

1                                   **SALES AND USE TAX EXEMPTION FOR**  
2                                   **DISPOSABLE HOME MEDICAL EQUIPMENT**  
3                                   **OR SUPPLIES**

4                                   2007 GENERAL SESSION

5                                   STATE OF UTAH

6                                   **Chief Sponsor: Sheldon L. Killpack**

7                                   House Sponsor: Gregory H. Hughes

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9   **LONG TITLE**

10 **General Description:**

11           This bill amends the Sales and Use Tax Act to enact a sales and use tax exemption.

12 **Highlighted Provisions:**

13           This bill:

- 14           ▶ defines the term "disposable home medical equipment or supplies";
- 15           ▶ enacts a sales and use tax exemption for sales of disposable home medical
- 16 equipment or supplies; and
- 17           ▶ makes technical changes.

18 **Monies Appropriated in this Bill:**

19           None

20 **Other Special Clauses:**

21           This bill takes effect on July 1, 2007.

22 **Utah Code Sections Affected:**

23 AMENDS:

24           **59-12-102**, as last amended by Chapter 1, Laws of Utah 2006, Fourth Special Session

25           **59-12-104**, as last amended by Chapters 181, 182, 217, 218, 219, 220, 246, 268 and  
26 346, Laws of Utah 2006



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

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

30 **59-12-102. Definitions.**

31 As used in this chapter:

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

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

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

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

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

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

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

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

42 (b) Section 59-12-204;

43 (c) Section 59-12-401;

44 (d) Section 59-12-402;

45 (e) Section 59-12-501;

46 (f) Section 59-12-502;

47 (g) Section 59-12-703;

48 (h) Section 59-12-802;

49 (i) Section 59-12-804;

50 (j) Section 59-12-1001;

51 (k) Section 59-12-1102;

52 (l) Section 59-12-1302;

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

54 (n) Section 59-12-1503.

55 (5) "Aircraft" is as defined in Section 72-10-102.

56 (6) "Alcoholic beverage" means a beverage that:

57 (a) is suitable for human consumption; and

58 (b) contains .5% or more alcohol by volume.

59 (7) "Area agency on aging" is as defined in Section 62A-3-101.

60 (8) "Assisted amusement device" means an amusement device, skill device, or ride  
61 device that is started and stopped by an individual:

62 (a) who is not the purchaser or renter of the right to use or operate the amusement  
63 device, skill device, or ride device; and

64 (b) at the direction of the seller of the right to use the amusement device, skill device,  
65 or ride device.

66 (9) "Assisted cleaning or washing of tangible personal property" means cleaning or  
67 washing of tangible personal property if the cleaning or washing labor is primarily performed  
68 by an individual:

69 (a) who is not the purchaser of the cleaning or washing of the tangible personal  
70 property; and

71 (b) at the direction of the seller of the cleaning or washing of the tangible personal  
72 property.

73 (10) "Authorized carrier" means:

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

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

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

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

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

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

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

86 (B) animal waste;

87 (C) methane produced:

88 (I) at landfills; or

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

- 90 (D) aquatic plants; and
- 91 (E) agricultural products.
- 92 (b) "Biomass energy" does not include:
- 93 (i) black liquor;
- 94 (ii) treated woods; or
- 95 (iii) biomass from municipal solid waste other than methane produced:
- 96 (A) at landfills; or
- 97 (B) as a byproduct of the treatment of wastewater residuals.
- 98 (12) (a) "Bundled transaction" means the sale of two or more items of tangible personal
- 99 property if:
- 100 (i) one or more of the items of tangible personal property is food and food ingredients;
- 101 and
- 102 (ii) the items of tangible personal property are:
- 103 (A) distinct and identifiable; and
- 104 (B) sold for one price that is not itemized.
- 105 (b) "Bundled transaction" does not include the sale of tangible personal property if the
- 106 sales price varies, or is negotiable, on the basis of the selection by the purchaser of the items of
- 107 tangible personal property included in the transaction.
- 108 (c) For purposes of Subsection (12)(a)(ii)(A), tangible personal property that is distinct
- 109 and identifiable does not include:
- 110 (i) packaging that:
- 111 (A) accompanies the sale of the tangible personal property; and
- 112 (B) is incidental or immaterial to the sale of the tangible personal property;
- 113 (ii) tangible personal property provided free of charge with the purchase of another
- 114 item of tangible personal property; or
- 115 (iii) an item of tangible personal property included in the definition of "purchase
- 116 price."
- 117 (d) For purposes of Subsection (12)(c)(ii), an item of tangible personal property is
- 118 provided free of charge with the purchase of another item of tangible personal property if the
- 119 sales price of the purchased item of tangible personal property does not vary depending on the
- 120 inclusion of the tangible personal property provided free of charge.

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

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

125 (i) on a transaction; and

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

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

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

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

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

132 and

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

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

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

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

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

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

144 (17) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other  
145 fuels that does not constitute industrial use under Subsection [~~(39)~~] (40) or residential use  
146 under Subsection [~~(76)~~] (77).

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

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

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

155 (19) "Component part" includes:

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

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

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

161 (d) feed, seeds, and seedlings.

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

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

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

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

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

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

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

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

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

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

174 (i) by a seller of:

175 (A) tangible personal property; or

176 (B) services; and

177 (ii) for preparation and delivery of the tangible personal property or services described  
178 in Subsection (24)(a)(i) to a location designated by the purchaser.

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

180 (i) transportation;

181 (ii) shipping;

182 (iii) postage;

- 183 (iv) handling;
- 184 (v) crating; or
- 185 (vi) packing.
- 186 (25) "Dietary supplement" means a product, other than tobacco, that:
- 187 (a) is intended to supplement the diet;
- 188 (b) contains one or more of the following dietary ingredients:
- 189 (i) a vitamin;
- 190 (ii) a mineral;
- 191 (iii) an herb or other botanical;
- 192 (iv) an amino acid;
- 193 (v) a dietary substance for use by humans to supplement the diet by increasing the total
- 194 dietary intake; or
- 195 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
- 196 described in Subsections (25)(b)(i) through (v);
- 197 (c) (i) except as provided in Subsection (25)(c)(ii), is intended for ingestion in:
- 198 (A) tablet form;
- 199 (B) capsule form;
- 200 (C) powder form;
- 201 (D) softgel form;
- 202 (E) gelcap form; or
- 203 (F) liquid form; or
- 204 (ii) notwithstanding Subsection (25)(c)(i), if the product is not intended for ingestion in
- 205 a form described in Subsections (25)(c)(i)(A) through (F), is not represented:
- 206 (A) as conventional food; and
- 207 (B) for use as a sole item of:
- 208 (I) a meal; or
- 209 (II) the diet; and
- 210 (d) is required to be labeled as a dietary supplement:
- 211 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 212 (ii) as required by 21 C.F.R. Sec. 101.36.
- 213 (26) (a) "Direct mail" means printed material delivered or distributed by United States

214 mail or other delivery service:

215 (i) to:

216 (A) a mass audience; or

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

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

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

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

223 (27) (a) "Disposable home medical equipment or supplies" means medical equipment  
224 or supplies that:

225 (i) cannot withstand repeated use; and

226 (ii) are purchased by, for, or on behalf of a person other than:

227 (A) a health care facility as defined in Section 26-21-2;

228 (B) a health care provider as defined in Section 78-14-3;

229 (C) an office of a health care provider described in Subsection (27)(a)(ii)(B); or

230 (D) a person similar to a person described in Subsections (27)(a)(ii)(A) through (C).

231 (b) "Disposable home medical equipment or supplies" does not include:

232 (i) a drug;

233 (ii) durable medical equipment;

234 (iii) a hearing aid;

235 (iv) a hearing aid accessory;

236 (v) mobility enhancing equipment; or

237 (vi) tangible personal property used to correct impaired vision, including:

238 (A) eyeglasses; or

239 (B) contact lenses.

240 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
241 commission may by rule define what constitutes medical equipment or supplies.

242 [~~27~~] (28) (a) "Drug" means a compound, substance, or preparation, or a component of  
243 a compound, substance, or preparation that is:

244 (i) recognized in:



- 245 (A) the official United States Pharmacopoeia;
- 246 (B) the official Homeopathic Pharmacopoeia of the United States;
- 247 (C) the official National Formulary; or
- 248 (D) a supplement to a publication listed in Subsections [~~(27)~~] (28)(a)(i)(A) through
- 249 (C);
- 250 (ii) intended for use in the:
  - 251 (A) diagnosis of disease;
  - 252 (B) cure of disease;
  - 253 (C) mitigation of disease;
  - 254 (D) treatment of disease; or
  - 255 (E) prevention of disease; or
- 256 (iii) intended to affect:
  - 257 (A) the structure of the body; or
  - 258 (B) any function of the body.
- 259 (b) "Drug" does not include:
  - 260 (i) food and food ingredients;
  - 261 (ii) a dietary supplement;
  - 262 (iii) an alcoholic beverage; or
  - 263 (iv) a prosthetic device.
- 264 [~~(28)~~] (29) (a) Except as provided in Subsection [~~(28)~~] (29)(c), "durable medical
- 265 equipment" means equipment that:
  - 266 (i) can withstand repeated use;
  - 267 (ii) is primarily and customarily used to serve a medical purpose;
  - 268 (iii) generally is not useful to a person in the absence of illness or injury; and
  - 269 (iv) is not worn in or on the body.
- 270 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 271 equipment described in Subsection [~~(28)~~] (29)(a).
- 272 (c) Notwithstanding Subsection [~~(28)~~] (29)(a), "durable medical equipment" does not
- 273 include mobility enhancing equipment.
- 274 [~~(29)~~] (30) "Electronic" means:
- 275 (a) relating to technology; and

- 276 (b) having:
- 277 (i) electrical capabilities;
- 278 (ii) digital capabilities;
- 279 (iii) magnetic capabilities;
- 280 (iv) wireless capabilities;
- 281 (v) optical capabilities;
- 282 (vi) electromagnetic capabilities; or
- 283 (vii) capabilities similar to Subsections [~~(29)~~] (30)(b)(i) through (vi).
- 284 [~~(30)~~] (31) "Employee" is as defined in Section 59-10-401.
- 285 [~~(31)~~] (32) "Fixed guideway" means a public transit facility that uses and occupies:
- 286 (a) rail for the use of public transit; or
- 287 (b) a separate right-of-way for the use of public transit.
- 288 [~~(32)~~] (33) (a) "Food and food ingredients" means substances:
- 289 (i) regardless of whether the substances are in:
- 290 (A) liquid form;
- 291 (B) concentrated form;
- 292 (C) solid form;
- 293 (D) frozen form;
- 294 (E) dried form; or
- 295 (F) dehydrated form; and
- 296 (ii) that are:
- 297 (A) sold for:
- 298 (I) ingestion by humans; or
- 299 (II) chewing by humans; and
- 300 (B) consumed for the substance's:
- 301 (I) taste; or
- 302 (II) nutritional value.
- 303 (b) "Food and food ingredients" includes an item described in Subsection [~~(63)~~]
- 304 (64)(b)(iii).
- 305 (c) "Food and food ingredients" does not include:
- 306 (i) an alcoholic beverage;

- 307 (ii) tobacco; or
- 308 (iii) prepared food.
- 309 [~~(33)~~] (34) (a) "Fundraising sales" means sales:
- 310 (i) (A) made by a school; or
- 311 (B) made by a school student;
- 312 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 313 materials, or provide transportation; and
- 314 (iii) that are part of an officially sanctioned school activity.
- 315 (b) For purposes of Subsection [~~(33)~~] (34)(a)(iii), "officially sanctioned school activity"
- 316 means a school activity:
- 317 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 318 district governing the authorization and supervision of fundraising activities;
- 319 (ii) that does not directly or indirectly compensate an individual teacher or other
- 320 educational personnel by direct payment, commissions, or payment in kind; and
- 321 (iii) the net or gross revenues from which are deposited in a dedicated account
- 322 controlled by the school or school district.
- 323 [~~(34)~~] (35) "Geothermal energy" means energy contained in heat that continuously
- 324 flows outward from the earth that is used as the sole source of energy to produce electricity.
- 325 [~~(35)~~] (36) "Governing board of the agreement" means the governing board of the
- 326 agreement that is:
- 327 (a) authorized to administer the agreement; and
- 328 (b) established in accordance with the agreement.
- 329 [~~(36)~~] (37) (a) "Hearing aid" means:
- 330 (i) an instrument or device having an electronic component that is designed to:
- 331 (A) (I) improve impaired human hearing; or
- 332 (II) correct impaired human hearing; and
- 333 (B) (I) be worn in the human ear; or
- 334 (II) affixed behind the human ear;
- 335 (ii) an instrument or device that is surgically implanted into the cochlea; or
- 336 (iii) a telephone amplifying device.
- 337 (b) "Hearing aid" does not include:

338 (i) except as provided in Subsection [~~(36)~~] (37)(a)(i)(B) or [~~(36)~~] (37)(a)(ii), an  
339 instrument or device having an electronic component that is designed to be worn on the body;

340 (ii) except as provided in Subsection [~~(36)~~] (37)(a)(iii), an assistive listening device or  
341 system designed to be used by one individual, including:

342 (A) a personal amplifying system;

343 (B) a personal FM system;

344 (C) a television listening system; or

345 (D) a device or system similar to a device or system described in Subsections [~~(36)~~]

346 (37)(b)(ii)(A) through (C); or

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

349 (A) a device or system installed in:

350 (I) an auditorium;

351 (II) a church;

352 (III) a conference room;

353 (IV) a synagogue; or

354 (V) a theater; or

355 (B) a device or system similar to a device or system described in Subsections [~~(36)~~]

356 (37)(b)(iii)(A)(I) through (V).

357 [~~(37)~~] (38) (a) "Hearing aid accessory" means a hearing aid:

358 (i) component;

359 (ii) attachment; or

360 (iii) accessory.

361 (b) "Hearing aid accessory" includes:

362 (i) a hearing aid neck loop;

363 (ii) a hearing aid cord;

364 (iii) a hearing aid ear mold;

365 (iv) hearing aid tubing;

366 (v) a hearing aid ear hook; or

367 (vi) a hearing aid remote control.

368 (c) "Hearing aid accessory" does not include:

- 369 (i) a component, attachment, or accessory designed to be used only with an:  
370 (A) instrument or device described in Subsection [~~(36)~~] (37)(b)(i); or  
371 (B) assistive listening device or system described in Subsection [~~(36)~~] (37)(b)(ii) or  
372 (iii); or  
373 (ii) a hearing aid battery.
- 374 [~~(38)~~] (39) "Hydroelectric energy" means water used as the sole source of energy to  
375 produce electricity.
- 376 [~~(39)~~] (40) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil,  
377 or other fuels:
- 378 (a) in mining or extraction of minerals;  
379 (b) in agricultural operations to produce an agricultural product up to the time of  
380 harvest or placing the agricultural product into a storage facility, including:  
381 (i) commercial greenhouses;  
382 (ii) irrigation pumps;  
383 (iii) farm machinery;  
384 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not  
385 registered under Title 41, Chapter 1a, Part 2, Registration; and  
386 (v) other farming activities;  
387 (c) in manufacturing tangible personal property at an establishment described in SIC  
388 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal  
389 Executive Office of the President, Office of Management and Budget;  
390 (d) by a scrap recycler if:  
391 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process  
392 one or more of the following items into prepared grades of processed materials for use in new  
393 products:  
394 (A) iron;  
395 (B) steel;  
396 (C) nonferrous metal;  
397 (D) paper;  
398 (E) glass;  
399 (F) plastic;

400 (G) textile; or  
401 (H) rubber; and  
402 (ii) the new products under Subsection [~~(39)~~] (40)(d)(i) would otherwise be made with  
403 nonrecycled materials; or

404 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a  
405 cogeneration facility as defined in Section 54-2-1.

406 [~~(40)~~] (41) (a) Except as provided in Subsection [~~(40)~~] (41)(b), "installation charge"  
407 means a charge for installing tangible personal property.

408 (b) Notwithstanding Subsection [~~(40)~~] (41)(a), "installation charge" does not include a  
409 charge for repairs or renovations of tangible personal property.

410 [~~(41)~~] (42) (a) "Lease" or "rental" means a transfer of possession or control of tangible  
411 personal property for:

- 412 (i) (A) a fixed term; or
- 413 (B) an indeterminate term; and

414 (ii) consideration.

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

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

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

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

- 425 (A) upon completion of required payments; and
- 426 (B) if the payment of an option price does not exceed the greater of:

427 (I) \$100; or

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

429 (iii) providing tangible personal property along with an operator for a fixed period of  
430 time or an indeterminate period of time if the operator is necessary for equipment to perform as

431 designed.

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

- 434 (i) set-up of tangible personal property;  
435 (ii) maintenance of tangible personal property; or  
436 (iii) inspection of tangible personal property.

437 [~~(42)~~] (43) "Load and leave" means delivery to a purchaser by use of a tangible storage  
438 media if the tangible storage media is not physically transferred to the purchaser.

439 [~~(43)~~] (44) "Local taxing jurisdiction" means a:

- 440 (a) county that is authorized to impose an agreement sales and use tax;  
441 (b) city that is authorized to impose an agreement sales and use tax; or  
442 (c) town that is authorized to impose an agreement sales and use tax.

443 [~~(44)~~] (45) "Manufactured home" is as defined in Section 58-56-3.

444 [~~(45)~~] (46) For purposes of Section 59-12-104, "manufacturing facility" means:

445 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard  
446 Industrial Classification Manual of the federal Executive Office of the President, Office of  
447 Management and Budget;

448 (b) a scrap recycler if:

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

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

460 (ii) the new products under Subsection [~~(45)~~] (46)(b)(i) would otherwise be made with  
461 nonrecycled materials; or

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

463 [~~46~~] (47) "Member of the immediate family of the producer" means a person who is  
464 related to a producer described in Subsection 59-12-104(20)(a) as a:

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

466 (i) an adopted child or adopted stepchild; or

467 (ii) a foster child or foster stepchild;

468 (b) grandchild or stepgrandchild;

469 (c) grandparent or stepgrandparent;

470 (d) nephew or stepnephew;

471 (e) niece or stepniece;

472 (f) parent or stepparent;

473 (g) sibling or stepsibling;

474 (h) spouse;

475 (i) person who is the spouse of a person described in Subsections [~~46~~] (47)(a) through  
476 (g); or

477 (j) person similar to a person described in Subsections [~~46~~] (47)(a) through (i) as  
478 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah  
479 Administrative Rulemaking Act.

480 [~~47~~] (48) "Mobile home" is as defined in Section 58-56-3.

481 [~~48~~] (49) "Mobile telecommunications service" is as defined in the Mobile  
482 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

483 [~~49~~] (50) (a) Except as provided in Subsection [~~49~~] (50)(c), "mobility enhancing  
484 equipment" means equipment that is:

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

487 (ii) appropriate for use in a:

488 (A) home; or

489 (B) motor vehicle; and

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

491 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of  
492 the equipment described in Subsection [~~49~~] (50)(a).



493 (c) Notwithstanding Subsection [~~(49)~~] (50)(a), "mobility enhancing equipment" does  
494 not include:

495 (i) a motor vehicle;

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

498 (iii) durable medical equipment; or

499 (iv) a prosthetic device.

500 [~~(50)~~] (51) "Model 1 seller" means a seller that has selected a certified service provider  
501 as the seller's agent to perform all of the seller's sales and use tax functions for agreement sales  
502 and use taxes other than the seller's obligation under Section 59-12-107.4 to remit a tax on the  
503 seller's own purchases.

504 [~~(51)~~] (52) "Model 2 seller" means a seller that:

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

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

509 (i) collected by the seller; and

510 (ii) to the appropriate local taxing jurisdiction.

511 [~~(52)~~] (53) (a) Subject to Subsection [~~(52)~~] (53)(b), "model 3 seller" means a seller that  
512 has:

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

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

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

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

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

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

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

521 [~~(53)~~] (54) "Modular home" means a modular unit as defined in Section 58-56-3.

522 [~~(54)~~] (55) "Motor vehicle" is as defined in Section 41-1a-102.

523 [~~(55)~~] (56) "Oil shale" means a group of fine black to dark brown shales containing

524 bituminous material that yields petroleum upon distillation.

525 ~~[(56)]~~ (57) (a) "Other fuels" means products that burn independently to produce heat or  
526 energy.

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

529 ~~[(57)]~~ (58) "Pawnbroker" is as defined in Section 13-32a-102.

530 ~~[(58)]~~ (59) "Pawn transaction" is as defined in Section 13-32a-102.

531 ~~[(59)]~~ (60) (a) "Permanently attached to real property" means that for tangible personal  
532 property attached to real property:

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

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

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

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

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

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

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

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

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

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

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

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

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

- 555 (B) a hot water heater;
- 556 (C) a water softener system; or
- 557 (D) a water filtration system, other than a water filtration system manufactured as part  
558 of a refrigerator.
- 559 (c) "Permanently attached to real property" does not include:
- 560 (i) the attachment of portable or movable tangible personal property to real property if  
561 that portable or movable tangible personal property is attached to real property only for:
- 562 (A) convenience;
- 563 (B) stability; or
- 564 (C) for an obvious temporary purpose;
- 565 (ii) the detachment of tangible personal property from real property other than the  
566 detachment described in Subsection [~~59~~] (60)(b)(ii); or
- 567 (iii) an attachment of the following tangible personal property to real property if the  
568 attachment to real property is only through a line that supplies water, electricity, gas, telephone,  
569 cable, or supplies a similar item as determined by the commission by rule made in accordance  
570 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:
- 571 (A) a refrigerator;
- 572 (B) a washer;
- 573 (C) a dryer;
- 574 (D) a stove;
- 575 (E) a television;
- 576 (F) a computer;
- 577 (G) a telephone; or
- 578 (H) tangible personal property similar to Subsections [~~59~~] (60)(c)(iii)(A) through (G)  
579 as determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah  
580 Administrative Rulemaking Act.
- 581 [~~60~~] (61) "Person" includes any individual, firm, partnership, joint venture,  
582 association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county,  
583 city, municipality, district, or other local governmental entity of the state, or any group or  
584 combination acting as a unit.
- 585 [~~61~~] (62) "Place of primary use":

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

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

593 ~~[(62)]~~ (63) "Postproduction" means an activity related to the finishing or duplication of  
594 a medium described in Subsection 59-12-104(56)(a).

595 ~~[(63)]~~ (64) (a) "Prepared food" means:

- 596 (i) food:
  - 597 (A) sold in a heated state; or
  - 598 (B) heated by a seller;
- 599 (ii) two or more food ingredients mixed or combined by the seller for sale as a single  
600 item; or

601 (iii) except as provided in Subsection ~~[(63)]~~ (64)(c), food sold with an eating utensil  
602 provided by the seller, including a:

- 603 (A) plate;
- 604 (B) knife;
- 605 (C) fork;
- 606 (D) spoon;
- 607 (E) glass;
- 608 (F) cup;
- 609 (G) napkin; or
- 610 (H) straw.

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

- 612 (i) food that a seller only:
  - 613 (A) cuts;
  - 614 (B) repackages; or
  - 615 (C) pasteurizes; or
- 616 (ii) (A) the following:

- 617 (I) raw egg;
- 618 (II) raw fish;
- 619 (III) raw meat;
- 620 (IV) raw poultry; or
- 621 (V) a food containing an item described in Subsections [~~63~~] (64)(b)(ii)(A)(I) through
- 622 (IV); and
- 623 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 624 Food and Drug Administration's Food Code that a consumer cook the items described in
- 625 Subsection [~~63~~] (64)(b)(ii)(A) to prevent food borne illness; or
- 626 (iii) the following if sold without eating utensils provided by the seller:
- 627 (A) food and food ingredients sold by a seller if the seller's proper primary
- 628 classification under the 2002 North American Industry Classification System of the federal
- 629 Executive Office of the President, Office of Management and Budget, is manufacturing in
- 630 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
- 631 Manufacturing;
- 632 (B) food and food ingredients sold in an unheated state:
- 633 (I) by weight or volume; and
- 634 (II) as a single item; or
- 635 (C) a bakery item, including:
- 636 (I) a bagel;
- 637 (II) a bar;
- 638 (III) a biscuit;
- 639 (IV) bread;
- 640 (V) a bun;
- 641 (VI) a cake;
- 642 (VII) a cookie;
- 643 (VIII) a croissant;
- 644 (IX) a danish;
- 645 (X) a donut;
- 646 (XI) a muffin;
- 647 (XII) a pastry;

648 (XIII) a pie;  
649 (XIV) a roll;  
650 (XV) a tart;  
651 (XVI) a torte; or  
652 (XVII) a tortilla.  
653 (c) Notwithstanding Subsection [~~(63)~~] (64)(a)(iii), an eating utensil provided by the  
654 seller does not include the following used to transport the food:  
655 (i) a container; or  
656 (ii) packaging.  
657 [~~(64)~~] (65) "Prescription" means an order, formula, or recipe that is issued:  
658 (a) (i) orally;  
659 (ii) in writing;  
660 (iii) electronically; or  
661 (iv) by any other manner of transmission; and  
662 (b) by a licensed practitioner authorized by the laws of a state.  
663 [~~(65)~~] (66) (a) Except as provided in Subsection [~~(65)~~] (66)(b)(ii) or (iii), "prewritten  
664 computer software" means computer software that is not designed and developed:  
665 (i) by the author or other creator of the computer software; and  
666 (ii) to the specifications of a specific purchaser.  
667 (b) "Prewritten computer software" includes:  
668 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer  
669 software is not designed and developed:  
670 (A) by the author or other creator of the computer software; and  
671 (B) to the specifications of a specific purchaser;  
672 (ii) notwithstanding Subsection [~~(65)~~] (66)(a), computer software designed and  
673 developed by the author or other creator of the computer software to the specifications of a  
674 specific purchaser if the computer software is sold to a person other than the purchaser; or  
675 (iii) notwithstanding Subsection [~~(65)~~] (66)(a) and except as provided in Subsection  
676 [~~(65)~~] (66)(c), prewritten computer software or a prewritten portion of prewritten computer  
677 software:  
678 (A) that is modified or enhanced to any degree; and

679 (B) if the modification or enhancement described in Subsection [~~(65)~~] (66)(b)(iii)(A) is  
680 designed and developed to the specifications of a specific purchaser.

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

684 (i) reasonable; and

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

687 [~~(66)~~] (67) (a) "Prosthetic device" means a device that is worn on or in the body to:

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

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

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

691 (b) "Prosthetic device" includes:

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

693 (ii) replacement parts for a prosthetic device.

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

695 (i) corrective eyeglasses;

696 (ii) contact lenses;

697 (iii) hearing aids; or

698 (iv) dental prostheses.

699 [~~(67)~~] (68) (a) "Protective equipment" means an item:

700 (i) for human wear; and

701 (ii) that is:

702 (A) designed as protection:

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

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

705 (B) not suitable for general use.

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

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

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

710 under the agreement.

711 [~~68~~] (69) (a) "Purchase price" and "sales price" mean the total amount of  
712 consideration:

713 (i) valued in money; and

714 (ii) for which tangible personal property or services are:

715 (A) sold;

716 (B) leased; or

717 (C) rented.

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

719 (i) the seller's cost of the tangible personal property or services sold;

720 (ii) expenses of the seller, including:

721 (A) the cost of materials used;

722 (B) a labor cost;

723 (C) a service cost;

724 (D) interest;

725 (E) a loss;

726 (F) the cost of transportation to the seller; or

727 (G) a tax imposed on the seller; or

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

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

730 (i) a discount:

731 (A) in a form including:

732 (I) cash;

733 (II) term; or

734 (III) coupon;

735 (B) that is allowed by a seller;

736 (C) taken by a purchaser on a sale; and

737 (D) that is not reimbursed by a third party; or

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

740 (A) the amount of a trade-in;



- 741 (B) the following from credit extended on the sale of tangible personal property or  
742 services:
- 743 (I) interest charges;
  - 744 (II) financing charges; or
  - 745 (III) carrying charges;
  - 746 (C) a tax or fee legally imposed directly on the consumer;
  - 747 (D) a delivery charge; or
  - 748 (E) an installation charge.
- 749 [~~(69)~~] (70) "Purchaser" means a person to whom:
- 750 (a) a sale of tangible personal property is made; or
  - 751 (b) a service is furnished.
- 752 [~~(70)~~] (71) "Regularly rented" means:
- 753 (a) rented to a guest for value three or more times during a calendar year; or
  - 754 (b) advertised or held out to the public as a place that is regularly rented to guests for  
755 value.
- 756 [~~(71)~~] (72) "Renewable energy" means:
- 757 (a) biomass energy;
  - 758 (b) hydroelectric energy;
  - 759 (c) geothermal energy;
  - 760 (d) solar energy; or
  - 761 (e) wind energy.
- 762 [~~(72)~~] (73) (a) "Renewable energy production facility" means a facility that:
- 763 (i) uses renewable energy to produce electricity; and
  - 764 (ii) has a production capacity of 20 kilowatts or greater.
- 765 (b) A facility is a renewable energy production facility regardless of whether the  
766 facility is:
- 767 (i) connected to an electric grid; or
  - 768 (ii) located on the premises of an electricity consumer.
- 769 [~~(73)~~] (74) "Rental" is as defined in Subsection [~~(41)~~] (42).
- 770 [~~(74)~~] (75) "Repairs or renovations of tangible personal property" means:
- 771 (a) a repair or renovation of tangible personal property that is not permanently attached

772 to real property; or

773 (b) attaching tangible personal property to other tangible personal property if the other  
774 tangible personal property to which the tangible personal property is attached is not  
775 permanently attached to real property.

776 [~~75~~] (76) "Research and development" means the process of inquiry or  
777 experimentation aimed at the discovery of facts, devices, technologies, or applications and the  
778 process of preparing those devices, technologies, or applications for marketing.

779 [~~76~~] (77) "Residential use" means the use in or around a home, apartment building,  
780 sleeping quarters, and similar facilities or accommodations.

781 [~~77~~] (78) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose  
782 other than:

- 783 (a) resale;
- 784 (b) sublease; or
- 785 (c) subrent.

786 [~~78~~] (79) (a) "Retailer" means any person engaged in a regularly organized business  
787 in tangible personal property or any other taxable transaction under Subsection 59-12-103(1),  
788 and who is selling to the user or consumer and not for resale.

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

791 [~~79~~] (80) (a) "Sale" means any transfer of title, exchange, or barter, conditional or  
792 otherwise, in any manner, of tangible personal property or any other taxable transaction under  
793 Subsection 59-12-103(1), for consideration.

794 (b) "Sale" includes:

- 795 (i) installment and credit sales;
- 796 (ii) any closed transaction constituting a sale;
- 797 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this  
798 chapter;

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

801 (v) any transaction under which right to possession, operation, or use of any article of  
802 tangible personal property is granted under a lease or contract and the transfer of possession

803 would be taxable if an outright sale were made.

804 ~~[(80)]~~ (81) "Sale at retail" is as defined in Subsection ~~[(77)]~~ (78).

805 ~~[(81)]~~ (82) "Sale-leaseback transaction" means a transaction by which title to tangible  
806 personal property that is subject to a tax under this chapter is transferred:

807 (a) by a purchaser-lessee;

808 (b) to a lessor;

809 (c) for consideration; and

810 (d) if:

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

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

815 (A) for the property; and

816 (B) to the purchaser-lessee; and

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

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

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

821 ~~[(82)]~~ (83) "Sales price" is as defined in Subsection ~~[(68)]~~ (69).

822 ~~[(83)]~~ (84) (a) "Sales relating to schools" means the following sales by, amounts paid  
823 to, or amounts charged by a school:

824 (i) sales that are directly related to the school's educational functions or activities  
825 including:

826 (A) the sale of:

827 (I) textbooks;

828 (II) textbook fees;

829 (III) laboratory fees;

830 (IV) laboratory supplies; or

831 (V) safety equipment;

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

833 that:

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

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

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

840 (I) food and food ingredients; or

841 (II) prepared food; or

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

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

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

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

847 (ii) except as provided in Subsection [~~(83)~~] (84)(a)(i)(B):

848 (A) clothing;

849 (B) clothing accessories or equipment;

850 (C) protective equipment; or

851 (D) sports or recreational equipment; or

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

854 (A) other than a:

855 (I) school;

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

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

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

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

863 [~~(84)~~] (85) For purposes of this section and Section 59-12-104, "school" means:

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

- 865 (i) is a:
- 866 (A) public school; or
- 867 (B) private school; and
- 868 (ii) provides instruction for one or more grades kindergarten through 12; or
- 869 (b) a public school district.
- 870 [~~85~~] (86) "Seller" means a person that makes a sale, lease, or rental of:
- 871 (a) tangible personal property; or
- 872 (b) a service.
- 873 [~~86~~] (87) (a) "Semiconductor fabricating, processing, research, or development
- 874 materials" means tangible personal property:
- 875 (i) used primarily in the process of:
- 876 (A) (I) manufacturing a semiconductor;
- 877 (II) fabricating a semiconductor; or
- 878 (III) research or development of a:
- 879 (Aa) semiconductor; or
- 880 (Bb) semiconductor manufacturing process; or
- 881 (B) maintaining an environment suitable for a semiconductor; or
- 882 (ii) consumed primarily in the process of:
- 883 (A) (I) manufacturing a semiconductor;
- 884 (II) fabricating a semiconductor; or
- 885 (III) research or development of a:
- 886 (Aa) semiconductor; or
- 887 (Bb) semiconductor manufacturing process; or
- 888 (B) maintaining an environment suitable for a semiconductor.
- 889 (b) "Semiconductor fabricating, processing, research, or development materials"
- 890 includes:
- 891 (i) parts used in the repairs or renovations of tangible personal property described in
- 892 Subsection [~~86~~] (87)(a); or
- 893 (ii) a chemical, catalyst, or other material used to:
- 894 (A) produce or induce in a semiconductor a:
- 895 (I) chemical change; or

896 (II) physical change;

897 (B) remove impurities from a semiconductor; or

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

899 ~~[(87)]~~ (88) "Senior citizen center" means a facility having the primary purpose of

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

901 ~~[(88)]~~ (89) "Simplified electronic return" means the electronic return:

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

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

904 ~~[(89)]~~ (90) "Solar energy" means the sun used as the sole source of energy for

905 producing electricity.

906 ~~[(90)]~~ (91) (a) "Sports or recreational equipment" means an item:

907 (i) designed for human use; and

908 (ii) that is:

909 (A) worn in conjunction with:

910 (I) an athletic activity; or

911 (II) a recreational activity; and

912 (B) not suitable for general use.

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

914 commission shall make rules:

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

916 (ii) that are consistent with the list of items that constitute "sports or recreational

917 equipment" under the agreement.

918 ~~[(91)]~~ (92) "State" means the state of Utah, its departments, and agencies.

919 ~~[(92)]~~ (93) "Storage" means any keeping or retention of tangible personal property or

920 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose

921 except sale in the regular course of business.

922 ~~[(93)]~~ (94) (a) "Tangible personal property" means personal property that:

923 (i) may be:

924 (A) seen;

925 (B) weighed;

926 (C) measured;

- 927 (D) felt; or
- 928 (E) touched; or
- 929 (ii) is in any manner perceptible to the senses.
- 930 (b) "Tangible personal property" includes:
- 931 (i) electricity;
- 932 (ii) water;
- 933 (iii) gas;
- 934 (iv) steam; or
- 935 (v) prewritten computer software.
- 936 [~~94~~] 95 "Tar sands" means impregnated sands that yield mixtures of liquid
- 937 hydrocarbon and require further processing other than mechanical blending before becoming
- 938 finished petroleum products.
- 939 [~~95~~] 96 (a) "Telecommunications enabling or facilitating equipment, machinery, or
- 940 software" means an item listed in Subsection [~~95~~] 96(b) if that item is purchased or leased
- 941 primarily to enable or facilitate one or more of the following to function:
- 942 (i) telecommunications switching or routing equipment, machinery, or software; or
- 943 (ii) telecommunications transmission equipment, machinery, or software.
- 944 (b) The following apply to Subsection [~~95~~] 96(a):
- 945 (i) a pole;
- 946 (ii) software;
- 947 (iii) a supplementary power supply;
- 948 (iv) temperature or environmental equipment or machinery;
- 949 (v) test equipment;
- 950 (vi) a tower; or
- 951 (vii) equipment, machinery, or software that functions similarly to an item listed in
- 952 Subsections [~~95~~] 96(b)(i) through (vi) as determined by the commission by rule made in
- 953 accordance with Subsection [~~95~~] 96(c).
- 954 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 955 commission may by rule define what constitutes equipment, machinery, or software that
- 956 functions similarly to an item listed in Subsections [~~95~~] 96(b)(i) through (vi).
- 957 [~~96~~] 97 "Telecommunications equipment, machinery, or software required for 911

958 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.  
959 Sec. 20.18.

960 ~~[(97)]~~ (98) "Telecommunications maintenance or repair equipment, machinery, or  
961 software" means equipment, machinery, or software purchased or leased primarily to maintain  
962 or repair one or more of the following, regardless of whether the equipment, machinery, or  
963 software is purchased or leased as a spare part or as an upgrade or modification to one or more  
964 of the following:

- 965 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 966 (b) telecommunications switching or routing equipment, machinery, or software; or
- 967 (c) telecommunications transmission equipment, machinery, or software.

968 ~~[(98)]~~ (99) (a) "Telecommunications switching or routing equipment, machinery, or  
969 software" means an item listed in Subsection ~~[(98)]~~ (99)(b) if that item is purchased or leased  
970 primarily for switching or routing:

- 971 (i) voice communications;
- 972 (ii) data communications; or
- 973 (iii) telephone service.

974 (b) The following apply to Subsection ~~[(98)]~~ (99)(a):

- 975 (i) a bridge;
- 976 (ii) a computer;
- 977 (iii) a cross connect;
- 978 (iv) a modem;
- 979 (v) a multiplexer;
- 980 (vi) plug in circuitry;
- 981 (vii) a router;
- 982 (viii) software;
- 983 (ix) a switch; or

984 (x) equipment, machinery, or software that functions similarly to an item listed in  
985 Subsections ~~[(98)]~~ (99)(b)(i) through (ix) as determined by the commission by rule made in  
986 accordance with Subsection ~~[(98)]~~ (99)(c).

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



989 functions similarly to an item listed in Subsections [~~(98)~~] (99)(b)(i) through (ix).

990 [~~(99)~~] (100) (a) "Telecommunications transmission equipment, machinery, or  
991 software" means an item listed in Subsection [~~(99)~~] (100)(b) if that item is purchased or leased  
992 primarily for sending, receiving, or transporting:

993 (i) voice communications;

994 (ii) data communications; or

995 (iii) telephone service.

996 (b) The following apply to Subsection [~~(99)~~] (100)(a):

997 (i) an amplifier;

998 (ii) a cable;

999 (iii) a closure;

1000 (iv) a conduit;

1001 (v) a controller;

1002 (vi) a duplexer;

1003 (vii) a filter;

1004 (viii) an input device;

1005 (ix) an input/output device;

1006 (x) an insulator;

1007 (xi) microwave machinery or equipment;

1008 (xii) an oscillator;

1009 (xiii) an output device;

1010 (xiv) a pedestal;

1011 (xv) a power converter;

1012 (xvi) a power supply;

1013 (xvii) a radio channel;

1014 (xviii) a radio receiver;

1015 (xix) a radio transmitter;

1016 (xx) a repeater;

1017 (xxi) software;

1018 (xxii) a terminal;

1019 (xxiii) a timing unit;

1020 (xxiv) a transformer;  
1021 (xxv) a wire; or  
1022 (xxvi) equipment, machinery, or software that functions similarly to an item listed in  
1023 Subsections [~~99~~] (100)(b)(i) through (xxv) as determined by the commission by rule made in  
1024 accordance with Subsection [~~99~~] (100)(c).

1025 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
1026 commission may by rule define what constitutes equipment, machinery, or software that  
1027 functions similarly to an item listed in Subsections [~~99~~] (100)(b)(i) through (xxv).

1028 [~~100~~] (101) (a) "Telephone service" means a two-way transmission:

1029 (i) by:

1030 (A) wire;

1031 (B) radio;

1032 (C) lightwave; or

1033 (D) other electromagnetic means; and

1034 (ii) of one or more of the following:

1035 (A) a sign;

1036 (B) a signal;

1037 (C) writing;

1038 (D) an image;

1039 (E) sound;

1040 (F) a message;

1041 (G) data; or

1042 (H) other information of any nature.

1043 (b) "Telephone service" includes:

1044 (i) mobile telecommunications service;

1045 (ii) private communications service; or

1046 (iii) automated digital telephone answering service.

1047 (c) "Telephone service" does not include a service or a transaction that a state or a  
1048 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet  
1049 Tax Freedom Act, Pub. L. No. 105-277.

1050 [~~101~~] (102) Notwithstanding where a call is billed or paid, "telephone service

1051 address" means:

1052 (a) if the location described in this Subsection [~~(101)~~] (102)(a) is known, the location  
1053 of the telephone service equipment:

1054 (i) to which a call is charged; and

1055 (ii) from which the call originates or terminates;

1056 (b) if the location described in Subsection [~~(101)~~] (102)(a) is not known but the  
1057 location described in this Subsection [~~(101)~~] (102)(b) is known, the location of the origination  
1058 point of the signal of the telephone service first identified by:

1059 (i) the telecommunications system of the seller; or

1060 (ii) if the system used to transport the signal is not that of the seller, information  
1061 received by the seller from its service provider; or

1062 (c) if the locations described in Subsection [~~(101)~~] (102)(a) or (b) are not known, the  
1063 location of a purchaser's primary place of use.

1064 [~~(102)~~] (103) (a) "Telephone service provider" means a person that:

1065 (i) owns, controls, operates, or manages a telephone service; and

1066 (ii) engages in an activity described in Subsection [~~(102)~~] (103)(a)(i) for the shared use  
1067 with or resale to any person of the telephone service.

1068 (b) A person described in Subsection [~~(102)~~] (103)(a) is a telephone service provider  
1069 whether or not the Public Service Commission of Utah regulates:

1070 (i) that person; or

1071 (ii) the telephone service that the person owns, controls, operates, or manages.

1072 [~~(103)~~] (104) "Tobacco" means:

1073 (a) a cigarette;

1074 (b) a cigar;

1075 (c) chewing tobacco;

1076 (d) pipe tobacco; or

1077 (e) any other item that contains tobacco.

1078 [~~(104)~~] (105) "Unassisted amusement device" means an amusement device, skill

1079 device, or ride device that is started and stopped by the purchaser or renter of the right to use or  
1080 operate the amusement device, skill device, or ride device.

1081 [~~(105)~~] (106) (a) "Use" means the exercise of any right or power over tangible personal

1082 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that  
1083 property, item, or service.

1084 (b) "Use" does not include the sale, display, demonstration, or trial of that property in  
1085 the regular course of business and held for resale.

1086 [~~(106)~~] (107) (a) Subject to Subsection [~~(106)~~] (107)(b), "vehicle" means the following  
1087 that are required to be titled, registered, or titled and registered:

- 1088 (i) an aircraft as defined in Section 72-10-102;
- 1089 (ii) a vehicle as defined in Section 41-1a-102;
- 1090 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1091 (iv) a vessel as defined in Section 41-1a-102.

1092 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

- 1093 (i) a vehicle described in Subsection [~~(106)~~] (107)(a); or
- 1094 (ii) (A) a locomotive;
- 1095 (B) a freight car;
- 1096 (C) railroad work equipment; or
- 1097 (D) other railroad rolling stock.

1098 [~~(107)~~] (108) "Vehicle dealer" means a person engaged in the business of buying,  
1099 selling, or exchanging a vehicle as defined in Subsection [~~(106)~~] (107).

1100 [~~(108)~~] (109) (a) Except as provided in Subsection [~~(108)~~] (109)(b), "waste energy  
1101 facility" means a facility that generates electricity:

- 1102 (i) using as the primary source of energy waste materials that would be placed in a  
1103 landfill or refuse pit if it were not used to generate electricity, including:
  - 1104 (A) tires;
  - 1105 (B) waste coal; or
  - 1106 (C) oil shale; and
- 1107 (ii) in amounts greater than actually required for the operation of the facility.

1108 (b) "Waste energy facility" does not include a facility that incinerates:

- 1109 (i) municipal solid waste;
- 1110 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or
- 1111 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1112 [~~(109)~~] (110) "Watercraft" means a vessel as defined in Section 73-18-2.

1113 [~~(H0)~~] (111) "Wind energy" means wind used as the sole source of energy to produce  
1114 electricity.

1115 [~~(H1)~~] (112) "ZIP Code" means a Zoning Improvement Plan Code assigned to a  
1116 geographic location by the United States Postal Service.

1117 Section 2. Section **59-12-104** is amended to read:

1118 **59-12-104. Exemptions.**

1119 The following sales and uses are exempt from the taxes imposed by this chapter:

1120 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax  
1121 under Chapter 13, Motor and Special Fuel Tax Act;

1122 (2) sales to the state, its institutions, and its political subdivisions; however, this  
1123 exemption does not apply to sales of:

1124 (a) construction materials except:

1125 (i) construction materials purchased by or on behalf of institutions of the public  
1126 education system as defined in Utah Constitution Article X, Section 2, provided the  
1127 construction materials are clearly identified and segregated and installed or converted to real  
1128 property which is owned by institutions of the public education system; and

1129 (ii) construction materials purchased by the state, its institutions, or its political  
1130 subdivisions which are installed or converted to real property by employees of the state, its  
1131 institutions, or its political subdivisions; or

1132 (b) tangible personal property in connection with the construction, operation,  
1133 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities  
1134 providing additional project capacity, as defined in Section 11-13-103;

1135 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:

1136 (i) the proceeds of each sale do not exceed \$1; and

1137 (ii) the seller or operator of the vending machine reports an amount equal to 150% of  
1138 the cost of the item described in Subsection (3)(b) as goods consumed; and

1139 (b) Subsection (3)(a) applies to:

1140 (i) food and food ingredients; or

1141 (ii) prepared food;

1142 (4) sales of the following to a commercial airline carrier for in-flight consumption:

1143 (a) food and food ingredients;

- 1144 (b) prepared food; or
- 1145 (c) services related to Subsection (4)(a) or (b);
- 1146 (5) sales of parts and equipment for installation in aircraft operated by common carriers
- 1147 in interstate or foreign commerce;
- 1148 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
- 1149 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
- 1150 exhibitor, distributor, or commercial television or radio broadcaster;
- 1151 (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal
- 1152 property if the cleaning or washing of the tangible personal property is not assisted cleaning or
- 1153 washing of tangible personal property;
- 1154 (b) if a seller that sells at the same business location assisted cleaning or washing of
- 1155 tangible personal property and cleaning or washing of tangible personal property that is not
- 1156 assisted cleaning or washing of tangible personal property, the exemption described in
- 1157 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning
- 1158 or washing of the tangible personal property; and
- 1159 (c) for purposes of Subsection (7)(b) and in accordance with Title 63, Chapter 46a,
- 1160 Utah Administrative Rulemaking Act, the commission may make rules:
- 1161 (i) governing the circumstances under which sales are at the same business location;
- 1162 and
- 1163 (ii) establishing the procedures and requirements for a seller to separately account for
- 1164 sales of assisted cleaning or washing of tangible personal property;
- 1165 (8) sales made to or by religious or charitable institutions in the conduct of their regular
- 1166 religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are
- 1167 fulfilled;
- 1168 (9) sales of a vehicle of a type required to be registered under the motor vehicle laws of
- 1169 this state if the vehicle is both not:
- 1170 (a) registered in this state; and
- 1171 (b) used in this state except as necessary to transport the vehicle to the borders of this
- 1172 state;
- 1173 (10) (a) amounts paid for an item described in Subsection (10)(b) if:
- 1174 (i) the item is intended for human use; and

- 1175 (ii) (A) a prescription was issued for the item; or
- 1176 (B) the item was purchased by a hospital or other medical facility; and
- 1177 (b) (i) Subsection (10)(a) applies to:
- 1178 (A) a drug;
- 1179 (B) a syringe; or
- 1180 (C) a stoma supply; and
- 1181 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 1182 commission may by rule define the terms:
- 1183 (A) "syringe"; or
- 1184 (B) "stoma supply";
- 1185 (11) sales or use of property, materials, or services used in the construction of or
- 1186 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;
- 1187 (12) (a) sales of an item described in Subsection (12)(c) served by:
- 1188 (i) the following if the item described in Subsection (12)(c) is not available to the
- 1189 general public:
- 1190 (A) a church; or
- 1191 (B) a charitable institution;
- 1192 (ii) an institution of higher education if:
- 1193 (A) the item described in Subsection (12)(c) is not available to the general public; or
- 1194 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
- 1195 offered by the institution of higher education; or
- 1196 (b) sales of an item described in Subsection (12)(c) provided for a patient by:
- 1197 (i) a medical facility; or
- 1198 (ii) a nursing facility; and
- 1199 (c) Subsections (12)(a) and (b) apply to:
- 1200 (i) food and food ingredients;
- 1201 (ii) prepared food; or
- 1202 (iii) alcoholic beverages;
- 1203 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property
- 1204 by a person:
- 1205 (i) regardless of the number of transactions involving the sale of that tangible personal

1206 property by that person; and

1207 (ii) not regularly engaged in the business of selling that type of tangible personal  
1208 property;

1209 (b) this Subsection (13) does not apply if:

1210 (i) the sale is one of a series of sales of a character to indicate that the person is  
1211 regularly engaged in the business of selling that type of tangible personal property;

1212 (ii) the person holds that person out as regularly engaged in the business of selling that  
1213 type of tangible personal property;

1214 (iii) the person sells an item of tangible personal property that the person purchased as  
1215 a sale that is exempt under Subsection (25); or

1216 (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of  
1217 this state in which case the tax is based upon:

1218 (A) the bill of sale or other written evidence of value of the vehicle or vessel being  
1219 sold; or

1220 (B) in the absence of a bill of sale or other written evidence of value, the fair market  
1221 value of the vehicle or vessel being sold at the time of the sale as determined by the  
1222 commission; and

1223 (c) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
1224 commission shall make rules establishing the circumstances under which:

1225 (i) a person is regularly engaged in the business of selling a type of tangible personal  
1226 property;

1227 (ii) a sale of tangible personal property is one of a series of sales of a character to  
1228 indicate that a person is regularly engaged in the business of selling that type of tangible  
1229 personal property; or

1230 (iii) a person holds that person out as regularly engaged in the business of selling a type  
1231 of tangible personal property;

1232 (14) (a) except as provided in Subsection (14)(b), amounts paid or charged on or after  
1233 July 1, 2006, for a purchase or lease by a manufacturing facility other than a cogeneration  
1234 facility, for the following:

1235 (i) machinery and equipment that:

1236 (A) is used:



1237 (I) for a manufacturing facility other than a manufacturing facility that is a scrap  
1238 recycler described in Subsection 59-12-102[(45)](46)(b):  
1239 (Aa) in the manufacturing process; and  
1240 (Bb) to manufacture an item sold as tangible personal property; or  
1241 (II) for a manufacturing facility that is a scrap recycler described in Subsection  
1242 59-12-102[(45)](46)(b), to process an item sold as tangible personal property; and  
1243 (B) has an economic life of three or more years; and  
1244 (ii) normal operating repair or replacement parts that:  
1245 (A) have an economic life of three or more years; and  
1246 (B) are used:  
1247 (I) for a manufacturing facility in the state other than a manufacturing facility that is a  
1248 scrap recycler described in Subsection 59-12-102[(45)](46)(b), in the manufacturing process;  
1249 or  
1250 (II) for a manufacturing facility in the state that is a scrap recycler described in  
1251 Subsection 59-12-102[(45)](46)(b), to process an item sold as tangible personal property;  
1252 (b) (i) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a  
1253 manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006,  
1254 for the following:  
1255 (A) machinery and equipment that:  
1256 (I) is used:  
1257 (Aa) in the manufacturing process; and  
1258 (Bb) to manufacture an item sold as tangible personal property; and  
1259 (II) has an economic life of three or more years; and  
1260 (B) normal operating repair or replacement parts that:  
1261 (I) are used in the manufacturing process in a manufacturing facility in the state; and  
1262 (II) have an economic life of three or more years; and  
1263 (ii) for amounts paid or charged on or after July 1, 2005, but on or before June 30,  
1264 2006, for a purchase or lease described in Subsection (14)(b)(i), a cogeneration facility may  
1265 claim the exemption allowed by Subsection (14)(b)(i) by filing for a refund:  
1266 (A) for sales and use taxes paid under this chapter on the purchase or lease payment;  
1267 and

1268 (B) in accordance with Section 59-12-110;

1269 (c) for purposes of this Subsection (14) and in accordance with Title 63, Chapter 46a,

1270 Utah Administrative Rulemaking Act, the commission:

1271 (i) shall by rule define the term "establishment"; and

1272 (ii) may by rule define what constitutes processing an item sold as tangible personal

1273 property; and

1274 (d) on or before October 1, 1991, and every five years after October 1, 1991, the

1275 commission shall:

1276 (i) review the exemptions described in this Subsection (14) and make

1277 recommendations to the Revenue and Taxation Interim Committee concerning whether the

1278 exemptions should be continued, modified, or repealed; and

1279 (ii) include in its report:

1280 (A) the cost of the exemptions;

1281 (B) the purpose and effectiveness of the exemptions; and

1282 (C) the benefits of the exemptions to the state;

1283 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:

1284 (i) tooling;

1285 (ii) special tooling;

1286 (iii) support equipment;

1287 (iv) special test equipment; or

1288 (v) parts used in the repairs or renovations of tooling or equipment described in

1289 Subsections (15)(a)(i) through (iv); and

1290 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:

1291 (i) the tooling, equipment, or parts are used or consumed exclusively in the

1292 performance of any aerospace or electronics industry contract with the United States

1293 government or any subcontract under that contract; and

1294 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),

1295 title to the tooling, equipment, or parts is vested in the United States government as evidenced

1296 by:

1297 (A) a government identification tag placed on the tooling, equipment, or parts; or

1298 (B) listing on a government-approved property record if placing a government

1299 identification tag on the tooling, equipment, or parts is impractical;  
1300           (16) sales of newspapers or newspaper subscriptions;  
1301           (17) (a) except as provided in Subsection (17)(b), tangible personal property traded in  
1302 as full or part payment of the purchase price, except that for purposes of calculating sales or use  
1303 tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and  
1304 the tax is based upon:  
1305           (i) the bill of sale or other written evidence of value of the vehicle being sold and the  
1306 vehicle being traded in; or  
1307           (ii) in the absence of a bill of sale or other written evidence of value, the then existing  
1308 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the  
1309 commission; and  
1310           (b) notwithstanding Subsection (17)(a), Subsection (17)(a) does not apply to the  
1311 following items of tangible personal property traded in as full or part payment of the purchase  
1312 price:  
1313           (i) money;  
1314           (ii) electricity;  
1315           (iii) water;  
1316           (iv) gas; or  
1317           (v) steam;  
1318           (18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property  
1319 used or consumed primarily and directly in farming operations, regardless of whether the  
1320 tangible personal property:  
1321           (A) becomes part of real estate; or  
1322           (B) is installed by a:  
1323           (I) farmer;  
1324           (II) contractor; or  
1325           (III) subcontractor; or  
1326           (ii) sales of parts used in the repairs or renovations of tangible personal property if the  
1327 tangible personal property is exempt under Subsection (18)(a)(i); and  
1328           (b) notwithstanding Subsection (18)(a), amounts paid or charged for the following  
1329 tangible personal property are subject to the taxes imposed by this chapter:

1330 (i) (A) subject to Subsection (18)(b)(i)(B), the following tangible personal property if  
1331 the tangible personal property is used in a manner that is incidental to farming:

- 1332 (I) machinery;
- 1333 (II) equipment;
- 1334 (III) materials; or
- 1335 (IV) supplies; and

1336 (B) tangible personal property that is considered to be used in a manner that is  
1337 incidental to farming includes:

- 1338 (I) hand tools; or
- 1339 (II) maintenance and janitorial equipment and supplies;

1340 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property if the tangible  
1341 personal property is used in an activity other than farming; and

1342 (B) tangible personal property that is considered to be used in an activity other than  
1343 farming includes:

- 1344 (I) office equipment and supplies; or
- 1345 (II) equipment and supplies used in:
  - 1346 (Aa) the sale or distribution of farm products;
  - 1347 (Bb) research; or
  - 1348 (Cc) transportation; or

1349 (iii) a vehicle required to be registered by the laws of this state during the period ending  
1350 two years after the date of the vehicle's purchase;

1351 (19) sales of hay;

1352 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or  
1353 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or  
1354 garden, farm, or other agricultural produce is sold by:

1355 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other  
1356 agricultural produce;

1357 (b) an employee of the producer described in Subsection (20)(a); or

1358 (c) a member of the immediate family of the producer described in Subsection (20)(a);

1359 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued  
1360 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

1361 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,  
1362 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,  
1363 wholesaler, or retailer for use in packaging tangible personal property to be sold by that  
1364 manufacturer, processor, wholesaler, or retailer;

1365 (23) property stored in the state for resale;

1366 (24) property brought into the state by a nonresident for his or her own personal use or  
1367 enjoyment while within the state, except property purchased for use in Utah by a nonresident  
1368 living and working in Utah at the time of purchase;

1369 (25) property purchased for resale in this state, in the regular course of business, either  
1370 in its original form or as an ingredient or component part of a manufactured or compounded  
1371 product;

1372 (26) property upon which a sales or use tax was paid to some other state, or one of its  
1373 subdivisions, except that the state shall be paid any difference between the tax paid and the tax  
1374 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if  
1375 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax  
1376 Act;

1377 (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a  
1378 person for use in compounding a service taxable under the subsections;

1379 (28) purchases made in accordance with the special supplemental nutrition program for  
1380 women, infants, and children established in 42 U.S.C. Sec. 1786;

1381 (29) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers,  
1382 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens  
1383 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification  
1384 Manual of the federal Executive Office of the President, Office of Management and Budget;

1385 (30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State  
1386 Boating Act, a boat trailer, or an outboard motor if the boat, trailer, or outboard motor is both  
1387 not:

1388 (a) registered in this state; and

1389 (b) used in this state except as necessary to transport the boat, boat trailer, or outboard  
1390 motor to the borders of this state;

1391 (31) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah

1392 where a sales or use tax is not imposed, even if the title is passed in Utah;

1393       (32) amounts paid for the purchase of telephone service for purposes of providing

1394 telephone service;

1395       (33) sales or leases of vehicles to, or use of vehicles by an authorized carrier;

1396       (34) (a) 45% of the sales price of any new manufactured home; and

1397       (b) 100% of the sales price of any used manufactured home;

1398       (35) sales relating to schools and fundraising sales;

1399       (36) sales or rentals of durable medical equipment if:

1400       (a) a person presents a prescription for the durable medical equipment; and

1401       (b) the durable medical equipment is used for home use only;

1402       (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in

1403 Section 72-11-102; and

1404       (b) the commission shall by rule determine the method for calculating sales exempt

1405 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;

1406       (38) sales to a ski resort of:

1407       (a) snowmaking equipment;

1408       (b) ski slope grooming equipment;

1409       (c) passenger ropeways as defined in Section 72-11-102; or

1410       (d) parts used in the repairs or renovations of equipment or passenger ropeways

1411 described in Subsections (38)(a) through (c);

1412       (39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

1413       (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for

1414 amusement, entertainment, or recreation an unassisted amusement device as defined in Section

1415 59-12-102;

1416       (b) if a seller that sells or rents at the same business location the right to use or operate

1417 for amusement, entertainment, or recreation one or more unassisted amusement devices and

1418 one or more assisted amusement devices, the exemption described in Subsection (40)(a)

1419 applies if the seller separately accounts for the sales or rentals of the right to use or operate for

1420 amusement, entertainment, or recreation for the assisted amusement devices; and

1421       (c) for purposes of Subsection (40)(b) and in accordance with Title 63, Chapter 46a,

1422 Utah Administrative Rulemaking Act, the commission may make rules:

- 1423 (i) governing the circumstances under which sales are at the same business location;
- 1424 and
- 1425 (ii) establishing the procedures and requirements for a seller to separately account for
- 1426 the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for
- 1427 assisted amusement devices;
- 1428 (41) sales by the state or a political subdivision of the state, except state institutions of
- 1429 higher education as defined in Section 53B-3-102, of:
- 1430 (a) photocopies; or
- 1431 (b) other copies of records held or maintained by the state or a political subdivision of
- 1432 the state;
- 1433 (42) amounts paid for admission to an athletic event at an institution of higher
- 1434 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
- 1435 20 U.S.C. Sec. 1681 et seq.;
- 1436 (43) sales of telephone service charged to a prepaid telephone calling card;
- 1437 (44) (a) sales of:
- 1438 (i) hearing aids;
- 1439 (ii) hearing aid accessories; or
- 1440 (iii) except as provided in Subsection (44)(b), parts used in the repairs or renovations
- 1441 of hearing aids or hearing aid accessories; and
- 1442 (b) for purposes of this Subsection (44), notwithstanding Subsection (44)(a)(iii),
- 1443 "parts" does not include batteries;
- 1444 (45) (a) sales made to or by:
- 1445 (i) an area agency on aging; or
- 1446 (ii) a senior citizen center owned by a county, city, or town; or
- 1447 (b) sales made by a senior citizen center that contracts with an area agency on aging;
- 1448 (46) sales or leases of semiconductor fabricating, processing, research, or development
- 1449 materials regardless of whether the semiconductor fabricating, processing, research, or
- 1450 development materials:
- 1451 (a) actually come into contact with a semiconductor; or
- 1452 (b) ultimately become incorporated into real property;
- 1453 (47) an amount paid by or charged to a purchaser for accommodations and services

1454 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section  
1455 59-12-104.2;

1456 (48) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary  
1457 sports event registration certificate in accordance with Section 41-3-306 for the event period  
1458 specified on the temporary sports event registration certificate;

1459 (49) sales or uses of electricity, if the sales or uses are:

1460 (a) made under a tariff adopted by the Public Service Commission of Utah only for  
1461 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy  
1462 source, as designated in the tariff by the Public Service Commission of Utah; and

1463 (b) for an amount of electricity that is:

1464 (i) unrelated to the amount of electricity used by the person purchasing the electricity  
1465 under the tariff described in Subsection (49)(a); and

1466 (ii) equivalent to the number of kilowatthours specified in the tariff described in  
1467 Subsection (49)(a) that may be purchased under the tariff described in Subsection (49)(a);

1468 (50) sales or rentals of mobility enhancing equipment if a person presents a  
1469 prescription for the mobility enhancing equipment;

1470 (51) sales of water in a:

1471 (a) pipe;

1472 (b) conduit;

1473 (c) ditch; or

1474 (d) reservoir;

1475 (52) sales of currency or coinage that constitute legal tender of the United States or of a  
1476 foreign nation;

1477 (53) (a) sales of an item described in Subsection (53)(b) if the item:

1478 (i) does not constitute legal tender of any nation; and

1479 (ii) has a gold, silver, or platinum content of 80% or more; and

1480 (b) Subsection (53)(a) applies to a gold, silver, or platinum:

1481 (i) ingot;

1482 (ii) bar;

1483 (iii) medallion; or

1484 (iv) decorative coin;



- 1485 (54) amounts paid on a sale-leaseback transaction;
- 1486 (55) sales of a prosthetic device:
- 1487 (a) for use on or in a human;
- 1488 (b) for which a prescription is issued; and
- 1489 (c) to a person that presents a prescription for the prosthetic device;
- 1490 (56) (a) except as provided in Subsection (56)(b), purchases, leases, or rentals of
- 1491 machinery or equipment by an establishment described in Subsection (56)(c) if the machinery
- 1492 or equipment is primarily used in the production or postproduction of the following media for
- 1493 commercial distribution:
- 1494 (i) a motion picture;
- 1495 (ii) a television program;
- 1496 (iii) a movie made for television;
- 1497 (iv) a music video;
- 1498 (v) a commercial;
- 1499 (vi) a documentary; or
- 1500 (vii) a medium similar to Subsections (56)(a)(i) through (vi) as determined by the
- 1501 commission by administrative rule made in accordance with Subsection (56)(d); or
- 1502 (b) notwithstanding Subsection (56)(a), purchases, leases, or rentals of machinery or
- 1503 equipment by an establishment described in Subsection (56)(c) that is used for the production
- 1504 or postproduction of the following are subject to the taxes imposed by this chapter:
- 1505 (i) a live musical performance;
- 1506 (ii) a live news program; or
- 1507 (iii) a live sporting event;
- 1508 (c) the following establishments listed in the 1997 North American Industry
- 1509 Classification System of the federal Executive Office of the President, Office of Management
- 1510 and Budget, apply to Subsections (56)(a) and (b):
- 1511 (i) NAICS Code 512110; or
- 1512 (ii) NAICS Code 51219; and
- 1513 (d) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 1514 commission may by rule:
- 1515 (i) prescribe what constitutes a medium similar to Subsections (56)(a)(i) through (vi);

1516 or

1517 (ii) define:

1518 (A) "commercial distribution";

1519 (B) "live musical performance";

1520 (C) "live news program"; or

1521 (D) "live sporting event";

1522 (57) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on  
1523 or before June 30, 2009, of machinery or equipment that:

1524 (i) is leased or purchased for or by a facility that:

1525 (A) is a renewable energy production facility;

1526 (B) is located in the state; and

1527 (C) (I) becomes operational on or after July 1, 2004; or

1528 (II) has its generation capacity increased by one or more megawatts on or after July 1,  
1529 2004 as a result of the use of the machinery or equipment;

1530 (ii) has an economic life of five or more years; and

1531 (iii) is used to make the facility or the increase in capacity of the facility described in

1532 Subsection (57)(a)(i) operational up to the point of interconnection with an existing  
1533 transmission grid including:

1534 (A) a wind turbine;

1535 (B) generating equipment;

1536 (C) a control and monitoring system;

1537 (D) a power line;

1538 (E) substation equipment;

1539 (F) lighting;

1540 (G) fencing;

1541 (H) pipes; or

1542 (I) other equipment used for locating a power line or pole; and

1543 (b) this Subsection (57) does not apply to:

1544 (i) machinery or equipment used in construction of:

1545 (A) a new renewable energy production facility; or

1546 (B) the increase in the capacity of a renewable energy production facility;

- 1547 (ii) contracted services required for construction and routine maintenance activities;  
1548 and
- 1549 (iii) unless the machinery or equipment is used or acquired for an increase in capacity  
1550 of the facility described in Subsection (57)(a)(i)(C)(II), machinery or equipment used or  
1551 acquired after:
- 1552 (A) the renewable energy production facility described in Subsection (57)(a)(i) is  
1553 operational as described in Subsection (57)(a)(iii); or
- 1554 (B) the increased capacity described in Subsection (57)(a)(i) is operational as described  
1555 in Subsection (57)(a)(iii);
- 1556 (58) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on  
1557 or before June 30, 2009, of machinery or equipment that:
- 1558 (i) is leased or purchased for or by a facility that:
- 1559 (A) is a waste energy production facility;
- 1560 (B) is located in the state; and
- 1561 (C) (I) becomes operational on or after July 1, 2004; or
- 1562 (II) has its generation capacity increased by one or more megawatts on or after July 1,  
1563 2004 as a result of the use of the machinery or equipment;
- 1564 (ii) has an economic life of five or more years; and
- 1565 (iii) is used to make the facility or the increase in capacity of the facility described in  
1566 Subsection (58)(a)(i) operational up to the point of interconnection with an existing  
1567 transmission grid including:
- 1568 (A) generating equipment;
- 1569 (B) a control and monitoring system;
- 1570 (C) a power line;
- 1571 (D) substation equipment;
- 1572 (E) lighting;
- 1573 (F) fencing;
- 1574 (G) pipes; or
- 1575 (H) other equipment used for locating a power line or pole; and
- 1576 (b) this Subsection (58) does not apply to:
- 1577 (i) machinery or equipment used in construction of:

- 1578 (A) a new waste energy facility; or
- 1579 (B) the increase in the capacity of a waste energy facility;
- 1580 (ii) contracted services required for construction and routine maintenance activities;
- 1581 and
- 1582 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
- 1583 described in Subsection (58)(a)(i)(C)(II), machinery or equipment used or acquired after:
- 1584 (A) the waste energy facility described in Subsection (58)(a)(i) is operational as
- 1585 described in Subsection (58)(a)(iii); or
- 1586 (B) the increased capacity described in Subsection (58)(a)(i) is operational as described
- 1587 in Subsection (58)(a)(iii);
- 1588 (59) (a) leases of five 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 located in the state;
- 1592 (B) produces fuel from biomass energy including:
- 1593 (I) methanol; or
- 1594 (II) ethanol; and
- 1595 (C) (I) becomes operational on or after July 1, 2004; or
- 1596 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004 as
- 1597 a result of the installation of the machinery or equipment;
- 1598 (ii) has an economic life of five or more years; and
- 1599 (iii) is installed on the facility described in Subsection (59)(a)(i);
- 1600 (b) this Subsection (59) does not apply to:
- 1601 (i) machinery or equipment used in construction of:
- 1602 (A) a new facility described in Subsection (59)(a)(i); or
- 1603 (B) the increase in capacity of the facility described in Subsection (59)(a)(i); or
- 1604 (ii) contracted services required for construction and routine maintenance activities;
- 1605 and
- 1606 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
- 1607 described in Subsection (59)(a)(i)(C)(II), machinery or equipment used or acquired after:
- 1608 (A) the facility described in Subsection (59)(a)(i) is operational; or

- 1609 (B) the increased capacity described in Subsection (59)(a)(i) is operational;
- 1610 (60) amounts paid to a purchaser as a rebate from the manufacturer of a new vehicle
- 1611 for purchasing the new vehicle;
- 1612 (61) (a) subject to Subsection (61)(b), sales of tangible personal property to persons
- 1613 within this state that is subsequently shipped outside the state and incorporated pursuant to
- 1614 contract into and becomes a part of real property located outside of this state, except to the
- 1615 extent that the other state or political entity imposes a sales, use, gross receipts, or other similar
- 1616 transaction excise tax on it against which the other state or political entity allows a credit for
- 1617 taxes imposed by this chapter; and
- 1618 (b) the exemption provided for in Subsection (61)(a):
- 1619 (i) is allowed only if the exemption is applied:
- 1620 (A) in calculating the purchase price of the tangible personal property; and
- 1621 (B) to a written contract that is in effect on July 1, 2004; and
- 1622 (ii) (A) does not apply beginning on the day on which the contract described in
- 1623 Subsection (61)(b)(i):
- 1624 (I) is substantially modified; or
- 1625 (II) terminates; and
- 1626 (B) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
- 1627 the commission may by rule prescribe the circumstances under which a contract is substantially
- 1628 modified;
- 1629 (62) purchases:
- 1630 (a) of one or more of the following items in printed or electronic format:
- 1631 (i) a list containing information that includes one or more:
- 1632 (A) names; or
- 1633 (B) addresses; or
- 1634 (ii) a database containing information that includes one or more:
- 1635 (A) names; or
- 1636 (B) addresses; and
- 1637 (b) used to send direct mail;
- 1638 (63) redemptions or repurchases of property by a person if that property was:
- 1639 (a) delivered to a pawnbroker as part of a pawn transaction; and

1640 (b) redeemed or repurchased within the time period established in a written agreement  
1641 between the person and the pawnbroker for redeeming or repurchasing the property;

1642 (64) (a) purchases or leases of an item described in Subsection (64)(b) if the item:

1643 (i) is purchased or leased by, or on behalf of, a telephone service provider; and

1644 (ii) has a useful economic life of one or more years; and

1645 (b) the following apply to Subsection (64)(a):

1646 (i) telecommunications enabling or facilitating equipment, machinery, or software;

1647 (ii) telecommunications equipment, machinery, or software required for 911 service;

1648 (iii) telecommunications maintenance or repair equipment, machinery, or software;

1649 (iv) telecommunications switching or routing equipment, machinery, or software; or

1650 (v) telecommunications transmission equipment, machinery, or software; [~~and~~]

1651 (65) (a) beginning on July 1, 2006 and ending on June 30, 2016, purchases of tangible  
1652 personal property used in the research and development of coal-to-liquids, oil shale, or tar  
1653 sands technology; and

1654 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
1655 commission may, for purposes of Subsection (65)(a), make rules defining what constitutes  
1656 tangible personal property used in the research and development of coal-to-liquids, oil shale,  
1657 and tar sands technology[-]; and

1658 (66) sales of disposable home medical equipment or supplies if:

1659 (a) a person presents a prescription for the disposable home medical equipment or  
1660 supplies;

1661 (b) the disposable home medical equipment or supplies are used exclusively by the  
1662 person to whom the prescription described in Subsection (66)(a) is issued; and

1663 (c) the disposable home medical equipment and supplies are listed as eligible for  
1664 payment under:

1665 (i) Title XVIII, federal Social Security Act; or

1666 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act.

1667 Section 3. **Effective date.**

1668 This bill takes effect on July 1, 2007.

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**Legislative Review Note**  
as of 12-6-06 2:45 PM

**Office of Legislative Research and General Counsel**

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**Revised  
Fiscal Note**

**S.B. 96 - Sales and Use Tax Exemption for Disposable Home Medical  
Equipment or Supplies**

2007 General Session

State of Utah

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**State Impact**

The Tax Commission is currently not collecting this tax. Assuming this bill passes, there will be no impact on state revenues.

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**Individual, Business and/or Local Impact**

With the passage of this bill, individuals purchasing disposable medical equipment and supplies would not be subject to sales and use tax on those equipment items and supply items.

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