

1 **SALES AND USE TAX DEFINITIONS**

2 **RELATING TO PROPERTY**

3 2009 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Wayne L. Niederhauser**

6 House Sponsor: John Dougall

7
8 **LONG TITLE**

9 **Committee Note:**

10 The Revenue and Taxation Interim Committee recommended this bill.

11 **General Description:**

12 This bill amends the Sales and Use Tax Act relating to definitions.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ modifies the definitions of:
 - 16 • "permanently attached to real property"; and
 - 17 • "tangible personal property"; and
- 18 ▶ makes technical changes.

19 **Monies Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 This bill takes effect on July 1, 2009.

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **59-12-102**, as last amended by Laws of Utah 2008, Chapters 3, 28, 286, 323, 382, and
26 384



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

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

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

31 As used in this chapter:

32 (1) "800 service" means a telecommunications service that:

33 (a) allows a caller to dial a toll-free number without incurring a charge for the call; and

34 (b) is typically marketed:

35 (i) under the name 800 toll-free calling;

36 (ii) under the name 855 toll-free calling;

37 (iii) under the name 866 toll-free calling;

38 (iv) under the name 877 toll-free calling;

39 (v) under the name 888 toll-free calling; or

40 (vi) under a name similar to Subsections (1)(b)(i) through (v) as designated by the

41 Federal Communications Commission.

42 (2) (a) "900 service" means an inbound toll telecommunications service that:

43 (i) a subscriber purchases;

44 (ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to
45 the subscriber's:

46 (A) prerecorded announcement; or

47 (B) live service; and

48 (iii) is typically marketed:

49 (A) under the name 900 service; or

50 (B) under a name similar to Subsection (2)(~~e~~)(a)(iii)(A) as designated by the Federal
51 Communications Commission.

52 (b) "900 service" does not include a charge for:

53 (i) a collection service a seller of a telecommunications service provides to a
54 subscriber; or

55 (ii) the following a subscriber sells to the subscriber's customer:

56 (A) a product; or

57 (B) a service.

58 (3) (a) "Admission or user fees" includes season passes.

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

61 (4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on
62 November 12, 2002, including amendments made to the Streamlined Sales and Use Tax
63 Agreement after November 12, 2002.

64 (5) "Agreement combined tax rate" means the sum of the tax rates:

65 (a) listed under Subsection (6); and

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

67 (6) "Agreement sales and use tax" means a tax imposed under:

68 (a) Subsection 59-12-103(2)(a)(i)(A);

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

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

71 (d) Subsection 59-12-103(2)(d)(i)(A)(I);

72 (e) Section 59-12-204;

73 (f) Section 59-12-401;

74 (g) Section 59-12-402;

75 (h) Section 59-12-501;

76 (i) Section 59-12-502;

77 (j) Section 59-12-703;

78 (k) Section 59-12-802;

79 (l) Section 59-12-804;

80 (m) Section 59-12-1001;

81 (n) Section 59-12-1102;

82 (o) Section 59-12-1302;

83 (p) Section 59-12-1402;

84 (q) Section 59-12-1503;

85 (r) Section 59-12-1703;

86 (s) Section 59-12-1802;

87 (t) Section 59-12-1903;

88 (u) Section 59-12-2003; or

89 (v) Section 59-12-2103.

90 (7) "Aircraft" is as defined in Section 72-10-102.

91 (8) "Alcoholic beverage" means a beverage that:

92 (a) is suitable for human consumption; and

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

94 (9) (a) "Ancillary service" means a service associated with, or incidental to, the
95 provision of telecommunications service.

96 (b) "Ancillary service" includes:

97 (i) a conference bridging service;

98 (ii) a detailed communications billing service;

99 (iii) directory assistance;

100 (iv) a vertical service; or

101 (v) a voice mail service.

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

103 (11) "Assisted amusement device" means an amusement device, skill device, or ride
104 device that is started and stopped by an individual:

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

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

109 (12) "Assisted cleaning or washing of tangible personal property" means cleaning or
110 washing of tangible personal property if the cleaning or washing labor is primarily performed
111 by an individual:

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

114 (b) at the direction of the seller of the cleaning or washing of the tangible personal
115 property.

116 (13) "Authorized carrier" means:

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

120 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating

121 certificate or air carrier's operating certificate; or

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

124 (14) (a) Except as provided in Subsection (14)(b), "biomass energy" means any of the
125 following that is used as the primary source of energy to produce fuel or electricity:

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

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

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

129 (B) animal waste;

130 (C) methane produced:

131 (I) at landfills; or

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

133 (D) aquatic plants; and

134 (E) agricultural products.

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

136 (i) black liquor;

137 (ii) treated woods; or

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

139 (A) at landfills; or

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

141 (15) (a) "Bundled transaction" means the sale of two or more items of tangible personal
142 property, products, or services if the tangible personal property, products, or services are:

143 (i) distinct and identifiable; and

144 (ii) sold for one nonitemized price.

145 (b) "Bundled transaction" does not include:

146 (i) the sale of tangible personal property if the sales price varies, or is negotiable, on
147 the basis of the selection by the purchaser of the items of tangible personal property included in
148 the transaction;

149 (ii) the sale of real property;

150 (iii) the sale of services to real property;

151 (iv) the retail sale of tangible personal property and a service if:

- 152 (A) the tangible personal property:
- 153 (I) is essential to the use of the service; and
- 154 (II) is provided exclusively in connection with the service; and
- 155 (B) the service is the true object of the transaction;
- 156 (v) the retail sale of two services if:
- 157 (A) one service is provided that is essential to the use or receipt of a second service;
- 158 (B) the first service is provided exclusively in connection with the second service; and
- 159 (C) the second service is the true object of the transaction;
- 160 (vi) a transaction that includes tangible personal property or a product subject to
- 161 taxation under this chapter and tangible personal property or a product that is not subject to
- 162 taxation under this chapter if the:
- 163 (A) seller's purchase price of the tangible personal property or product subject to
- 164 taxation under this chapter is de minimis; or
- 165 (B) seller's sales price of the tangible personal property or product subject to taxation
- 166 under this chapter is de minimis; and
- 167 (vii) the retail sale of tangible personal property that is not subject to taxation under
- 168 this chapter and tangible personal property that is subject to taxation under this chapter if:
- 169 (A) that retail sale includes:
- 170 (I) food and food ingredients;
- 171 (II) a drug;
- 172 (III) durable medical equipment;
- 173 (IV) mobility enhancing equipment;
- 174 (V) an over-the-counter drug;
- 175 (VI) a prosthetic device; or
- 176 (VII) a medical supply; and
- 177 (B) subject to Subsection (15)(f):
- 178 (I) the seller's purchase price of the tangible personal property subject to taxation under
- 179 this chapter is 50% or less of the seller's total purchase price of that retail sale; or
- 180 (II) the seller's sales price of the tangible personal property subject to taxation under
- 181 this chapter is 50% or less of the seller's total sales price of that retail sale.
- 182 (c) (i) For purposes of Subsection (15)(a)(i), tangible personal property, a product, or a

183 service that is distinct and identifiable does not include:

184 (A) packaging that:

185 (I) accompanies the sale of the tangible personal property, product, or service; and

186 (II) is incidental or immaterial to the sale of the tangible personal property, product, or
187 service;

188 (B) tangible personal property, a product, or a service provided free of charge with the
189 purchase of another item of tangible personal property, a product, or a service; or

190 (C) an item of tangible personal property, a product, or a service included in the
191 definition of "purchase price."

192 (ii) For purposes of Subsection (15)(c)(i)(B), an item of tangible personal property, a
193 product, or a service is provided free of charge with the purchase of another item of tangible
194 personal property, a product, or a service if the sales price of the purchased item of tangible
195 personal property, product, or service does not vary depending on the inclusion of the tangible
196 personal property, product, or service provided free of charge.

197 (d) (i) For purposes of Subsection (15)(a)(ii), property sold for one nonitemized price
198 does not include a price that is separately identified by product on the following, regardless of
199 whether the following is in paper format or electronic format:

200 (A) a binding sales document; or

201 (B) another supporting sales-related document that is available to a purchaser.

202 (ii) For purposes of Subsection (15)(d)(i), a binding sales document or another
203 supporting sales-related document that is available to a purchaser includes:

204 (A) a bill of sale;

205 (B) a contract;

206 (C) an invoice;

207 (D) a lease agreement;

208 (E) a periodic notice of rates and services;

209 (F) a price list;

210 (G) a rate card;

211 (H) a receipt; or

212 (I) a service agreement.

213 (e) (i) For purposes of Subsection (15)(b)(vi), the sales price of tangible personal

214 property or a product subject to taxation under this chapter is de minimis if:

215 (A) the seller's purchase price of the tangible personal property or product is 10% or
216 less of the seller's total purchase price of the bundled transaction; or

217 (B) the seller's sales price of the tangible personal property or product is 10% or less of
218 the seller's total sales price of the bundled transaction.

219 (ii) For purposes of Subsection (15)(b)(vi), a seller:

220 (A) shall use the seller's purchase price or the seller's sales price to determine if the
221 purchase price or sales price of the tangible personal property or product subject to taxation
222 under this chapter is de minimis; and

223 (B) may not use a combination of the seller's purchase price and the seller's sales price
224 to determine if the purchase price or sales price of the tangible personal property or product
225 subject to taxation under this chapter is de minimis.

226 (iii) For purposes of Subsection (15)(b)(vi), a seller shall use the full term of a service
227 contract to determine if the sales price of tangible personal property or a product is de minimis.

228 (f) For purposes of Subsection (15)(b)(vii)(B), a seller may not use a combination of
229 the seller's purchase price and the seller's sales price to determine if tangible personal property
230 subject to taxation under this chapter is 50% or less of the seller's total purchase price or sales
231 price of that retail sale.

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

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

236 (i) on a transaction; and

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

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

240 (c) maintains a record of the transaction described in Subsection (16)(a)(i).

241 (17) "Certified service provider" means an agent certified:

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

243 and

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

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

247 (18) (a) Subject to Subsection (18)(b), "clothing" means all human wearing apparel
248 suitable for general use.

249 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
250 commission shall make rules:

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

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

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

255 (20) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
256 fuels that does not constitute industrial use under Subsection (46) or residential use under
257 Subsection (91).

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

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

263 (ii) For purposes of Subsection (21)(b)(i), in accordance with Title 63G, Chapter 3,
264 Utah Administrative Rulemaking Act, the commission may make rules defining what
265 constitutes a person's place of employment.

266 (22) "Component part" includes:

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

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

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

272 (d) feed, seeds, and seedlings.

273 (23) "Computer" means an electronic device that accepts information:

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

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

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

277 (24) "Computer software" means a set of coded instructions designed to cause:

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

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

280 (25) (a) "Conference bridging service" means an ancillary service that links two or
281 more participants of an audio conference call or video conference call.

282 (b) "Conference bridging service" includes providing a telephone number as part of the
283 ancillary service described in Subsection (25)(a).

284 (c) "Conference bridging service" does not include a telecommunications service used
285 to reach the ancillary service described in Subsection (25)(a).

286 (26) "Construction materials" means any tangible personal property that will be
287 converted into real property.

288 (27) "Delivered electronically" means delivered to a purchaser by means other than
289 tangible storage media.

290 (28) (a) "Delivery charge" means a charge:

291 (i) by a seller of:

292 (A) tangible personal property;

293 (B) a product transferred electronically; or

294 (C) services; and

295 (ii) for preparation and delivery of the tangible personal property, product transferred
296 electronically, or services described in Subsection (28)(a)(i) to a location designated by the
297 purchaser.

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

299 (i) transportation;

300 (ii) shipping;

301 (iii) postage;

302 (iv) handling;

303 (v) crating; or

304 (vi) packing.

305 (29) "Detailed telecommunications billing service" means an ancillary service of
306 separately stating information pertaining to individual calls on a customer's billing statement.

- 307 (30) "Dietary supplement" means a product, other than tobacco, that:
- 308 (a) is intended to supplement the diet;
- 309 (b) contains one or more of the following dietary ingredients:
- 310 (i) a vitamin;
- 311 (ii) a mineral;
- 312 (iii) an herb or other botanical;
- 313 (iv) an amino acid;
- 314 (v) a dietary substance for use by humans to supplement the diet by increasing the total
- 315 dietary intake; or
- 316 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
- 317 described in Subsections (30)(b)(i) through (v);
- 318 (c) (i) except as provided in Subsection (30)(c)(ii), is intended for ingestion in:
- 319 (A) tablet form;
- 320 (B) capsule form;
- 321 (C) powder form;
- 322 (D) softgel form;
- 323 (E) gelcap form; or
- 324 (F) liquid form; or
- 325 (ii) notwithstanding Subsection (30)(c)(i), if the product is not intended for ingestion in
- 326 a form described in Subsections (30)(c)(i)(A) through (F), is not represented:
- 327 (A) as conventional food; and
- 328 (B) for use as a sole item of:
- 329 (I) a meal; or
- 330 (II) the diet; and
- 331 (d) is required to be labeled as a dietary supplement:
- 332 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 333 (ii) as required by 21 C.F.R. Sec. 101.36.
- 334 (31) (a) "Direct mail" means printed material delivered or distributed by United States
- 335 mail or other delivery service:
- 336 (i) to:
- 337 (A) a mass audience; or

- 338 (B) addressees on a mailing list provided by a purchaser of the mailing list; and
- 339 (ii) if the cost of the printed material is not billed directly to the recipients.
- 340 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
- 341 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 342 (c) "Direct mail" does not include multiple items of printed material delivered to a
- 343 single address.
- 344 (32) "Directory assistance" means an ancillary service of providing:
- 345 (a) address information; or
- 346 (b) telephone number information.
- 347 (33) (a) "Disposable home medical equipment or supplies" means medical equipment
- 348 or supplies that:
- 349 (i) cannot withstand repeated use; and
- 350 (ii) are purchased by, for, or on behalf of a person other than:
- 351 (A) a health care facility as defined in Section 26-21-2;
- 352 (B) a health care provider as defined in Section 78B-3-403;
- 353 (C) an office of a health care provider described in Subsection (33)(a)(ii)(B); or
- 354 (D) a person similar to a person described in Subsections (33)(a)(ii)(A) through (C).
- 355 (b) "Disposable home medical equipment or supplies" does not include:
- 356 (i) a drug;
- 357 (ii) durable medical equipment;
- 358 (iii) a hearing aid;
- 359 (iv) a hearing aid accessory;
- 360 (v) mobility enhancing equipment; or
- 361 (vi) tangible personal property used to correct impaired vision, including:
- 362 (A) eyeglasses; or
- 363 (B) contact lenses.
- 364 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 365 commission may by rule define what constitutes medical equipment or supplies.
- 366 (34) (a) "Drug" means a compound, substance, or preparation, or a component of a
- 367 compound, substance, or preparation that is:
- 368 (i) recognized in:

- 369 (A) the official United States Pharmacopoeia;
- 370 (B) the official Homeopathic Pharmacopoeia of the United States;
- 371 (C) the official National Formulary; or
- 372 (D) a supplement to a publication listed in Subsections (34)(a)(i)(A) through (C);
- 373 (ii) intended for use in the:
 - 374 (A) diagnosis of disease;
 - 375 (B) cure of disease;
 - 376 (C) mitigation of disease;
 - 377 (D) treatment of disease; or
 - 378 (E) prevention of disease; or
- 379 (iii) intended to affect:
 - 380 (A) the structure of the body; or
 - 381 (B) any function of the body.
- 382 (b) "Drug" does not include:
 - 383 (i) food and food ingredients;
 - 384 (ii) a dietary supplement;
 - 385 (iii) an alcoholic beverage; or
 - 386 (iv) a prosthetic device.
- 387 (35) (a) Except as provided in Subsection (35)(c), "durable medical equipment" means
- 388 equipment that:
 - 389 (i) can withstand repeated use;
 - 390 (ii) is primarily and customarily used to serve a medical purpose;
 - 391 (iii) generally is not useful to a person in the absence of illness or injury; and
 - 392 (iv) is not worn in or on the body.
- 393 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 394 equipment described in Subsection (35)(a).
- 395 (c) Notwithstanding Subsection (35)(a), "durable medical equipment" does not include
- 396 mobility enhancing equipment.
- 397 (36) "Electronic" means:
 - 398 (a) relating to technology; and
 - 399 (b) having:

- 400 (i) electrical capabilities;
- 401 (ii) digital capabilities;
- 402 (iii) magnetic capabilities;
- 403 (iv) wireless capabilities;
- 404 (v) optical capabilities;
- 405 (vi) electromagnetic capabilities; or
- 406 (vii) capabilities similar to Subsections (36)(b)(i) through (vi).
- 407 (37) "Employee" is as defined in Section 59-10-401.
- 408 (38) "Fixed guideway" means a public transit facility that uses and occupies:
- 409 (a) rail for the use of public transit; or
- 410 (b) a separate right-of-way for the use of public transit.
- 411 (39) "Fixed wireless service" means a telecommunications service that provides radio
- 412 communication between fixed points.
- 413 (40) (a) "Food and food ingredients" means substances:
- 414 (i) regardless of whether the substances are in:
- 415 (A) liquid form;
- 416 (B) concentrated form;
- 417 (C) solid form;
- 418 (D) frozen form;
- 419 (E) dried form; or
- 420 (F) dehydrated form; and
- 421 (ii) that are:
- 422 (A) sold for:
- 423 (I) ingestion by humans; or
- 424 (II) chewing by humans; and
- 425 (B) consumed for the substance's:
- 426 (I) taste; or
- 427 (II) nutritional value.
- 428 (b) "Food and food ingredients" includes an item described in Subsection (75)(b)(iii).
- 429 (c) "Food and food ingredients" does not include:
- 430 (i) an alcoholic beverage;

431 (ii) tobacco; or
432 (iii) prepared food.
433 (41) (a) "Fundraising sales" means sales:
434 (i) (A) made by a school; or
435 (B) made by a school student;
436 (ii) that are for the purpose of raising funds for the school to purchase equipment,
437 materials, or provide transportation; and
438 (iii) that are part of an officially sanctioned school activity.
439 (b) For purposes of Subsection (41)(a)(iii), "officially sanctioned school activity"
440 means a school activity:
441 (i) that is conducted in accordance with a formal policy adopted by the school or school
442 district governing the authorization and supervision of fundraising activities;
443 (ii) that does not directly or indirectly compensate an individual teacher or other
444 educational personnel by direct payment, commissions, or payment in kind; and
445 (iii) the net or gross revenues from which are deposited in a dedicated account
446 controlled by the school or school district.
447 (42) "Geothermal energy" means energy contained in heat that continuously flows
448 outward from the earth that is used as the sole source of energy to produce electricity.
449 (43) "Governing board of the agreement" means the governing board of the agreement
450 that is:
451 (a) authorized to administer the agreement; and
452 (b) established in accordance with the agreement.
453 (44) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:
454 (i) the executive branch of the state, including all departments, institutions, boards,
455 divisions, bureaus, offices, commissions, and committees;
456 (ii) the judicial branch of the state, including the courts, the Judicial Council, the
457 Office of the Court Administrator, and similar administrative units in the judicial branch;
458 (iii) the legislative branch of the state, including the House of Representatives, the
459 Senate, the Legislative Printing Office, the Office of Legislative Research and General
460 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal
461 Analyst;

- 462 (iv) the National Guard;
- 463 (v) an independent entity as defined in Section 63E-1-102; or
- 464 (vi) a political subdivision as defined in Section 17B-1-102.
- 465 (b) "Governmental entity" does not include the state systems of public and higher
- 466 education, including:
 - 467 (i) a college campus of the Utah College of Applied Technology;
 - 468 (ii) a school;
 - 469 (iii) the State Board of Education;
 - 470 (iv) the State Board of Regents; or
 - 471 (v) a state institution of higher education as defined in Section 53B-3-102.
- 472 (45) "Hydroelectric energy" means water used as the sole source of energy to produce
- 473 electricity.
- 474 (46) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
- 475 other fuels:
 - 476 (a) in mining or extraction of minerals;
 - 477 (b) in agricultural operations to produce an agricultural product up to the time of
 - 478 harvest or placing the agricultural product into a storage facility, including:
 - 479 (i) commercial greenhouses;
 - 480 (ii) irrigation pumps;
 - 481 (iii) farm machinery;
 - 482 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
 - 483 registered under Title 41, Chapter 1a, Part 2, Registration; and
 - 484 (v) other farming activities;
 - 485 (c) in manufacturing tangible personal property at an establishment described in SIC
 - 486 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
 - 487 Executive Office of the President, Office of Management and Budget;
 - 488 (d) by a scrap recycler if:
 - 489 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
 - 490 one or more of the following items into prepared grades of processed materials for use in new
 - 491 products:
 - 492 (A) iron;

- 493 (B) steel;
- 494 (C) nonferrous metal;
- 495 (D) paper;
- 496 (E) glass;
- 497 (F) plastic;
- 498 (G) textile; or
- 499 (H) rubber; and
- 500 (ii) the new products under Subsection (46)(d)(i) would otherwise be made with
- 501 nonrecycled materials; or
- 502 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a
- 503 cogeneration facility as defined in Section 54-2-1.
- 504 (47) (a) Except as provided in Subsection (47)(b), "installation charge" means a charge
- 505 for installing:
 - 506 (i) tangible personal property; or
 - 507 (ii) a product transferred electronically.
- 508 (b) "Installation charge" does not include a charge for repairs or renovations of:
 - 509 (i) tangible personal property; or
 - 510 (ii) a product transferred electronically.
- 511 (48) (a) "Lease" or "rental" means a transfer of possession or control of tangible
- 512 personal property or a product transferred electronically for:
 - 513 (i) (A) a fixed term; or
 - 514 (B) an indeterminate term; and
 - 515 (ii) consideration.
- 516 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
- 517 amount of consideration may be increased or decreased by reference to the amount realized
- 518 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
- 519 Code.
- 520 (c) "Lease" or "rental" does not include:
 - 521 (i) a transfer of possession or control of property under a security agreement or
 - 522 deferred payment plan that requires the transfer of title upon completion of the required
 - 523 payments;

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

526 (A) upon completion of required payments; and

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

528 (I) \$100; or

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

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

533 (d) For purposes of Subsection (48)(c)(iii), an operator is necessary for equipment to
534 perform as designed if the operator's duties exceed the:

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

536 (ii) maintenance of tangible personal property; or

537 (iii) inspection of tangible personal property.

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

540 (50) "Local taxing jurisdiction" means a:

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

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

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

544 (51) "Manufactured home" is as defined in Section 58-56-3.

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

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

549 (b) a scrap recycler if:

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

553 (A) iron;

554 (B) steel;

- 555 (C) nonferrous metal;
- 556 (D) paper;
- 557 (E) glass;
- 558 (F) plastic;
- 559 (G) textile; or
- 560 (H) rubber; and
- 561 (ii) the new products under Subsection (52)(b)(i) would otherwise be made with
- 562 nonrecycled materials; or
- 563 (c) a cogeneration facility as defined in Section 54-2-1.
- 564 (53) "Member of the immediate family of the producer" means a person who is related
- 565 to a producer described in Subsection 59-12-104(20)(a) as a:
- 566 (a) child or stepchild, regardless of whether the child or stepchild is:
- 567 (i) an adopted child or adopted stepchild; or
- 568 (ii) a foster child or foster stepchild;
- 569 (b) grandchild or stepgrandchild;
- 570 (c) grandparent or stepgrandparent;
- 571 (d) nephew or stepnephew;
- 572 (e) niece or stepniece;
- 573 (f) parent or stepparent;
- 574 (g) sibling or stepsibling;
- 575 (h) spouse;
- 576 (i) person who is the spouse of a person described in Subsections (53)(a) through (g);
- 577 or
- 578 (j) person similar to a person described in Subsections (53)(a) through (i) as
- 579 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
- 580 Administrative Rulemaking Act.
- 581 (54) "Mobile home" is as defined in Section 58-56-3.
- 582 (55) "Mobile telecommunications service" is as defined in the Mobile
- 583 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
- 584 (56) (a) "Mobile wireless service" means a telecommunications service, regardless of
- 585 the technology used, if:

586 (i) the origination point of the conveyance, routing, or transmission is not fixed;
587 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or
588 (iii) the origination point described in Subsection (56)(a)(i) and the termination point
589 described in Subsection (56)(a)(ii) are not fixed.

590 (b) "Mobile wireless service" includes a telecommunications service that is provided
591 by a commercial mobile radio service provider.

592 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
593 commission may by rule define "commercial mobile radio service provider."

594 (57) (a) Except as provided in Subsection (57)(c), "mobility enhancing equipment"
595 means equipment that is:

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

598 (ii) appropriate for use in a:

599 (A) home; or

600 (B) motor vehicle; and

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

602 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
603 the equipment described in Subsection (57)(a).

604 (c) Notwithstanding Subsection (57)(a), "mobility enhancing equipment" does not
605 include:

606 (i) a motor vehicle;

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

609 (iii) durable medical equipment; or

610 (iv) a prosthetic device.

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

615 (59) "Model 2 seller" means a seller that:

616 (a) except as provided in Subsection (59)(b), has selected a certified automated system

617 to perform the seller's sales tax functions for agreement sales and use taxes; and
618 (b) notwithstanding Subsection (59)(a), retains responsibility for remitting all of the
619 sales tax:
620 (i) collected by the seller; and
621 (ii) to the appropriate local taxing jurisdiction.
622 (60) (a) Subject to Subsection (60)(b), "model 3 seller" means a seller that has:
623 (i) sales in at least five states that are members of the agreement;
624 (ii) total annual sales revenues of at least \$500,000,000;
625 (iii) a proprietary system that calculates the amount of tax:
626 (A) for an agreement sales and use tax; and
627 (B) due to each local taxing jurisdiction; and
628 (iv) entered into a performance agreement with the governing board of the agreement.
629 (b) For purposes of Subsection (60)(a), "model 3 seller" includes an affiliated group of
630 sellers using the same proprietary system.
631 (61) "Modular home" means a modular unit as defined in Section 58-56-3.
632 (62) "Motor vehicle" is as defined in Section 41-1a-102.
633 (63) "Oil shale" means a group of fine black to dark brown shales containing
634 bituminous material that yields petroleum upon distillation.
635 (64) (a) "Other fuels" means products that burn independently to produce heat or
636 energy.
637 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible
638 personal property.
639 (65) (a) "Paging service" means a telecommunications service that provides
640 transmission of a coded radio signal for the purpose of activating a specific pager.
641 (b) For purposes of Subsection (65)(a), the transmission of a coded radio signal
642 includes a transmission by message or sound.
643 (66) "Pawnbroker" is as defined in Section 13-32a-102.
644 (67) "Pawn transaction" is as defined in Section 13-32a-102.
645 (68) (a) "Permanently attached to real property" means that for tangible personal
646 property attached to real property:
647 (i) the attachment of the tangible personal property to the real property:

648 (A) is essential to the use of the tangible personal property; and
649 (B) suggests that the tangible personal property will remain attached to the real
650 property in the same place over the useful life of the tangible personal property; or
651 (ii) if the tangible personal property is detached from the real property, the detachment
652 would:
653 (A) cause substantial damage to the tangible personal property; or
654 (B) require substantial alteration or repair of the real property to which the tangible
655 personal property is attached.
656 (b) "Permanently attached to real property" includes:
657 (i) the attachment of an accessory to the tangible personal property if the accessory is:
658 (A) essential to the operation of the tangible personal property; and
659 (B) attached only to facilitate the operation of the tangible personal property;
660 (ii) a temporary detachment of tangible personal property from real property for a
661 repair or renovation if the repair or renovation is performed where the tangible personal
662 property and real property are located; or
663 (iii) property attached to oil, gas, or water pipelines, ~~[other than]~~ except for the
664 property listed in ~~[Subsection]~~ Subsections (68)(c)(iii) through (v).
665 (c) "Permanently attached to real property" does not include:
666 (i) the attachment of portable or movable tangible personal property to real property if
667 that portable or movable tangible personal property is attached to real property only for:
668 (A) convenience;
669 (B) stability; or
670 (C) for an obvious temporary purpose;
671 (ii) the detachment of tangible personal property from real property ~~[other than]~~ except
672 for the detachment described in Subsection (68)(b)(ii);
673 (iii) an attachment of the following tangible personal property to real property if the
674 attachment to real property is only through a line that supplies water, electricity, gas,
675 telecommunications, cable, or supplies a similar item as determined by the commission by rule
676 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
677 [~~(A) a refrigerator;~~]
678 [~~(B) a washer;~~]

679 [~~(C)~~ a dryer;]
680 [~~(D)~~ a stove;]
681 [~~(E)~~ a television;]
682 [~~(F)~~] (A) a computer;
683 [~~(G)~~] (B) a telephone; [~~or~~]
684 (C) a television; or
685 [~~(H)~~] (D) tangible personal property similar to Subsections (68)(c)(iii)(A) through
686 [~~(G)~~] (C) as determined by the commission by rule made in accordance with Title 63G, Chapter
687 3, Utah Administrative Rulemaking Act; [~~or~~]
688 (iv) the following if attached to real property, regardless of whether the attachment to
689 real property is only through a line that supplies water, electricity, gas, telephone, cable, or
690 supplies a similar item as determined by the commission by rule made in accordance with Title
691 63G, Chapter 3, Utah Administrative Rulemaking Act:
692 (A) a hot water heater;
693 (B) a water [~~softener~~] filtration system; or
694 (C) a water [~~filtration~~] softener system; or
695 (v) an item listed in Subsection (108)(c).
696 (69) "Person" includes any individual, firm, partnership, joint venture, association,
697 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
698 municipality, district, or other local governmental entity of the state, or any group or
699 combination acting as a unit.
700 (70) "Place of primary use":
701 (a) for telecommunications service other than mobile telecommunications service,
702 means the street address representative of where the purchaser's use of the telecommunications
703 service primarily occurs, which shall be:
704 (i) the residential street address of the purchaser; or
705 (ii) the primary business street address of the purchaser; or
706 (b) for mobile telecommunications service, is as defined in the Mobile
707 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
708 (71) (a) "Postpaid calling service" means a telecommunications service a person
709 obtains by making a payment on a call-by-call basis:

- 710 (i) through the use of a:
- 711 (A) bank card;
- 712 (B) credit card;
- 713 (C) debit card; or
- 714 (D) travel card; or
- 715 (ii) by a charge made to a telephone number that is not associated with the origination
- 716 or termination of the telecommunications service.
- 717 (b) "Postpaid calling service" includes a service that would be a prepaid wireless
- 718 calling service if the service were exclusively a telecommunications service.
- 719 (72) "Postproduction" means an activity related to the finishing or duplication of a
- 720 medium described in Subsection 59-12-104 (55)(a).
- 721 (73) "Prepaid calling service" means a telecommunications service:
- 722 (a) that allows a purchaser access to telecommunications service that is exclusively
- 723 telecommunications service;
- 724 (b) that:
- 725 (i) is paid for in advance; and
- 726 (ii) enables the origination of a call using an:
- 727 (A) access number; or
- 728 (B) authorization code;
- 729 (c) that is dialed:
- 730 (i) manually; or
- 731 (ii) electronically; and
- 732 (d) sold in predetermined units or dollars that decline:
- 733 (i) by a known amount; and
- 734 (ii) with use.
- 735 (74) "Prepaid wireless calling service" means a telecommunications service:
- 736 (a) that provides the right to utilize:
- 737 (i) mobile wireless service; and
- 738 (ii) other service that is not a telecommunications service, including:
- 739 (A) the download of a product transferred electronically;
- 740 (B) a content service; or

- 741 (C) an ancillary service;
- 742 (b) that:
- 743 (i) is paid for in advance; and
- 744 (ii) enables the origination of a call using an:
- 745 (A) access number; or
- 746 (B) authorization code;
- 747 (c) that is dialed:
- 748 (i) manually; or
- 749 (ii) electronically; and
- 750 (d) sold in predetermined units or dollars that decline:
- 751 (i) by a known amount; and
- 752 (ii) with use.
- 753 (75) (a) "Prepared food" means:
- 754 (i) food:
- 755 (A) sold in a heated state; or
- 756 (B) heated by a seller;
- 757 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 758 item; or
- 759 (iii) except as provided in Subsection (75)(c), food sold with an eating utensil provided
- 760 by the seller, including a:
- 761 (A) plate;
- 762 (B) knife;
- 763 (C) fork;
- 764 (D) spoon;
- 765 (E) glass;
- 766 (F) cup;
- 767 (G) napkin; or
- 768 (H) straw.
- 769 (b) "Prepared food" does not include:
- 770 (i) food that a seller only:
- 771 (A) cuts;

- 772 (B) repackages; or
- 773 (C) pasteurizes; or
- 774 (ii) (A) the following:
- 775 (I) raw egg;
- 776 (II) raw fish;
- 777 (III) raw meat;
- 778 (IV) raw poultry; or
- 779 (V) a food containing an item described in Subsections (75)(b)(ii)(A)(I) through (IV);

780 and

781 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
782 Food and Drug Administration's Food Code that a consumer cook the items described in
783 Subsection (75)(b)(ii)(A) to prevent food borne illness; or

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

785 (A) food and food ingredients sold by a seller if the seller's proper primary
786 classification under the 2002 North American Industry Classification System of the federal
787 Executive Office of the President, Office of Management and Budget, is manufacturing in
788 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
789 Manufacturing;

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

791 (I) by weight or volume; and

792 (II) as a single item; or

793 (C) a bakery item, including:

794 (I) a bagel;

795 (II) a bar;

796 (III) a biscuit;

797 (IV) bread;

798 (V) a bun;

799 (VI) a cake;

800 (VII) a cookie;

801 (VIII) a croissant;

802 (IX) a danish;

- 803 (X) a donut;
- 804 (XI) a muffin;
- 805 (XII) a pastry;
- 806 (XIII) a pie;
- 807 (XIV) a roll;
- 808 (XV) a tart;
- 809 (XVI) a torte; or
- 810 (XVII) a tortilla.
- 811 (c) Notwithstanding Subsection (75)(a)(iii), an eating utensil provided by the seller
- 812 does not include the following used to transport the food:
 - 813 (i) a container; or
 - 814 (ii) packaging.
- 815 (76) "Prescription" means an order, formula, or recipe that is issued:
 - 816 (a) (i) orally;
 - 817 (ii) in writing;
 - 818 (iii) electronically; or
 - 819 (iv) by any other manner of transmission; and
 - 820 (b) by a licensed practitioner authorized by the laws of a state.
- 821 (77) (a) Except as provided in Subsection (77)(b)(ii) or (iii), "prewritten computer
- 822 software" means computer software that is not designed and developed:
 - 823 (i) by the author or other creator of the computer software; and
 - 824 (ii) to the specifications of a specific purchaser.
- 825 (b) "Prewritten computer software" includes:
 - 826 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
 - 827 software is not designed and developed:
 - 828 (A) by the author or other creator of the computer software; and
 - 829 (B) to the specifications of a specific purchaser;
 - 830 (ii) notwithstanding Subsection (77)(a), computer software designed and developed by
 - 831 the author or other creator of the computer software to the specifications of a specific purchaser
 - 832 if the computer software is sold to a person other than the purchaser; or
 - 833 (iii) notwithstanding Subsection (77)(a) and except as provided in Subsection (77)(c),

834 prewritten computer software or a prewritten portion of prewritten computer software:

835 (A) that is modified or enhanced to any degree; and

836 (B) if the modification or enhancement described in Subsection (77)(b)(iii)(A) is
837 designed and developed to the specifications of a specific purchaser.

838 (c) Notwithstanding Subsection (77)(b)(iii), "prewritten computer software" does not
839 include a modification or enhancement described in Subsection (77)(b)(iii) if the charges for
840 the modification or enhancement are:

841 (i) reasonable; and

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

844 (78) (a) "Private communication service" means a telecommunications service:

845 (i) that entitles a customer to exclusive or priority use of one or more communications
846 channels between or among termination points; and

847 (ii) regardless of the manner in which the one or more communications channels are
848 connected.

849 (b) "Private communications service" includes the following provided in connection
850 with the use of one or more communications channels:

851 (i) an extension line;

852 (ii) a station; or

853 (iii) switching capacity.

854 (79) (a) "Prosthetic device" means a device that is worn on or in the body to:

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

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

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

858 (b) "Prosthetic device" includes:

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

860 (ii) replacement parts for a prosthetic device;

861 (iii) a dental prosthesis; or

862 (iv) a hearing aid.

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

864 (i) corrective eyeglasses; or

- 865 (ii) contact lenses.
- 866 (80) (a) "Protective equipment" means an item:
- 867 (i) for human wear; and
- 868 (ii) that is:
- 869 (A) designed as protection:
- 870 (I) to the wearer against injury or disease; or
- 871 (II) against damage or injury of other persons or property; and
- 872 (B) not suitable for general use.
- 873 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 874 commission shall make rules:
- 875 (i) listing the items that constitute "protective equipment"; and
- 876 (ii) that are consistent with the list of items that constitute "protective equipment"
- 877 under the agreement.
- 878 (81) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or
- 879 printed matter, other than a photocopy:
- 880 (i) regardless of:
- 881 (A) characteristics;
- 882 (B) copyright;
- 883 (C) form;
- 884 (D) format;
- 885 (E) method of reproduction; or
- 886 (F) source; and
- 887 (ii) made available in printed or electronic format.
- 888 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 889 commission may by rule define the term "photocopy."
- 890 (82) (a) "Purchase price" and "sales price" mean the total amount of consideration:
- 891 (i) valued in money; and
- 892 (ii) for which tangible personal property, a product transferred electronically, or
- 893 services are:
- 894 (A) sold;
- 895 (B) leased; or

- 896 (C) rented.
- 897 (b) "Purchase price" and "sales price" include:
- 898 (i) the seller's cost of the tangible personal property, a product transferred
- 899 electronically, or services sold;
- 900 (ii) expenses of the seller, including:
- 901 (A) the cost of materials used;
- 902 (B) a labor cost;
- 903 (C) a service cost;
- 904 (D) interest;
- 905 (E) a loss;
- 906 (F) the cost of transportation to the seller; or
- 907 (G) a tax imposed on the seller;
- 908 (iii) a charge by the seller for any service necessary to complete the sale; or
- 909 (iv) consideration a seller receives from a person other than the purchaser if:
- 910 (A) (I) the seller actually receives consideration from a person other than the purchaser;
- 911 and
- 912 (II) the consideration described in Subsection (82)(b)(iv)(A)(I) is directly related to a
- 913 price reduction or discount on the sale;
- 914 (B) the seller has an obligation to pass the price reduction or discount through to the
- 915 purchaser;
- 916 (C) the amount of the consideration attributable to the sale is fixed and determinable by
- 917 the seller at the time of the sale to the purchaser; and
- 918 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the
- 919 seller to claim a price reduction or discount; and
- 920 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,
- 921 coupon, or other documentation with the understanding that the person other than the seller
- 922 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;
- 923 (II) the purchaser identifies that purchaser to the seller as a member of a group or
- 924 organization allowed a price reduction or discount, except that a preferred customer card that is
- 925 available to any patron of a seller does not constitute membership in a group or organization
- 926 allowed a price reduction or discount; or

- 927 (III) the price reduction or discount is identified as a third party price reduction or
928 discount on the:
- 929 (Aa) invoice the purchaser receives; or
930 (Bb) certificate, coupon, or other documentation the purchaser presents.
931 (c) "Purchase price" and "sales price" do not include:
932 (i) a discount:
933 (A) in a form including:
934 (I) cash;
935 (II) term; or
936 (III) coupon;
937 (B) that is allowed by a seller;
938 (C) taken by a purchaser on a sale; and
939 (D) that is not reimbursed by a third party; or
940 (ii) the following if separately stated on an invoice, bill of sale, or similar document
941 provided to the purchaser:
942 (A) the following from credit extended on the sale of tangible personal property or
943 services:
944 (I) a carrying charge;
945 (II) a financing charge; or
946 (III) an interest charge;
947 (B) a delivery charge;
948 (C) an installation charge;
949 (D) a manufacturer rebate on a motor vehicle; or
950 (E) a tax or fee legally imposed directly on the consumer.
951 (83) "Purchaser" means a person to whom:
952 (a) a sale of tangible personal property is made;
953 (b) a product is transferred electronically; or
954 (c) a service is furnished.
955 (84) "Regularly rented" means:
956 (a) rented to a guest for value three or more times during a calendar year; or
957 (b) advertised or held out to the public as a place that is regularly rented to guests for

958 value.

959 (85) "Renewable energy" means:

960 (a) biomass energy;

961 (b) hydroelectric energy;

962 (c) geothermal energy;

963 (d) solar energy; or

964 (e) wind energy.

965 (86) (a) "Renewable energy production facility" means a facility that:

966 (i) uses renewable energy to produce electricity; and

967 (ii) has a production capacity of 20 kilowatts or greater.

968 (b) A facility is a renewable energy production facility regardless of whether the
969 facility is:

970 (i) connected to an electric grid; or

971 (ii) located on the premises of an electricity consumer.

972 (87) "Rental" is as defined in Subsection (48).

973 (88) "Repairs or renovations of tangible personal property" means:

974 (a) a repair or renovation of tangible personal property that is not permanently attached
975 to real property; or

976 (b) attaching tangible personal property or a product that is transferred electronically to
977 other tangible personal property if the other tangible personal property to which the tangible
978 personal property or product that is transferred electronically is attached is not permanently
979 attached to real property.

980 (89) "Research and development" means the process of inquiry or experimentation
981 aimed at the discovery of facts, devices, technologies, or applications and the process of
982 preparing those devices, technologies, or applications for marketing.

983 (90) (a) "Residential telecommunications services" means a telecommunications
984 service or an ancillary service that is provided to an individual for personal use:

985 (i) at a residential address; or

986 (ii) at an institution, including a nursing home or a school, if the telecommunications
987 service or ancillary service is provided to and paid for by the individual residing at the
988 institution rather than the institution.

989 (b) For purposes of Subsection (90)(a), a residential address includes an:

990 (i) apartment; or

991 (ii) other individual dwelling unit.

992 (91) "Residential use" means the use in or around a home, apartment building, sleeping
993 quarters, and similar facilities or accommodations.

994 (92) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
995 than:

996 (a) resale;

997 (b) sublease; or

998 (c) subrent.

999 (93) (a) "Retailer" means any person engaged in a regularly organized business in
1000 tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and
1001 who is selling to the user or consumer and not for resale.

1002 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
1003 engaged in the business of selling to users or consumers within the state.

1004 (94) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
1005 otherwise, in any manner, of tangible personal property or any other taxable transaction under
1006 Subsection 59-12-103(1), for consideration.

1007 (b) "Sale" includes:

1008 (i) installment and credit sales;

1009 (ii) any closed transaction constituting a sale;

1010 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
1011 chapter;

1012 (iv) any transaction if the possession of property is transferred but the seller retains the
1013 title as security for the payment of the price; and

1014 (v) any transaction under which right to possession, operation, or use of any article of
1015 tangible personal property is granted under a lease or contract and the transfer of possession
1016 would be taxable if an outright sale were made.

1017 (95) "Sale at retail" is as defined in Subsection (92).

1018 (96) "Sale-leaseback transaction" means a transaction by which title to tangible
1019 personal property or a product transferred electronically that is subject to a tax under this

1020 chapter is transferred:

1021 (a) by a purchaser-lessee;

1022 (b) to a lessor;

1023 (c) for consideration; and

1024 (d) if:

1025 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase

1026 of the tangible personal property or product transferred electronically;

1027 (ii) the sale of the tangible personal property or product transferred electronically to the

1028 lessor is intended as a form of financing:

1029 (A) for the tangible personal property or product transferred electronically; and

1030 (B) to the purchaser-lessee; and

1031 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee

1032 is required to:

1033 (A) capitalize the tangible personal property or product transferred electronically for

1034 financial reporting purposes; and

1035 (B) account for the lease payments as payments made under a financing arrangement.

1036 (97) "Sales price" is as defined in Subsection (82).

1037 (98) (a) "Sales relating to schools" means the following sales by, amounts paid to, or

1038 amounts charged by a school:

1039 (i) sales that are directly related to the school's educational functions or activities

1040 including:

1041 (A) the sale of:

1042 (I) textbooks;

1043 (II) textbook fees;

1044 (III) laboratory fees;

1045 (IV) laboratory supplies; or

1046 (V) safety equipment;

1047 (B) the sale of a uniform, protective equipment, or sports or recreational equipment

1048 that:

1049 (I) a student is specifically required to wear as a condition of participation in a

1050 school-related event or school-related activity; and

1051 (II) is not readily adaptable to general or continued usage to the extent that it takes the
1052 place of ordinary clothing;

1053 (C) sales of the following if the net or gross revenues generated by the sales are
1054 deposited into a school district fund or school fund dedicated to school meals:

1055 (I) food and food ingredients; or

1056 (II) prepared food; or

1057 (D) transportation charges for official school activities; or

1058 (ii) amounts paid to or amounts charged by a school for admission to a school-related
1059 event or school-related activity.

1060 (b) "Sales relating to schools" does not include:

1061 (i) bookstore sales of items that are not educational materials or supplies;

1062 (ii) except as provided in Subsection (98)(a)(i)(B):

1063 (A) clothing;

1064 (B) clothing accessories or equipment;

1065 (C) protective equipment; or

1066 (D) sports or recreational equipment; or

1067 (iii) amounts paid to or amounts charged by a school for admission to a school-related
1068 event or school-related activity if the amounts paid or charged are passed through to a person:

1069 (A) other than a:

1070 (I) school;

1071 (II) nonprofit organization authorized by a school board or a governing body of a
1072 private school to organize and direct a competitive secondary school activity; or

1073 (III) nonprofit association authorized by a school board or a governing body of a
1074 private school to organize and direct a competitive secondary school activity; and

1075 (B) that is required to collect sales and use taxes under this chapter.

1076 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1077 commission may make rules defining the term "passed through."

1078 (99) For purposes of this section and Section 59-12-104, "school":

1079 (a) means:

1080 (i) an elementary school or a secondary school that:

1081 (A) is a:

- 1082 (I) public school; or
- 1083 (II) private school; and
- 1084 (B) provides instruction for one or more grades kindergarten through 12; or
- 1085 (ii) a public school district; and
- 1086 (b) includes the Electronic High School as defined in Section 53A-15-1002.
- 1087 (100) "Seller" means a person that makes a sale, lease, or rental of:
- 1088 (a) tangible personal property;
- 1089 (b) a product transferred electronically; or
- 1090 (c) a service.
- 1091 (101) (a) "Semiconductor fabricating, processing, research, or development materials"
- 1092 means tangible personal property or a product transferred electronically if the tangible personal
- 1093 property or product transferred electronically is:
- 1094 (i) used primarily in the process of:
- 1095 (A) (I) manufacturing a semiconductor;
- 1096 (II) fabricating a semiconductor; or
- 1097 (III) research or development of a:
- 1098 (Aa) semiconductor; or
- 1099 (Bb) semiconductor manufacturing process; or
- 1100 (B) maintaining an environment suitable for a semiconductor; or
- 1101 (ii) consumed primarily in the process of:
- 1102 (A) (I) manufacturing a semiconductor;
- 1103 (II) fabricating a semiconductor; or
- 1104 (III) research or development of a:
- 1105 (Aa) semiconductor; or
- 1106 (Bb) semiconductor manufacturing process; or
- 1107 (B) maintaining an environment suitable for a semiconductor.
- 1108 (b) "Semiconductor fabricating, processing, research, or development materials"
- 1109 includes:
- 1110 (i) parts used in the repairs or renovations of tangible personal property or a product
- 1111 transferred electronically described in Subsection (101)(a); or
- 1112 (ii) a chemical, catalyst, or other material used to:

- 1113 (A) produce or induce in a semiconductor a:
- 1114 (I) chemical change; or
- 1115 (II) physical change;
- 1116 (B) remove impurities from a semiconductor; or
- 1117 (C) improve the marketable condition of a semiconductor.
- 1118 (102) "Senior citizen center" means a facility having the primary purpose of providing
- 1119 services to the aged as defined in Section 62A-3-101.
- 1120 (103) "Simplified electronic return" means the electronic return:
- 1121 (a) described in Section 318(C) of the agreement; and
- 1122 (b) approved by the governing board of the agreement.
- 1123 (104) "Solar energy" means the sun used as the sole source of energy for producing
- 1124 electricity.
- 1125 (105) (a) "Sports or recreational equipment" means an item:
- 1126 (i) designed for human use; and
- 1127 (ii) that is:
- 1128 (A) worn in conjunction with:
- 1129 (I) an athletic activity; or
- 1130 (II) a recreational activity; and
- 1131 (B) not suitable for general use.
- 1132 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1133 commission shall make rules:
- 1134 (i) listing the items that constitute "sports or recreational equipment"; and
- 1135 (ii) that are consistent with the list of items that constitute "sports or recreational
- 1136 equipment" under the agreement.
- 1137 (106) "State" means the state of Utah, its departments, and agencies.
- 1138 (107) "Storage" means any keeping or retention of tangible personal property or any
- 1139 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except
- 1140 sale in the regular course of business.
- 1141 (108) (a) Except as provided in Subsection (108)~~(c)~~(d) or (e), " tangible personal
- 1142 property" means personal property that:
- 1143 (i) may be:

- 1144 (A) seen;
- 1145 (B) weighed;
- 1146 (C) measured;
- 1147 (D) felt; or
- 1148 (E) touched; or
- 1149 (ii) is in any manner perceptible to the senses.
- 1150 (b) "Tangible personal property" includes:
- 1151 (i) electricity;
- 1152 (ii) water;
- 1153 (iii) gas;
- 1154 (iv) steam; or
- 1155 (v) prewritten computer software.
- 1156 (c) "Tangible personal property" includes the following regardless of whether the item
- 1157 is attached to real property:
- 1158 (i) a dishwasher;
- 1159 (ii) a dryer;
- 1160 (iii) a freezer;
- 1161 (iv) a microwave;
- 1162 (v) a refrigerator;
- 1163 (vi) a stove;
- 1164 (vii) a washer; or
- 1165 (viii) an item similar to Subsections (108)(c)(i) through (vii) as determined by the
- 1166 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 1167 Rulemaking Act.
- 1168 [~~(c)~~] (d) "Tangible personal property" does not include a product that is transferred
- 1169 electronically.
- 1170 [~~(d)~~] (e) "Tangible personal property" does not include the following if attached to real
- 1171 property, regardless of whether the attachment to real property is only through a line that
- 1172 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
- 1173 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 1174 Rulemaking Act:

- 1175 (i) a hot water heater;
- 1176 (ii) a water [~~softener~~] filtration system; or
- 1177 (iii) a water [~~filtration~~] softener system.

1178 (109) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon
1179 and require further processing other than mechanical blending before becoming finished
1180 petroleum products.

1181 (110) (a) "Telecommunications enabling or facilitating equipment, machinery, or
1182 software" means an item listed in Subsection (110)(b) if that item is purchased or leased
1183 primarily to enable or facilitate one or more of the following to function:

- 1184 (i) telecommunications switching or routing equipment, machinery, or software; or
- 1185 (ii) telecommunications transmission equipment, machinery, or software.

1186 (b) The following apply to Subsection (110)(a):

- 1187 (i) a pole;
- 1188 (ii) software;
- 1189 (iii) a supplementary power supply;
- 1190 (iv) temperature or environmental equipment or machinery;
- 1191 (v) test equipment;
- 1192 (vi) a tower; or

1193 (vii) equipment, machinery, or software that functions similarly to an item listed in
1194 Subsections (110)(b)(i) through (vi) as determined by the commission by rule made in
1195 accordance with Subsection (110)(c).

1196 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1197 commission may by rule define what constitutes equipment, machinery, or software that
1198 functions similarly to an item listed in Subsections (110)(b)(i) through (vi).

1199 (111) "Telecommunications equipment, machinery, or software required for 911
1200 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.
1201 Sec. 20.18.

1202 (112) "Telecommunications maintenance or repair equipment, machinery, or software"
1203 means equipment, machinery, or software purchased or leased primarily to maintain or repair
1204 one or more of the following, regardless of whether the equipment, machinery, or software is
1205 purchased or leased as a spare part or as an upgrade or modification to one or more of the

1206 following:

1207 (a) telecommunications enabling or facilitating equipment, machinery, or software;

1208 (b) telecommunications switching or routing equipment, machinery, or software; or

1209 (c) telecommunications transmission equipment, machinery, or software.

1210 (113) (a) "Telecommunications service" means the electronic conveyance, routing, or
1211 transmission of audio, data, video, voice, or any other information or signal to a point, or
1212 among or between points.

1213 (b) "Telecommunications service" includes:

1214 (i) an electronic conveyance, routing, or transmission with respect to which a computer
1215 processing application is used to act:

1216 (A) on the code, form, or protocol of the content;

1217 (B) for the purpose of electronic conveyance, routing, or transmission; and

1218 (C) regardless of whether the service:

1219 (I) is referred to as voice over Internet protocol service; or

1220 (II) is classified by the Federal Communications Commission as enhanced or value
1221 added;

1222 (ii) an 800 service;

1223 (iii) a 900 service;

1224 (iv) a fixed wireless service;

1225 (v) a mobile wireless service;

1226 (vi) a postpaid calling service;

1227 (vii) a prepaid calling service;

1228 (viii) a prepaid wireless calling service; or

1229 (ix) a private communications service.

1230 (c) "Telecommunications service" does not include:

1231 (i) advertising, including directory advertising;

1232 (ii) an ancillary service;

1233 (iii) a billing and collection service provided to a third party;

1234 (iv) a data processing and information service if:

1235 (A) the data processing and information service allows data to be:

1236 (I) (Aa) acquired;

- 1237 (Bb) generated;
- 1238 (Cc) processed;
- 1239 (Dd) retrieved; or
- 1240 (Ee) stored; and
- 1241 (II) delivered by an electronic transmission to a purchaser; and
- 1242 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 1243 or information;
- 1244 (v) installation or maintenance of the following on a customer's premises:
- 1245 (A) equipment; or
- 1246 (B) wiring;
- 1247 (vi) Internet access service;
- 1248 (vii) a paging service;
- 1249 (viii) a product transferred electronically, including:
- 1250 (A) music;
- 1251 (B) reading material;
- 1252 (C) a ring tone;
- 1253 (D) software; or
- 1254 (E) video;
- 1255 (ix) a radio and television audio and video programming service:
- 1256 (A) regardless of the medium; and
- 1257 (B) including:
- 1258 (I) furnishing conveyance, routing, or transmission of a television audio and video
- 1259 programming service by a programming service provider;
- 1260 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
- 1261 (III) audio and video programming services delivered by a commercial mobile radio
- 1262 service provider as defined in 47 C.F.R. Sec. 20.3;
- 1263 (x) a value-added nonvoice data service; or
- 1264 (xi) tangible personal property.
- 1265 (114) (a) "Telecommunications service provider" means a person that:
- 1266 (i) owns, controls, operates, or manages a telecommunications service; and
- 1267 (ii) engages in an activity described in Subsection (114)(a)(i) for the shared use with or

1268 resale to any person of the telecommunications service.

1269 (b) A person described in Subsection (114)(a) is a telecommunications service provider
1270 whether or not the Public Service Commission of Utah regulates:

1271 (i) that person; or

1272 (ii) the telecommunications service that the person owns, controls, operates, or
1273 manages.

1274 (115) (a) "Telecommunications switching or routing equipment, machinery, or
1275 software" means an item listed in Subsection (115)(b) if that item is purchased or leased
1276 primarily for switching or routing:

1277 (i) an ancillary service;

1278 (ii) data communications;

1279 (iii) voice communications; or

1280 (iv) telecommunications service.

1281 (b) The following apply to Subsection (115)(a):

1282 (i) a bridge;

1283 (ii) a computer;

1284 (iii) a cross connect;

1285 (iv) a modem;

1286 (v) a multiplexer;

1287 (vi) plug in circuitry;

1288 (vii) a router;

1289 (viii) software;

1290 (ix) a switch; or

1291 (x) equipment, machinery, or software that functions similarly to an item listed in
1292 Subsections (115)(b)(i) through (ix) as determined by the commission by rule made in
1293 accordance with Subsection (115)(c).

1294 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1295 commission may by rule define what constitutes equipment, machinery, or software that
1296 functions similarly to an item listed in Subsections (115)(b)(i) through (ix).

1297 (116) (a) "Telecommunications transmission equipment, machinery, or software"
1298 means an item listed in Subsection (116)(b) if that item is purchased or leased primarily for

- 1299 sending, receiving, or transporting:
- 1300 (i) an ancillary service;
- 1301 (ii) data communications;
- 1302 (iii) voice communications; or
- 1303 (iv) telecommunications service.
- 1304 (b) The following apply to Subsection (116)(a):
- 1305 (i) an amplifier;
- 1306 (ii) a cable;
- 1307 (iii) a closure;
- 1308 (iv) a conduit;
- 1309 (v) a controller;
- 1310 (vi) a duplexer;
- 1311 (vii) a filter;
- 1312 (viii) an input device;
- 1313 (ix) an input/output device;
- 1314 (x) an insulator;
- 1315 (xi) microwave machinery or equipment;
- 1316 (xii) an oscillator;
- 1317 (xiii) an output device;
- 1318 (xiv) a pedestal;
- 1319 (xv) a power converter;
- 1320 (xvi) a power supply;
- 1321 (xvii) a radio channel;
- 1322 (xviii) a radio receiver;
- 1323 (xix) a radio transmitter;
- 1324 (xx) a repeater;
- 1325 (xxi) software;
- 1326 (xxii) a terminal;
- 1327 (xxiii) a timing unit;
- 1328 (xxiv) a transformer;
- 1329 (xxv) a wire; or

1330 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
1331 Subsections (116)(b)(i) through (xxv) as determined by the commission by rule made in
1332 accordance with Subsection (116)(c).

1333 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1334 commission may by rule define what constitutes equipment, machinery, or software that
1335 functions similarly to an item listed in Subsections (116)(b)(i) through (xxv).

1336 (117) "Tobacco" means:

1337 (a) a cigarette;

1338 (b) a cigar;

1339 (c) chewing tobacco;

1340 (d) pipe tobacco; or

1341 (e) any other item that contains tobacco.

1342 (118) "Unassisted amusement device" means an amusement device, skill device, or
1343 ride device that is started and stopped by the purchaser or renter of the right to use or operate
1344 the amusement device, skill device, or ride device.

1345 (119) (a) "Use" means the exercise of any right or power over tangible personal
1346 property, a product transferred electronically, or a service under Subsection 59-12-103(1),
1347 incident to the ownership or the leasing of that tangible personal property, product transferred
1348 electronically, or service.

1349 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal
1350 property, a product transferred electronically, or a service in the regular course of business and
1351 held for resale.

1352 (120) "Value-added nonvoice data service" means a service:

1353 (a) that otherwise meets the definition of a telecommunications service except that a
1354 computer processing application is used to act primarily for a purpose other than conveyance,
1355 routing, or transmission; and

1356 (b) with respect to which a computer processing application is used to act on data or
1357 information:

1358 (i) code;

1359 (ii) content;

1360 (iii) form; or

- 1361 (iv) protocol.
- 1362 (121) (a) Subject to Subsection (121)(b), "vehicle" means the following that are
- 1363 required to be titled, registered, or titled and registered:
- 1364 (i) an aircraft as defined in Section 72-10-102;
- 1365 (ii) a vehicle as defined in Section 41-1a-102;
- 1366 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1367 (iv) a vessel as defined in Section 41-1a-102.
- 1368 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:
- 1369 (i) a vehicle described in Subsection (121)(a); or
- 1370 (ii) (A) a locomotive;
- 1371 (B) a freight car;
- 1372 (C) railroad work equipment; or
- 1373 (D) other railroad rolling stock.
- 1374 (122) "Vehicle dealer" means a person engaged in the business of buying, selling, or
- 1375 exchanging a vehicle as defined in Subsection (121).
- 1376 (123) (a) "Vertical service" means an ancillary service that:
- 1377 (i) is offered in connection with one or more telecommunications services; and
- 1378 (ii) offers an advanced calling feature that allows a customer to:
- 1379 (A) identify a caller; and
- 1380 (B) manage multiple calls and call connections.
- 1381 (b) "Vertical service" includes an ancillary service that allows a customer to manage a
- 1382 conference bridging service.
- 1383 (124) (a) "Voice mail service" means an ancillary service that enables a customer to
- 1384 receive, send, or store a recorded message.
- 1385 (b) "Voice mail service" does not include a vertical service that a customer is required
- 1386 to have in order to utilize a voice mail service.
- 1387 (125) (a) Except as provided in Subsection (125)(b), "waste energy facility" means a
- 1388 facility that generates electricity:
- 1389 (i) using as the primary source of energy waste materials that would be placed in a
- 1390 landfill or refuse pit if it were not used to generate electricity, including:
- 1391 (A) tires;

- 1392 (B) waste coal; or
- 1393 (C) oil shale; and
- 1394 (ii) in amounts greater than actually required for the operation of the facility.
- 1395 (b) "Waste energy facility" does not include a facility that incinerates:
- 1396 (i) municipal solid waste;
- 1397 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or
- 1398 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.
- 1399 (126) "Watercraft" means a vessel as defined in Section 73-18-2.
- 1400 (127) "Wind energy" means wind used as the sole source of energy to produce
- 1401 electricity.
- 1402 (128) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
- 1403 location by the United States Postal Service.
- 1404 Section 2. **Effective date.**
- 1405 This bill takes effect on July 1, 2009.

Legislative Review Note
as of 11-25-08 3:45 PM

Office of Legislative Research and General Counsel

S.B. 35 - Sales and Use Tax Definitions Relating to Property

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will increase revenue to the General Fund by \$227,000 in FY 2010 and \$252,000 in FY 2011. Revenue to the Critical Highway Needs Fund and the Transportation Investment Fund will equally increase by \$1,200 in FY 2010 and \$1,400 in FY 2011.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$0	\$0	\$0	\$0	\$227,000	\$252,000
Transportation Fund Restricted	\$0	\$0	\$0	\$0	\$2,400	\$2,800
Total	\$0	\$0	\$0	\$0	\$229,400	\$254,800

Individual, Business and/or Local Impact

Sales tax revenue to locals will increase by \$97,000 in FY 2010 and \$108,000 in FY 2011. Sales tax revenue paid by businesses will decrease by \$2,832,000 in FY 2010 and \$3,153,000 in FY 2011. Sales tax paid by individuals will increase by \$3,059,000 in FY 2010 and \$3,405,000 in FY 2011. The increase in sales tax is because consumers pay sales tax on the markup whereas businesses pay sales tax on a wholesale price.