

Senator Scott K. Jenkins proposes the following substitute bill:

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:



26 This bill coordinates with H.B. 206, Tax Amendments, to make substantive and
27 technical amendments, including enacting Sections 59-12-1904, 59-12-1905, and
28 59-12-1906.

29 **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,
- 81 or 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
- 84 by 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
130 item of tangible personal property; or

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

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

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

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

141 (i) on a transaction; and

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

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

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

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

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

149 (b) to perform all of a seller's sales and use tax functions for an agreement sales and

150 use tax other than the seller's obligation under Section 59-12-107.4 to remit a tax on the seller's
151 own purchases.

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

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

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

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

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

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

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

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

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

171 (19) "Component part" includes:

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

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

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

177 (d) feed, seeds, and seedlings.

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

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

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

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

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

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

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

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

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

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

190 (i) by a seller of:

191 (A) tangible personal property; or

192 (B) services; and

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

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

196 (i) transportation;

197 (ii) shipping;

198 (iii) postage;

199 (iv) handling;

200 (v) crating; or

201 (vi) packing.

202 (25) (a) "Dental prosthesis" means the following if fabricated in a laboratory:

203 (i) a bridge;

204 (ii) a crown if that crown covers at least 75% of a tooth structure;

205 (iii) a denture;

206 (iv) an implant;

207 (v) an orthodontic device designed to:

208 (A) retain the position or spacing of teeth; and

209 (B) replace a missing tooth;

210 (vi) a partial denture; or

211 (vii) a device similar to Subsections (25)(a)(i) through (vi).

212 (b) "Dental prosthesis" does not include an appliance or device, other than a device
213 described in Subsection (25)(a), if that appliance or device is used in orthodontic therapy to
214 apply force to the teeth and their supporting structures to:

215 (i) produce changes in their relationship to each other; and

216 (ii) control their growth and development.

217 (26) "Dietary supplement" means a product, other than tobacco, that:

218 (a) is intended to supplement the diet;

219 (b) contains one or more of the following dietary ingredients:

220 (i) a vitamin;

221 (ii) a mineral;

222 (iii) an herb or other botanical;

223 (iv) an amino acid;

224 (v) a dietary substance for use by humans to supplement the diet by increasing the total
225 dietary intake; or

226 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
227 described in Subsections (26)(b)(i) through (v);

228 (c) (i) except as provided in Subsection (26)(c)(ii), is intended for ingestion in:

229 (A) tablet form;

230 (B) capsule form;

231 (C) powder form;

232 (D) softgel form;

233 (E) gelcap form; or

234 (F) liquid form; or

235 (ii) notwithstanding Subsection (26)(c)(i), if the product is not intended for ingestion in
236 a form described in Subsections (26)(c)(i)(A) through (F), is not represented:

237 (A) as conventional food; and

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

239 (I) a meal; or

240 (II) the diet; and

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

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

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

244 (27) (a) "Direct mail" means printed material delivered or distributed by United States
245 mail or other delivery service:

246 (i) to:

247 (A) a mass audience; or

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

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

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

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

254 (28) (a) "Disposable home medical equipment or supplies" means medical equipment
255 or supplies that:

256 (i) cannot withstand repeated use; and

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

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

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

260 (C) an office of a health care provider described in Subsection (28)(a)(ii)(B); or

261 (D) a person similar to a person described in Subsections (28)(a)(ii)(A) through (C).

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

263 (i) a drug;

264 (ii) durable medical equipment;

265 (iii) a hearing aid;

266 (iv) a hearing aid accessory;

267 (v) mobility enhancing equipment; or

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

269 (A) eyeglasses; or

270 (B) contact lenses.

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

273 (29) (a) "Drug" means a compound, substance, or preparation, or a component of a

274 compound, substance, or preparation that is:

275 (i) recognized in:

276 (A) the official United States Pharmacopoeia;

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

278 (C) the official National Formulary; or

279 (D) a supplement to a publication listed in Subsections (29)(a)(i)(A) through (C);

280 (ii) intended for use in the:

281 (A) diagnosis of disease;

282 (B) cure of disease;

283 (C) mitigation of disease;

284 (D) treatment of disease; or

285 (E) prevention of disease; or

286 (iii) intended to affect:

287 (A) the structure of the body; or

288 (B) any function of the body.

289 (b) "Drug" does not include:

290 (i) food and food ingredients;

291 (ii) a dietary supplement;

292 (iii) an alcoholic beverage; or

293 (iv) a prosthetic device.

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

296 (i) can withstand repeated use;

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

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

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

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

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

304 (31) "Electronic" means:

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

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

- 367 (iv) the National Guard;
- 368 (v) an independent entity as defined in Section 63E-1-102; or
- 369 (vi) a political subdivision as defined in Section 17B-1-102.
- 370 (b) "Governmental entity" does not include the state systems of public and higher
- 371 education, including:
 - 372 (i) a college campus of the Utah College of Applied Technology;
 - 373 (ii) a school;
 - 374 (iii) the State Board of Education;
 - 375 (iv) the State Board of Regents; or
 - 376 (v) a state institution of higher education as defined in Section 53B-3-102.
- 377 (39) (a) "Hearing aid" means:
 - 378 (i) an instrument or device having an electronic component that is designed to:
 - 379 (A) (I) improve impaired human hearing; or
 - 380 (II) correct impaired human hearing; and
 - 381 (B) (I) be worn in the human ear; or
 - 382 (II) affixed behind the human ear;
 - 383 (ii) an instrument or device that is surgically implanted into the cochlea; or
 - 384 (iii) a telephone amplifying device.
- 385 (b) "Hearing aid" does not include:
 - 386 (i) except as provided in Subsection (39)(a)(i)(B) or (39)(a)(ii), an instrument or device
 - 387 having an electronic component that is designed to be worn on the body;
 - 388 (ii) except as provided in Subsection (39)(a)(iii), an assistive listening device or system
 - 389 designed to be used by one individual, including:
 - 390 (A) a personal amplifying system;
 - 391 (B) a personal FM system;
 - 392 (C) a television listening system; or
 - 393 (D) a device or system similar to a device or system described in Subsections
 - 394 (39)(b)(ii)(A) through (C); or
 - 395 (iii) an assistive listening device or system designed to be used by more than one
 - 396 individual, including:
 - 397 (A) a device or system installed in:

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

- 429 (ii) irrigation pumps;
- 430 (iii) farm machinery;
- 431 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
- 432 registered under Title 41, Chapter 1a, Part 2, Registration; and
- 433 (v) other farming activities;
- 434 (c) in manufacturing tangible personal property at an establishment described in SIC
- 435 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
- 436 Executive Office of the President, Office of Management and Budget;
- 437 (d) by a scrap recycler if:
- 438 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 439 one or more of the following items into prepared grades of processed materials for use in new
- 440 products:
- 441 (A) iron;
- 442 (B) steel;
- 443 (C) nonferrous metal;
- 444 (D) paper;
- 445 (E) glass;
- 446 (F) plastic;
- 447 (G) textile; or
- 448 (H) rubber; and
- 449 (ii) the new products under Subsection (42)(d)(i) would otherwise be made with
- 450 nonrecycled materials; or
- 451 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a
- 452 cogeneration facility as defined in Section 54-2-1.
- 453 (43) (a) Except as provided in Subsection (43)(b), "installation charge" means a charge
- 454 for installing tangible personal property.
- 455 (b) Notwithstanding Subsection (43)(a), "installation charge" does not include a charge
- 456 for repairs or renovations of tangible personal property.
- 457 (44) (a) "Lease" or "rental" means a transfer of possession or control of tangible
- 458 personal property for:
- 459 (i) (A) a fixed term; or

- 460 (B) an indeterminate term; and
461 (ii) consideration.
- 462 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
463 amount of consideration may be increased or decreased by reference to the amount realized
464 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
465 Code.
- 466 (c) "Lease" or "rental" does not include:
- 467 (i) a transfer of possession or control of property under a security agreement or
468 deferred payment plan that requires the transfer of title upon completion of the required
469 payments;
- 470 (ii) a transfer of possession or control of property under an agreement that requires the
471 transfer of title:
- 472 (A) upon completion of required payments; and
473 (B) if the payment of an option price does not exceed the greater of:
- 474 (I) \$100; or
475 (II) 1% of the total required payments; or
- 476 (iii) providing tangible personal property along with an operator for a fixed period of
477 time or an indeterminate period of time if the operator is necessary for equipment to perform as
478 designed.
- 479 (d) For purposes of Subsection (44)(c)(iii), an operator is necessary for equipment to
480 perform as designed if the operator's duties exceed the:
- 481 (i) set-up of tangible personal property;
482 (ii) maintenance of tangible personal property; or
483 (iii) inspection of tangible personal property.
- 484 (45) "Load and leave" means delivery to a purchaser by use of a tangible storage media
485 if the tangible storage media is not physically transferred to the purchaser.
- 486 (46) "Local taxing jurisdiction" means a:
- 487 (a) county that is authorized to impose an agreement sales and use tax;
488 (b) city that is authorized to impose an agreement sales and use tax; or
489 (c) town that is authorized to impose an agreement sales and use tax.
- 490 (47) "Manufactured home" is as defined in Section 58-56-3.

491 (48) For purposes of Section 59-12-104, "manufacturing facility" means:

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

495 (b) a scrap recycler if:

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

499 (A) iron;

500 (B) steel;

501 (C) nonferrous metal;

502 (D) paper;

503 (E) glass;

504 (F) plastic;

505 (G) textile; or

506 (H) rubber; and

507 (ii) the new products under Subsection (48)(b)(i) would otherwise be made with
508 nonrecycled materials; or

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

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

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

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

514 (ii) a foster child or foster stepchild;

515 (b) grandchild or stepgrandchild;

516 (c) grandparent or stepgrandparent;

517 (d) nephew or stepnephew;

518 (e) niece or stepniece;

519 (f) parent or stepparent;

520 (g) sibling or stepsibling;

521 (h) spouse;

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

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

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

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

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

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

534 (ii) appropriate for use in a:

535 (A) home; or

536 (B) motor vehicle; and

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

538 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
539 the equipment described in Subsection (52)(a).

540 (c) Notwithstanding Subsection (52)(a), "mobility enhancing equipment" does not
541 include:

542 (i) a motor vehicle;

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

545 (iii) durable medical equipment; or

546 (iv) a prosthetic device.

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

551 (54) "Model 2 seller" means a seller that:

552 (a) except as provided in Subsection (54)(b), has selected a certified automated system

553 to perform the seller's sales tax functions for agreement sales and use taxes; and

554 (b) notwithstanding Subsection (54)(a), retains responsibility for remitting all of the
555 sales tax:

556 (i) collected by the seller; and

557 (ii) to the appropriate local taxing jurisdiction.

558 (55) (a) Subject to Subsection (55)(b), "model 3 seller" means a seller that has:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

583 (ii) if the tangible personal property is detached from the real property, the detachment

584 would:

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

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

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

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

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

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

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

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

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

601 (B) a hot water heater;

602 (C) a water softener system; or

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

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

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

608 (A) convenience;

609 (B) stability; or

610 (C) for an obvious temporary purpose;

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

613 (iii) an attachment of the following tangible personal property to real property if the
614 attachment to real property is only through a line that supplies water, electricity, gas, telephone,

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

617 (A) a refrigerator;

618 (B) a washer;

619 (C) a dryer;

620 (D) a stove;

621 (E) a television;

622 (F) a computer;

623 (G) a telephone; or

624 (H) tangible personal property similar to Subsections (62)(c)(iii)(A) through (G) as
625 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah
626 Administrative Rulemaking Act.

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

631 (64) "Place of primary use":

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

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

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

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

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

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

642 (i) food:

643 (A) sold in a heated state; or

644 (B) heated by a seller;

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

646 item; or

647 (iii) except as provided in Subsection (66)(c), food sold with an eating utensil provided

648 by the seller, including a:

649 (A) plate;

650 (B) knife;

651 (C) fork;

652 (D) spoon;

653 (E) glass;

654 (F) cup;

655 (G) napkin; or

656 (H) straw.

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

658 (i) food that a seller only:

659 (A) cuts;

660 (B) repackages; or

661 (C) pasteurizes; or

662 (ii) (A) the following:

663 (I) raw egg;

664 (II) raw fish;

665 (III) raw meat;

666 (IV) raw poultry; or

667 (V) a food containing an item described in Subsections (66)(b)(ii)(A)(I) through (IV);

668 and

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

670 Food and Drug Administration's Food Code that a consumer cook the items described in

671 Subsection (66)(b)(ii)(A) to prevent food borne illness; or

672 (iii) the following if sold without eating utensils provided by the seller:

673 (A) food and food ingredients sold by a seller if the seller's proper primary

674 classification under the 2002 North American Industry Classification System of the federal

675 Executive Office of the President, Office of Management and Budget, is manufacturing in

676 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla

677 Manufacturing;

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

679 (I) by weight or volume; and

680 (II) as a single item; or

681 (C) a bakery item, including:

682 (I) a bagel;

683 (II) a bar;

684 (III) a biscuit;

685 (IV) bread;

686 (V) a bun;

687 (VI) a cake;

688 (VII) a cookie;

689 (VIII) a croissant;

690 (IX) a danish;

691 (X) a donut;

692 (XI) a muffin;

693 (XII) a pastry;

694 (XIII) a pie;

695 (XIV) a roll;

696 (XV) a tart;

697 (XVI) a torte; or

698 (XVII) a tortilla.

699 (c) Notwithstanding Subsection (66)(a)(iii), an eating utensil provided by the seller
700 does not include the following used to transport the food:

701 (i) a container; or

702 (ii) packaging.

703 (67) "Prescription" means an order, formula, or recipe that is issued:

704 (a) (i) orally;

705 (ii) in writing;

706 (iii) electronically; or

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

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

709 (68) (a) Except as provided in Subsection (68)(b)(ii) or (iii), "prewritten computer
710 software" means computer software that is not designed and developed:
711 (i) by the author or other creator of the computer software; and
712 (ii) to the specifications of a specific purchaser.

713 (b) "Prewritten computer software" includes:
714 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
715 software is not designed and developed:
716 (A) by the author or other creator of the computer software; and
717 (B) to the specifications of a specific purchaser;
718 (ii) notwithstanding Subsection (68)(a), computer software designed and developed by
719 the author or other creator of the computer software to the specifications of a specific purchaser
720 if the computer software is sold to a person other than the purchaser; or
721 (iii) notwithstanding Subsection (68)(a) and except as provided in Subsection (68)(c),
722 prewritten computer software or a prewritten portion of prewritten computer software:
723 (A) that is modified or enhanced to any degree; and
724 (B) if the modification or enhancement described in Subsection (68)(b)(iii)(A) is
725 designed and developed to the specifications of a specific purchaser.

726 (c) Notwithstanding Subsection (68)(b)(iii), "prewritten computer software" does not
727 include a modification or enhancement described in Subsection (68)(b)(iii) if the charges for
728 the modification or enhancement are:
729 (i) reasonable; and
730 (ii) separately stated on the invoice or other statement of price provided to the
731 purchaser.

732 (69) (a) "Prosthetic device" means a device that is worn on or in the body to:
733 (i) artificially replace a missing portion of the body;
734 (ii) prevent or correct a physical deformity or physical malfunction; or
735 (iii) support a weak or deformed portion of the body.

736 (b) "Prosthetic device" includes:
737 (i) parts used in the repairs or renovation of a prosthetic device;
738 (ii) replacement parts for a prosthetic device; or

- 739 (iii) a dental prosthesis.
- 740 (c) "Prosthetic device" does not include:
- 741 (i) corrective eyeglasses;
- 742 (ii) contact lenses; or
- 743 (iii) hearing aids.
- 744 (70) (a) "Protective equipment" means an item:
- 745 (i) for human wear; and
- 746 (ii) that is:
- 747 (A) designed as protection:
- 748 (I) to the wearer against injury or disease; or
- 749 (II) against damage or injury of other persons or property; and
- 750 (B) not suitable for general use.
- 751 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 752 commission shall make rules:
- 753 (i) listing the items that constitute "protective equipment"; and
- 754 (ii) that are consistent with the list of items that constitute "protective equipment"
- 755 under the agreement.
- 756 (71) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or
- 757 printed matter, other than a photocopy:
- 758 (i) regardless of:
- 759 (A) characteristics;
- 760 (B) copyright;
- 761 (C) form;
- 762 (D) format;
- 763 (E) method of reproduction; or
- 764 (F) source; and
- 765 (ii) made available in printed or electronic format.
- 766 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 767 commission may by rule define the term "photocopy."
- 768 (72) (a) "Purchase price" and "sales price" mean the total amount of consideration:
- 769 (i) valued in money; and

- 770 (ii) for which tangible personal property or services are:
- 771 (A) sold;
- 772 (B) leased; or
- 773 (C) rented.
- 774 (b) "Purchase price" and "sales price" include:
- 775 (i) the seller's cost of the tangible personal property or services sold;
- 776 (ii) expenses of the seller, including:
- 777 (A) the cost of materials used;
- 778 (B) a labor cost;
- 779 (C) a service cost;
- 780 (D) interest;
- 781 (E) a loss;
- 782 (F) the cost of transportation to the seller; or
- 783 (G) a tax imposed on the seller; or
- 784 (iii) a charge by the seller for any service necessary to complete the sale.
- 785 (c) "Purchase price" and "sales price" do not include:
- 786 (i) a discount:
- 787 (A) in a form including:
- 788 (I) cash;
- 789 (II) term; or
- 790 (III) coupon;
- 791 (B) that is allowed by a seller;
- 792 (C) taken by a purchaser on a sale; and
- 793 (D) that is not reimbursed by a third party; or
- 794 (ii) the following if separately stated on an invoice, bill of sale, or similar document
- 795 provided to the purchaser:
- 796 (A) the amount of a trade-in;
- 797 (B) the following from credit extended on the sale of tangible personal property or
- 798 services:
- 799 (I) interest charges;
- 800 (II) financing charges; or

- 801 (III) carrying charges;
- 802 (C) a tax or fee legally imposed directly on the consumer;
- 803 (D) a delivery charge; or
- 804 (E) an installation charge.
- 805 (73) "Purchaser" means a person to whom:
- 806 (a) a sale of tangible personal property is made; or
- 807 (b) a service is furnished.
- 808 (74) "Regularly rented" means:
- 809 (a) rented to a guest for value three or more times during a calendar year; or
- 810 (b) advertised or held out to the public as a place that is regularly rented to guests for
- 811 value.
- 812 (75) "Renewable energy" means:
- 813 (a) biomass energy;
- 814 (b) hydroelectric energy;
- 815 (c) geothermal energy;
- 816 (d) solar energy; or
- 817 (e) wind energy.
- 818 (76) (a) "Renewable energy production facility" means a facility that:
- 819 (i) uses renewable energy to produce electricity; and
- 820 (ii) has a production capacity of 20 kilowatts or greater.
- 821 (b) A facility is a renewable energy production facility regardless of whether the
- 822 facility is:
- 823 (i) connected to an electric grid; or
- 824 (ii) located on the premises of an electricity consumer.
- 825 (77) "Rental" is as defined in Subsection (44).
- 826 (78) "Repairs or renovations of tangible personal property" means:
- 827 (a) a repair or renovation of tangible personal property that is not permanently attached
- 828 to real property; or
- 829 (b) attaching tangible personal property to other tangible personal property if the other
- 830 tangible personal property to which the tangible personal property is attached is not
- 831 permanently attached to real property.

832 (79) "Research and development" means the process of inquiry or experimentation
833 aimed at the discovery of facts, devices, technologies, or applications and the process of
834 preparing those devices, technologies, or applications for marketing.

835 (80) "Residential use" means the use in or around a home, apartment building, sleeping
836 quarters, and similar facilities or accommodations.

837 (81) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
838 than:

839 (a) resale;

840 (b) sublease; or

841 (c) subrent.

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

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

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

850 (b) "Sale" includes:

851 (i) installment and credit sales;

852 (ii) any closed transaction constituting a sale;

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

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

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

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

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

- 863 (a) by a purchaser-lessee;
- 864 (b) to a lessor;
- 865 (c) for consideration; and
- 866 (d) if:
 - 867 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
 - 868 of the tangible personal property;
 - 869 (ii) the sale of the tangible personal property to the lessor is intended as a form of
 - 870 financing:
 - 871 (A) for the property; and
 - 872 (B) to the purchaser-lessee; and
 - 873 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
 - 874 is required to:
 - 875 (A) capitalize the property for financial reporting purposes; and
 - 876 (B) account for the lease payments as payments made under a financing arrangement.
 - 877 (86) "Sales price" is as defined in Subsection (72).
 - 878 (87) (a) "Sales relating to schools" means the following sales by, amounts paid to, or
 - 879 amounts charged by a school:
 - 880 (i) sales that are directly related to the school's educational functions or activities
 - 881 including:
 - 882 (A) the sale of:
 - 883 (I) textbooks;
 - 884 (II) textbook fees;
 - 885 (III) laboratory fees;
 - 886 (IV) laboratory supplies; or
 - 887 (V) safety equipment;
 - 888 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
 - 889 that:
 - 890 (I) a student is specifically required to wear as a condition of participation in a
 - 891 school-related event or school-related activity; and
 - 892 (II) is not readily adaptable to general or continued usage to the extent that it takes the
 - 893 place of ordinary clothing;

894 (C) sales of the following if the net or gross revenues generated by the sales are
895 deposited into a school district fund or school fund dedicated to school meals:
896 (I) food and food ingredients; or
897 (II) prepared food; or
898 (D) transportation charges for official school activities; or
899 (ii) amounts paid to or amounts charged by a school for admission to a school-related
900 event or school-related activity.

901 (b) "Sales relating to schools" does not include:
902 (i) bookstore sales of items that are not educational materials or supplies;
903 (ii) except as provided in Subsection (87)(a)(i)(B):
904 (A) clothing;
905 (B) clothing accessories or equipment;
906 (C) protective equipment; or
907 (D) sports or recreational equipment; or
908 (iii) amounts paid to or amounts charged by a school for admission to a school-related
909 event or school-related activity if the amounts paid or charged are passed through to a person:

910 (A) other than a:
911 (I) school;
912 (II) nonprofit organization authorized by a school board or a governing body of a
913 private school to organize and direct a competitive secondary school activity; or
914 (III) nonprofit association authorized by a school board or a governing body of a
915 private school to organize and direct a competitive secondary school activity; and

916 (B) that is required to collect sales and use taxes under this chapter.
917 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
918 commission may make rules defining the term "passed through."

919 (88) For purposes of this section and Section 59-12-104, "school":

920 (a) means:
921 (i) an elementary school or a secondary school that:
922 (A) is a:
923 (I) public school; or
924 (II) private school; and

- 925 (B) provides instruction for one or more grades kindergarten through 12; or
- 926 (ii) a public school district; and
- 927 (b) includes the Electronic High School as defined in Section 53A-15-1002.
- 928 (89) "Seller" means a person that makes a sale, lease, or rental of:
- 929 (a) tangible personal property; or
- 930 (b) a service.
- 931 (90) (a) "Semiconductor fabricating, processing, research, or development materials"
- 932 means tangible personal property:
- 933 (i) used primarily in the process of:
- 934 (A) (I) manufacturing a semiconductor;
- 935 (II) fabricating a semiconductor; or
- 936 (III) research or development of a:
- 937 (Aa) semiconductor; or
- 938 (Bb) semiconductor manufacturing process; or
- 939 (B) maintaining an environment suitable for a semiconductor; or
- 940 (ii) consumed primarily in the process of:
- 941 (A) (I) manufacturing a semiconductor;
- 942 (II) fabricating a semiconductor; or
- 943 (III) research or development of a:
- 944 (Aa) semiconductor; or
- 945 (Bb) semiconductor manufacturing process; or
- 946 (B) maintaining an environment suitable for a semiconductor.
- 947 (b) "Semiconductor fabricating, processing, research, or development materials"
- 948 includes:
- 949 (i) parts used in the repairs or renovations of tangible personal property described in
- 950 Subsection (90)(a); or
- 951 (ii) a chemical, catalyst, or other material used to:
- 952 (A) produce or induce in a semiconductor a:
- 953 (I) chemical change; or
- 954 (II) physical change;
- 955 (B) remove impurities from a semiconductor; or

- 956 (C) improve the marketable condition of a semiconductor.
- 957 (91) "Senior citizen center" means a facility having the primary purpose of providing
958 services to the aged as defined in Section 62A-3-101.
- 959 (92) "Simplified electronic return" means the electronic return:
- 960 (a) described in Section 318(C) of the agreement; and
- 961 (b) approved by the governing board of the agreement.
- 962 (93) "Solar energy" means the sun used as the sole source of energy for producing
963 electricity.
- 964 (94) (a) "Sports or recreational equipment" means an item:
- 965 (i) designed for human use; and
- 966 (ii) that is:
- 967 (A) worn in conjunction with:
- 968 (I) an athletic activity; or
- 969 (II) a recreational activity; and
- 970 (B) not suitable for general use.
- 971 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
972 commission shall make rules:
- 973 (i) listing the items that constitute "sports or recreational equipment"; and
- 974 (ii) that are consistent with the list of items that constitute "sports or recreational
975 equipment" under the agreement.
- 976 (95) "State" means the state of Utah, its departments, and agencies.
- 977 (96) "Storage" means any keeping or retention of tangible personal property or any
978 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except
979 sale in the regular course of business.
- 980 (97) (a) "Tangible personal property" means personal property that:
- 981 (i) may be:
- 982 (A) seen;
- 983 (B) weighed;
- 984 (C) measured;
- 985 (D) felt; or
- 986 (E) touched; or

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

988 (b) "Tangible personal property" includes:

989 (i) electricity;

990 (ii) water;

991 (iii) gas;

992 (iv) steam; or

993 (v) prewritten computer software.

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

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

1000 (i) telecommunications switching or routing equipment, machinery, or software; or

1001 (ii) telecommunications transmission equipment, machinery, or software.

1002 (b) The following apply to Subsection (99)(a):

1003 (i) a pole;

1004 (ii) software;

1005 (iii) a supplementary power supply;

1006 (iv) temperature or environmental equipment or machinery;

1007 (v) test equipment;

1008 (vi) a tower; or

1009 (vii) equipment, machinery, or software that functions similarly to an item listed in
1010 Subsections (99)(b)(i) through (vi) as determined by the commission by rule made in
1011 accordance with Subsection (99)(c).

1012 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1013 commission may by rule define what constitutes equipment, machinery, or software that
1014 functions similarly to an item listed in Subsections (99)(b)(i) through (vi).

1015 (100) "Telecommunications equipment, machinery, or software required for 911
1016 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.
1017 Sec. 20.18.

1018 (101) "Telecommunications maintenance or repair equipment, machinery, or software"
1019 means equipment, machinery, or software purchased or leased primarily to maintain or repair
1020 one or more of the following, regardless of whether the equipment, machinery, or software is
1021 purchased or leased as a spare part or as an upgrade or modification to one or more of the
1022 following:

- 1023 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 1024 (b) telecommunications switching or routing equipment, machinery, or software; or
- 1025 (c) telecommunications transmission equipment, machinery, or software.

1026 (102) (a) "Telecommunications switching or routing equipment, machinery, or
1027 software" means an item listed in Subsection (102)(b) if that item is purchased or leased
1028 primarily for switching or routing:

- 1029 (i) voice communications;
- 1030 (ii) data communications; or
- 1031 (iii) telephone service.

1032 (b) The following apply to Subsection (102)(a):

- 1033 (i) a bridge;
- 1034 (ii) a computer;
- 1035 (iii) a cross connect;
- 1036 (iv) a modem;
- 1037 (v) a multiplexer;
- 1038 (vi) plug in circuitry;
- 1039 (vii) a router;
- 1040 (viii) software;
- 1041 (ix) a switch; or

1042 (x) equipment, machinery, or software that functions similarly to an item listed in
1043 Subsections (102)(b)(i) through (ix) as determined by the commission by rule made in
1044 accordance with Subsection (102)(c).

1045 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1046 commission may by rule define what constitutes equipment, machinery, or software that
1047 functions similarly to an item listed in Subsections (102)(b)(i) through (ix).

1048 (103) (a) "Telecommunications transmission equipment, machinery, or software"

1049 means an item listed in Subsection (103)(b) if that item is purchased or leased primarily for
1050 sending, receiving, or transporting:

- 1051 (i) voice communications;
- 1052 (ii) data communications; or
- 1053 (iii) telephone service.

1054 (b) The following apply to Subsection (103)(a):

- 1055 (i) an amplifier;
- 1056 (ii) a cable;
- 1057 (iii) a closure;
- 1058 (iv) a conduit;
- 1059 (v) a controller;
- 1060 (vi) a duplexer;
- 1061 (vii) a filter;
- 1062 (viii) an input device;
- 1063 (ix) an input/output device;
- 1064 (x) an insulator;
- 1065 (xi) microwave machinery or equipment;
- 1066 (xii) an oscillator;
- 1067 (xiii) an output device;
- 1068 (xiv) a pedestal;
- 1069 (xv) a power converter;
- 1070 (xvi) a power supply;
- 1071 (xvii) a radio channel;
- 1072 (xviii) a radio receiver;
- 1073 (xix) a radio transmitter;
- 1074 (xx) a repeater;
- 1075 (xxi) software;
- 1076 (xxii) a terminal;
- 1077 (xxiii) a timing unit;
- 1078 (xxiv) a transformer;
- 1079 (xxv) a wire; or

1080 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
1081 Subsections (103)(b)(i) through (xxv) as determined by the commission by rule made in
1082 accordance with Subsection (103)(c).

1083 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1084 commission may by rule define what constitutes equipment, machinery, or software that
1085 functions similarly to an item listed in Subsections (103)(b)(i) through (xxv).

1086 (104) (a) "Telephone service" means a two-way transmission:

1087 (i) by:

1088 (A) wire;

1089 (B) radio;

1090 (C) lightwave; or

1091 (D) other electromagnetic means; and

1092 (ii) of one or more of the following:

1093 (A) a sign;

1094 (B) a signal;

1095 (C) writing;

1096 (D) an image;

1097 (E) sound;

1098 (F) a message;

1099 (G) data; or

1100 (H) other information of any nature.

1101 (b) "Telephone service" includes:

1102 (i) mobile telecommunications service;

1103 (ii) private communications service; or

1104 (iii) automated digital telephone answering service.

1105 (c) "Telephone service" does not include a service or a transaction that a state or a
1106 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet
1107 Tax Freedom Act, Pub. L. No. 105-277.

1108 (105) Notwithstanding where a call is billed or paid, "telephone service address"
1109 means:

1110 (a) if the location described in this Subsection (105)(a) is known, the location of the

1111 telephone service equipment:

1112 (i) to which a call is charged; and

1113 (ii) from which the call originates or terminates;

1114 (b) if the location described in Subsection (105)(a) is not known but the location
1115 described in this Subsection (105)(b) is known, the location of the origination point of the
1116 signal of the telephone service first identified by:

1117 (i) the telecommunications system of the seller; or

1118 (ii) if the system used to transport the signal is not that of the seller, information
1119 received by the seller from its service provider; or

1120 (c) if the locations described in Subsection (105)(a) or (b) are not known, the location
1121 of a purchaser's primary place of use.

1122 (106) (a) "Telephone service provider" means a person that:

1123 (i) owns, controls, operates, or manages a telephone service; and

1124 (ii) engages in an activity described in Subsection (106)(a)(i) for the shared use with or
1125 resale to any person of the telephone service.

1126 (b) A person described in Subsection (106)(a) is a telephone service provider whether
1127 or not the Public Service Commission of Utah regulates:

1128 (i) that person; or

1129 (ii) the telephone service that the person owns, controls, operates, or manages.

1130 (107) "Tobacco" means:

1131 (a) a cigarette;

1132 (b) a cigar;

1133 (c) chewing tobacco;

1134 (d) pipe tobacco; or

1135 (e) any other item that contains tobacco.

1136 (108) "Unassisted amusement device" means an amusement device, skill device, or
1137 ride device that is started and stopped by the purchaser or renter of the right to use or operate
1138 the amusement device, skill device, or ride device.

1139 (109) (a) "Use" means the exercise of any right or power over tangible personal
1140 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that
1141 property, item, or service.

1142 (b) "Use" does not include the sale, display, demonstration, or trial of that property in
1143 the regular course of business and held for resale.

1144 (110) (a) Subject to Subsection (110)(b), "vehicle" means the following that are
1145 required to be titled, registered, or titled and registered:

- 1146 (i) an aircraft as defined in Section 72-10-102;
- 1147 (ii) a vehicle as defined in Section 41-1a-102;
- 1148 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1149 (iv) a vessel as defined in Section 41-1a-102.

1150 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

- 1151 (i) a vehicle described in Subsection (110)(a); or
- 1152 (ii) (A) a locomotive;
- 1153 (B) a freight car;
- 1154 (C) railroad work equipment; or
- 1155 (D) other railroad rolling stock.

1156 (111) "Vehicle dealer" means a person engaged in the business of buying, selling, or
1157 exchanging a vehicle as defined in Subsection (110).

1158 (112) (a) Except as provided in Subsection (112)(b), "waste energy facility" means a
1159 facility that generates electricity:

- 1160 (i) using as the primary source of energy waste materials that would be placed in a
1161 landfill or refuse pit if it were not used to generate electricity, including:
 - 1162 (A) tires;
 - 1163 (B) waste coal; or
 - 1164 (C) oil shale; and
- 1165 (ii) in amounts greater than actually required for the operation of the facility.

1166 (b) "Waste energy facility" does not include a facility that incinerates:

- 1167 (i) municipal solid waste;
- 1168 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or
- 1169 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1170 (113) "Watercraft" means a vessel as defined in Section 73-18-2.

1171 (114) "Wind energy" means wind used as the sole source of energy to produce
1172 electricity.

1173 (115) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
1174 location by the United States Postal Service.

1175 Section 2. Section 59-12-1901 is enacted to read:

1176 **Part 19. City or Town Option Sales and Use Tax Act**

1177 **59-12-1901. Title.**

1178 This part is known as the "City or Town Option Sales and Use Tax Act."

1179 Section 3. Section 59-12-1902 is enacted to read:

1180 **59-12-1902. Definitions.**

1181 As used in this part:

1182 (1) "Annexation" means an annexation to a city or town under Title 10, Chapter 2, Part
1183 4, Annexation.

1184 (2) "Annexing area" means an area that is annexed into a city or town.

1185 Section 4. Section 59-12-1903 is enacted to read:

1186 **59-12-1903. Imposition of tax -- Base -- Rate -- Expenditure of revenues collected**
1187 **from the tax -- Administration, collection, and enforcement of tax by commission --**
1188 **Administrative fee -- Enactment or repeal of tax -- Annexation -- Notice.**

1189 (1) (a) Subject to the other provisions of this section and except as provided in
1190 Subsection (2), beginning on January 1, 2009 and ending on June 30, 2016, if a city or town
1191 receives the minimum tax revenue distribution in accordance with Section 59-12-205 for the
1192 twelve consecutive months of fiscal year 2005-06, the city or town legislative body may
1193 impose a sales and use tax of up to .20% on the transactions:

1194 (i) described in Subsection 59-12-103(1); and

1195 (ii) within the city or town.

1196 (b) A city or town legislative body that imposes a tax under Subsection (1)(a) shall
1197 expend the revenues collected from the tax for the same purposes for which the city or town
1198 may expend the city's or town's general fund revenues.

1199 (c) For purposes of this Subsection (1), the location of a transaction shall be
1200 determined in accordance with Section 59-12-207.

1201 (2) (a) A city or town legislative body may not impose a tax under this section on:

1202 (i) the sales and uses described in Section 59-12-104 to the extent the sales and uses
1203 are exempt from taxation under Section 59-12-104;

1204 (ii) any amounts paid or charged by a seller that collects a tax under Subsection
1205 59-12-107(1)(b); or

1206 (iii) except as provided in Subsection (2)(b), amounts paid or charged for food and
1207 food ingredients.

1208 (b) A city or town legislative body imposing a tax under this section shall impose the
1209 tax on amounts paid or charged for food and food ingredients if:

1210 (i) the food and food ingredients are sold as part of a bundled transaction attributable to
1211 food and food ingredients and tangible personal property other than food and food ingredients;

1212 and

1213 (ii) the seller collecting the tax is a seller other than a seller that collects a tax in
1214 accordance with Subsection 59-12-107(1)(b).

1215 (3) To impose a tax under this part, a city or town legislative body shall obtain
1216 approval from a majority of the members of the city or town legislative body.

1217 (4) The commission shall transmit revenues collected within a city or town from a tax
1218 under this part:

1219 (a) to the city or town legislative body;

1220 (b) monthly; and

1221 (c) by electronic funds transfer.

1222 (5) (a) Except as provided in Subsection (5)(b), the commission shall administer,
1223 collect, and enforce a tax under this part in accordance with:

1224 (i) the same procedures used to administer, collect, and enforce the tax under:

1225 (A) Part 1, Tax Collection; or

1226 (B) Part 2, Local Sales and Use Tax Act; and

1227 (ii) Chapter 1, General Taxation Policies.

1228 (b) A tax under this part is not subject to Subsections 59-12-205(2) through (7).

1229 (6) (a) The commission may retain an amount of tax collected under this part of not to
1230 exceed the lesser of:

1231 (i) 1.5%; or

1232 (ii) an amount equal to the cost to the commission of administering this part.

1233 (b) Any amount the commission retains under Subsection (6)(a) shall be:

1234 (i) deposited into the Sales and Use Tax Administrative Fees Account; and

- 1235 (ii) used as provided in Subsection 59-12-206(2).
- 1236 (7) (a) (i) Except as provided in Subsection (7)(b) or (c), if, on or after January 1, 2009,
1237 a city or town enacts or repeals a tax or changes the rate of a tax under this part, the enactment,
1238 repeal, or change shall take effect:
- 1239 (A) on the first day of a calendar quarter; and
- 1240 (B) after a 90-day period beginning on the date the commission receives notice meeting
1241 the requirements of Subsection (7)(a)(i) from the city or town.
- 1242 (ii) The notice described in Subsection (7)(a)(i)(B) shall state:
- 1243 (A) that the city or town will enact or repeal a tax or change the rate of the tax under
1244 this part;
- 1245 (B) the statutory authority for the tax described in Subsection (7)(a)(ii)(A);
- 1246 (C) the effective date of the tax described in Subsection (7)(a)(ii)(A); and
- 1247 (D) if the city or town enacts the tax or changes the rate of the tax described in
1248 Subsection (7)(a)(ii)(A), the rate of the tax.
- 1249 (b) (i) For a transaction described in Subsection (7)(b)(iii), if the billing period for the
1250 transaction begins before the enactment of the tax or the tax rate increase under Subsection (1),
1251 the enactment of a tax or a tax rate increase shall take effect on the first day of the first billing
1252 period that begins after the effective date of the enactment of the tax or the tax rate increase.
- 1253 (ii) For a transaction described in Subsection (7)(b)(iii), if the billing period for the
1254 transaction begins before the effective date of the repeal of the tax or the tax rate decrease
1255 imposed under Subsection (1), the repeal of a tax or a tax rate decrease shall take effect on the
1256 first day of the last billing period that began before the effective date of the repeal of the tax or
1257 the tax rate decrease.
- 1258 (iii) Subsections (7)(b)(i) and (ii) apply to transactions subject to a tax under:
- 1259 (A) Subsection 59-12-103(1)(b);
- 1260 (B) Subsection 59-12-103(1)(c);
- 1261 (C) Subsection 59-12-103(1)(d);
- 1262 (D) Subsection 59-12-103(1)(e);
- 1263 (E) Subsection 59-12-103(1)(f);
- 1264 (F) Subsection 59-12-103(1)(g);
- 1265 (G) Subsection 59-12-103(1)(h);

1266 (H) Subsection 59-12-103(1)(i);

1267 (I) Subsection 59-12-103(1)(j); or

1268 (J) Subsection 59-12-103(1)(k).

1269 (c) (i) If a tax due under this part on a catalogue sale is computed on the basis of sales
1270 and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of a tax
1271 described in Subsection (7)(a)(i) takes effect:

1272 (A) on the first day of a calendar quarter; and

1273 (B) beginning 60 days after the effective date of the enactment, repeal, or change in the
1274 rate of the tax under Subsection (7)(a)(i).

1275 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
1276 the commission may by rule define the term "catalogue sale."

1277 (d) (i) Except as provided in Subsection (7)(e) or (f), if, for an annexation that occurs
1278 on or after January 1, 2009, the annexation will result in the enactment, repeal, or change in the
1279 rate of a tax under this part for an annexing area, the enactment, repeal, or change shall take
1280 effect:

1281 (A) on the first day of a calendar quarter; and

1282 (B) after a 90-day period beginning on the date the commission receives notice meeting
1283 the requirements of Subsection (7)(d)(ii) from the city or town that annexes the annexing area.

1284 (ii) The notice described in Subsection (7)(d)(i)(B) shall state:

1285 (A) that the annexation described in Subsection (7)(d)(i)(B) will result in the
1286 enactment, repeal, or change in the rate of a tax under this part for the annexing area;

1287 (B) the statutory authority for the tax described in Subsection (7)(d)(ii)(A);

1288 (C) the effective date of the tax described in Subsection (7)(d)(ii)(a); and

1289 (D) if the city or town enacts the tax or changes the rate of the tax described in
1290 Subsection (7)(d)(ii)(A), the rate of the tax.

1291 (e) (i) For a transaction described in Subsection (7)(e)(iii), if the billing period for the
1292 transaction begins before the effective date of the enactment of the tax or a tax rate increase
1293 under Subsection (1), the enactment of a tax or a tax rate increase shall take effect on the first
1294 day of the first billing period that begins after the effective date of the enactment of the tax or
1295 the tax rate increase.

1296 (ii) For a transaction described in Subsection (7)(e)(iii), if the billing period for the

1297 transaction begins before the effective date of the repeal of the tax or the tax rate decrease
 1298 imposed under Subsection (1), the repeal of a tax or a tax rate decrease shall take effect on the
 1299 first day of the last billing period that began before the effective date of the repeal of the tax or
 1300 the tax rate decrease.

1301 (iii) Subsections (7)(e)(i) and (ii) apply to transactions subject to a tax under:

1302 (A) Subsection 59-12-103(1)(b);

1303 (B) Subsection 59-12-103(1)(c);

1304 (C) Subsection 59-12-103(1)(d);

1305 (D) Subsection 59-12-103(1)(e);

1306 (E) Subsection 59-12-103(1)(f);

1307 (F) Subsection 59-12-103(1)(g);

1308 (G) Subsection 59-12-103(1)(h);

1309 (H) Subsection 59-12-103(1)(i);

1310 (I) Subsection 59-12-103(1)(j); or

1311 (J) Subsection 59-12-103(1)(k).

1312 (f) (i) If a tax due under this part on a catalogue sale is computed on the basis of sales
 1313 and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of a tax
 1314 described in Subsection (7)(d)(i) takes effect:

1315 (A) on the first day of a calendar quarter; and

1316 (B) beginning 60 days after the effective date of the enactment, repeal, or change under
 1317 Subsection (7)(d)(i).

1318 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
 1319 the commission may by rule define the term "catalogue sale."

1320 **Section 5. Coordinating H.B. 172 with H.B. 206 -- Substantive and technical**
 1321 **amendments.**

1322 If this H.B. 172 and H.B. 206, Tax Amendments, both pass, it is the intent of the
 1323 Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah
 1324 Code database for publication:

1325 (1) modify Section 59-12-1903 to read:

1326 **"59-12-1903. Imposition of tax -- Base -- Rate -- Expenditure of revenues collected**
 1327 **from the tax -- Administration, collection, and enforcement of tax by commission --**

1328 **Administrative fee -- Enactment or repeal of tax -- Annexation -- Notice.**

1329 (1) (a) Subject to the other provisions of this section and except as provided in
1330 Subsection (2), beginning on January 1, 2009 and ending on June 30, 2013, if a city or town
1331 receives the minimum tax revenue distribution in accordance with Section 59-12-205 for the
1332 twelve consecutive months of fiscal year 2005-06, the city or town legislative body may
1333 impose a sales and use tax of up to .20% on the transactions:

1334 (i) described in Subsection 59-12-103(1); and

1335 (ii) within the city or town.

1336 (b) A city or town legislative body that imposes a tax under Subsection (1)(a) shall
1337 expend the revenues collected from the tax for the same purposes for which the city or town
1338 may expend the city's or town's general fund revenues.

1339 (c) For purposes of this Subsection (1), the location of a transaction shall be
1340 determined in accordance with Sections 59-12-211 through 59-12-215.

1341 (2) (a) A city or town legislative body may not impose a tax under this section on:

1342 (i) the sales and uses described in Section 59-12-104 to the extent the sales and uses
1343 are exempt from taxation under Section 59-12-104; and

1344 (ii) except as provided in Subsection (2)(b), amounts paid or charged for food and food
1345 ingredients.

1346 (b) A city or town legislative body imposing a tax under this section shall impose the
1347 tax on amounts paid or charged for food and food ingredients if the food and food ingredients
1348 are sold as part of a bundled transaction attributable to food and food ingredients and tangible
1349 personal property other than food and food ingredients.

1350 (3) To impose a tax under this part, a city or town legislative body shall obtain
1351 approval from a majority of the members of the city or town legislative body.

1352 (4) The commission shall transmit revenues collected within a city or town from a tax
1353 under this part:

1354 (a) to the city or town legislative body;

1355 (b) monthly; and

1356 (c) by electronic funds transfer.

1357 (5) (a) Except as provided in Subsection (5)(b), the commission shall administer,
1358 collect, and enforce a tax under this part in accordance with:

1359 (i) the same procedures used to administer, collect, and enforce the tax under:
1360 (A) Part 1, Tax Collection; or
1361 (B) Part 2, Local Sales and Use Tax Act; and
1362 (ii) Chapter 1, General Taxation Policies.
1363 (b) A tax under this part is not subject to Subsections 59-12-205(2) through (7).
1364 (6) (a) The commission may retain an amount of tax collected under this part of not to
1365 exceed the lesser of:
1366 (i) 1.5%; or
1367 (ii) an amount equal to the cost to the commission of administering this part.
1368 (b) Any amount the commission retains under Subsection (6)(a) shall be:
1369 (i) deposited into the Sales and Use Tax Administrative Fees Account; and
1370 (ii) used as provided in Subsection 59-12-206(2).
1371 (7) (a) (i) Except as provided in Subsection (7)(b) or (c), if, on or after January 1, 2009,
1372 a city or town enacts or repeals a tax or changes the rate of a tax under this part, the enactment,
1373 repeal, or change shall take effect:
1374 (A) on the first day of a calendar quarter; and
1375 (B) after a 90-day period beginning on the date the commission receives notice meeting
1376 the requirements of Subsection (7)(a)(i) from the city or town.
1377 (ii) The notice described in Subsection (7)(a)(i)(B) shall state:
1378 (A) that the city or town will enact or repeal a tax or change the rate of the tax under
1379 this part;
1380 (B) the statutory authority for the tax described in Subsection (7)(a)(ii)(A);
1381 (C) the effective date of the tax described in Subsection (7)(a)(ii)(A); and
1382 (D) if the city or town enacts the tax or changes the rate of the tax described in
1383 Subsection (7)(a)(ii)(A), the rate of the tax.
1384 (b) (i) If the billing period for the transaction begins before the enactment of the tax or
1385 the tax rate increase under Subsection (1), the enactment of a tax or a tax rate increase shall
1386 take effect on the first day of the first billing period that begins after the effective date of the
1387 enactment of the tax or the tax rate increase.
1388 (ii) If the billing period for the transaction begins before the effective date of the repeal
1389 of the tax or the tax rate decrease imposed under Subsection (1), the repeal of a tax or a tax rate

1390 decrease shall take effect on the first day of the last billing period that began before the
1391 effective date of the repeal of the tax or the tax rate decrease.

1392 (c) (i) If a tax due under this part on a catalogue sale is computed on the basis of sales
1393 and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of a tax
1394 described in Subsection (7)(a)(i) takes effect:

1395 (A) on the first day of a calendar quarter; and

1396 (B) beginning 60 days after the effective date of the enactment, repeal, or change in the
1397 rate of the tax under Subsection (7)(a)(i).

1398 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
1399 the commission may by rule define the term "catalogue sale."

1400 (d) (i) Except as provided in Subsection (7)(e) or (f), if, for an annexation that occurs
1401 on or after January 1, 2009, the annexation will result in the enactment, repeal, or change in the
1402 rate of a tax under this part for an annexing area, the enactment, repeal, or change shall take
1403 effect:

1404 (A) on the first day of a calendar quarter; and

1405 (B) after a 90-day period beginning on the date the commission receives notice meeting
1406 the requirements of Subsection (7)(d)(ii) from the city or town that annexes the annexing area.

1407 (ii) The notice described in Subsection (7)(d)(i)(B) shall state:

1408 (A) that the annexation described in Subsection (7)(d)(i)(B) will result in the
1409 enactment, repeal, or change in the rate of a tax under this part for the annexing area;

1410 (B) the statutory authority for the tax described in Subsection (7)(d)(ii)(A);

1411 (C) the effective date of the tax described in Subsection (7)(d)(ii)(a); and

1412 (D) if the city or town enacts the tax or changes the rate of the tax described in
1413 Subsection (7)(d)(ii)(A), the rate of the tax.

1414 (e) (i) If the billing period for the transaction begins before the effective date of the
1415 enactment of the tax or a tax rate increase under Subsection (1), the enactment of a tax or a tax
1416 rate increase shall take effect on the first day of the first billing period that begins after the
1417 effective date of the enactment of the tax or the tax rate increase.

1418 (ii) If the billing period for the transaction begins before the effective date of the repeal
1419 of the tax or the tax rate decrease imposed under Subsection (1), the repeal of a tax or a tax rate
1420 decrease shall take effect on the first day of the last billing period that began before the

1421 effective date of the repeal of the tax or the tax rate decrease.

1422 (f) (i) If a tax due under this part on a catalogue sale is computed on the basis of sales
1423 and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of a tax
1424 described in Subsection (7)(d)(i) takes effect:

1425 (A) on the first day of a calendar quarter; and

1426 (B) beginning 60 days after the effective date of the enactment, repeal, or change under
1427 Subsection (7)(d)(i).

1428 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
1429 the commission may by rule define the term "catalogue sale.""; and

1430 (2) insert as newly enacted provisions into the Utah Code database, the following
1431 sections:

1432 **"59-12-1904. Seller or certified service provider reliance on commission**
1433 **information or certain systems.**

1434 A seller or certified service provider is not liable for failing to collect a tax at a tax rate
1435 imposed under this part if:

1436 (1) the tax rate at which the seller or certified service provider collects the tax is
1437 derived from a database created by the commission containing tax rates; and

1438 (2) the seller's or certified service provider's failure to collect the tax is as a result of the
1439 seller's or certified service provider's reliance on incorrect data provided by the commission in
1440 the database created by the commission containing tax rates.

1441 **59-12-1905. Certified service provider or model 2 seller reliance on commission**
1442 **certified software.**

1443 (1) Except as provided in Subsection (2) and subject to Subsection (4), a certified
1444 service provider or model 2 seller is not liable for failing to collect a tax required under this
1445 part if:

1446 (a) the certified service provider or model 2 seller relies on software the commission
1447 certifies; and

1448 (b) the certified service provider's or model 2 seller's failure to collect a tax required
1449 under this part is as a result of the seller's or certified service provider's reliance on incorrect
1450 data:

1451 (i) provided by the commission; or

1452 (ii) in the software the commission certifies.

1453 (2) The relief from liability described in Subsection (1) does not apply if a certified
1454 service provider or model 2 seller incorrectly classifies an item or transaction into a product
1455 category the commission certifies.

1456 (3) If the taxability of a product category is incorrectly classified in software the
1457 commission certifies, the commission shall:

1458 (a) notify a certified service provider or model 2 seller of the incorrect classification of
1459 the taxability of a product category in software the commission certifies; and

1460 (b) state in the notice required by Subsection (3)(a) that the certified service provider or
1461 model 2 seller is liable for failing to collect the correct amount of tax under this part on the
1462 incorrectly classified product category if the certified service provider or model 2 seller fails to
1463 correct the taxability of the item or transaction within ten days after the day on which the
1464 certified service provider or model 2 seller receives the notice.

1465 (4) If a certified service provider or model 2 seller fails to correct the taxability of an
1466 item or transaction within ten days after the day on which the certified service provider or
1467 model 2 seller receives the notice described in Subsection (3), the certified service provider or
1468 model 2 seller is liable for failing to collect the correct amount of tax under this part on the
1469 item or transaction.

1470 **59-12-1906. Purchaser relief from liability.**

1471 (1) (a) Except as provided in Subsection (1)(b), a purchaser is relieved from a penalty
1472 under Section 59-1-401 for failure to pay a tax due under this part or an underpayment if:

1473 (i) the purchaser's seller or certified service provider relies on incorrect data provided
1474 by the commission:

1475 (A) on a tax rate;

1476 (B) on a boundary;

1477 (C) on a taxing jurisdiction; or

1478 (D) in the taxability matrix the commission provides in accordance with the agreement;

1479 or

1480 (ii) the purchaser, regardless of whether the purchaser holds a direct payment permit in
1481 accordance with Section 59-12-107.1, relies on incorrect data provided by the commission:

1482 (A) on a tax rate;

- 1483 (B) on a boundary;
1484 (C) on a taxing jurisdiction; or
1485 (D) in the taxability matrix the commission provides in accordance with the agreement.
1486 (b) For purposes of Subsection (1)(a), a purchaser is not relieved from a penalty under
1487 Section 59-1-401 for failure to pay a tax due under this part or an underpayment if the
1488 purchaser's, the purchaser's seller's, or the purchaser's certified service provider's reliance on
1489 incorrect data provided by the commission is as a result of conduct that is:
1490 (i) fraudulent;
1491 (ii) intentional; or
1492 (iii) willful.
1493 (2) In addition to the relief from a penalty described in Subsection (1), a purchaser is
1494 not liable for a tax or interest under Section 59-1-402 for failure to pay a tax due under this part
1495 or an underpayment if:
1496 (a) the purchaser's seller or certified service provider relies on:
1497 (i) incorrect data provided by the commission:
1498 (A) on a tax rate;
1499 (B) on a boundary; or
1500 (C) on a taxing jurisdiction; or
1501 (ii) an erroneous classification by the commission:
1502 (A) in the taxability matrix the commission provides in accordance with the agreement;
1503 and
1504 (B) with respect to a term:
1505 (I) in the library of definitions; and
1506 (II) that is:
1507 (Aa) listed as taxable or exempt;
1508 (Bb) included or excluded from "sales price"; or
1509 (Cc) included in or excluded from a definition; or
1510 (b) the purchaser, regardless of whether the purchaser holds a direct payment permit in
1511 accordance with Section 59-12-107.1, relies on:
1512 (i) incorrect data provided by the commission:
1513 (A) on a tax rate;

- 1514 (B) on a boundary; or
- 1515 (C) on a taxing jurisdiction; or
- 1516 (ii) an erroneous classification by the commission:
- 1517 (A) in the taxability matrix the commission provides in accordance with the agreement;
- 1518 and
- 1519 (B) with respect to a term:
- 1520 (I) in the library of definitions; and
- 1521 (II) that is:
- 1522 (Aa) listed as taxable or exempt;
- 1523 (Bb) included or excluded from "sales price"; or
- 1524 (Cc) included in or excluded from a definition."

H.B. 172 1st Sub. (Buff) - City or Town Option Sales and Use Tax

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill could increase local revenues by \$214,500 in FY 2009 and by \$438,000 in FY 2010.
