

**SALES AND USE TAX EXEMPTIONS AND
REFUND FOR CERTAIN BUSINESS INPUTS**

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Howard A. Stephenson

House Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill amends the Sales and Use Tax Act to provide sales and use tax exemptions and a refund for certain business inputs.

Highlighted Provisions:

This bill:

- ▶ expands the definition of "industrial use" so that the use of natural gas, electricity, heat, coal, fuel oil, or other fuels are exempt from sales and use taxation if used in manufacturing tangible personal property at certain establishments listed under the North American Industry Classification System;

- ▶ expands the definition of "manufacturing facility" to include certain establishments listed under the North American Industry Classification System;

- ▶ provides a sales and use tax exemption and refund for certain machinery, equipment, or repair or replacement parts purchased or leased by certain establishments listed under the North American Industry Classification System;

- ▶ grants rulemaking authority to the State Tax Commission;

- ▶ modifies State Tax Commission rulemaking authority; and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 This bill takes effect on July 1, 2007.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **59-12-102**, as last amended by Chapter 1, Laws of Utah 2006, Fourth Special Session

33 **59-12-104**, as last amended by Chapters 181, 182, 217, 218, 219, 220, 246, 268 and

34 346, Laws of Utah 2006

35 ENACTS:

36 **59-12-104.4**, Utah Code Annotated 1953



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

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

40 **59-12-102. Definitions.**

41 As used in this chapter:

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

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

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

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

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

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

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

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

52 (b) Section 59-12-204;

53 (c) Section 59-12-401;

54 (d) Section 59-12-402;

55 (e) Section 59-12-501;

56 (f) Section 59-12-502;

57 (g) Section 59-12-703;

58 (h) Section 59-12-802;

- 59 (i) Section 59-12-804;
- 60 (j) Section 59-12-1001;
- 61 (k) Section 59-12-1102;
- 62 (l) Section 59-12-1302;
- 63 (m) Section 59-12-1402; or
- 64 (n) Section 59-12-1503.
- 65 (5) "Aircraft" is as defined in Section 72-10-102.
- 66 (6) "Alcoholic beverage" means a beverage that:
 - 67 (a) is suitable for human consumption; and
 - 68 (b) contains .5% or more alcohol by volume.
- 69 (7) "Area agency on aging" is as defined in Section 62A-3-101.
- 70 (8) "Assisted amusement device" means an amusement device, skill device, or ride
- 71 device that is started and stopped by an individual:
 - 72 (a) who is not the purchaser or renter of the right to use or operate the amusement
 - 73 device, skill device, or ride device; and
 - 74 (b) at the direction of the seller of the right to use the amusement device, skill device,
 - 75 or ride device.
- 76 (9) "Assisted cleaning or washing of tangible personal property" means cleaning or
- 77 washing of tangible personal property if the cleaning or washing labor is primarily performed
- 78 by an individual:
 - 79 (a) who is not the purchaser of the cleaning or washing of the tangible personal
 - 80 property; and
 - 81 (b) at the direction of the seller of the cleaning or washing of the tangible personal
 - 82 property.
- 83 (10) "Authorized carrier" means:
 - 84 (a) in the case of vehicles operated over public highways, the holder of credentials
 - 85 indicating that the vehicle is or will be operated pursuant to both the International Registration
 - 86 Plan and the International Fuel Tax Agreement;
 - 87 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating
 - 88 certificate or air carrier's operating certificate; or
 - 89 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling

90 stock, the holder of a certificate issued by the United States Surface Transportation Board.

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

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

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

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

96 (B) animal waste;

97 (C) methane produced:

98 (I) at landfills; or

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

100 (D) aquatic plants; and

101 (E) agricultural products.

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

103 (i) black liquor;

104 (ii) treated woods; or

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

106 (A) at landfills; or

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

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

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

111 and

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

113 (A) distinct and identifiable; and

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

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

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

120 (i) packaging that:

- 121 (A) accompanies the sale of the tangible personal property; and
- 122 (B) is incidental or immaterial to the sale of the tangible personal property;
- 123 (ii) tangible personal property provided free of charge with the purchase of another
- 124 item of tangible personal property; or
- 125 (iii) an item of tangible personal property included in the definition of "purchase
- 126 price."

127 (d) For purposes of Subsection (12)(c)(ii), an item of tangible personal property is

128 provided free of charge with the purchase of another item of tangible personal property if the

129 sales price of the purchased item of tangible personal property does not vary depending on the

130 inclusion of the tangible personal property provided free of charge.

131 (13) "Certified automated system" means software certified by the governing board of

132 the agreement in accordance with Section 59-12-102.1 that:

- 133 (a) calculates the agreement sales and use tax imposed within a local taxing
- 134 jurisdiction:
- 135 (i) on a transaction; and
- 136 (ii) in the states that are members of the agreement;
- 137 (b) determines the amount of agreement sales and use tax to remit to a state that is a
- 138 member of the agreement; and
- 139 (c) maintains a record of the transaction described in Subsection (13)(a)(i).

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

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

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

146 (15) (a) Subject to Subsection (15)(b), "clothing" means all human wearing apparel

147 suitable for general use.

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

149 commission shall make rules:

- 150 (i) listing the items that constitute "clothing"; and
- 151 (ii) that are consistent with the list of items that constitute "clothing" under the

152 agreement.

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

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

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

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

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

165 (19) "Component part" includes:

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

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

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

171 (d) feed, seeds, and seedlings.

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

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

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

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

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

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

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

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

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

- 183 (24) (a) "Delivery charge" means a charge:
184 (i) by a seller of:
185 (A) tangible personal property; or
186 (B) services; and
187 (ii) for preparation and delivery of the tangible personal property or services described
188 in Subsection (24)(a)(i) to a location designated by the purchaser.
189 (b) "Delivery charge" includes a charge for the following:
190 (i) transportation;
191 (ii) shipping;
192 (iii) postage;
193 (iv) handling;
194 (v) crating; or
195 (vi) packing.
196 (25) "Dietary supplement" means a product, other than tobacco, that:
197 (a) is intended to supplement the diet;
198 (b) contains one or more of the following dietary ingredients:
199 (i) a vitamin;
200 (ii) a mineral;
201 (iii) an herb or other botanical;
202 (iv) an amino acid;
203 (v) a dietary substance for use by humans to supplement the diet by increasing the total
204 dietary intake; or
205 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
206 described in Subsections (25)(b)(i) through (v);
207 (c) (i) except as provided in Subsection (25)(c)(ii), is intended for ingestion in:
208 (A) tablet form;
209 (B) capsule form;
210 (C) powder form;
211 (D) softgel form;
212 (E) gelcap form; or
213 (F) liquid form; or

214 (ii) notwithstanding Subsection (25)(c)(i), if the product is not intended for ingestion in
215 a form described in Subsections (25)(c)(i)(A) through (F), is not represented:

216 (A) as conventional food; and

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

218 (I) a meal; or

219 (II) the diet; and

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

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

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

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

225 (i) to:

226 (A) a mass audience; or

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

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

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

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

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

235 (i) recognized in:

236 (A) the official United States Pharmacopoeia;

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

238 (C) the official National Formulary; or

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

240 (ii) intended for use in the:

241 (A) diagnosis of disease;

242 (B) cure of disease;

243 (C) mitigation of disease;

244 (D) treatment of disease; or

- 245 (E) prevention of disease; or
- 246 (iii) intended to affect:
- 247 (A) the structure of the body; or
- 248 (B) any function of the body.
- 249 (b) "Drug" does not include:
- 250 (i) food and food ingredients;
- 251 (ii) a dietary supplement;
- 252 (iii) an alcoholic beverage; or
- 253 (iv) a prosthetic device.
- 254 (28) (a) Except as provided in Subsection (28)(c), "durable medical equipment" means
- 255 equipment that:
- 256 (i) can withstand repeated use;
- 257 (ii) is primarily and customarily used to serve a medical purpose;
- 258 (iii) generally is not useful to a person in the absence of illness or injury; and
- 259 (iv) is not worn in or on the body.
- 260 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 261 equipment described in Subsection (28)(a).
- 262 (c) Notwithstanding Subsection (28)(a), "durable medical equipment" does not include
- 263 mobility enhancing equipment.
- 264 (29) "Electronic" means:
- 265 (a) relating to technology; and
- 266 (b) having:
- 267 (i) electrical capabilities;
- 268 (ii) digital capabilities;
- 269 (iii) magnetic capabilities;
- 270 (iv) wireless capabilities;
- 271 (v) optical capabilities;
- 272 (vi) electromagnetic capabilities; or
- 273 (vii) capabilities similar to Subsections (29)(b)(i) through (vi).
- 274 (30) "Employee" is as defined in Section 59-10-401.
- 275 (31) "Fixed guideway" means a public transit facility that uses and occupies:

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

307 district governing the authorization and supervision of fundraising activities;

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

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

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

314 (35) "Governing board of the agreement" means the governing board of the agreement
315 that is:

316 (a) authorized to administer the agreement; and

317 (b) established in accordance with the agreement.

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

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

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

321 (II) correct impaired human hearing; and

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

323 (II) affixed behind the human ear;

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

325 (iii) a telephone amplifying device.

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

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

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

331 (A) a personal amplifying system;

332 (B) a personal FM system;

333 (C) a television listening system; or

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

335 (36)(b)(ii)(A) through (C); or

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

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

- 369 (i) commercial greenhouses;
- 370 (ii) irrigation pumps;
- 371 (iii) farm machinery;
- 372 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
373 registered under Title 41, Chapter 1a, Part 2, Registration; and
- 374 (v) other farming activities;
- 375 (c) in manufacturing tangible personal property at an establishment described in:
- 376 (i) SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of
377 the federal Executive Office of the President, Office of Management and Budget; or
- 378 (ii) NAICS Sectors 31 through 33, Manufacturing, of the 2002 North American
379 Industry Classification System of the federal Executive Office of the President, Office of
380 Management and Budget;
- 381 (d) by a scrap recycler if:
- 382 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
383 one or more of the following items into prepared grades of processed materials for use in new
384 products:
- 385 (A) iron;
- 386 (B) steel;
- 387 (C) nonferrous metal;
- 388 (D) paper;
- 389 (E) glass;
- 390 (F) plastic;
- 391 (G) textile; or
- 392 (H) rubber; and
- 393 (ii) the new products under Subsection (39)(d)(i) would otherwise be made with
394 nonrecycled materials; or
- 395 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a
396 cogeneration facility as defined in Section 54-2-1.
- 397 (40) (a) Except as provided in Subsection (40)(b), "installation charge" means a charge
398 for installing tangible personal property.
- 399 (b) Notwithstanding Subsection (40)(a), "installation charge" does not include a charge

400 for repairs or renovations of tangible personal property.

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

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

404 (B) an indeterminate term; and

405 (ii) consideration.

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

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

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

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

416 (A) upon completion of required payments; and

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

418 (I) \$100; or

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

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

423 (d) For purposes of Subsection (41)(c)(iii), an operator is necessary for equipment to
424 perform as designed if the operator's duties exceed the:

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

426 (ii) maintenance of tangible personal property; or

427 (iii) inspection of tangible personal property.

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

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

- 431 (a) county that is authorized to impose an agreement sales and use tax;
- 432 (b) city that is authorized to impose an agreement sales and use tax; or
- 433 (c) town that is authorized to impose an agreement sales and use tax.
- 434 (44) "Manufactured home" is as defined in Section 58-56-3.
- 435 (45) For purposes of Section 59-12-104, "manufacturing facility" means:
- 436 (a) an establishment described in:
 - 437 (i) SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of
 - 438 the federal Executive Office of the President, Office of Management and Budget; or
 - 439 (ii) NAICS Sectors 31 through 33, Manufacturing, of the 2002 North American
 - 440 Industry Classification System of the federal Executive Office of the President, Office of
 - 441 Management and Budget;
- 442 (b) a scrap recycler if:
 - 443 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
 - 444 one or more of the following items into prepared grades of processed materials for use in new
 - 445 products:
 - 446 (A) iron;
 - 447 (B) steel;
 - 448 (C) nonferrous metal;
 - 449 (D) paper;
 - 450 (E) glass;
 - 451 (F) plastic;
 - 452 (G) textile; or
 - 453 (H) rubber; and
 - 454 (ii) the new products under Subsection (45)(b)(i) would otherwise be made with
 - 455 nonrecycled materials; or
- 456 (c) a cogeneration facility as defined in Section 54-2-1.
- 457 (46) "Member of the immediate family of the producer" means a person who is related
- 458 to a producer described in Subsection 59-12-104(20)(a) as a:
 - 459 (a) child or stepchild, regardless of whether the child or stepchild is:
 - 460 (i) an adopted child or adopted stepchild; or
 - 461 (ii) a foster child or foster stepchild;

- 462 (b) grandchild or stepgrandchild;
- 463 (c) grandparent or stepgrandparent;
- 464 (d) nephew or stepnephew;
- 465 (e) niece or stepniece;
- 466 (f) parent or stepparent;
- 467 (g) sibling or stepsibling;
- 468 (h) spouse;
- 469 (i) person who is the spouse of a person described in Subsections (46)(a) through (g);

470 or

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

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

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

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

- 479 (i) primarily and customarily used to provide or increase the ability to move from one
480 place to another;

- 481 (ii) appropriate for use in a:

- 482 (A) home; or

- 483 (B) motor vehicle; and

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

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

- 487 (c) Notwithstanding Subsection (49)(a), "mobility enhancing equipment" does not
488 include:

- 489 (i) a motor vehicle;

- 490 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
491 vehicle manufacturer;

- 492 (iii) durable medical equipment; or

493 (iv) a prosthetic device.

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

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

499 (a) except as provided in Subsection (51)(b), has selected a certified automated system
500 to perform the seller's sales tax functions for agreement sales and use taxes; and

501 (b) notwithstanding Subsection (51)(a), retains responsibility for remitting all of the
502 sales tax:

503 (i) collected by the seller; and

504 (ii) to the appropriate local taxing jurisdiction.

505 (52) (a) Subject to Subsection (52)(b), "model 3 seller" means a seller that has:

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

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

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

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

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

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

512 (b) For purposes of Subsection (52)(a), "model 3 seller" includes an affiliated group of
513 sellers using the same proprietary system.

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

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

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

518 (56) (a) "Other fuels" means products that burn independently to produce heat or
519 energy.

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

522 (57) "Pawnbroker" is as defined in Section 13-32a-102.

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

524 (59) (a) "Permanently attached to real property" means that for tangible personal
525 property attached to real property:

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

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

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

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

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

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

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

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

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

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

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

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

546 (A) property attached to oil, gas, or water pipelines, other than the property listed in
547 Subsection (59)(c)(iii);

548 (B) a hot water heater;

549 (C) a water softener system; or

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

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

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

555 (A) convenience;

556 (B) stability; or

557 (C) for an obvious temporary purpose;

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

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

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

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

562 cable, or supplies a similar item as determined by the commission by rule made in accordance

563 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

564 (A) a refrigerator;

565 (B) a washer;

566 (C) a dryer;

567 (D) a stove;

568 (E) a television;

569 (F) a computer;

570 (G) a telephone; or

571 (H) tangible personal property similar to Subsections (59)(c)(iii)(A) through (G) as

572 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah

573 Administrative Rulemaking Act.

574 (60) "Person" includes any individual, firm, partnership, joint venture, association,

575 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,

576 municipality, district, or other local governmental entity of the state, or any group or

577 combination acting as a unit.

578 (61) "Place of primary use":

579 (a) for telephone service other than mobile telecommunications service, means the

580 street address representative of where the purchaser's use of the telephone service primarily

581 occurs, which shall be:

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

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

584 (b) for mobile telecommunications service, is as defined in the Mobile

585 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

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

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

589 (i) food:

590 (A) sold in a heated state; or

591 (B) heated by a seller;

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

594 (iii) except as provided in Subsection (63)(c), food sold with an eating utensil provided
595 by the seller, including a:

596 (A) plate;

597 (B) knife;

598 (C) fork;

599 (D) spoon;

600 (E) glass;

601 (F) cup;

602 (G) napkin; or

603 (H) straw.

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

605 (i) food that a seller only:

606 (A) cuts;

607 (B) repackages; or

608 (C) pasteurizes; or

609 (ii) (A) the following:

610 (I) raw egg;

611 (II) raw fish;

612 (III) raw meat;

613 (IV) raw poultry; or

614 (V) a food containing an item described in Subsections (63)(b)(ii)(A)(I) through (IV);

615 and

616 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the

617 Food and Drug Administration's Food Code that a consumer cook the items described in
618 Subsection (63)(b)(ii)(A) to prevent food borne illness; or
619 (iii) the following if sold without eating utensils provided by the seller:
620 (A) food and food ingredients sold by a seller if the seller's proper primary
621 classification under the 2002 North American Industry Classification System of the federal
622 Executive Office of the President, Office of Management and Budget, is manufacturing in
623 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
624 Manufacturing;
625 (B) food and food ingredients sold in an unheated state:
626 (I) by weight or volume; and
627 (II) as a single item; or
628 (C) a bakery item, including:
629 (I) a bagel;
630 (II) a bar;
631 (III) a biscuit;
632 (IV) bread;
633 (V) a bun;
634 (VI) a cake;
635 (VII) a cookie;
636 (VIII) a croissant;
637 (IX) a danish;
638 (X) a donut;
639 (XI) a muffin;
640 (XII) a pastry;
641 (XIII) a pie;
642 (XIV) a roll;
643 (XV) a tart;
644 (XVI) a torte; or
645 (XVII) a tortilla.
646 (c) Notwithstanding Subsection (63)(a)(iii), an eating utensil provided by the seller
647 does not include the following used to transport the food:

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

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

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

- 741 (a) a sale of tangible personal property is made; or
- 742 (b) a service is furnished.
- 743 (70) "Regularly rented" means:
- 744 (a) rented to a guest for value three or more times during a calendar year; or
- 745 (b) advertised or held out to the public as a place that is regularly rented to guests for
- 746 value.
- 747 (71) "Renewable energy" means:
- 748 (a) biomass energy;
- 749 (b) hydroelectric energy;
- 750 (c) geothermal energy;
- 751 (d) solar energy; or
- 752 (e) wind energy.
- 753 (72) (a) "Renewable energy production facility" means a facility that:
- 754 (i) uses renewable energy to produce electricity; and
- 755 (ii) has a production capacity of 20 kilowatts or greater.
- 756 (b) A facility is a renewable energy production facility regardless of whether the
- 757 facility is:
- 758 (i) connected to an electric grid; or
- 759 (ii) located on the premises of an electricity consumer.
- 760 (73) "Rental" is as defined in Subsection (41).
- 761 (74) "Repairs or renovations of tangible personal property" means:
- 762 (a) a repair or renovation of tangible personal property that is not permanently attached
- 763 to real property; or
- 764 (b) attaching tangible personal property to other tangible personal property if the other
- 765 tangible personal property to which the tangible personal property is attached is not
- 766 permanently attached to real property.
- 767 (75) "Research and development" means the process of inquiry or experimentation
- 768 aimed at the discovery of facts, devices, technologies, or applications and the process of
- 769 preparing those devices, technologies, or applications for marketing.
- 770 (76) "Residential use" means the use in or around a home, apartment building, sleeping
- 771 quarters, and similar facilities or accommodations.

772 (77) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
773 than:

- 774 (a) resale;
- 775 (b) sublease; or
- 776 (c) subrent.

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

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

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

785 (b) "Sale" includes:

- 786 (i) installment and credit sales;
- 787 (ii) any closed transaction constituting a sale;
- 788 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
789 chapter;

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

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

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

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

- 798 (a) by a purchaser-lessee;
- 799 (b) to a lessor;
- 800 (c) for consideration; and
- 801 (d) if:
 - 802 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase

803 of the tangible personal property;

804 (ii) the sale of the tangible personal property to the lessor is intended as a form of

805 financing:

806 (A) for the property; and

807 (B) to the purchaser-lessee; and

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

809 is required to:

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

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

812 (82) "Sales price" is as defined in Subsection (68).

813 (83) (a) "Sales relating to schools" means the following sales by, amounts paid to, or

814 amounts charged by a school:

815 (i) sales that are directly related to the school's educational functions or activities

816 including:

817 (A) the sale of:

818 (I) textbooks;

819 (II) textbook fees;

820 (III) laboratory fees;

821 (IV) laboratory supplies; or

822 (V) safety equipment;

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

824 that:

825 (I) a student is specifically required to wear as a condition of participation in a

826 school-related event or school-related activity; and

827 (II) is not readily adaptable to general or continued usage to the extent that it takes the

828 place of ordinary clothing;

829 (C) sales of the following if the net or gross revenues generated by the sales are

830 deposited into a school district fund or school fund dedicated to school meals:

831 (I) food and food ingredients; or

832 (II) prepared food; or

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

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

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

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

838 (ii) except as provided in Subsection (83)(a)(i)(B):

839 (A) clothing;

840 (B) clothing accessories or equipment;

841 (C) protective equipment; or

842 (D) sports or recreational equipment; or

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

845 (A) other than a:

846 (I) school;

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

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

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

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

854 (84) For purposes of this section and Section 59-12-104, "school" means:

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

856 (i) is a:

857 (A) public school; or

858 (B) private school; and

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

860 (b) a public school district.

861 (85) "Seller" means a person that makes a sale, lease, or rental of:

862 (a) tangible personal property; or

863 (b) a service.

864 (86) (a) "Semiconductor fabricating, processing, research, or development materials"

865 means tangible personal property:

866 (i) used primarily in the process of:

867 (A) (I) manufacturing a semiconductor;

868 (II) fabricating a semiconductor; or

869 (III) research or development of a:

870 (Aa) semiconductor; or

871 (Bb) semiconductor manufacturing process; or

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

873 (ii) consumed primarily in the process of:

874 (A) (I) manufacturing a semiconductor;

875 (II) fabricating a semiconductor; or

876 (III) research or development of a:

877 (Aa) semiconductor; or

878 (Bb) semiconductor manufacturing process; or

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

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

881 includes:

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

883 Subsection (86)(a); or

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

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

886 (I) chemical change; or

887 (II) physical change;

888 (B) remove impurities from a semiconductor; or

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

890 (87) "Senior citizen center" means a facility having the primary purpose of providing

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

892 (88) "Simplified electronic return" means the electronic return:

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

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

895 (89) "Solar energy" means the sun used as the sole source of energy for producing

896 electricity.

897 (90) (a) "Sports or recreational equipment" means an item:

898 (i) designed for human use; and

899 (ii) that is:

900 (A) worn in conjunction with:

901 (I) an athletic activity; or

902 (II) a recreational activity; and

903 (B) not suitable for general use.

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

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

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

909 (91) "State" means the state of Utah, its departments, and agencies.

910 (92) "Storage" means any keeping or retention of tangible personal property or any
911 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except
912 sale in the regular course of business.

913 (93) (a) "Tangible personal property" means personal property that:

914 (i) may be:

915 (A) seen;

916 (B) weighed;

917 (C) measured;

918 (D) felt; or

919 (E) touched; or

920 (ii) is in any manner perceptible to the senses.

921 (b) "Tangible personal property" includes:

922 (i) electricity;

923 (ii) water;

924 (iii) gas;

925 (iv) steam; or

926 (v) prewritten computer software.

927 (94) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon
928 and require further processing other than mechanical blending before becoming finished
929 petroleum products.

930 (95) (a) "Telecommunications enabling or facilitating equipment, machinery, or
931 software" means an item listed in Subsection (95)(b) if that item is purchased or leased
932 primarily to enable or facilitate one or more of the following to function:

933 (i) telecommunications switching or routing equipment, machinery, or software; or
934 (ii) telecommunications transmission equipment, machinery, or software.

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

936 (i) a pole;

937 (ii) software;

938 (iii) a supplementary power supply;

939 (iv) temperature or environmental equipment or machinery;

940 (v) test equipment;

941 (vi) a tower; or

942 (vii) equipment, machinery, or software that functions similarly to an item listed in
943 Subsections (95)(b)(i) through (vi) as determined by the commission by rule made in
944 accordance with Subsection (95)(c).

945 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
946 commission may by rule define what constitutes equipment, machinery, or software that
947 functions similarly to an item listed in Subsections (95)(b)(i) through (vi).

948 (96) "Telecommunications equipment, machinery, or software required for 911
949 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.
950 Sec. 20.18.

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

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

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

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

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

960 means an item listed in Subsection (98)(b) if that item is purchased or leased primarily for
961 switching or routing:

962 (i) voice communications;

963 (ii) data communications; or

964 (iii) telephone service.

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

966 (i) a bridge;

967 (ii) a computer;

968 (iii) a cross connect;

969 (iv) a modem;

970 (v) a multiplexer;

971 (vi) plug in circuitry;

972 (vii) a router;

973 (viii) software;

974 (ix) a switch; or

975 (x) equipment, machinery, or software that functions similarly to an item listed in

976 Subsections (98)(b)(i) through (ix) as determined by the commission by rule made in

977 accordance with Subsection (98)(c).

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

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

980 functions similarly to an item listed in Subsections (98)(b)(i) through (ix).

981 (99) (a) "Telecommunications transmission equipment, machinery, or software" means

982 an item listed in Subsection (99)(b) if that item is purchased or leased primarily for sending,

983 receiving, or transporting:

984 (i) voice communications;

985 (ii) data communications; or

986 (iii) telephone service.

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

988 (i) an amplifier;

- 989 (ii) a cable;
- 990 (iii) a closure;
- 991 (iv) a conduit;
- 992 (v) a controller;
- 993 (vi) a duplexer;
- 994 (vii) a filter;
- 995 (viii) an input device;
- 996 (ix) an input/output device;
- 997 (x) an insulator;
- 998 (xi) microwave machinery or equipment;
- 999 (xii) an oscillator;
- 1000 (xiii) an output device;
- 1001 (xiv) a pedestal;
- 1002 (xv) a power converter;
- 1003 (xvi) a power supply;
- 1004 (xvii) a radio channel;
- 1005 (xviii) a radio receiver;
- 1006 (xix) a radio transmitter;
- 1007 (xx) a repeater;
- 1008 (xxi) software;
- 1009 (xxii) a terminal;
- 1010 (xxiii) a timing unit;
- 1011 (xxiv) a transformer;
- 1012 (xxv) a wire; or
- 1013 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
- 1014 Subsections (99)(b)(i) through (xxv) as determined by the commission by rule made in
- 1015 accordance with Subsection (99)(c).

1016 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1017 commission may by rule define what constitutes equipment, machinery, or software that
1018 functions similarly to an item listed in Subsections (99)(b)(i) through (xxv).

1019 (100) (a) "Telephone service" means a two-way transmission:

- 1020 (i) by:
- 1021 (A) wire;
- 1022 (B) radio;
- 1023 (C) lightwave; or
- 1024 (D) other electromagnetic means; and
- 1025 (ii) of one or more of the following:
- 1026 (A) a sign;
- 1027 (B) a signal;
- 1028 (C) writing;
- 1029 (D) an image;
- 1030 (E) sound;
- 1031 (F) a message;
- 1032 (G) data; or
- 1033 (H) other information of any nature.
- 1034 (b) "Telephone service" includes:
- 1035 (i) mobile telecommunications service;
- 1036 (ii) private communications service; or
- 1037 (iii) automated digital telephone answering service.
- 1038 (c) "Telephone service" does not include a service or a transaction that a state or a
- 1039 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet
- 1040 Tax Freedom Act, Pub. L. No. 105-277.
- 1041 (101) Notwithstanding where a call is billed or paid, "telephone service address"
- 1042 means:
- 1043 (a) if the location described in this Subsection (101)(a) is known, the location of the
- 1044 telephone service equipment:
- 1045 (i) to which a call is charged; and
- 1046 (ii) from which the call originates or terminates;
- 1047 (b) if the location described in Subsection (101)(a) is not known but the location
- 1048 described in this Subsection (101)(b) is known, the location of the origination point of the
- 1049 signal of the telephone service first identified by:
- 1050 (i) the telecommunications system of the seller; or

1051 (ii) if the system used to transport the signal is not that of the seller, information
1052 received by the seller from its service provider; or

1053 (c) if the locations described in Subsection (101)(a) or (b) are not known, the location
1054 of a purchaser's primary place of use.

1055 (102) (a) "Telephone service provider" means a person that:

1056 (i) owns, controls, operates, or manages a telephone service; and

1057 (ii) engages in an activity described in Subsection (102)(a)(i) for the shared use with or
1058 resale to any person of the telephone service.

1059 (b) A person described in Subsection (102)(a) is a telephone service provider whether
1060 or not the Public Service Commission of Utah regulates:

1061 (i) that person; or

1062 (ii) the telephone service that the person owns, controls, operates, or manages.

1063 (103) "Tobacco" means:

1064 (a) a cigarette;

1065 (b) a cigar;

1066 (c) chewing tobacco;

1067 (d) pipe tobacco; or

1068 (e) any other item that contains tobacco.

1069 (104) "Unassisted amusement device" means an amusement device, skill device, or
1070 ride device that is started and stopped by the purchaser or renter of the right to use or operate
1071 the amusement device, skill device, or ride device.

1072 (105) (a) "Use" means the exercise of any right or power over tangible personal
1073 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that
1074 property, item, or service.

1075 (b) "Use" does not include the sale, display, demonstration, or trial of that property in
1076 the regular course of business and held for resale.

1077 (106) (a) Subject to Subsection (106)(b), "vehicle" means the following that are
1078 required to be titled, registered, or titled and registered:

1079 (i) an aircraft as defined in Section 72-10-102;

1080 (ii) a vehicle as defined in Section 41-1a-102;

1081 (iii) an off-highway vehicle as defined in Section 41-22-2; or

- 1082 (iv) a vessel as defined in Section 41-1a-102.
- 1083 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:
- 1084 (i) a vehicle described in Subsection (106)(a); or
- 1085 (ii) (A) a locomotive;
- 1086 (B) a freight car;
- 1087 (C) railroad work equipment; or
- 1088 (D) other railroad rolling stock.

1089 (107) "Vehicle dealer" means a person engaged in the business of buying, selling, or
1090 exchanging a vehicle as defined in Subsection (106).

1091 (108) (a) Except as provided in Subsection (108)(b), "waste energy facility" means a
1092 facility that generates electricity:

1093 (i) using as the primary source of energy waste materials that would be placed in a
1094 landfill or refuse pit if it were not used to generate electricity, including:

- 1095 (A) tires;
- 1096 (B) waste coal; or
- 1097 (C) oil shale; and

1098 (ii) in amounts greater than actually required for the operation of the facility.

1099 (b) "Waste energy facility" does not include a facility that incinerates:

- 1100 (i) municipal solid waste;
- 1101 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or
- 1102 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1103 (109) "Watercraft" means a vessel as defined in Section 73-18-2.

1104 (110) "Wind energy" means wind used as the sole source of energy to produce
1105 electricity.

1106 (111) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
1107 location by the United States Postal Service.

1108 Section 2. Section **59-12-104** is amended to read:

1109 **59-12-104. Exemptions.**

1110 The following sales and uses are exempt from the taxes imposed by this chapter:

1111 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
1112 under Chapter 13, Motor and Special Fuel Tax Act;

- 1113 (2) sales to the state, its institutions, and its political subdivisions; however, this
1114 exemption does not apply to sales of:
- 1115 (a) construction materials except:
- 1116 (i) construction materials purchased by or on behalf of institutions of the public
1117 education system as defined in Utah Constitution Article X, Section 2, provided the
1118 construction materials are clearly identified and segregated and installed or converted to real
1119 property which is owned by institutions of the public education system; and
- 1120 (ii) construction materials purchased by the state, its institutions, or its political
1121 subdivisions which are installed or converted to real property by employees of the state, its
1122 institutions, or its political subdivisions; or
- 1123 (b) tangible personal property in connection with the construction, operation,
1124 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities
1125 providing additional project capacity, as defined in Section 11-13-103;
- 1126 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:
- 1127 (i) the proceeds of each sale do not exceed \$1; and
- 1128 (ii) the seller or operator of the vending machine reports an amount equal to 150% of
1129 the cost of the item described in Subsection (3)(b) as goods consumed; and
- 1130 (b) Subsection (3)(a) applies to:
- 1131 (i) food and food ingredients; or
- 1132 (ii) prepared food;
- 1133 (4) sales of the following to a commercial airline carrier for in-flight consumption:
- 1134 (a) food and food ingredients;
- 1135 (b) prepared food; or
- 1136 (c) services related to Subsection (4)(a) or (b);
- 1137 (5) sales of parts and equipment for installation in aircraft operated by common carriers
1138 in interstate or foreign commerce;
- 1139 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
1140 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
1141 exhibitor, distributor, or commercial television or radio broadcaster;
- 1142 (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal
1143 property if the cleaning or washing of the tangible personal property is not assisted cleaning or

1144 washing of tangible personal property;

1145 (b) if a seller that sells at the same business location assisted cleaning or washing of
1146 tangible personal property and cleaning or washing of tangible personal property that is not
1147 assisted cleaning or washing of tangible personal property, the exemption described in
1148 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning
1149 or washing of the tangible personal property; and

1150 (c) for purposes of Subsection (7)(b) and in accordance with Title 63, Chapter 46a,
1151 Utah Administrative Rulemaking Act, the commission may make rules:

1152 (i) governing the circumstances under which sales are at the same business location;
1153 and

1154 (ii) establishing the procedures and requirements for a seller to separately account for
1155 sales of assisted cleaning or washing of tangible personal property;

1156 (8) sales made to or by religious or charitable institutions in the conduct of their regular
1157 religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are
1158 fulfilled;

1159 (9) sales of a vehicle of a type required to be registered under the motor vehicle laws of
1160 this state if the vehicle is both not:

1161 (a) registered in this state; and

1162 (b) used in this state except as necessary to transport the vehicle to the borders of this
1163 state;

1164 (10) (a) amounts paid for an item described in Subsection (10)(b) if:

1165 (i) the item is intended for human use; and

1166 (ii) (A) a prescription was issued for the item; or

1167 (B) the item was purchased by a hospital or other medical facility; and

1168 (b) (i) Subsection (10)(a) applies to:

1169 (A) a drug;

1170 (B) a syringe; or

1171 (C) a stoma supply; and

1172 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1173 commission may by rule define the terms:

1174 (A) "syringe"; or

- 1175 (B) "stoma supply";
- 1176 (11) sales or use of property, materials, or services used in the construction of or
- 1177 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;
- 1178 (12) (a) sales of an item described in Subsection (12)(c) served by:
- 1179 (i) the following if the item described in Subsection (12)(c) is not available to the
- 1180 general public:
- 1181 (A) a church; or
- 1182 (B) a charitable institution;
- 1183 (ii) an institution of higher education if:
- 1184 (A) the item described in Subsection (12)(c) is not available to the general public; or
- 1185 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
- 1186 offered by the institution of higher education; or
- 1187 (b) sales of an item described in Subsection (12)(c) provided for a patient by:
- 1188 (i) a medical facility; or
- 1189 (ii) a nursing facility; and
- 1190 (c) Subsections (12)(a) and (b) apply to:
- 1191 (i) food and food ingredients;
- 1192 (ii) prepared food; or
- 1193 (iii) alcoholic beverages;
- 1194 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property
- 1195 by a person:
- 1196 (i) regardless of the number of transactions involving the sale of that tangible personal
- 1197 property by that person; and
- 1198 (ii) not regularly engaged in the business of selling that type of tangible personal
- 1199 property;
- 1200 (b) this Subsection (13) does not apply if:
- 1201 (i) the sale is one of a series of sales of a character to indicate that the person is
- 1202 regularly engaged in the business of selling that type of tangible personal property;
- 1203 (ii) the person holds that person out as regularly engaged in the business of selling that
- 1204 type of tangible personal property;
- 1205 (iii) the person sells an item of tangible personal property that the person purchased as

1206 a sale that is exempt under Subsection (25); or
1207 (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of
1208 this state in which case the tax is based upon:
1209 (A) the bill of sale or other written evidence of value of the vehicle or vessel being
1210 sold; or
1211 (B) in the absence of a bill of sale or other written evidence of value, the fair market
1212 value of the vehicle or vessel being sold at the time of the sale as determined by the
1213 commission; and
1214 (c) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1215 commission shall make rules establishing the circumstances under which:
1216 (i) a person is regularly engaged in the business of selling a type of tangible personal
1217 property;
1218 (ii) a sale of tangible personal property is one of a series of sales of a character to
1219 indicate that a person is regularly engaged in the business of selling that type of tangible
1220 personal property; or
1221 (iii) a person holds that person out as regularly engaged in the business of selling a type
1222 of tangible personal property;
1223 (14) (a) except as provided in Subsection (14)(b), amounts paid or charged on or after
1224 July 1, 2006, for a purchase or lease by a manufacturing facility other than a cogeneration
1225 facility, for the following:
1226 (i) machinery and equipment that:
1227 (A) is used:
1228 (I) for a manufacturing facility other than a manufacturing facility that is a scrap
1229 recycler described in Subsection 59-12-102(45)(b):
1230 (Aa) in the manufacturing process; and
1231 (Bb) to manufacture an item sold as tangible personal property; or
1232 (II) for a manufacturing facility that is a scrap recycler described in Subsection
1233 59-12-102(45)(b), to process an item sold as tangible personal property; and
1234 (B) has an economic life of three or more years; and
1235 (ii) normal operating repair or replacement parts that:
1236 (A) have an economic life of three or more years; and

1237 (B) are used:

1238 (I) for a manufacturing facility in the state other than a manufacturing facility that is a
1239 scrap recycler described in Subsection 59-12-102(45)(b), in the manufacturing process; or

1240 (II) for a manufacturing facility in the state that is a scrap recycler described in
1241 Subsection 59-12-102(45)(b), to process an item sold as tangible personal property;

1242 (b) (i) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a
1243 manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006,
1244 for the following:

1245 (A) machinery and equipment that:

1246 (I) is used:

1247 (Aa) in the manufacturing process; and

1248 (Bb) to manufacture an item sold as tangible personal property; and

1249 (II) has an economic life of three or more years; and

1250 (B) normal operating repair or replacement parts that:

1251 (I) are used in the manufacturing process in a manufacturing facility in the state; and

1252 (II) have an economic life of three or more years; and

1253 (ii) for amounts paid or charged on or after July 1, 2005, but on or before June 30,
1254 2006, for a purchase or lease described in Subsection (14)(b)(i), a cogeneration facility may
1255 claim the exemption allowed by Subsection (14)(b)(i) by filing for a refund:

1256 (A) for sales and use taxes paid under this chapter on the purchase or lease payment;
1257 and

1258 (B) in accordance with Section 59-12-110;

1259 (c) amounts paid or charged on or after July 1, 2010, for a purchase or lease by an
1260 establishment described in NAICS Sector 21, Mining, or NAICS Code 511210, Software
1261 Publishers, 5415, Computer Systems Design and Related Services, or 54171, Research and
1262 Development in the Physical, Engineering, and Life Sciences, of the 2002 North American
1263 Industry Classification System of the federal Executive Office of the President, Office of
1264 Management and Budget:

1265 (i) machinery and equipment that:

1266 (A) is used in:

1267 (I) the production process, other than the production of real property; or

1268 (II) research and development; and
1269 (B) has an economic life of three or more years; and
1270 (ii) normal operating repair or replacement parts that:
1271 (A) have an economic life of three or more years; and
1272 (B) are used in:
1273 (I) the production process, other than the production of real property, in an
1274 establishment described in this Subsection (14)(c) in the state; or
1275 (II) research and development in an establishment described in this Subsection (14)(c)
1276 in the state;
1277 ~~[(c)]~~ (d) for purposes of this Subsection (14) and in accordance with Title 63, Chapter
1278 46a, Utah Administrative Rulemaking Act, the commission:
1279 (i) shall by rule define the term "establishment"; and
1280 (ii) may by rule define what constitutes:
1281 (A) processing an item sold as tangible personal property;
1282 (B) the production process, other than the production of real property; or
1283 (C) research and development; and
1284 ~~[(d)]~~ (e) on or before October 1, ~~[1991]~~ 2011, and every five years after October 1,
1285 ~~[1991]~~ 2011, the commission shall:
1286 (i) review the exemptions described in this Subsection (14) and make
1287 recommendations to the Revenue and Taxation Interim Committee concerning whether the
1288 exemptions should be continued, modified, or repealed; and
1289 (ii) include in its report:
1290 (A) the cost of the exemptions;
1291 (B) the purpose and effectiveness of the exemptions; and
1292 (C) the benefits of the exemptions to the state;
1293 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:
1294 (i) tooling;
1295 (ii) special tooling;
1296 (iii) support equipment;
1297 (iv) special test equipment; or
1298 (v) parts used in the repairs or renovations of tooling or equipment described in

1299 Subsections (15)(a)(i) through (iv); and
1300 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:
1301 (i) the tooling, equipment, or parts are used or consumed exclusively in the
1302 performance of any aerospace or electronics industry contract with the United States
1303 government or any subcontract under that contract; and
1304 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
1305 title to the tooling, equipment, or parts is vested in the United States government as evidenced
1306 by:
1307 (A) a government identification tag placed on the tooling, equipment, or parts; or
1308 (B) listing on a government-approved property record if placing a government
1309 identification tag on the tooling, equipment, or parts is impractical;
1310 (16) sales of newspapers or newspaper subscriptions;
1311 (17) (a) except as provided in Subsection (17)(b), tangible personal property traded in
1312 as full or part payment of the purchase price, except that for purposes of calculating sales or use
1313 tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and
1314 the tax is based upon:
1315 (i) the bill of sale or other written evidence of value of the vehicle being sold and the
1316 vehicle being traded in; or
1317 (ii) in the absence of a bill of sale or other written evidence of value, the then existing
1318 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
1319 commission; and
1320 (b) notwithstanding Subsection (17)(a), Subsection (17)(a) does not apply to the
1321 following items of tangible personal property traded in as full or part payment of the purchase
1322 price:
1323 (i) money;
1324 (ii) electricity;
1325 (iii) water;
1326 (iv) gas; or
1327 (v) steam;
1328 (18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property
1329 used or consumed primarily and directly in farming operations, regardless of whether the

1330 tangible personal property:

1331 (A) becomes part of real estate; or

1332 (B) is installed by a:

1333 (I) farmer;

1334 (II) contractor; or

1335 (III) subcontractor; or

1336 (ii) sales of parts used in the repairs or renovations of tangible personal property if the

1337 tangible personal property is exempt under Subsection (18)(a)(i); and

1338 (b) notwithstanding Subsection (18)(a), amounts paid or charged for the following

1339 tangible personal property are subject to the taxes imposed by this chapter:

1340 (i) (A) subject to Subsection (18)(b)(i)(B), the following tangible personal property if

1341 the tangible personal property is used in a manner that is incidental to farming:

1342 (I) machinery;

1343 (II) equipment;

1344 (III) materials; or

1345 (IV) supplies; and

1346 (B) tangible personal property that is considered to be used in a manner that is

1347 incidental to farming includes:

1348 (I) hand tools; or

1349 (II) maintenance and janitorial equipment and supplies;

1350 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property if the tangible

1351 personal property is used in an activity other than farming; and

1352 (B) tangible personal property that is considered to be used in an activity other than

1353 farming includes:

1354 (I) office equipment and supplies; or

1355 (II) equipment and supplies used in:

1356 (Aa) the sale or distribution of farm products;

1357 (Bb) research; or

1358 (Cc) transportation; or

1359 (iii) a vehicle required to be registered by the laws of this state during the period ending

1360 two years after the date of the vehicle's purchase;

- 1361 (19) sales of hay;
- 1362 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or
1363 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or
1364 garden, farm, or other agricultural produce is sold by:
- 1365 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other
1366 agricultural produce;
- 1367 (b) an employee of the producer described in Subsection (20)(a); or
- 1368 (c) a member of the immediate family of the producer described in Subsection (20)(a);
- 1369 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
1370 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;
- 1371 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
1372 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
1373 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
1374 manufacturer, processor, wholesaler, or retailer;
- 1375 (23) property stored in the state for resale;
- 1376 (24) property brought into the state by a nonresident for his or her own personal use or
1377 enjoyment while within the state, except property purchased for use in Utah by a nonresident
1378 living and working in Utah at the time of purchase;
- 1379 (25) property purchased for resale in this state, in the regular course of business, either
1380 in its original form or as an ingredient or component part of a manufactured or compounded
1381 product;
- 1382 (26) property upon which a sales or use tax was paid to some other state, or one of its
1383 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
1384 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if
1385 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax
1386 Act;
- 1387 (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a
1388 person for use in compounding a service taxable under the subsections;
- 1389 (28) purchases made in accordance with the special supplemental nutrition program for
1390 women, infants, and children established in 42 U.S.C. Sec. 1786;
- 1391 (29) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers,

1392 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens
1393 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification
1394 Manual of the federal Executive Office of the President, Office of Management and Budget;
1395 (30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State
1396 Boating Act, a boat trailer, or an outboard motor if the boat, trailer, or outboard motor is both
1397 not:
1398 (a) registered in this state; and
1399 (b) used in this state except as necessary to transport the boat, boat trailer, or outboard
1400 motor to the borders of this state;
1401 (31) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah
1402 where a sales or use tax is not imposed, even if the title is passed in Utah;
1403 (32) amounts paid for the purchase of telephone service for purposes of providing
1404 telephone service;
1405 (33) sales or leases of vehicles to, or use of vehicles by an authorized carrier;
1406 (34) (a) 45% of the sales price of any new manufactured home; and
1407 (b) 100% of the sales price of any used manufactured home;
1408 (35) sales relating to schools and fundraising sales;
1409 (36) sales or rentals of durable medical equipment if:
1410 (a) a person presents a prescription for the durable medical equipment; and
1411 (b) the durable medical equipment is used for home use only;
1412 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
1413 Section 72-11-102; and
1414 (b) the commission shall by rule determine the method for calculating sales exempt
1415 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;
1416 (38) sales to a ski resort of:
1417 (a) snowmaking equipment;
1418 (b) ski slope grooming equipment;
1419 (c) passenger ropeways as defined in Section 72-11-102; or
1420 (d) parts used in the repairs or renovations of equipment or passenger ropeways
1421 described in Subsections (38)(a) through (c);
1422 (39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

1423 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for
1424 amusement, entertainment, or recreation an unassisted amusement device as defined in Section
1425 59-12-102;

1426 (b) if a seller that sells or rents at the same business location the right to use or operate
1427 for amusement, entertainment, or recreation one or more unassisted amusement devices and
1428 one or more assisted amusement devices, the exemption described in Subsection (40)(a)
1429 applies if the seller separately accounts for the sales or rentals of the right to use or operate for
1430 amusement, entertainment, or recreation for the assisted amusement devices; and

1431 (c) for purposes of Subsection (40)(b) and in accordance with Title 63, Chapter 46a,
1432 Utah Administrative Rulemaking Act, the commission may make rules:

1433 (i) governing the circumstances under which sales are at the same business location;
1434 and

1435 (ii) establishing the procedures and requirements for a seller to separately account for
1436 the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for
1437 assisted amusement devices;

1438 (41) sales by the state or a political subdivision of the state, except state institutions of
1439 higher education as defined in Section 53B-3-102, of:

1440 (a) photocopies; or

1441 (b) other copies of records held or maintained by the state or a political subdivision of
1442 the state;

1443 (42) amounts paid for admission to an athletic event at an institution of higher
1444 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
1445 20 U.S.C. Sec. 1681 et seq.;

1446 (43) sales of telephone service charged to a prepaid telephone calling card;

1447 (44) (a) sales of:

1448 (i) hearing aids;

1449 (ii) hearing aid accessories; or

1450 (iii) except as provided in Subsection (44)(b), parts used in the repairs or renovations
1451 of hearing aids or hearing aid accessories; and

1452 (b) for purposes of this Subsection (44), notwithstanding Subsection (44)(a)(iii),
1453 "parts" does not include batteries;

- 1454 (45) (a) sales made to or by:
- 1455 (i) an area agency on aging; or
- 1456 (ii) a senior citizen center owned by a county, city, or town; or
- 1457 (b) sales made by a senior citizen center that contracts with an area agency on aging;
- 1458 (46) sales or leases of semiconductor fabricating, processing, research, or development
- 1459 materials regardless of whether the semiconductor fabricating, processing, research, or
- 1460 development materials:
- 1461 (a) actually come into contact with a semiconductor; or
- 1462 (b) ultimately become incorporated into real property;
- 1463 (47) an amount paid by or charged to a purchaser for accommodations and services
- 1464 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
- 1465 59-12-104.2;
- 1466 (48) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary
- 1467 sports event registration certificate in accordance with Section 41-3-306 for the event period
- 1468 specified on the temporary sports event registration certificate;
- 1469 (49) sales or uses of electricity, if the sales or uses are:
- 1470 (a) made under a tariff adopted by the Public Service Commission of Utah only for
- 1471 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy
- 1472 source, as designated in the tariff by the Public Service Commission of Utah; and
- 1473 (b) for an amount of electricity that is:
- 1474 (i) unrelated to the amount of electricity used by the person purchasing the electricity
- 1475 under the tariff described in Subsection (49)(a); and
- 1476 (ii) equivalent to the number of kilowatthours specified in the tariff described in
- 1477 Subsection (49)(a) that may be purchased under the tariff described in Subsection (49)(a);
- 1478 (50) sales or rentals of mobility enhancing equipment if a person presents a
- 1479 prescription for the mobility enhancing equipment;
- 1480 (51) sales of water in a:
- 1481 (a) pipe;
- 1482 (b) conduit;
- 1483 (c) ditch; or
- 1484 (d) reservoir;

1485 (52) sales of currency or coinage that constitute legal tender of the United States or of a
1486 foreign nation;

1487 (53) (a) sales of an item described in Subsection (53)(b) if the item:

1488 (i) does not constitute legal tender of any nation; and

1489 (ii) has a gold, silver, or platinum content of 80% or more; and

1490 (b) Subsection (53)(a) applies to a gold, silver, or platinum:

1491 (i) ingot;

1492 (ii) bar;

1493 (iii) medallion; or

1494 (iv) decorative coin;

1495 (54) amounts paid on a sale-leaseback transaction;

1496 (55) sales of a prosthetic device:

1497 (a) for use on or in a human;

1498 (b) for which a prescription is issued; and

1499 (c) to a person that presents a prescription for the prosthetic device;

1500 (56) (a) except as provided in Subsection (56)(b), purchases, leases, or rentals of
1501 machinery or equipment by an establishment described in Subsection (56)(c) if the machinery
1502 or equipment is primarily used in the production or postproduction of the following media for
1503 commercial distribution:

1504 (i) a motion picture;

1505 (ii) a television program;

1506 (iii) a movie made for television;

1507 (iv) a music video;

1508 (v) a commercial;

1509 (vi) a documentary; or

1510 (vii) a medium similar to Subsections (56)(a)(i) through (vi) as determined by the
1511 commission by administrative rule made in accordance with Subsection (56)(d); or

1512 (b) notwithstanding Subsection (56)(a), purchases, leases, or rentals of machinery or
1513 equipment by an establishment described in Subsection (56)(c) that is used for the production
1514 or postproduction of the following are subject to the taxes imposed by this chapter:

1515 (i) a live musical performance;

- 1516 (ii) a live news program; or
- 1517 (iii) a live sporting event;
- 1518 (c) the following establishments listed in the 1997 North American Industry
- 1519 Classification System of the federal Executive Office of the President, Office of Management
- 1520 and Budget, apply to Subsections (56)(a) and (b):
- 1521 (i) NAICS Code 512110; or
- 1522 (ii) NAICS Code 51219; and
- 1523 (d) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 1524 commission may by rule:
- 1525 (i) prescribe what constitutes a medium similar to Subsections (56)(a)(i) through (vi);
- 1526 or
- 1527 (ii) define:
- 1528 (A) "commercial distribution";
- 1529 (B) "live musical performance";
- 1530 (C) "live news program"; or
- 1531 (D) "live sporting event";
- 1532 (57) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on
- 1533 or before June 30, 2009, of machinery or equipment that:
- 1534 (i) is leased or purchased for or by a facility that:
- 1535 (A) is a renewable energy production facility;
- 1536 (B) is located in the state; and
- 1537 (C) (I) becomes operational on or after July 1, 2004; or
- 1538 (II) has its generation capacity increased by one or more megawatts on or after July 1,
- 1539 2004 as a result of the use of the machinery or equipment;
- 1540 (ii) has an economic life of five or more years; and
- 1541 (iii) is used to make the facility or the increase in capacity of the facility described in
- 1542 Subsection (57)(a)(i) operational up to the point of interconnection with an existing
- 1543 transmission grid including:
- 1544 (A) a wind turbine;
- 1545 (B) generating equipment;
- 1546 (C) a control and monitoring system;

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

- 1578 (A) generating equipment;
- 1579 (B) a control and monitoring system;
- 1580 (C) a power line;
- 1581 (D) substation equipment;
- 1582 (E) lighting;
- 1583 (F) fencing;
- 1584 (G) pipes; or
- 1585 (H) other equipment used for locating a power line or pole; and
- 1586 (b) this Subsection (58) does not apply to:
 - 1587 (i) machinery or equipment used in construction of:
 - 1588 (A) a new waste energy facility; or
 - 1589 (B) the increase in the capacity of a waste energy facility;
 - 1590 (ii) contracted services required for construction and routine maintenance activities;
 - 1591 and
 - 1592 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
 - 1593 described in Subsection (58)(a)(i)(C)(II), machinery or equipment used or acquired after:
 - 1594 (A) the waste energy facility described in Subsection (58)(a)(i) is operational as
 - 1595 described in Subsection (58)(a)(iii); or
 - 1596 (B) the increased capacity described in Subsection (58)(a)(i) is operational as described
 - 1597 in Subsection (58)(a)(iii);
 - 1598 (59) (a) leases of five or more years or purchases made on or after July 1, 2004 but on
 - 1599 or before June 30, 2009, of machinery or equipment that:
 - 1600 (i) is leased or purchased for or by a facility that:
 - 1601 (A) is located in the state;
 - 1602 (B) produces fuel from biomass energy including:
 - 1603 (I) methanol; or
 - 1604 (II) ethanol; and
 - 1605 (C) (I) becomes operational on or after July 1, 2004; or
 - 1606 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004 as
 - 1607 a result of the installation of the machinery or equipment;
 - 1608 (ii) has an economic life of five or more years; and

- 1609 (iii) is installed on the facility described in Subsection (59)(a)(i);
- 1610 (b) this Subsection (59) does not apply to:
- 1611 (i) machinery or equipment used in construction of:
- 1612 (A) a new facility described in Subsection (59)(a)(i); or
- 1613 (B) the increase in capacity of the facility described in Subsection (59)(a)(i); or
- 1614 (ii) contracted services required for construction and routine maintenance activities;
- 1615 and
- 1616 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
- 1617 described in Subsection (59)(a)(i)(C)(II), machinery or equipment used or acquired after:
- 1618 (A) the facility described in Subsection (59)(a)(i) is operational; or
- 1619 (B) the increased capacity described in Subsection (59)(a)(i) is operational;
- 1620 (60) amounts paid to a purchaser as a rebate from the manufacturer of a new vehicle
- 1621 for purchasing the new vehicle;
- 1622 (61) (a) subject to Subsection (61)(b), sales of tangible personal property to persons
- 1623 within this state that is subsequently shipped outside the state and incorporated pursuant to
- 1624 contract into and becomes a part of real property located outside of this state, except to the
- 1625 extent that the other state or political entity imposes a sales, use, gross receipts, or other similar
- 1626 transaction excise tax on it against which the other state or political entity allows a credit for
- 1627 taxes imposed by this chapter; and
- 1628 (b) the exemption provided for in Subsection (61)(a):
- 1629 (i) is allowed only if the exemption is applied:
- 1630 (A) in calculating the purchase price of the tangible personal property; and
- 1631 (B) to a written contract that is in effect on July 1, 2004; and
- 1632 (ii) (A) does not apply beginning on the day on which the contract described in
- 1633 Subsection (61)(b)(i):
- 1634 (I) is substantially modified; or
- 1635 (II) terminates; and
- 1636 (B) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
- 1637 the commission may by rule prescribe the circumstances under which a contract is substantially
- 1638 modified;
- 1639 (62) purchases:

- 1640 (a) of one or more of the following items in printed or electronic format:
- 1641 (i) a list containing information that includes one or more:
- 1642 (A) names; or
- 1643 (B) addresses; or
- 1644 (ii) a database containing information that includes one or more:
- 1645 (A) names; or
- 1646 (B) addresses; and
- 1647 (b) used to send direct mail;
- 1648 (63) redemptions or repurchases of property by a person if that property was:
- 1649 (a) delivered to a pawnbroker as part of a pawn transaction; and
- 1650 (b) redeemed or repurchased within the time period established in a written agreement
- 1651 between the person and the pawnbroker for redeeming or repurchasing the property;
- 1652 (64) (a) purchases or leases of an item described in Subsection (64)(b) if the item:
- 1653 (i) is purchased or leased by, or on behalf of, a telephone service provider; and
- 1654 (ii) has a useful economic life of one or more years; and
- 1655 (b) the following apply to Subsection (64)(a):
- 1656 (i) telecommunications enabling or facilitating equipment, machinery, or software;
- 1657 (ii) telecommunications equipment, machinery, or software required for 911 service;
- 1658 (iii) telecommunications maintenance or repair equipment, machinery, or software;
- 1659 (iv) telecommunications switching or routing equipment, machinery, or software; or
- 1660 (v) telecommunications transmission equipment, machinery, or software; and
- 1661 (65) (a) beginning on July 1, 2006 and ending on June 30, 2016, purchases of tangible
- 1662 personal property used in the research and development of coal-to-liquids, oil shale, or tar
- 1663 sands technology; and
- 1664 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 1665 commission may, for purposes of Subsection (65)(a), make rules defining what constitutes
- 1666 tangible personal property used in the research and development of coal-to-liquids, oil shale,
- 1667 and tar sands technology.

1668 Section 3. Section **59-12-104.4** is enacted to read:

1669 **59-12-104.4. Refund for sales and use taxes paid for certain purchases or leases of**
1670 **machinery, equipment, or repair or replacement parts -- Rulemaking authority.**

1671 (1) Subject to the other provisions of this section, for a purchase or lease described in
1672 Subsection (2) made on or after July 1, 2007, but on or before June 30, 2010, an establishment
1673 described as follows in the 2002 North American Industry Classification System of the federal
1674 Executive Office of the President, Office of Management and Budget, may claim a refund of
1675 sales and use taxes under this chapter paid by that establishment:

1676 (a) NAICS Sector 21, Mining;

1677 (b) NAICS Code 511210, Software Publishers;

1678 (c) NAICS Code 5415, Computer Systems Design and Related Services; or

1679 (d) NAICS Code 54171, Research and Development in the Physical, Engineering, and
1680 Life Sciences.

1681 (2) Subject to the other provisions of this section, an establishment described in
1682 Subsection (1) may claim a refund for sales and use taxes under this chapter paid by that
1683 establishment for a purchase or lease of:

1684 (a) machinery and equipment that:

1685 (i) is used in:

1686 (A) the production process, other than the production of real property; or

1687 (B) research and development; and

1688 (ii) has an economic life of three or more years; and

1689 (b) normal operating repair or replacement parts that:

1690 (i) have an economic life of three or more years; and

1691 (ii) are used in:

1692 (A) the production process, other than the production of real property, in an
1693 establishment described in Subsection (1) in the state; or

1694 (B) research and development in an establishment described in Subsection (1) in the
1695 state.

1696 (3) The amount of the refund allowed by this section is:

1697 (a) for a purchase or lease described in Subsection (2) made by an establishment

1698 described in Subsection (1) on or after July 1, 2007, but on or before June 30, 2008, the amount
1699 of the refund is equal to the product of:

1700 (i) the amount of any sales and use tax under this chapter paid on the purchase or lease;

1701 and

1702 (ii) 25%;
1703 (b) for a purchase or lease described in Subsection (2) made by an establishment
1704 described in Subsection (1) on or after July 1, 2008, but on or before June 30, 2009, the amount
1705 of the refund is equal to the product of:
1706 (i) the amount of any sales and use tax under this chapter paid on the purchase or lease;
1707 and
1708 (ii) 50%; and
1709 (c) for a purchase or lease described in Subsection (2) made by an establishment
1710 described in Subsection (1) on or after July 1, 2009, but on or before June 30, 2010, the amount
1711 of the refund is equal to the product of:
1712 (i) the amount of any sales and use tax under this chapter paid on the purchase or lease;
1713 and
1714 (ii) 75%.
1715 (4) An establishment described in Subsection (1) may apply to the commission for the
1716 refund of sales and use taxes allowed by this section on a form prescribed by the commission.
1717 (5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1718 commission may make rules:
1719 (a) providing procedures for applying for a refund of sales and use taxes under this
1720 section;
1721 (b) providing standards for submitting a request for a refund on a monthly basis if an
1722 establishment has accumulated \$100 or more in sales and use taxes for which the establishment
1723 claims a refund of sales and use taxes under this section;
1724 (c) providing procedures for submitting a request for a refund on a quarterly basis if an
1725 establishment has accumulated less than \$100 in sales and use taxes for which the
1726 establishment claims a refund of sales and use taxes under this section;
1727 (d) defining:
1728 (i) the term "establishment"; or
1729 (ii) what constitutes:
1730 (A) the production process, other than the production of real property; or
1731 (B) research and development; or
1732 (e) providing other procedures and requirements for administering the refund of sales

1733 and use taxes allowed by this section.

1734 Section 4. **Effective date.**

1735 This bill takes effect on July 1, 2007.

Legislative Review Note

as of 1-3-07 11:06 AM

Office of Legislative Research and General Counsel