

**CITY OR TOWN OPTION SALES
AND USE TAX**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad L. Dee

Senate Sponsor: Scott K. Jenkins

LONG TITLE

General Description:

This bill amends the Sales and Use Tax Act to authorize the imposition of a city or town option sales and use tax.

Highlighted Provisions:

This bill:

- ▶ creates a part within the Sales and Use Tax Act authorizing the imposition of a city or town option sales and use tax by certain cities or towns for a certain time period;
- ▶ defines terms;
- ▶ provides that a city or town legislative body may expend the sales and use tax revenues for the same purposes for which the city or town may expend the city's or town's general fund revenues;
- ▶ addresses the procedures and requirements for imposing the sales and use tax, including providing that the sales and use tax is an agreement sales and use tax; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill coordinates with H.B. 206, Tax Amendments, to make substantive and technical amendments, including enacting Sections 59-12-1904, 59-12-1905, and 59-12-1906.

Utah Code Sections Affected:

30 AMENDS:

31 **59-12-102**, as last amended by Laws of Utah 2007, Chapters 9, 214, 224, and 288

32 ENACTS:

33 **59-12-1901**, Utah Code Annotated 1953

34 **59-12-1902**, Utah Code Annotated 1953

35 **59-12-1903**, Utah Code Annotated 1953

36

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

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

39 **59-12-102. Definitions.**

40 As used in this chapter:

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

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

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

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

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

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

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

50 (a) Subsection 59-12-103(2)(a)(i);

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

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

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

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

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

56 (g) Section 59-12-204;

57 (h) Section 59-12-401;

- 58 (i) Section 59-12-402;
- 59 (j) Section 59-12-501;
- 60 (k) Section 59-12-502;
- 61 (l) Section 59-12-703;
- 62 (m) Section 59-12-802;
- 63 (n) Section 59-12-804;
- 64 (o) Section 59-12-1001;
- 65 (p) Section 59-12-1102;
- 66 (q) Section 59-12-1302;
- 67 (r) Section 59-12-1402;
- 68 (s) Section 59-12-1503; [or]
- 69 (t) Section 59-12-1703[-]; or
- 70 (u) Section 59-12-1903.
- 71 (5) "Aircraft" is as defined in Section 72-10-102.
- 72 (6) "Alcoholic beverage" means a beverage that:
- 73 (a) is suitable for human consumption; and
- 74 (b) contains .5% or more alcohol by volume.
- 75 (7) "Area agency on aging" is as defined in Section 62A-3-101.
- 76 (8) "Assisted amusement device" means an amusement device, skill device, or ride
- 77 device that is started and stopped by an individual:
- 78 (a) who is not the purchaser or renter of the right to use or operate the amusement
- 79 device, skill device, or ride device; and
- 80 (b) at the direction of the seller of the right to use the amusement device, skill device, or
- 81 ride device.
- 82 (9) "Assisted cleaning or washing of tangible personal property" means cleaning or
- 83 washing of tangible personal property if the cleaning or washing labor is primarily performed by
- 84 an individual:
- 85 (a) who is not the purchaser of the cleaning or washing of the tangible personal

86 property; and

87 (b) at the direction of the seller of the cleaning or washing of the tangible personal
88 property.

89 (10) "Authorized carrier" means:

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

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

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

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

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

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

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

102 (B) animal waste;

103 (C) methane produced:

104 (I) at landfills; or

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

106 (D) aquatic plants; and

107 (E) agricultural products.

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

109 (i) black liquor;

110 (ii) treated woods; or

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

112 (A) at landfills; or

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

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

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

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

119 (A) distinct and identifiable; and

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

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

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

126 (i) packaging that:

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

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

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

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

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

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

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

139 (i) on a transaction; and

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

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

142 member of the agreement; and

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

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

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

146 and

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

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

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

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

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

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

158 (17) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
159 fuels that does not constitute industrial use under Subsection (42) or residential use under
160 Subsection (80).

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

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

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

169 (19) "Component part" includes:

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

- 198 (v) crating; or
- 199 (vi) packing.
- 200 (25) (a) "Dental prosthesis" means the following if fabricated in a laboratory:
- 201 (i) a bridge;
- 202 (ii) a crown if that crown covers at least 75% of a tooth structure;
- 203 (iii) a denture;
- 204 (iv) an implant;
- 205 (v) an orthodontic device designed to:
- 206 (A) retain the position or spacing of teeth; and
- 207 (B) replace a missing tooth;
- 208 (vi) a partial denture; or
- 209 (vii) a device similar to Subsections (25)(a)(i) through (vi).
- 210 (b) "Dental prosthesis" does not include an appliance or device, other than a device
- 211 described in Subsection (25)(a), if that appliance or device is used in orthodontic therapy to
- 212 apply force to the teeth and their supporting structures to:
- 213 (i) produce changes in their relationship to each other; and
- 214 (ii) control their growth and development.
- 215 (26) "Dietary supplement" means a product, other than tobacco, that:
- 216 (a) is intended to supplement the diet;
- 217 (b) contains one or more of the following dietary ingredients:
- 218 (i) a vitamin;
- 219 (ii) a mineral;
- 220 (iii) an herb or other botanical;
- 221 (iv) an amino acid;
- 222 (v) a dietary substance for use by humans to supplement the diet by increasing the total
- 223 dietary intake; or
- 224 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
- 225 described in Subsections (26)(b)(i) through (v);

- 226 (c) (i) except as provided in Subsection (26)(c)(ii), is intended for ingestion in:
- 227 (A) tablet form;
- 228 (B) capsule form;
- 229 (C) powder form;
- 230 (D) softgel form;
- 231 (E) gelcap form; or
- 232 (F) liquid form; or
- 233 (ii) notwithstanding Subsection (26)(c)(i), if the product is not intended for ingestion in
- 234 a form described in Subsections (26)(c)(i)(A) through (F), is not represented:
- 235 (A) as conventional food; and
- 236 (B) for use as a sole item of:
- 237 (I) a meal; or
- 238 (II) the diet; and
- 239 (d) is required to be labeled as a dietary supplement:
- 240 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 241 (ii) as required by 21 C.F.R. Sec. 101.36.
- 242 (27) (a) "Direct mail" means printed material delivered or distributed by United States
- 243 mail or other delivery service:
- 244 (i) to:
- 245 (A) a mass audience; or
- 246 (B) addressees on a mailing list provided by a purchaser of the mailing list; and
- 247 (ii) if the cost of the printed material is not billed directly to the recipients.
- 248 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
- 249 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 250 (c) "Direct mail" does not include multiple items of printed material delivered to a single
- 251 address.
- 252 (28) (a) "Disposable home medical equipment or supplies" means medical equipment or
- 253 supplies that:

- 254 (i) cannot withstand repeated use; and
- 255 (ii) are purchased by, for, or on behalf of a person other than:
 - 256 (A) a health care facility as defined in Section 26-21-2;
 - 257 (B) a health care provider as defined in Section 78-14-3;
 - 258 (C) an office of a health care provider described in Subsection (28)(a)(ii)(B); or
 - 259 (D) a person similar to a person described in Subsections (28)(a)(ii)(A) through (C).
- 260 (b) "Disposable home medical equipment or supplies" does not include:
 - 261 (i) a drug;
 - 262 (ii) durable medical equipment;
 - 263 (iii) a hearing aid;
 - 264 (iv) a hearing aid accessory;
 - 265 (v) mobility enhancing equipment; or
 - 266 (vi) tangible personal property used to correct impaired vision, including:
 - 267 (A) eyeglasses; or
 - 268 (B) contact lenses.
 - 269 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
 - 270 commission may by rule define what constitutes medical equipment or supplies.
- 271 (29) (a) "Drug" means a compound, substance, or preparation, or a component of a
- 272 compound, substance, or preparation that is:
 - 273 (i) recognized in:
 - 274 (A) the official United States Pharmacopoeia;
 - 275 (B) the official Homeopathic Pharmacopoeia of the United States;
 - 276 (C) the official National Formulary; or
 - 277 (D) a supplement to a publication listed in Subsections (29)(a)(i)(A) through (C);
 - 278 (ii) intended for use in the:
 - 279 (A) diagnosis of disease;
 - 280 (B) cure of disease;
 - 281 (C) mitigation of disease;

- 282 (D) treatment of disease; or
- 283 (E) prevention of disease; or
- 284 (iii) intended to affect:
- 285 (A) the structure of the body; or
- 286 (B) any function of the body.

- 287 (b) "Drug" does not include:
- 288 (i) food and food ingredients;
- 289 (ii) a dietary supplement;
- 290 (iii) an alcoholic beverage; or
- 291 (iv) a prosthetic device.

292 (30) (a) Except as provided in Subsection (30)(c), "durable medical equipment" means
293 equipment that:

- 294 (i) can withstand repeated use;
- 295 (ii) is primarily and customarily used to serve a medical purpose;
- 296 (iii) generally is not useful to a person in the absence of illness or injury; and
- 297 (iv) is not worn in or on the body.

298 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
299 equipment described in Subsection (30)(a).

300 (c) Notwithstanding Subsection (30)(a), "durable medical equipment" does not include
301 mobility enhancing equipment.

302 (31) "Electronic" means:

- 303 (a) relating to technology; and
- 304 (b) having:
- 305 (i) electrical capabilities;
- 306 (ii) digital capabilities;
- 307 (iii) magnetic capabilities;
- 308 (iv) wireless capabilities;
- 309 (v) optical capabilities;

- 310 (vi) electromagnetic capabilities; or
- 311 (vii) capabilities similar to Subsections (31)(b)(i) through (vi).
- 312 (32) "Employee" is as defined in Section 59-10-401.
- 313 (33) "Fixed guideway" means a public transit facility that uses and occupies:
 - 314 (a) rail for the use of public transit; or
 - 315 (b) a separate right-of-way for the use of public transit.
- 316 (34) (a) "Food and food ingredients" means substances:
 - 317 (i) regardless of whether the substances are in:
 - 318 (A) liquid form;
 - 319 (B) concentrated form;
 - 320 (C) solid form;
 - 321 (D) frozen form;
 - 322 (E) dried form; or
 - 323 (F) dehydrated form; and
 - 324 (ii) that are:
 - 325 (A) sold for:
 - 326 (I) ingestion by humans; or
 - 327 (II) chewing by humans; and
 - 328 (B) consumed for the substance's:
 - 329 (I) taste; or
 - 330 (II) nutritional value.
- 331 (b) "Food and food ingredients" includes an item described in Subsection (66)(b)(iii).
- 332 (c) "Food and food ingredients" does not include:
 - 333 (i) an alcoholic beverage;
 - 334 (ii) tobacco; or
 - 335 (iii) prepared food.
- 336 (35) (a) "Fundraising sales" means sales:
 - 337 (i) (A) made by a school; or

- 338 (B) made by a school student;
- 339 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 340 materials, or provide transportation; and
- 341 (iii) that are part of an officially sanctioned school activity.
- 342 (b) For purposes of Subsection (35)(a)(iii), "officially sanctioned school activity" means
- 343 a school activity:
- 344 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 345 district governing the authorization and supervision of fundraising activities;
- 346 (ii) that does not directly or indirectly compensate an individual teacher or other
- 347 educational personnel by direct payment, commissions, or payment in kind; and
- 348 (iii) the net or gross revenues from which are deposited in a dedicated account
- 349 controlled by the school or school district.
- 350 (36) "Geothermal energy" means energy contained in heat that continuously flows
- 351 outward from the earth that is used as the sole source of energy to produce electricity.
- 352 (37) "Governing board of the agreement" means the governing board of the agreement
- 353 that is:
- 354 (a) authorized to administer the agreement; and
- 355 (b) established in accordance with the agreement.
- 356 (38) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:
- 357 (i) the executive branch of the state, including all departments, institutions, boards,
- 358 divisions, bureaus, offices, commissions, and committees;
- 359 (ii) the judicial branch of the state, including the courts, the Judicial Council, the Office
- 360 of the Court Administrator, and similar administrative units in the judicial branch;
- 361 (iii) the legislative branch of the state, including the House of Representatives, the
- 362 Senate, the Legislative Printing Office, the Office of Legislative Research and General Counsel,
- 363 the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal Analyst;
- 364 (iv) the National Guard;
- 365 (v) an independent entity as defined in Section 63E-1-102; or

- 366 (vi) a political subdivision as defined in Section 17B-1-102.
- 367 (b) "Governmental entity" does not include the state systems of public and higher
- 368 education, including:
 - 369 (i) a college campus of the Utah College of Applied Technology;
 - 370 (ii) a school;
 - 371 (iii) the State Board of Education;
 - 372 (iv) the State Board of Regents; or
 - 373 (v) a state institution of higher education as defined in Section 53B-3-102.
- 374 (39) (a) "Hearing aid" means:
 - 375 (i) an instrument or device having an electronic component that is designed to:
 - 376 (A) (I) improve impaired human hearing; or
 - 377 (II) correct impaired human hearing; and
 - 378 (B) (I) be worn in the human ear; or
 - 379 (II) affixed behind the human ear;
 - 380 (ii) an instrument or device that is surgically implanted into the cochlea; or
 - 381 (iii) a telephone amplifying device.
- 382 (b) "Hearing aid" does not include:
 - 383 (i) except as provided in Subsection (39)(a)(i)(B) or (39)(a)(ii), an instrument or device
 - 384 having an electronic component that is designed to be worn on the body;
 - 385 (ii) except as provided in Subsection (39)(a)(iii), an assistive listening device or system
 - 386 designed to be used by one individual, including:
 - 387 (A) a personal amplifying system;
 - 388 (B) a personal FM system;
 - 389 (C) a television listening system; or
 - 390 (D) a device or system similar to a device or system described in Subsections
 - 391 (39)(b)(ii)(A) through (C); or
 - 392 (iii) an assistive listening device or system designed to be used by more than one
 - 393 individual, including:

- 394 (A) a device or system installed in:
- 395 (I) an auditorium;
- 396 (II) a church;
- 397 (III) a conference room;
- 398 (IV) a synagogue; or
- 399 (V) a theater; or
- 400 (B) a device or system similar to a device or system described in Subsections
- 401 (39)(b)(iii)(A)(I) through (V).
- 402 (40) (a) "Hearing aid accessory" means a hearing aid:
- 403 (i) component;
- 404 (ii) attachment; or
- 405 (iii) accessory.
- 406 (b) "Hearing aid accessory" includes:
- 407 (i) a hearing aid neck loop;
- 408 (ii) a hearing aid cord;
- 409 (iii) a hearing aid ear mold;
- 410 (iv) hearing aid tubing;
- 411 (v) a hearing aid ear hook; or
- 412 (vi) a hearing aid remote control.
- 413 (c) "Hearing aid accessory" does not include:
- 414 (i) a component, attachment, or accessory designed to be used only with an:
- 415 (A) instrument or device described in Subsection (39)(b)(i); or
- 416 (B) assistive listening device or system described in Subsection (39)(b)(ii) or (iii); or
- 417 (ii) a hearing aid battery.
- 418 (41) "Hydroelectric energy" means water used as the sole source of energy to produce
- 419 electricity.
- 420 (42) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
- 421 other fuels:

- 422 (a) in mining or extraction of minerals;
- 423 (b) in agricultural operations to produce an agricultural product up to the time of
424 harvest or placing the agricultural product into a storage facility, including:
- 425 (i) commercial greenhouses;
- 426 (ii) irrigation pumps;
- 427 (iii) farm machinery;
- 428 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
429 registered under Title 41, Chapter 1a, Part 2, Registration; and
- 430 (v) other farming activities;
- 431 (c) in manufacturing tangible personal property at an establishment described in SIC
432 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
433 Executive Office of the President, Office of Management and Budget;
- 434 (d) by a scrap recycler if:
- 435 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
436 one or more of the following items into prepared grades of processed materials for use in new
437 products:
- 438 (A) iron;
- 439 (B) steel;
- 440 (C) nonferrous metal;
- 441 (D) paper;
- 442 (E) glass;
- 443 (F) plastic;
- 444 (G) textile; or
- 445 (H) rubber; and
- 446 (ii) the new products under Subsection (42)(d)(i) would otherwise be made with
447 nonrecycled materials; or
- 448 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a
449 cogeneration facility as defined in Section 54-2-1.

450 (43) (a) Except as provided in Subsection (43)(b), "installation charge" means a charge
451 for installing tangible personal property.

452 (b) Notwithstanding Subsection (43)(a), "installation charge" does not include a charge
453 for repairs or renovations of tangible personal property.

454 (44) (a) "Lease" or "rental" means a transfer of possession or control of tangible
455 personal property for:

- 456 (i) (A) a fixed term; or
- 457 (B) an indeterminate term; and
- 458 (ii) consideration.

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

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

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

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

469 (A) upon completion of required payments; and

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

471 (I) \$100; or

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

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

476 (d) For purposes of Subsection (44)(c)(iii), an operator is necessary for equipment to
477 perform as designed if the operator's duties exceed the:

- 478 (i) set-up of tangible personal property;
- 479 (ii) maintenance of tangible personal property; or
- 480 (iii) inspection of tangible personal property.
- 481 (45) "Load and leave" means delivery to a purchaser by use of a tangible storage media
- 482 if the tangible storage media is not physically transferred to the purchaser.
- 483 (46) "Local taxing jurisdiction" means a:
- 484 (a) county that is authorized to impose an agreement sales and use tax;
- 485 (b) city that is authorized to impose an agreement sales and use tax; or
- 486 (c) town that is authorized to impose an agreement sales and use tax.
- 487 (47) "Manufactured home" is as defined in Section 58-56-3.
- 488 (48) For purposes of Section 59-12-104, "manufacturing facility" means:
- 489 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
- 490 Industrial Classification Manual of the federal Executive Office of the President, Office of
- 491 Management and Budget;
- 492 (b) a scrap recycler if:
- 493 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 494 one or more of the following items into prepared grades of processed materials for use in new
- 495 products:
- 496 (A) iron;
- 497 (B) steel;
- 498 (C) nonferrous metal;
- 499 (D) paper;
- 500 (E) glass;
- 501 (F) plastic;
- 502 (G) textile; or
- 503 (H) rubber; and
- 504 (ii) the new products under Subsection (48)(b)(i) would otherwise be made with
- 505 nonrecycled materials; or

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

507 (49) "Member of the immediate family of the producer" means a person who is related
508 to a producer described in Subsection 59-12-104(20)(a) as a:

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

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

511 (ii) a foster child or foster stepchild;

512 (b) grandchild or stepgrandchild;

513 (c) grandparent or stepgrandparent;

514 (d) nephew or stepnephew;

515 (e) niece or stepniece;

516 (f) parent or stepparent;

517 (g) sibling or stepsibling;

518 (h) spouse;

519 (i) person who is the spouse of a person described in Subsections (49)(a) through (g);

520 or

521 (j) person similar to a person described in Subsections (49)(a) through (i) as determined
522 by the commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative
523 Rulemaking Act.

524 (50) "Mobile home" is as defined in Section 58-56-3.

525 (51) "Mobile telecommunications service" is as defined in the Mobile
526 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

527 (52) (a) Except as provided in Subsection (52)(c), "mobility enhancing equipment"
528 means equipment that is:

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

531 (ii) appropriate for use in a:

532 (A) home; or

533 (B) motor vehicle; and

- 534 (iii) not generally used by persons with normal mobility.
- 535 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
536 the equipment described in Subsection (52)(a).
- 537 (c) Notwithstanding Subsection (52)(a), "mobility enhancing equipment" does not
538 include:
- 539 (i) a motor vehicle;
- 540 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
541 vehicle manufacturer;
- 542 (iii) durable medical equipment; or
- 543 (iv) a prosthetic device.
- 544 (53) "Model 1 seller" means a seller that has selected a certified service provider as the
545 seller's agent to perform all of the seller's sales and use tax functions for agreement sales and
546 use taxes other than the seller's obligation under Section 59-12-107.4 to remit a tax on the
547 seller's own purchases.
- 548 (54) "Model 2 seller" means a seller that:
- 549 (a) except as provided in Subsection (54)(b), has selected a certified automated system
550 to perform the seller's sales tax functions for agreement sales and use taxes; and
- 551 (b) notwithstanding Subsection (54)(a), retains responsibility for remitting all of the
552 sales tax:
- 553 (i) collected by the seller; and
- 554 (ii) to the appropriate local taxing jurisdiction.
- 555 (55) (a) Subject to Subsection (55)(b), "model 3 seller" means a seller that has:
- 556 (i) sales in at least five states that are members of the agreement;
- 557 (ii) total annual sales revenues of at least \$500,000,000;
- 558 (iii) a proprietary system that calculates the amount of tax:
- 559 (A) for an agreement sales and use tax; and
- 560 (B) due to each local taxing jurisdiction; and
- 561 (iv) entered into a performance agreement with the governing board of the agreement.

562 (b) For purposes of Subsection (55)(a), "model 3 seller" includes an affiliated group of
563 sellers using the same proprietary system.

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

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

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

568 (59) (a) "Other fuels" means products that burn independently to produce heat or
569 energy.

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

572 (60) "Pawnbroker" is as defined in Section 13-32a-102.

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

574 (62) (a) "Permanently attached to real property" means that for tangible personal
575 property attached to real property:

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

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

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

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

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

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

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

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

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

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

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

590 or renovation if the repair or renovation is performed where the tangible personal property and
591 real property are located; or

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

596 (A) property attached to oil, gas, or water pipelines, other than the property listed in
597 Subsection (62)(c)(iii);

598 (B) a hot water heater;

599 (C) a water softener system; or

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

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

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

605 (A) convenience;

606 (B) stability; or

607 (C) for an obvious temporary purpose;

608 (ii) the detachment of tangible personal property from real property other than the
609 detachment described in Subsection (62)(b)(ii); or

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

614 (A) a refrigerator;

615 (B) a washer;

616 (C) a dryer;

617 (D) a stove;

618 (E) a television;
619 (F) a computer;
620 (G) a telephone; or
621 (H) tangible personal property similar to Subsections (62)(c)(iii)(A) through (G) as
622 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah
623 Administrative Rulemaking Act.

624 (63) "Person" includes any individual, firm, partnership, joint venture, association,
625 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
626 municipality, district, or other local governmental entity of the state, or any group or
627 combination acting as a unit.

628 (64) "Place of primary use":

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

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

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

638 (66) (a) "Prepared food" means:

- 639 (i) food:
 - 640 (A) sold in a heated state; or
 - 641 (B) heated by a seller;
- 642 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
643 item; or

644 (iii) except as provided in Subsection (66)(c), food sold with an eating utensil provided
645 by the seller, including a:

- 646 (A) plate;
- 647 (B) knife;
- 648 (C) fork;
- 649 (D) spoon;
- 650 (E) glass;
- 651 (F) cup;
- 652 (G) napkin; or
- 653 (H) straw.
- 654 (b) "Prepared food" does not include:
- 655 (i) food that a seller only:
- 656 (A) cuts;
- 657 (B) repackages; or
- 658 (C) pasteurizes; or
- 659 (ii) (A) the following:
- 660 (I) raw egg;
- 661 (II) raw fish;
- 662 (III) raw meat;
- 663 (IV) raw poultry; or
- 664 (V) a food containing an item described in Subsections (66)(b)(ii)(A)(I) through (IV);
- 665 and
- 666 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 667 Food and Drug Administration's Food Code that a consumer cook the items described in
- 668 Subsection (66)(b)(ii)(A) to prevent food borne illness; or
- 669 (iii) the following if sold without eating utensils provided by the seller:
- 670 (A) food and food ingredients sold by a seller if the seller's proper primary classification
- 671 under the 2002 North American Industry Classification System of the federal Executive Office
- 672 of the President, Office of Management and Budget, is manufacturing in Sector 311, Food
- 673 Manufacturing, except for Subsector 3118, Bakeries and Tortilla Manufacturing;

- 674 (B) food and food ingredients sold in an unheated state:
- 675 (I) by weight or volume; and
- 676 (II) as a single item; or
- 677 (C) a bakery item, including:
- 678 (I) a bagel;
- 679 (II) a bar;
- 680 (III) a biscuit;
- 681 (IV) bread;
- 682 (V) a bun;
- 683 (VI) a cake;
- 684 (VII) a cookie;
- 685 (VIII) a croissant;
- 686 (IX) a danish;
- 687 (X) a donut;
- 688 (XI) a muffin;
- 689 (XII) a pastry;
- 690 (XIII) a pie;
- 691 (XIV) a roll;
- 692 (XV) a tart;
- 693 (XVI) a torte; or
- 694 (XVII) a tortilla.
- 695 (c) Notwithstanding Subsection (66)(a)(iii), an eating utensil provided by the seller does
- 696 not include the following used to transport the food:
- 697 (i) a container; or
- 698 (ii) packaging.
- 699 (67) "Prescription" means an order, formula, or recipe that is issued:
- 700 (a) (i) orally;
- 701 (ii) in writing;

702 (iii) electronically; or
703 (iv) by any other manner of transmission; and
704 (b) by a licensed practitioner authorized by the laws of a state.
705 (68) (a) Except as provided in Subsection (68)(b)(ii) or (iii), "prewritten computer
706 software" means computer software that is not designed and developed:
707 (i) by the author or other creator of the computer software; and
708 (ii) to the specifications of a specific purchaser.
709 (b) "Prewritten computer software" includes:
710 (i) a prewritten upgrade to computer software if the prewritten upgrade to the
711 computer software is not designed and developed:
712 (A) by the author or other creator of the computer software; and
713 (B) to the specifications of a specific purchaser;
714 (ii) notwithstanding Subsection (68)(a), computer software designed and developed by
715 the author or other creator of the computer software to the specifications of a specific purchaser
716 if the computer software is sold to a person other than the purchaser; or
717 (iii) notwithstanding Subsection (68)(a) and except as provided in Subsection (68)(c),
718 prewritten computer software or a prewritten portion of prewritten computer software:
719 (A) that is modified or enhanced to any degree; and
720 (B) if the modification or enhancement described in Subsection (68)(b)(iii)(A) is
721 designed and developed to the specifications of a specific purchaser.
722 (c) Notwithstanding Subsection (68)(b)(iii), "prewritten computer software" does not
723 include a modification or enhancement described in Subsection (68)(b)(iii) if the charges for the
724 modification or enhancement are:
725 (i) reasonable; and
726 (ii) separately stated on the invoice or other statement of price provided to the
727 purchaser.
728 (69) (a) "Prosthetic device" means a device that is worn on or in the body to:
729 (i) artificially replace a missing portion of the body;

- 730 (ii) prevent or correct a physical deformity or physical malfunction; or
- 731 (iii) support a weak or deformed portion of the body.
- 732 (b) "Prosthetic device" includes:
- 733 (i) parts used in the repairs or renovation of a prosthetic device;
- 734 (ii) replacement parts for a prosthetic device; or
- 735 (iii) a dental prosthesis.
- 736 (c) "Prosthetic device" does not include:
- 737 (i) corrective eyeglasses;
- 738 (ii) contact lenses; or
- 739 (iii) hearing aids.
- 740 (70) (a) "Protective equipment" means an item:
- 741 (i) for human wear; and
- 742 (ii) that is:
- 743 (A) designed as protection:
- 744 (I) to the wearer against injury or disease; or
- 745 (II) against damage or injury of other persons or property; and
- 746 (B) not suitable for general use.
- 747 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 748 commission shall make rules:
- 749 (i) listing the items that constitute "protective equipment"; and
- 750 (ii) that are consistent with the list of items that constitute "protective equipment" under
- 751 the agreement.
- 752 (71) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or
- 753 printed matter, other than a photocopy:
- 754 (i) regardless of:
- 755 (A) characteristics;
- 756 (B) copyright;
- 757 (C) form;

- 758 (D) format;
- 759 (E) method of reproduction; or
- 760 (F) source; and
- 761 (ii) made available in printed or electronic format.
- 762 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 763 commission may by rule define the term "photocopy."
- 764 (72) (a) "Purchase price" and "sales price" mean the total amount of consideration:
- 765 (i) valued in money; and
- 766 (ii) for which tangible personal property or services are:
- 767 (A) sold;
- 768 (B) leased; or
- 769 (C) rented.
- 770 (b) "Purchase price" and "sales price" include:
- 771 (i) the seller's cost of the tangible personal property or services sold;
- 772 (ii) expenses of the seller, including:
- 773 (A) the cost of materials used;
- 774 (B) a labor cost;
- 775 (C) a service cost;
- 776 (D) interest;
- 777 (E) a loss;
- 778 (F) the cost of transportation to the seller; or
- 779 (G) a tax imposed on the seller; or
- 780 (iii) a charge by the seller for any service necessary to complete the sale.
- 781 (c) "Purchase price" and "sales price" do not include:
- 782 (i) a discount:
- 783 (A) in a form including:
- 784 (I) cash;
- 785 (II) term; or

- 786 (III) coupon;
- 787 (B) that is allowed by a seller;
- 788 (C) taken by a purchaser on a sale; and
- 789 (D) that is not reimbursed by a third party; or
- 790 (ii) the following if separately stated on an invoice, bill of sale, or similar document
- 791 provided to the purchaser:
 - 792 (A) the amount of a trade-in;
 - 793 (B) the following from credit extended on the sale of tangible personal property or
 - 794 services:
 - 795 (I) interest charges;
 - 796 (II) financing charges; or
 - 797 (III) carrying charges;
 - 798 (C) a tax or fee legally imposed directly on the consumer;
 - 799 (D) a delivery charge; or
 - 800 (E) an installation charge.
- 801 (73) "Purchaser" means a person to whom:
 - 802 (a) a sale of tangible personal property is made; or
 - 803 (b) a service is furnished.
- 804 (74) "Regularly rented" means:
 - 805 (a) rented to a guest for value three or more times during a calendar year; or
 - 806 (b) advertised or held out to the public as a place that is regularly rented to guests for
 - 807 value.
- 808 (75) "Renewable energy" means:
 - 809 (a) biomass energy;
 - 810 (b) hydroelectric energy;
 - 811 (c) geothermal energy;
 - 812 (d) solar energy; or
 - 813 (e) wind energy.

- 814 (76) (a) "Renewable energy production facility" means a facility that:
- 815 (i) uses renewable energy to produce electricity; and
- 816 (ii) has a production capacity of 20 kilowatts or greater.
- 817 (b) A facility is a renewable energy production facility regardless of whether the facility
- 818 is:
- 819 (i) connected to an electric grid; or
- 820 (ii) located on the premises of an electricity consumer.
- 821 (77) "Rental" is as defined in Subsection (44).
- 822 (78) "Repairs or renovations of tangible personal property" means:
- 823 (a) a repair or renovation of tangible personal property that is not permanently attached
- 824 to real property; or
- 825 (b) attaching tangible personal property to other tangible personal property if the other
- 826 tangible personal property to which the tangible personal property is attached is not
- 827 permanently attached to real property.
- 828 (79) "Research and development" means the process of inquiry or experimentation
- 829 aimed at the discovery of facts, devices, technologies, or applications and the process of
- 830 preparing those devices, technologies, or applications for marketing.
- 831 (80) "Residential use" means the use in or around a home, apartment building, sleeping
- 832 quarters, and similar facilities or accommodations.
- 833 (81) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
- 834 than:
- 835 (a) resale;
- 836 (b) sublease; or
- 837 (c) subrent.
- 838 (82) (a) "Retailer" means any person engaged in a regularly organized business in
- 839 tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and
- 840 who is selling to the user or consumer and not for resale.
- 841 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly

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

843 (83) (a) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise,
844 in any manner, of tangible personal property or any other taxable transaction under Subsection
845 59-12-103(1), for consideration.

846 (b) "Sale" includes:

847 (i) installment and credit sales;

848 (ii) any closed transaction constituting a sale;

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

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

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

856 (84) "Sale at retail" is as defined in Subsection (81).

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

859 (a) by a purchaser-lessee;

860 (b) to a lessor;

861 (c) for consideration; and

862 (d) if:

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

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

867 (A) for the property; and

868 (B) to the purchaser-lessee; and

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

870 required to:

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

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

873 (86) "Sales price" is as defined in Subsection (72).

874 (87) (a) "Sales relating to schools" means the following sales by, amounts paid to, or
875 amounts charged by a school:

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

877 including:

878 (A) the sale of:

879 (I) textbooks;

880 (II) textbook fees;

881 (III) laboratory fees;

882 (IV) laboratory supplies; or

883 (V) safety equipment;

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

885 that:

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

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

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

892 (I) food and food ingredients; or

893 (II) prepared food; or

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

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

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

- 898 (i) bookstore sales of items that are not educational materials or supplies;
- 899 (ii) except as provided in Subsection (87)(a)(i)(B):
 - 900 (A) clothing;
 - 901 (B) clothing accessories or equipment;
 - 902 (C) protective equipment; or
 - 903 (D) sports or recreational equipment; or
- 904 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 905 event or school-related activity if the amounts paid or charged are passed through to a person:
 - 906 (A) other than a:
 - 907 (I) school;
 - 908 (II) nonprofit organization authorized by a school board or a governing body of a
 - 909 private school to organize and direct a competitive secondary school activity; or
 - 910 (III) nonprofit association authorized by a school board or a governing body of a
 - 911 private school to organize and direct a competitive secondary school activity; and
 - 912 (B) that is required to collect sales and use taxes under this chapter.
 - 913 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
 - 914 commission may make rules defining the term "passed through."
- 915 (88) For purposes of this section and Section 59-12-104, "school":
 - 916 (a) means:
 - 917 (i) an elementary school or a secondary school that:
 - 918 (A) is a:
 - 919 (I) public school; or
 - 920 (II) private school; and
 - 921 (B) provides instruction for one or more grades kindergarten through 12; or
 - 922 (ii) a public school district; and
 - 923 (b) includes the Electronic High School as defined in Section 53A-15-1002.
- 924 (89) "Seller" means a person that makes a sale, lease, or rental of:
 - 925 (a) tangible personal property; or

- 926 (b) a service.
- 927 (90) (a) "Semiconductor fabricating, processing, research, or development materials"
- 928 means tangible personal property:
 - 929 (i) used primarily in the process of:
 - 930 (A) (I) manufacturing a semiconductor;
 - 931 (II) fabricating a semiconductor; or
 - 932 (III) research or development of a:
 - 933 (Aa) semiconductor; or
 - 934 (Bb) semiconductor manufacturing process; or
 - 935 (B) maintaining an environment suitable for a semiconductor; or
 - 936 (ii) consumed primarily in the process of:
 - 937 (A) (I) manufacturing a semiconductor;
 - 938 (II) fabricating a semiconductor; or
 - 939 (III) research or development of a:
 - 940 (Aa) semiconductor; or
 - 941 (Bb) semiconductor manufacturing process; or
 - 942 (B) maintaining an environment suitable for a semiconductor.
- 943 (b) "Semiconductor fabricating, processing, research, or development materials"
- 944 includes:
 - 945 (i) parts used in the repairs or renovations of tangible personal property described in
 - 946 Subsection (90)(a); or
 - 947 (ii) a chemical, catalyst, or other material used to:
 - 948 (A) produce or induce in a semiconductor a:
 - 949 (I) chemical change; or
 - 950 (II) physical change;
 - 951 (B) remove impurities from a semiconductor; or
 - 952 (C) improve the marketable condition of a semiconductor.
- 953 (91) "Senior citizen center" means a facility having the primary purpose of providing

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

955 (92) "Simplified electronic return" means the electronic return:

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

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

958 (93) "Solar energy" means the sun used as the sole source of energy for producing
959 electricity.

960 (94) (a) "Sports or recreational equipment" means an item:

961 (i) designed for human use; and

962 (ii) that is:

963 (A) worn in conjunction with:

964 (I) an athletic activity; or

965 (II) a recreational activity; and

966 (B) not suitable for general use.

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

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

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

972 (95) "State" means the state of Utah, its departments, and agencies.

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

976 (97) (a) "Tangible personal property" means personal property that:

977 (i) may be:

978 (A) seen;

979 (B) weighed;

980 (C) measured;

981 (D) felt; or

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

984 (b) "Tangible personal property" includes:

- 985 (i) electricity;
- 986 (ii) water;
- 987 (iii) gas;
- 988 (iv) steam; or
- 989 (v) prewritten computer software.

990 (98) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon
991 and require further processing other than mechanical blending before becoming finished
992 petroleum products.

993 (99) (a) "Telecommunications enabling or facilitating equipment, machinery, or
994 software" means an item listed in Subsection (99)(b) if that item is purchased or leased primarily
995 to enable or facilitate one or more of the following to function:

- 996 (i) telecommunications switching or routing equipment, machinery, or software; or
- 997 (ii) telecommunications transmission equipment, machinery, or software.

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

- 999 (i) a pole;
- 1000 (ii) software;
- 1001 (iii) a supplementary power supply;
- 1002 (iv) temperature or environmental equipment or machinery;
- 1003 (v) test equipment;
- 1004 (vi) a tower; or
- 1005 (vii) equipment, machinery, or software that functions similarly to an item listed in

1006 Subsections (99)(b)(i) through (vi) as determined by the commission by rule made in
1007 accordance with Subsection (99)(c).

1008 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1009 commission may by rule define what constitutes equipment, machinery, or software that

1010 functions similarly to an item listed in Subsections (99)(b)(i) through (vi).

1011 (100) "Telecommunications equipment, machinery, or software required for 911
1012 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.
1013 Sec. 20.18.

1014 (101) "Telecommunications maintenance or repair equipment, machinery, or software"
1015 means equipment, machinery, or software purchased or leased primarily to maintain or repair
1016 one or more of the following, regardless of whether the equipment, machinery, or software is
1017 purchased or leased as a spare part or as an upgrade or modification to one or more of the
1018 following:

- 1019 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 1020 (b) telecommunications switching or routing equipment, machinery, or software; or
- 1021 (c) telecommunications transmission equipment, machinery, or software.

1022 (102) (a) "Telecommunications switching or routing equipment, machinery, or
1023 software" means an item listed in Subsection (102)(b) if that item is purchased or leased
1024 primarily for switching or routing:

- 1025 (i) voice communications;
- 1026 (ii) data communications; or
- 1027 (iii) telephone service.

1028 (b) The following apply to Subsection (102)(a):

- 1029 (i) a bridge;
- 1030 (ii) a computer;
- 1031 (iii) a cross connect;
- 1032 (iv) a modem;
- 1033 (v) a multiplexer;
- 1034 (vi) plug in circuitry;
- 1035 (vii) a router;
- 1036 (viii) software;
- 1037 (ix) a switch; or

1038 (x) equipment, machinery, or software that functions similarly to an item listed in
1039 Subsections (102)(b)(i) through (ix) as determined by the commission by rule made in
1040 accordance with Subsection (102)(c).

1041 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1042 commission may by rule define what constitutes equipment, machinery, or software that
1043 functions similarly to an item listed in Subsections (102)(b)(i) through (ix).

1044 (103) (a) "Telecommunications transmission equipment, machinery, or software" means
1045 an item listed in Subsection (103)(b) if that item is purchased or leased primarily for sending,
1046 receiving, or transporting:

- 1047 (i) voice communications;
- 1048 (ii) data communications; or
- 1049 (iii) telephone service.

1050 (b) The following apply to Subsection (103)(a):

- 1051 (i) an amplifier;
- 1052 (ii) a cable;
- 1053 (iii) a closure;
- 1054 (iv) a conduit;
- 1055 (v) a controller;
- 1056 (vi) a duplexer;
- 1057 (vii) a filter;
- 1058 (viii) an input device;
- 1059 (ix) an input/output device;
- 1060 (x) an insulator;
- 1061 (xi) microwave machinery or equipment;
- 1062 (xii) an oscillator;
- 1063 (xiii) an output device;
- 1064 (xiv) a pedestal;
- 1065 (xv) a power converter;

- 1066 (xvi) a power supply;
- 1067 (xvii) a radio channel;
- 1068 (xviii) a radio receiver;
- 1069 (xix) a radio transmitter;
- 1070 (xx) a repeater;
- 1071 (xxi) software;
- 1072 (xxii) a terminal;
- 1073 (xxiii) a timing unit;
- 1074 (xxiv) a transformer;
- 1075 (xxv) a wire; or
- 1076 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
- 1077 Subsections (103)(b)(i) through (xxv) as determined by the commission by rule made in
- 1078 accordance with Subsection (103)(c).

1079 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

1080 commission may by rule define what constitutes equipment, machinery, or software that

1081 functions similarly to an item listed in Subsections (103)(b)(i) through (xxv).

1082 (104) (a) "Telephone service" means a two-way transmission:

1083 (i) by:

1084 (A) wire;

1085 (B) radio;

1086 (C) lightwave; or

1087 (D) other electromagnetic means; and

1088 (ii) of one or more of the following:

1089 (A) a sign;

1090 (B) a signal;

1091 (C) writing;

1092 (D) an image;

1093 (E) sound;

- 1094 (F) a message;
- 1095 (G) data; or
- 1096 (H) other information of any nature.
- 1097 (b) "Telephone service" includes:
- 1098 (i) mobile telecommunications service;
- 1099 (ii) private communications service; or
- 1100 (iii) automated digital telephone answering service.
- 1101 (c) "Telephone service" does not include a service or a transaction that a state or a
- 1102 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet
- 1103 Tax Freedom Act, Pub. L. No. 105-277.
- 1104 (105) Notwithstanding where a call is billed or paid, "telephone service address" means:
- 1105 (a) if the location described in this Subsection (105)(a) is known, the location of the
- 1106 telephone service equipment:
- 1107 (i) to which a call is charged; and
- 1108 (ii) from which the call originates or terminates;
- 1109 (b) if the location described in Subsection (105)(a) is not known but the location
- 1110 described in this Subsection (105)(b) is known, the location of the origination point of the signal
- 1111 of the telephone service first identified by:
- 1112 (i) the telecommunications system of the seller; or
- 1113 (ii) if the system used to transport the signal is not that of the seller, information
- 1114 received by the seller from its service provider; or
- 1115 (c) if the locations described in Subsection (105)(a) or (b) are not known, the location
- 1116 of a purchaser's primary place of use.
- 1117 (106) (a) "Telephone service provider" means a person that:
- 1118 (i) owns, controls, operates, or manages a telephone service; and
- 1119 (ii) engages in an activity described in Subsection (106)(a)(i) for the shared use with or
- 1120 resale to any person of the telephone service.
- 1121 (b) A person described in Subsection (106)(a) is a telephone service provider whether

1122 or not the Public Service Commission of Utah regulates:

1123 (i) that person; or

1124 (ii) the telephone service that the person owns, controls, operates, or manages.

1125 (107) "Tobacco" means:

1126 (a) a cigarette;

1127 (b) a cigar;

1128 (c) chewing tobacco;

1129 (d) pipe tobacco; or

1130 (e) any other item that contains tobacco.

1131 (108) "Unassisted amusement device" means an amusement device, skill device, or ride

1132 device that is started and stopped by the purchaser or renter of the right to use or operate the

1133 amusement device, skill device, or ride device.

1134 (109) (a) "Use" means the exercise of any right or power over tangible personal

1135 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that

1136 property, item, or service.

1137 (b) "Use" does not include the sale, display, demonstration, or trial of that property in

1138 the regular course of business and held for resale.

1139 (110) (a) Subject to Subsection (110)(b), "vehicle" means the following that are

1140 required to be titled, registered, or titled and registered:

1141 (i) an aircraft as defined in Section 72-10-102;

1142 (ii) a vehicle as defined in Section 41-1a-102;

1143 (iii) an off-highway vehicle as defined in Section 41-22-2; or

1144 (iv) a vessel as defined in Section 41-1a-102.

1145 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

1146 (i) a vehicle described in Subsection (110)(a); or

1147 (ii) (A) a locomotive;

1148 (B) a freight car;

1149 (C) railroad work equipment; or

- 1150 (D) other railroad rolling stock.
- 1151 (111) "Vehicle dealer" means a person engaged in the business of buying, selling, or
1152 exchanging a vehicle as defined in Subsection (110).
- 1153 (112) (a) Except as provided in Subsection (112)(b), "waste energy facility" means a
1154 facility that generates electricity:
- 1155 (i) using as the primary source of energy waste materials that would be placed in a
1156 landfill or refuse pit if it were not used to generate electricity, including:
- 1157 (A) tires;
- 1158 (B) waste coal; or
- 1159 (C) oil shale; and
- 1160 (ii) in amounts greater than actually required for the operation of the facility.
- 1161 (b) "Waste energy facility" does not include a facility that incinerates:
- 1162 (i) municipal solid waste;
- 1163 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or
- 1164 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.
- 1165 (113) "Watercraft" means a vessel as defined in Section 73-18-2.
- 1166 (114) "Wind energy" means wind used as the sole source of energy to produce
1167 electricity.
- 1168 (115) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
1169 location by the United States Postal Service.

1170 Section 2. Section **59-12-1901** is enacted to read:

1171 **Part 19. City or Town Option Sales and Use Tax Act**

1172 **59-12-1901. Title.**

1173 This part is known as the "City or Town Option Sales and Use Tax Act."

1174 Section 3. Section **59-12-1902** is enacted to read:

1175 **59-12-1902. Definitions.**

1176 As used in this part:

1177 (1) "Annexation" means an annexation to a city or town under Title 10, Chapter 2, Part

1178 4, Annexation.

1179 (2) "Annexing area" means an area that is annexed into a city or town.

1180 Section 4. Section **59-12-1903** is enacted to read:

1181 **59-12-1903. Imposition of tax -- Base -- Rate -- Expenditure of revenues collected**
1182 **from the tax -- Administration, collection, and enforcement of tax by commission --**
1183 **Administrative fee -- Enactment or repeal of tax -- Annexation -- Notice.**

1184 (1) (a) Subject to the other provisions of this section and except as provided in
1185 Subsection (2), beginning on January 1, 2009 and ending on June 30, 2016, if a city or town
1186 receives a distribution for the 12 consecutive months of fiscal year 2005-06 because the city or
1187 town would have received a tax revenue distribution of less than .75% of the taxable sales
1188 within the boundaries of the city or town but for Subsection 59-12-205(3)(a), the city or town
1189 legislative body may impose a sales and use tax of up to .20% on the transactions:

1190 (i) described in Subsection 59-12-103(1); and

1191 (ii) within the city or town.

1192 (b) A city or town legislative body that imposes a tax under Subsection (1)(a) shall
1193 expend the revenues collected from the tax for the same purposes for which the city or town
1194 may expend the city's or town's general fund revenues.

1195 (c) For purposes of this Subsection (1), the location of a transaction shall be determined
1196 in accordance with Section 59-12-207.

1197 (2) (a) A city or town legislative body may not impose a tax under this section on:

1198 (i) the sales and uses described in Section 59-12-104 to the extent the sales and uses are
1199 exempt from taxation under Section 59-12-104;

1200 (ii) any amounts paid or charged by a seller that collects a tax under Subsection
1201 59-12-107(1)(b); or

1202 (iii) except as provided in Subsection (2)(b), amounts paid or charged for food and food
1203 ingredients.

1204 (b) A city or town legislative body imposing a tax under this section shall impose the
1205 tax on amounts paid or charged for food and food ingredients if:

1206 (i) the food and food ingredients are sold as part of a bundled transaction attributable to
1207 food and food ingredients and tangible personal property other than food and food ingredients;
1208 and

1209 (ii) the seller collecting the tax is a seller other than a seller that collects a tax in
1210 accordance with Subsection 59-12-107(1)(b).

1211 (3) To impose a tax under this part, a city or town legislative body shall obtain approval
1212 from a majority of the members of the city or town legislative body.

1213 (4) The commission shall transmit revenues collected within a city or town from a tax
1214 under this part:

1215 (a) to the city or town legislative body;

1216 (b) monthly; and

1217 (c) by electronic funds transfer.

1218 (5) (a) Except as provided in Subsection (5)(b), the commission shall administer,
1219 collect, and enforce a tax under this part in accordance with:

1220 (i) the same procedures used to administer, collect, and enforce the tax under:

1221 (A) Part 1, Tax Collection; or

1222 (B) Part 2, Local Sales and Use Tax Act; and

1223 (ii) Chapter 1, General Taxation Policies.

1224 (b) A tax under this part is not subject to Subsections 59-12-205(2) through (7).

1225 (6) (a) The commission may retain an amount of tax collected under this part of not to
1226 exceed the lesser of:

1227 (i) 1.5%; or

1228 (ii) an amount equal to the cost to the commission of administering this part.

1229 (b) Any amount the commission retains under Subsection (6)(a) shall be:

1230 (i) deposited into the Sales and Use Tax Administrative Fees Account; and

1231 (ii) used as provided in Subsection 59-12-206(2).

1232 (7) (a) (i) Except as provided in Subsection (7)(b) or (c), if, on or after January 1, 2009,
1233 a city or town enacts or repeals a tax or changes the rate of a tax under this part, the enactment,

1234 repeal, or change shall take effect:

1235 (A) on the first day of a calendar quarter; and

1236 (B) after a 90-day period beginning on the date the commission receives notice meeting

1237 the requirements of Subsection (7)(a)(i) from the city or town.

1238 (ii) The notice described in Subsection (7)(a)(i)(B) shall state:

1239 (A) that the city or town will enact or repeal a tax or change the rate of the tax under

1240 this part;

1241 (B) the statutory authority for the tax described in Subsection (7)(a)(ii)(A);

1242 (C) the effective date of the tax described in Subsection (7)(a)(ii)(A); and

1243 (D) if the city or town enacts the tax or changes the rate of the tax described in

1244 Subsection (7)(a)(ii)(A), the rate of the tax.

1245 (b) (i) For a transaction described in Subsection (7)(b)(iii), if the billing period for the
1246 transaction begins before the enactment of the tax or the tax rate increase under Subsection (1),
1247 the enactment of a tax or a tax rate increase shall take effect on the first day of the first billing
1248 period that begins after the effective date of the enactment of the tax or the tax rate increase.

1249 (ii) For a transaction described in Subsection (7)(b)(iii), if the billing period for the
1250 transaction begins before the effective date of the repeal of the tax or the tax rate decrease
1251 imposed under Subsection (1), the repeal of a tax or a tax rate decrease shall take effect on the
1252 first day of the last billing period that began before the effective date of the repeal of the tax or
1253 the tax rate decrease.

1254 (iii) Subsections (7)(b)(i) and (ii) apply to transactions subject to a tax under:

1255 (A) Subsection 59-12-103(1)(b);

1256 (B) Subsection 59-12-103(1)(c);

1257 (C) Subsection 59-12-103(1)(d);

1258 (D) Subsection 59-12-103(1)(e);

1259 (E) Subsection 59-12-103(1)(f);

1260 (F) Subsection 59-12-103(1)(g);

1261 (G) Subsection 59-12-103(1)(h);

1262 (H) Subsection 59-12-103(1)(i);

1263 (I) Subsection 59-12-103(1)(j); or

1264 (J) Subsection 59-12-103(1)(k).

1265 (c) (i) If a tax due under this part on a catalogue sale is computed on the basis of sales
1266 and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of a tax
1267 described in Subsection (7)(a)(i) takes effect:

1268 (A) on the first day of a calendar quarter; and

1269 (B) beginning 60 days after the effective date of the enactment, repeal, or change in the
1270 rate of the tax under Subsection (7)(a)(i).

1271 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1272 commission may by rule define the term "catalogue sale."

1273 (d) (i) Except as provided in Subsection (7)(e) or (f), if, for an annexation that occurs
1274 on or after January 1, 2009, the annexation will result in the enactment, repeal, or change in the
1275 rate of a tax under this part for an annexing area, the enactment, repeal, or change shall take
1276 effect:

1277 (A) on the first day of a calendar quarter; and

1278 (B) after a 90-day period beginning on the date the commission receives notice meeting
1279 the requirements of Subsection (7)(d)(ii) from the city or town that annexes the annexing area.

1280 (ii) The notice described in Subsection (7)(d)(i)(B) shall state:

1281 (A) that the annexation described in Subsection (7)(d)(i)(B) will result in the enactment,
1282 repeal, or change in the rate of a tax under this part for the annexing area;

1283 (B) the statutory authority for the tax described in Subsection (7)(d)(ii)(A);

1284 (C) the effective date of the tax described in Subsection (7)(d)(ii)(a); and

1285 (D) if the city or town enacts the tax or changes the rate of the tax described in
1286 Subsection (7)(d)(ii)(A), the rate of the tax.

1287 (e) (i) For a transaction described in Subsection (7)(e)(iii), if the billing period for the
1288 transaction begins before the effective date of the enactment of the tax or a tax rate increase
1289 under Subsection (1), the enactment of a tax or a tax rate increase shall take effect on the first

1290 day of the first billing period that begins after the effective date of the enactment of the tax or
1291 the tax rate increase.

1292 (ii) For a transaction described in Subsection (7)(e)(iii), if the billing period for the
1293 transaction begins before the effective date of the repeal of the tax or the tax rate decrease
1294 imposed under Subsection (1), the repeal of a tax or a tax rate decrease shall take effect on the
1295 first day of the last billing period that began before the effective date of the repeal of the tax or
1296 the tax rate decrease.

1297 (iii) Subsections (7)(e)(i) and (ii) apply to transactions subject to a tax under:

1298 (A) Subsection 59-12-103(1)(b);

1299 (B) Subsection 59-12-103(1)(c);

1300 (C) Subsection 59-12-103(1)(d);

1301 (D) Subsection 59-12-103(1)(e);

1302 (E) Subsection 59-12-103(1)(f);

1303 (F) Subsection 59-12-103(1)(g);

1304 (G) Subsection 59-12-103(1)(h);

1305 (H) Subsection 59-12-103(1)(i);

1306 (I) Subsection 59-12-103(1)(j); or

1307 (J) Subsection 59-12-103(1)(k).

1308 (f) (i) If a tax due under this part on a catalogue sale is computed on the basis of sales
1309 and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of a tax
1310 described in Subsection (7)(d)(i) takes effect:

1311 (A) on the first day of a calendar quarter; and

1312 (B) beginning 60 days after the effective date of the enactment, repeal, or change under
1313 Subsection (7)(d)(i).

1314 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1315 commission may by rule define the term "catalogue sale."

1316 **Section 5. Coordinating H.B. 172 with H.B. 206 -- Substantive and technical**
1317 **amendments.**

1318 If this H.B. 172 and H.B. 206, Tax Amendments, both pass, it is the intent of the
1319 Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah
1320 Code database for publication:

1321 (1) modify Section 59-12-1903 to read:

1322 **"59-12-1903. Imposition of tax -- Base -- Rate -- Expenditure of revenues collected**
1323 **from the tax -- Administration, collection, and enforcement of tax by commission --**
1324 **Administrative fee -- Enactment or repeal of tax -- Annexation -- Notice.**

1325 (1) (a) Subject to the other provisions of this section and except as provided in
1326 Subsection (2), beginning on January 1, 2009 and ending on June 30, 2016, if a city or town
1327 receives a distribution for the 12 consecutive months of fiscal year 2005-06 because the city or
1328 town would have received a tax revenue distribution of less than .75% of the taxable sales
1329 within the boundaries of the city or town but for Subsection 59-12-205(3)(a), the city or town
1330 legislative body may impose a sales and use tax of up to .20% on the transactions:

1331 (i) described in Subsection 59-12-103(1); and

1332 (ii) within the city or town.

1333 (b) A city or town legislative body that imposes a tax under Subsection (1)(a) shall
1334 expend the revenues collected from the tax for the same purposes for which the city or town
1335 may expend the city's or town's general fund revenues.

1336 (c) For purposes of this Subsection (1), the location of a transaction shall be determined
1337 in accordance with Sections 59-12-211 through 59-12-215.

1338 (2) (a) A city or town legislative body may not impose a tax under this section on:

1339 (i) the sales and uses described in Section 59-12-104 to the extent the sales and uses are
1340 exempt from taxation under Section 59-12-104; and

1341 (ii) except as provided in Subsection (2)(b), amounts paid or charged for food and food
1342 ingredients.

1343 (b) A city or town legislative body imposing a tax under this section shall impose the
1344 tax on amounts paid or charged for food and food ingredients if the food and food ingredients
1345 are sold as part of a bundled transaction attributable to food and food ingredients and tangible

1346 personal property other than food and food ingredients.

1347 (3) To impose a tax under this part, a city or town legislative body shall obtain approval
1348 from a majority of the members of the city or town legislative body.

1349 (4) The commission shall transmit revenues collected within a city or town from a tax
1350 under this part:

1351 (a) to the city or town legislative body;

1352 (b) monthly; and

1353 (c) by electronic funds transfer.

1354 (5) (a) Except as provided in Subsection (5)(b), the commission shall administer,
1355 collect, and enforce a tax under this part in accordance with:

1356 (i) the same procedures used to administer, collect, and enforce the tax under:

1357 (A) Part 1, Tax Collection; or

1358 (B) Part 2, Local Sales and Use Tax Act; and

1359 (ii) Chapter 1, General Taxation Policies.

1360 (b) A tax under this part is not subject to Subsections 59-12-205(2) through (6).

1361 (6) (a) The commission may retain an amount of tax collected under this part of not to
1362 exceed the lesser of:

1363 (i) 1.5%; or

1364 (ii) an amount equal to the cost to the commission of administering this part.

1365 (b) Any amount the commission retains under Subsection (6)(a) shall be:

1366 (i) deposited into the Sales and Use Tax Administrative Fees Account; and

1367 (ii) used as provided in Subsection 59-12-206(2).

1368 (7) (a) (i) Except as provided in Subsection (7)(b) or (c), if, on or after January 1, 2009,
1369 a city or town enacts or repeals a tax or changes the rate of a tax under this part, the enactment,
1370 repeal, or change shall take effect:

1371 (A) on the first day of a calendar quarter; and

1372 (B) after a 90-day period beginning on the date the commission receives notice meeting
1373 the requirements of Subsection (7)(a)(i) from the city or town.

1374 (ii) The notice described in Subsection (7)(a)(i)(B) shall state:
1375 (A) that the city or town will enact or repeal a tax or change the rate of the tax under
1376 this part:
1377 (B) the statutory authority for the tax described in Subsection (7)(a)(ii)(A);
1378 (C) the effective date of the tax described in Subsection (7)(a)(ii)(A); and
1379 (D) if the city or town enacts the tax or changes the rate of the tax described in
1380 Subsection (7)(a)(ii)(A), the rate of the tax.
1381 (b) (i) If the billing period for a transaction begins before the enactment of the tax or the
1382 tax rate increase under Subsection (1), the enactment of a tax or a tax rate increase shall take
1383 effect on the first day of the first billing period that begins after the effective date of the
1384 enactment of the tax or the tax rate increase.
1385 (ii) If the billing period for a transaction begins before the effective date of the repeal of
1386 the tax or the tax rate decrease imposed under Subsection (1), the repeal of a tax or a tax rate
1387 decrease shall take effect on the first day of the last billing period that began before the effective
1388 date of the repeal of the tax or the tax rate decrease.
1389 (c) (i) If a tax due under this part on a catalogue sale is computed on the basis of sales
1390 and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of a tax
1391 described in Subsection (7)(a)(i) takes effect:
1392 (A) on the first day of a calendar quarter; and
1393 (B) beginning 60 days after the effective date of the enactment, repeal, or change in the
1394 rate of the tax under Subsection (7)(a)(i).
1395 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1396 commission may by rule define the term "catalogue sale."
1397 (d) (i) Except as provided in Subsection (7)(e) or (f), if, for an annexation that occurs
1398 on or after January 1, 2009, the annexation will result in the enactment, repeal, or change in the
1399 rate of a tax under this part for an annexing area, the enactment, repeal, or change shall take
1400 effect:
1401 (A) on the first day of a calendar quarter; and

1402 (B) after a 90-day period beginning on the date the commission receives notice meeting
1403 the requirements of Subsection (7)(d)(ii) from the city or town that annexes the annexing area.

1404 (ii) The notice described in Subsection (7)(d)(i)(B) shall state:

1405 (A) that the annexation described in Subsection (7)(d)(i)(B) will result in the enactment,
1406 repeal, or change in the rate of a tax under this part for the annexing area;

1407 (B) the statutory authority for the tax described in Subsection (7)(d)(ii)(A);

1408 (C) the effective date of the tax described in Subsection (7)(d)(ii)(a); and

1409 (D) if the city or town enacts the tax or changes the rate of the tax described in
1410 Subsection (7)(d)(ii)(A), the rate of the tax.

1411 (e) (i) If the billing period for a transaction begins before the effective date of the
1412 enactment of the tax or a tax rate increase under Subsection (1), the enactment of a tax or a tax
1413 rate increase shall take effect on the first day of the first billing period that begins after the
1414 effective date of the enactment of the tax or the tax rate increase.

1415 (ii) If the billing period for a transaction begins before the effective date of the repeal of
1416 the tax or the tax rate decrease imposed under Subsection (1), the repeal of a tax or a tax rate
1417 decrease shall take effect on the first day of the last billing period that began before the effective
1418 date of the repeal of the tax or the tax rate decrease.

1419 (f) (i) If a tax due under this part on a catalogue sale is computed on the basis of sales
1420 and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of a tax
1421 described in Subsection (7)(d)(i) takes effect:

1422 (A) on the first day of a calendar quarter; and

1423 (B) beginning 60 days after the effective date of the enactment, repeal, or change under
1424 Subsection (7)(d)(i).

1425 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1426 commission may by rule define the term "catalogue sale.""; and

1427 (2) insert as newly enacted provisions into the Utah Code database, the following
1428 sections:

1429 **"59-12-1904. Seller or certified service provider reliance on commission**

1430 **information or certain systems.**

1431 A seller or certified service provider is not liable for failing to collect a tax at a tax rate
1432 imposed under this part if:

1433 (1) the tax rate at which the seller or certified service provider collects the tax is derived
1434 from a database created by the commission containing tax rates; and

1435 (2) the seller's or certified service provider's failure to collect the tax is as a result of the
1436 seller's or certified service provider's reliance on incorrect data provided by the commission in
1437 the database created by the commission containing tax rates.

1438 **59-12-1905. Certified service provider or model 2 seller reliance on commission**
1439 **certified software.**

1440 (1) Except as provided in Subsection (2) and subject to Subsection (4), a certified
1441 service provider or model 2 seller is not liable for failing to collect a tax required under this part
1442 if:

1443 (a) the certified service provider or model 2 seller relies on software the commission
1444 certifies; and

1445 (b) the certified service provider's or model 2 seller's failure to collect a tax required
1446 under this part is as a result of the seller's or certified service provider's reliance on incorrect
1447 data:

1448 (i) provided by the commission; or

1449 (ii) in the software the commission certifies.

1450 (2) The relief from liability described in Subsection (1) does not apply if a certified
1451 service provider or model 2 seller incorrectly classifies an item or transaction into a product
1452 category the commission certifies.

1453 (3) If the taxability of a product category is incorrectly classified in software the
1454 commission certifies, the commission shall:

1455 (a) notify a certified service provider or model 2 seller of the incorrect classification of
1456 the taxability of a product category in software the commission certifies; and

1457 (b) state in the notice required by Subsection (3)(a) that the certified service provider or

1458 model 2 seller is liable for failing to collect the correct amount of tax under this part on the
 1459 incorrectly classified product category if the certified service provider or model 2 seller fails to
 1460 correct the taxability of the item or transaction within ten days after the day on which the
 1461 certified service provider or model 2 seller receives the notice.

1462 (4) If a certified service provider or model 2 seller fails to correct the taxability of an
 1463 item or transaction within ten days after the day on which the certified service provider or
 1464 model 2 seller receives the notice described in Subsection (3), the certified service provider or
 1465 model 2 seller is liable for failing to collect the correct amount of tax under this part on the item
 1466 or transaction.

1467 **59-12-1906. Purchaser relief from liability.**

1468 (1) (a) Except as provided in Subsection (1)(b), a purchaser is relieved from a penalty
 1469 under Section 59-1-401 for failure to pay a tax due under this part or an underpayment if:

1470 (i) the purchaser's seller or certified service provider relies on incorrect data provided
 1471 by the commission:

1472 (A) on a tax rate;

1473 (B) on a boundary;

1474 (C) on a taxing jurisdiction; or

1475 (D) in the taxability matrix the commission provides in accordance with the agreement;

1476 or

1477 (ii) the purchaser, regardless of whether the purchaser holds a direct payment permit in
 1478 accordance with Section 59-12-107.1, relies on incorrect data provided by the commission:

1479 (A) on a tax rate;

1480 (B) on a boundary;

1481 (C) on a taxing jurisdiction; or

1482 (D) in the taxability matrix the commission provides in accordance with the agreement.

1483 (b) For purposes of Subsection (1)(a), a purchaser is not relieved from a penalty under
 1484 Section 59-1-401 for failure to pay a tax due under this part or an underpayment if the
 1485 purchaser's, the purchaser's seller's, or the purchaser's certified service provider's reliance on

1486 incorrect data provided by the commission is as a result of conduct that is:
1487 (i) fraudulent;
1488 (ii) intentional; or
1489 (iii) willful.
1490 (2) In addition to the relief from a penalty described in Subsection (1), a purchaser is
1491 not liable for a tax or interest under Section 59-1-402 for failure to pay a tax due under this part
1492 or an underpayment if:
1493 (a) the purchaser's seller or certified service provider relies on:
1494 (i) incorrect data provided by the commission:
1495 (A) on a tax rate;
1496 (B) on a boundary; or
1497 (C) on a taxing jurisdiction; or
1498 (ii) an erroneous classification by the commission:
1499 (A) in the taxability matrix the commission provides in accordance with the agreement;
1500 and
1501 (B) with respect to a term:
1502 (I) in the library of definitions; and
1503 (II) that is:
1504 (Aa) listed as taxable or exempt;
1505 (Bb) included in or excluded from "sales price"; or
1506 (Cc) included in or excluded from a definition; or
1507 (b) the purchaser, regardless of whether the purchaser holds a direct payment permit in
1508 accordance with Section 59-12-107.1, relies on:
1509 (i) incorrect data provided by the commission:
1510 (A) on a tax rate;
1511 (B) on a boundary; or
1512 (C) on a taxing jurisdiction; or
1513 (ii) an erroneous classification by the commission:

- 1514 (A) in the taxability matrix the commission provides in accordance with the agreement;
- 1515 and
- 1516 (B) with respect to a term:
- 1517 (I) in the library of definitions; and
- 1518 (II) that is:
- 1519 (Aa) listed as taxable or exempt;
- 1520 (Bb) included in or excluded from "sales price"; or
- 1521 (Cc) included in or excluded from a definition."