of interconnection with an existing
1599 transmission grid including:
- 1600 (A) generating equipment;
 - 1601 (B) a control and monitoring system;
 - 1602 (C) a power line;
 - 1603 (D) substation equipment;
 - 1604 (E) lighting;
 - 1605 (F) fencing;
 - 1606 (G) pipes; or
 - 1607 (H) other equipment used for locating a power line or pole; and
- 1608 (b) this Subsection (58) does not apply to:
- 1609 (i) machinery or equipment used in construction of:
 - 1610 (A) a new waste energy facility; or
 - 1611 (B) the increase in the capacity of a waste energy facility;
 - 1612 (ii) contracted services required for construction and routine maintenance activities;
- 1613 and
- 1614 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
1615 described in Subsection (58)(a)(i)(C)(II), machinery or equipment used or acquired after:
 - 1616 (A) the waste energy facility described in Subsection (58)(a)(i) is operational as
1617 described in Subsection (58)(a)(iii); or
 - 1618 (B) the increased capacity described in Subsection (58)(a)(i) is operational as described
1619 in Subsection (58)(a)(iii);
- 1620 (59) (a) leases of five or more years or purchases made on or after July 1, 2004 but on
1621 or before June 30, 2009, of machinery or equipment that:
- 1622 (i) is leased or purchased for or by a facility that:
 - 1623 (A) is located in the state;
 - 1624 (B) produces fuel from biomass energy including:
 - 1625 (I) methanol; or

1626 (II) ethanol; and
1627 (C) (I) becomes operational on or after July 1, 2004; or
1628 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004 as
1629 a result of the installation of the machinery or equipment;
1630 (ii) has an economic life of five or more years; and
1631 (iii) is installed on the facility described in Subsection (59)(a)(i);
1632 (b) this Subsection (59) does not apply to:
1633 (i) machinery or equipment used in construction of:
1634 (A) a new facility described in Subsection (59)(a)(i); or
1635 (B) the increase in capacity of the facility described in Subsection (59)(a)(i); or
1636 (ii) contracted services required for construction and routine maintenance activities;
1637 and
1638 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
1639 described in Subsection (59)(a)(i)(C)(II), machinery or equipment used or acquired after:
1640 (A) the facility described in Subsection (59)(a)(i) is operational; or
1641 (B) the increased capacity described in Subsection (59)(a)(i) is operational;
1642 (60) amounts paid to a purchaser as a rebate from the manufacturer of a new vehicle
1643 for purchasing the new vehicle;
1644 (61) (a) subject to Subsection (61)(b), sales of tangible personal property to persons
1645 within this state that is subsequently shipped outside the state and incorporated pursuant to
1646 contract into and becomes a part of real property located outside of this state, except to the
1647 extent that the other state or political entity imposes a sales, use, gross receipts, or other similar
1648 transaction excise tax on it against which the other state or political entity allows a credit for
1649 taxes imposed by this chapter; and
1650 (b) the exemption provided for in Subsection (61)(a):
1651 (i) is allowed only if the exemption is applied:
1652 (A) in calculating the purchase price of the tangible personal property; and
1653 (B) to a written contract that is in effect on July 1, 2004; and

1654 (ii) (A) does not apply beginning on the day on which the contract described in
1655 Subsection (61)(b)(i):
1656 (I) is substantially modified; or
1657 (II) terminates; and
1658 (B) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
1659 the commission may by rule prescribe the circumstances under which a contract is substantially
1660 modified;
1661 (62) purchases:
1662 (a) of one or more of the following items in printed or electronic format:
1663 (i) a list containing information that includes one or more:
1664 (A) names; or
1665 (B) addresses; or
1666 (ii) a database containing information that includes one or more:
1667 (A) names; or
1668 (B) addresses; and
1669 (b) used to send direct mail;
1670 (63) redemptions or repurchases of property by a person if that property was:
1671 (a) delivered to a pawnbroker as part of a pawn transaction; and
1672 (b) redeemed or repurchased within the time period established in a written agreement
1673 between the person and the pawnbroker for redeeming or repurchasing the property;
1674 (64) (a) purchases or leases of an item described in Subsection (64)(b) if the item:
1675 (i) is purchased or leased by, or on behalf of, a telephone service provider; and
1676 (ii) has a useful economic life of one or more years; and
1677 (b) the following apply to Subsection (64)(a):
1678 (i) telecommunications enabling or facilitating equipment, machinery, or software;
1679 (ii) telecommunications equipment, machinery, or software required for 911 service;
1680 (iii) telecommunications maintenance or repair equipment, machinery, or software;
1681 (iv) telecommunications switching or routing equipment, machinery, or software; or

1682 (v) telecommunications transmission equipment, machinery, or software; and
1683 (65) (a) beginning on July 1, 2006 and ending on June 30, 2016, purchases of tangible
1684 personal property used in the research and development of coal-to-liquids, oil shale, or tar
1685 sands technology; and

1686 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1687 commission may, for purposes of Subsection (65)(a), make rules defining what constitutes
1688 tangible personal property used in the research and development of coal-to-liquids, oil shale,
1689 and tar sands technology.

1690 Section 3. **Effective date.**

1691 This bill takes effect on July 1, 2007.