

SALES AND USE TAX AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

Committee Note:

The Revenue and Taxation Interim Committee recommended this bill.

General Description:

This bill amends the Sales and Use Tax Act relating to prepaid telephone calling cards.

Highlighted Provisions:

This bill:

- ▶ provides that amounts paid or charged for prepaid telephone calling cards are not subject to state and local sales and use taxes;
- ▶ repeals a sales and use tax exemption for sales of telecommunications service charged to a prepaid telephone calling card; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2009.

Utah Code Sections Affected:

AMENDS:

59-1-403, as last amended by Laws of Utah 2008, Chapters 3, 382, and 384

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

384



28 **59-12-103**, as last amended by Laws of Utah 2008, Second Special Session, Chapter 5

29 **59-12-104**, as last amended by Laws of Utah 2008, Second Special Session, Chapter 2

30 **59-12-104.5**, as last amended by Laws of Utah 2008, Chapter 384

31 **59-12-105**, as last amended by Laws of Utah 2008, Chapter 384



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

34 Section 1. Section **59-1-403** is amended to read:

35 **59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

36 (1) (a) Any of the following may not divulge or make known in any manner any
37 information gained by that person from any return filed with the commission:

38 (i) a tax commissioner;

39 (ii) an agent, clerk, or other officer or employee of the commission; or

40 (iii) a representative, agent, clerk, or other officer or employee of any county, city, or
41 town.

42 (b) An official charged with the custody of a return filed with the commission is not
43 required to produce the return or evidence of anything contained in the return in any action or
44 proceeding in any court, except:

45 (i) in accordance with judicial order;

46 (ii) on behalf of the commission in any action or proceeding under:

47 (A) this title; or

48 (B) other law under which persons are required to file returns with the commission;

49 (iii) on behalf of the commission in any action or proceeding to which the commission
50 is a party; or

51 (iv) on behalf of any party to any action or proceeding under this title if the report or
52 facts shown by the return are directly involved in the action or proceeding.

53 (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may
54 admit in evidence, any portion of a return or of the facts shown by the return, as are specifically
55 pertinent to the action or proceeding.

56 (2) This section does not prohibit:

57 (a) a person or that person's duly authorized representative from receiving a copy of
58 any return or report filed in connection with that person's own tax;

59 (b) the publication of statistics as long as the statistics are classified to prevent the
60 identification of particular reports or returns; and

61 (c) the inspection by the attorney general or other legal representative of the state of the
62 report or return of any taxpayer:

63 (i) who brings action to set aside or review a tax based on the report or return;

64 (ii) against whom an action or proceeding is contemplated or has been instituted under
65 this title; or

66 (iii) against whom the state has an unsatisfied money judgment.

67 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the
68 commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative
69 Rulemaking Act, provide for a reciprocal exchange of information with:

70 (i) the United States Internal Revenue Service; or

71 (ii) the revenue service of any other state.

72 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and
73 corporate franchise tax, the commission may by rule, made in accordance with Title 63G,
74 Chapter 3, Utah Administrative Rulemaking Act, share information gathered from returns and
75 other written statements with the federal government, any other state, any of the political
76 subdivisions of another state, or any political subdivision of this state, except as limited by
77 Sections 59-12-209 and 59-12-210, if the political subdivision, other state, or the federal
78 government grant substantially similar privileges to this state.

79 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and
80 corporate franchise tax, the commission may by rule, in accordance with Title 63G, Chapter 3,
81 Utah Administrative Rulemaking Act, provide for the issuance of information concerning the
82 identity and other information of taxpayers who have failed to file tax returns or to pay any tax
83 due.

84 (d) Notwithstanding Subsection (1), the commission shall provide to the Solid and
85 Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, as
86 requested by the executive secretary, any records, returns, or other information filed with the
87 commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5
88 regarding the environmental assurance program participation fee.

89 (e) Notwithstanding Subsection (1), at the request of any person the commission shall

90 provide that person sales and purchase volume data reported to the commission on a report,
91 return, or other information filed with the commission under:

92 (i) Chapter 13, Part 2, Motor Fuel; or

93 (ii) Chapter 13, Part 4, Aviation Fuel.

94 (f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer,
95 as defined in Section 59-22-202, the commission shall report to the manufacturer:

96 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
97 manufacturer and reported to the commission for the previous calendar year under Section
98 59-14-407; and

99 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
100 manufacturer for which a tax refund was granted during the previous calendar year under
101 Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

102 (g) Notwithstanding Subsection (1), the commission shall notify manufacturers,
103 distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited
104 from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

105 (h) Notwithstanding Subsection (1), the commission may:

106 (i) provide to the Division of Consumer Protection within the Department of
107 Commerce and the attorney general data:

108 (A) reported to the commission under Section 59-14-212; or

109 (B) related to a violation under Section 59-14-211; and

110 (ii) upon request provide to any person data reported to the commission under
111 Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).

112 (i) Notwithstanding Subsection (1), the commission shall, at the request of a committee
113 of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning
114 and Budget, provide to the committee or office the total amount of revenues collected by the
115 commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period
116 specified by the committee or office.

117 (j) Notwithstanding Subsection (1), the commission shall at the request of the
118 Legislature provide to the Legislature the total amount of sales or uses exempt under
119 Subsection 59-12-104[~~(46)~~](44) reported to the commission in accordance with Section
120 59-12-105.

121 (k) Notwithstanding Subsection (1), the commission shall make the directory required
122 by Section 59-14-603 available for public inspection.

123 (l) Notwithstanding Subsection (1), the commission may share information with
124 federal, state, or local agencies as provided in Subsection 59-14-606(3).

125 (m) (i) Notwithstanding Subsection (1), the commission shall provide the Office of
126 Recovery Services within the Department of Human Services any relevant information
127 obtained from a return filed under Chapter 10, Individual Income Tax Act, regarding a taxpayer
128 who has become obligated to the Office of Recovery Services.

129 (ii) The information described in Subsection (3)(m)(i) may be provided by the Office
130 of Recovery Services to any other state's child support collection agency involved in enforcing
131 that support obligation.

132 (n) (i) Notwithstanding Subsection (1), upon request from the state court administrator,
133 the commission shall provide to the state court administrator, the name, address, telephone
134 number, county of residence, and Social Security number on resident returns filed under
135 Chapter 10, Individual Income Tax Act.

136 (ii) The state court administrator may use the information described in Subsection
137 (3)(n)(i) only as a source list for the master jury list described in Section 78B-1-106.

138 (o) Notwithstanding Subsection (1), the commission shall at the request of a
139 committee, commission, or task force of the Legislature provide to the committee, commission,
140 or task force of the Legislature any information relating to a tax imposed under Chapter 9,
141 Taxation of Admitted Insurers, relating to the study required by Section 59-9-101.

142 (p) (i) As used in this Subsection (3)(p), "office" means the:

143 (A) Office of the Legislative Fiscal Analyst; or

144 (B) Office of Legislative Research and General Counsel.

145 (ii) Notwithstanding Subsection (1) and except as provided in Subsection (3)(p)(iii),
146 the commission shall at the request of an office provide to the office all information:

147 (A) gained by the commission; and

148 (B) required to be attached to or included in returns filed with the commission.

149 (iii) (A) An office may not request and the commission may not provide to an office a
150 person's:

151 (I) address;

152 (II) name;

153 (III) Social Security number; or

154 (IV) taxpayer identification number.

155 (B) The commission shall in all instances protect the privacy of a person as required by

156 Subsection (3)(p)(iii)(A).

157 (iv) An office may provide information received from the commission in accordance

158 with this Subsection (3)(p) only:

159 (A) as:

160 (I) a fiscal estimate;

161 (II) fiscal note information; or

162 (III) statistical information; and

163 (B) if the information is classified to prevent the identification of a particular return.

164 (v) (A) A person may not request information from an office under Title 63G, Chapter

165 2, Government Records Access and Management Act, or this section, if that office received the

166 information from the commission in accordance with this Subsection (3)(p).

167 (B) An office may not provide to a person that requests information in accordance with

168 Subsection (3)(p)(v)(A) any information other than the information the office provides in

169 accordance with Subsection (3)(p)(iv).

170 (q) Notwithstanding Subsection (1), the commission may provide to the governing

171 board of the agreement or a taxing official of another state, the District of Columbia, the United

172 States, or a territory of the United States:

173 (i) the following relating to an agreement sales and use tax:

174 (A) information contained in a return filed with the commission;

175 (B) information contained in a report filed with the commission;

176 (C) a schedule related to Subsection (3)(q)(i)(A) or (B); or

177 (D) a document filed with the commission; or

178 (ii) a report of an audit or investigation made with respect to an agreement sales and

179 use tax.

180 (4) (a) Reports and returns shall be preserved for at least three years.

181 (b) After the three-year period provided in Subsection (4)(a) the commission may

182 destroy a report or return.

183 (5) (a) Any person who violates this section is guilty of a class A misdemeanor.

184 (b) If the person described in Subsection (5)(a) is an officer or employee of the state,
185 the person shall be dismissed from office and be disqualified from holding public office in this
186 state for a period of five years thereafter.

187 (c) Notwithstanding Subsection (5)(a) or (b), an office that requests information in
188 accordance with Subsection (3)(p)(iii) or a person that requests information in accordance with
189 Subsection (3)(p)(v):

190 (i) is not guilty of a class A misdemeanor; and

191 (ii) is not subject to:

192 (A) dismissal from office in accordance with Subsection (5)(b); or

193 (B) disqualification from holding public office in accordance with Subsection (5)(b).

194 (6) Except as provided in Section 59-1-404, this part does not apply to the property tax.

195 Section 2. Section **59-12-102** is amended to read:

196 **59-12-102. Definitions.**

197 As used in this chapter:

198 (1) "800 service" means a telecommunications service that:

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

200 (b) is typically marketed:

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

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

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

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

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

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

207 Federal Communications Commission.

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

209 (i) a subscriber purchases;

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

212 (A) prerecorded announcement; or

213 (B) live service; and

- 214 (iii) is typically marketed:
- 215 (A) under the name 900 service; or
- 216 (B) under a name similar to Subsection (2)(~~e~~)(a)(iii)(A) as designated by the Federal
- 217 Communications Commission.
- 218 (b) "900 service" does not include a charge for:
- 219 (i) a collection service a seller of a telecommunications service provides to a
- 220 subscriber; or
- 221 (ii) the following a subscriber sells to the subscriber's customer:
- 222 (A) a product; or
- 223 (B) a service.
- 224 (3) (a) "Admission or user fees" includes season passes.
- 225 (b) "Admission or user fees" does not include annual membership dues to private
- 226 organizations.
- 227 (4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on
- 228 November 12, 2002, including amendments made to the Streamlined Sales and Use Tax
- 229 Agreement after November 12, 2002.
- 230 (5) "Agreement combined tax rate" means the sum of the tax rates:
- 231 (a) listed under Subsection (6); and
- 232 (b) that are imposed within a local taxing jurisdiction.
- 233 (6) "Agreement sales and use tax" means a tax imposed under:
- 234 (a) Subsection 59-12-103(2)(a)(i)(A);
- 235 (b) Subsection 59-12-103(2)(b)(i);
- 236 (c) Subsection 59-12-103(2)(c)(i);
- 237 (d) Subsection 59-12-103(2)(d)(i)(A)(I);
- 238 (e) Section 59-12-204;
- 239 (f) Section 59-12-401;
- 240 (g) Section 59-12-402;
- 241 (h) Section 59-12-501;
- 242 (i) Section 59-12-502;
- 243 (j) Section 59-12-703;
- 244 (k) Section 59-12-802;

- 245 (l) Section 59-12-804;
- 246 (m) Section 59-12-1001;
- 247 (n) Section 59-12-1102;
- 248 (o) Section 59-12-1302;
- 249 (p) Section 59-12-1402;
- 250 (q) Section 59-12-1503;
- 251 (r) Section 59-12-1703;
- 252 (s) Section 59-12-1802;
- 253 (t) Section 59-12-1903;
- 254 (u) Section 59-12-2003; or
- 255 (v) Section 59-12-2103.
- 256 (7) "Aircraft" is as defined in Section 72-10-102.
- 257 (8) "Alcoholic beverage" means a beverage that:
- 258 (a) is suitable for human consumption; and
- 259 (b) contains .5% or more alcohol by volume.
- 260 (9) (a) "Ancillary service" means a service associated with, or incidental to, the
- 261 provision of telecommunications service.
- 262 (b) "Ancillary service" includes:
- 263 (i) a conference bridging service;
- 264 (ii) a detailed communications billing service;
- 265 (iii) directory assistance;
- 266 (iv) a vertical service; or
- 267 (v) a voice mail service.
- 268 (10) "Area agency on aging" is as defined in Section 62A-3-101.
- 269 (11) "Assisted amusement device" means an amusement device, skill device, or ride
- 270 device that is started and stopped by an individual:
- 271 (a) who is not the purchaser or renter of the right to use or operate the amusement
- 272 device, skill device, or ride device; and
- 273 (b) at the direction of the seller of the right to use the amusement device, skill device,
- 274 or ride device.
- 275 (12) "Assisted cleaning or washing of tangible personal property" means cleaning or

276 washing of tangible personal property if the cleaning or washing labor is primarily performed
277 by an individual:

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

280 (b) at the direction of the seller of the cleaning or washing of the tangible personal
281 property.

282 (13) "Authorized carrier" means:

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

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

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

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

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

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

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

295 (B) animal waste;

296 (C) methane produced:

297 (I) at landfills; or

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

299 (D) aquatic plants; and

300 (E) agricultural products.

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

302 (i) black liquor;

303 (ii) treated woods; or

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

305 (A) at landfills; or

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

- 307 (15) (a) "Bundled transaction" means the sale of two or more items of tangible personal
308 property, products, or services if the tangible personal property, products, or services are:
- 309 (i) distinct and identifiable; and
 - 310 (ii) sold for one nonitemized price.
- 311 (b) "Bundled transaction" does not include:
- 312 (i) the sale of tangible personal property if the sales price varies, or is negotiable, on
313 the basis of the selection by the purchaser of the items of tangible personal property included in
314 the transaction;
 - 315 (ii) the sale of real property;
 - 316 (iii) the sale of services to real property;
 - 317 (iv) the retail sale of tangible personal property and a service if:
 - 318 (A) the tangible personal property:
 - 319 (I) is essential to the use of the service; and
 - 320 (II) is provided exclusively in connection with the service; and
 - 321 (B) the service is the true object of the transaction;
 - 322 (v) the retail sale of two services if:
 - 323 (A) one service is provided that is essential to the use or receipt of a second service;
 - 324 (B) the first service is provided exclusively in connection with the second service; and
 - 325 (C) the second service is the true object of the transaction;
 - 326 (vi) a transaction that includes tangible personal property or a product subject to
327 taxation under this chapter and tangible personal property or a product that is not subject to
328 taxation under this chapter if the:
 - 329 (A) seller's purchase price of the tangible personal property or product subject to
330 taxation under this chapter is de minimis; or
 - 331 (B) seller's sales price of the tangible personal property or product subject to taxation
332 under this chapter is de minimis; and
 - 333 (vii) the retail sale of tangible personal property that is not subject to taxation under
334 this chapter and tangible personal property that is subject to taxation under this chapter if:
 - 335 (A) that retail sale includes:
 - 336 (I) food and food ingredients;
 - 337 (II) a drug;

- 338 (III) durable medical equipment;
- 339 (IV) mobility enhancing equipment;
- 340 (V) an over-the-counter drug;
- 341 (VI) a prosthetic device; or
- 342 (VII) a medical supply; and
- 343 (B) subject to Subsection (15)(f):
 - 344 (I) the seller's purchase price of the tangible personal property subject to taxation under
 - 345 this chapter is 50% or less of the seller's total purchase price of that retail sale; or
 - 346 (II) the seller's sales price of the tangible personal property subject to taxation under
 - 347 this chapter is 50% or less of the seller's total sales price of that retail sale.
- 348 (c) (i) For purposes of Subsection (15)(a)(i), tangible personal property, a product, or a
- 349 service that is distinct and identifiable does not include:
 - 350 (A) packaging that:
 - 351 (I) accompanies the sale of the tangible personal property, product, or service; and
 - 352 (II) is incidental or immaterial to the sale of the tangible personal property, product, or
 - 353 service;
 - 354 (B) tangible personal property, a product, or a service provided free of charge with the
 - 355 purchase of another item of tangible personal property, a product, or a service; or
 - 356 (C) an item of tangible personal property, a product, or a service included in the
 - 357 definition of "purchase price."
- 358 (ii) For purposes of Subsection (15)(c)(i)(B), an item of tangible personal property, a
- 359 product, or a service is provided free of charge with the purchase of another item of tangible
- 360 personal property, a product, or a service if the sales price of the purchased item of tangible
- 361 personal property, product, or service does not vary depending on the inclusion of the tangible
- 362 personal property, product, or service provided free of charge.
- 363 (d) (i) For purposes of Subsection (15)(a)(ii), property sold for one nonitemized price
- 364 does not include a price that is separately identified by product on the following, regardless of
- 365 whether the following is in paper format or electronic format:
 - 366 (A) a binding sales document; or
 - 367 (B) another supporting sales-related document that is available to a purchaser.
- 368 (ii) For purposes of Subsection (15)(d)(i), a binding sales document or another

369 supporting sales-related document that is available to a purchaser includes:

- 370 (A) a bill of sale;
- 371 (B) a contract;
- 372 (C) an invoice;
- 373 (D) a lease agreement;
- 374 (E) a periodic notice of rates and services;
- 375 (F) a price list;
- 376 (G) a rate card;
- 377 (H) a receipt; or
- 378 (I) a service agreement.

379 (e) (i) For purposes of Subsection (15)(b)(vi), the sales price of tangible personal
380 property or a product subject to taxation under this chapter is de minimis if:

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

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

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

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

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

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

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

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

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

402 (i) on a transaction; and
403 (ii) in the states that are members of the agreement;

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

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

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

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

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

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

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

417 (i) listing the items that constitute "clothing"; and
418 (ii) that are consistent with the list of items that constitute "clothing" under the
419 agreement.

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

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

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

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

429 (ii) For purposes of Subsection (21)(b)(i), in accordance with Title 63G, Chapter 3,
430 Utah Administrative Rulemaking Act, the commission may make rules defining what

431 constitutes a person's place of employment.

432 (22) "Component part" includes:

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

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

435 (c) fuel used for providing temperature control of orchards and commercial

436 greenhouses doing a majority of their business in wholesale sales, and for providing power for

437 off-highway type farm machinery; and

438 (d) feed, seeds, and seedlings.

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

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

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

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

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

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

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

446 (25) (a) "Conference bridging service" means an ancillary service that links two or

447 more participants of an audio conference call or video conference call.

448 (b) "Conference bridging service" includes providing a telephone number as part of the

449 ancillary service described in Subsection (25)(a).

450 (c) "Conference bridging service" does not include a telecommunications service used

451 to reach the ancillary service described in Subsection (25)(a).

452 (26) "Construction materials" means any tangible personal property that will be

453 converted into real property.

454 (27) "Delivered electronically" means delivered to a purchaser by means other than

455 tangible storage media.

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

457 (i) by a seller of:

458 (A) tangible personal property;

459 (B) a product transferred electronically; or

460 (C) services; and

461 (ii) for preparation and delivery of the tangible personal property, product transferred

462 electronically, or services described in Subsection (28)(a)(i) to a location designated by the
463 purchaser.

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

465 (i) transportation;

466 (ii) shipping;

467 (iii) postage;

468 (iv) handling;

469 (v) crating; or

470 (vi) packing.

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

473 (30) "Dietary supplement" means a product, other than tobacco, that:

474 (a) is intended to supplement the diet;

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

476 (i) a vitamin;

477 (ii) a mineral;

478 (iii) an herb or other botanical;

479 (iv) an amino acid;

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

482 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
483 described in Subsections (30)(b)(i) through (v);

484 (c) (i) except as provided in Subsection (30)(c)(ii), is intended for ingestion in:

485 (A) tablet form;

486 (B) capsule form;

487 (C) powder form;

488 (D) softgel form;

489 (E) gelcap form; or

490 (F) liquid form; or

491 (ii) notwithstanding Subsection (30)(c)(i), if the product is not intended for ingestion in
492 a form described in Subsections (30)(c)(i)(A) through (F), is not represented:

- 493 (A) as conventional food; and
- 494 (B) for use as a sole item of:
- 495 (I) a meal; or
- 496 (II) the diet; and
- 497 (d) is required to be labeled as a dietary supplement:
- 498 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 499 (ii) as required by 21 C.F.R. Sec. 101.36.
- 500 (31) (a) "Direct mail" means printed material delivered or distributed by United States
- 501 mail or other delivery service:
- 502 (i) to:
- 503 (A) a mass audience; or
- 504 (B) addressees on a mailing list provided by a purchaser of the mailing list; and
- 505 (ii) if the cost of the printed material is not billed directly to the recipients.
- 506 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
- 507 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 508 (c) "Direct mail" does not include multiple items of printed material delivered to a
- 509 single address.
- 510 (32) "Directory assistance" means an ancillary service of providing:
- 511 (a) address information; or
- 512 (b) telephone number information.
- 513 (33) (a) "Disposable home medical equipment or supplies" means medical equipment
- 514 or supplies that:
- 515 (i) cannot withstand repeated use; and
- 516 (ii) are purchased by, for, or on behalf of a person other than:
- 517 (A) a health care facility as defined in Section 26-21-2;
- 518 (B) a health care provider as defined in Section 78B-3-403;
- 519 (C) an office of a health care provider described in Subsection (33)(a)(ii)(B); or
- 520 (D) a person similar to a person described in Subsections (33)(a)(ii)(A) through (C).
- 521 (b) "Disposable home medical equipment or supplies" does not include:
- 522 (i) a drug;
- 523 (ii) durable medical equipment;

- 524 (iii) a hearing aid;
- 525 (iv) a hearing aid accessory;
- 526 (v) mobility enhancing equipment; or
- 527 (vi) tangible personal property used to correct impaired vision, including:
- 528 (A) eyeglasses; or
- 529 (B) contact lenses.

530 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
531 commission may by rule define what constitutes medical equipment or supplies.

532 (34) (a) "Drug" means a compound, substance, or preparation, or a component of a
533 compound, substance, or preparation that is:

- 534 (i) recognized in:
 - 535 (A) the official United States Pharmacopoeia;
 - 536 (B) the official Homeopathic Pharmacopoeia of the United States;
 - 537 (C) the official National Formulary; or
 - 538 (D) a supplement to a publication listed in Subsections (34)(a)(i)(A) through (C);
- 539 (ii) intended for use in the:
 - 540 (A) diagnosis of disease;
 - 541 (B) cure of disease;
 - 542 (C) mitigation of disease;
 - 543 (D) treatment of disease; or
 - 544 (E) prevention of disease; or
- 545 (iii) intended to affect:
 - 546 (A) the structure of the body; or
 - 547 (B) any function of the body.

548 (b) "Drug" does not include:

- 549 (i) food and food ingredients;
- 550 (ii) a dietary supplement;
- 551 (iii) an alcoholic beverage; or
- 552 (iv) a prosthetic device.

553 (35) (a) Except as provided in Subsection (35)(c), "durable medical equipment" means
554 equipment that:

- 555 (i) can withstand repeated use;
- 556 (ii) is primarily and customarily used to serve a medical purpose;
- 557 (iii) generally is not useful to a person in the absence of illness or injury; and
- 558 (iv) is not worn in or on the body.
- 559 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 560 equipment described in Subsection (35)(a).
- 561 (c) Notwithstanding Subsection (35)(a), "durable medical equipment" does not include
- 562 mobility enhancing equipment.
- 563 (36) "Electronic" means:
- 564 (a) relating to technology; and
- 565 (b) having:
- 566 (i) electrical capabilities;
- 567 (ii) digital capabilities;
- 568 (iii) magnetic capabilities;
- 569 (iv) wireless capabilities;
- 570 (v) optical capabilities;
- 571 (vi) electromagnetic capabilities; or
- 572 (vii) capabilities similar to Subsections (36)(b)(i) through (vi).
- 573 (37) "Employee" is as defined in Section 59-10-401.
- 574 (38) "Fixed guideway" means a public transit facility that uses and occupies:
- 575 (a) rail for the use of public transit; or
- 576 (b) a separate right-of-way for the use of public transit.
- 577 (39) "Fixed wireless service" means a telecommunications service that provides radio
- 578 communication between fixed points.
- 579 (40) (a) "Food and food ingredients" means substances:
- 580 (i) regardless of whether the substances are in:
- 581 (A) liquid form;
- 582 (B) concentrated form;
- 583 (C) solid form;
- 584 (D) frozen form;
- 585 (E) dried form; or

586 (F) dehydrated form; and
587 (ii) that are:
588 (A) sold for:
589 (I) ingestion by humans; or
590 (II) chewing by humans; and
591 (B) consumed for the substance's:
592 (I) taste; or
593 (II) nutritional value.
594 (b) "Food and food ingredients" includes an item described in Subsection (75)(b)(iii).
595 (c) "Food and food ingredients" does not include:
596 (i) an alcoholic beverage;
597 (ii) tobacco; or
598 (iii) prepared food.
599 (41) (a) "Fundraising sales" means sales:
600 (i) (A) made by a school; or
601 (B) made by a school student;
602 (ii) that are for the purpose of raising funds for the school to purchase equipment,
603 materials, or provide transportation; and
604 (iii) that are part of an officially sanctioned school activity.
605 (b) For purposes of Subsection (41)(a)(iii), "officially sanctioned school activity"
606 means a school activity:
607 (i) that is conducted in accordance with a formal policy adopted by the school or school
608 district governing the authorization and supervision of fundraising activities;
609 (ii) that does not directly or indirectly compensate an individual teacher or other
610 educational personnel by direct payment, commissions, or payment in kind; and
611 (iii) the net or gross revenues from which are deposited in a dedicated account
612 controlled by the school or school district.
613 (42) "Geothermal energy" means energy contained in heat that continuously flows
614 outward from the earth that is used as the sole source of energy to produce electricity.
615 (43) "Governing board of the agreement" means the governing board of the agreement
616 that is:

- 617 (a) authorized to administer the agreement; and
- 618 (b) established in accordance with the agreement.
- 619 (44) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:
- 620 (i) the executive branch of the state, including all departments, institutions, boards,
- 621 divisions, bureaus, offices, commissions, and committees;
- 622 (ii) the judicial branch of the state, including the courts, the Judicial Council, the
- 623 Office of the Court Administrator, and similar administrative units in the judicial branch;
- 624 (iii) the legislative branch of the state, including the House of Representatives, the
- 625 Senate, the Legislative Printing Office, the Office of Legislative Research and General
- 626 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal
- 627 Analyst;
- 628 (iv) the National Guard;
- 629 (v) an independent entity as defined in Section 63E-1-102; or
- 630 (vi) a political subdivision as defined in Section 17B-1-102.
- 631 (b) "Governmental entity" does not include the state systems of public and higher
- 632 education, including:
- 633 (i) a college campus of the Utah College of Applied Technology;
- 634 (ii) a school;
- 635 (iii) the State Board of Education;
- 636 (iv) the State Board of Regents; or
- 637 (v) a state institution of higher education as defined in Section 53B-3-102.
- 638 (45) "Hydroelectric energy" means water used as the sole source of energy to produce
- 639 electricity.
- 640 (46) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
- 641 other fuels:
- 642 (a) in mining or extraction of minerals;
- 643 (b) in agricultural operations to produce an agricultural product up to the time of
- 644 harvest or placing the agricultural product into a storage facility, including:
- 645 (i) commercial greenhouses;
- 646 (ii) irrigation pumps;
- 647 (iii) farm machinery;

648 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
649 registered under Title 41, Chapter 1a, Part 2, Registration; and

650 (v) other farming activities;

651 (c) in manufacturing tangible personal property at an establishment described in SIC
652 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
653 Executive Office of the President, Office of Management and Budget;

654 (d) by a scrap recycler if:

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

658 (A) iron;

659 (B) steel;

660 (C) nonferrous metal;

661 (D) paper;

662 (E) glass;

663 (F) plastic;

664 (G) textile; or

665 (H) rubber; and

666 (ii) the new products under Subsection (46)(d)(i) would otherwise be made with
667 nonrecycled materials; or

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

670 (47) (a) Except as provided in Subsection (47)(b), "installation charge" means a charge
671 for installing:

672 (i) tangible personal property; or

673 (ii) a product transferred electronically.

674 (b) "Installation charge" does not include a charge for repairs or renovations of:

675 (i) tangible personal property; or

676 (ii) a product transferred electronically.

677 (48) (a) "Lease" or "rental" means a transfer of possession or control of tangible
678 personal property or a product transferred electronically for:

- 679 (i) (A) a fixed term; or
- 680 (B) an indeterminate term; and
- 681 (ii) consideration.
- 682 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
- 683 amount of consideration may be increased or decreased by reference to the amount realized
- 684 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
- 685 Code.
- 686 (c) "Lease" or "rental" does not include:
- 687 (i) a transfer of possession or control of property under a security agreement or
- 688 deferred payment plan that requires the transfer of title upon completion of the required
- 689 payments;
- 690 (ii) a transfer of possession or control of property under an agreement that requires the
- 691 transfer of title:
- 692 (A) upon completion of required payments; and
- 693 (B) if the payment of an option price does not exceed the greater of:
- 694 (I) \$100; or
- 695 (II) 1% of the total required payments; or
- 696 (iii) providing tangible personal property along with an operator for a fixed period of
- 697 time or an indeterminate period of time if the operator is necessary for equipment to perform as
- 698 designed.
- 699 (d) For purposes of Subsection (48)(c)(iii), an operator is necessary for equipment to
- 700 perform as designed if the operator's duties exceed the:
- 701 (i) set-up of tangible personal property;
- 702 (ii) maintenance of tangible personal property; or
- 703 (iii) inspection of tangible personal property.
- 704 (49) "Load and leave" means delivery to a purchaser by use of a tangible storage media
- 705 if the tangible storage media is not physically transferred to the purchaser.
- 706 (50) "Local taxing jurisdiction" means a:
- 707 (a) county that is authorized to impose an agreement sales and use tax;
- 708 (b) city that is authorized to impose an agreement sales and use tax; or
- 709 (c) town that is authorized to impose an agreement sales and use tax.

- 710 (51) "Manufactured home" is as defined in Section 58-56-3.
- 711 (52) For purposes of Section 59-12-104, "manufacturing facility" means:
- 712 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
- 713 Industrial Classification Manual of the federal Executive Office of the President, Office of
- 714 Management and Budget;
- 715 (b) a scrap recycler if:
- 716 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 717 one or more of the following items into prepared grades of processed materials for use in new
- 718 products:
- 719 (A) iron;
- 720 (B) steel;
- 721 (C) nonferrous metal;
- 722 (D) paper;
- 723 (E) glass;
- 724 (F) plastic;
- 725 (G) textile; or
- 726 (H) rubber; and
- 727 (ii) the new products under Subsection (52)(b)(i) would otherwise be made with
- 728 nonrecycled materials; or
- 729 (c) a cogeneration facility as defined in Section 54-2-1.
- 730 (53) "Member of the immediate family of the producer" means a person who is related
- 731 to a producer described in Subsection 59-12-104(20)(a) as a:
- 732 (a) child or stepchild, regardless of whether the child or stepchild is:
- 733 (i) an adopted child or adopted stepchild; or
- 734 (ii) a foster child or foster stepchild;
- 735 (b) grandchild or stepgrandchild;
- 736 (c) grandparent or stepgrandparent;
- 737 (d) nephew or stepnephew;
- 738 (e) niece or stepniece;
- 739 (f) parent or stepparent;
- 740 (g) sibling or stepsibling;

741 (h) spouse;
742 (i) person who is the spouse of a person described in Subsections (53)(a) through (g);

743 or

744 (j) person similar to a person described in Subsections (53)(a) through (i) as
745 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
746 Administrative Rulemaking Act.

747 (54) "Mobile home" is as defined in Section 58-56-3.

748 (55) "Mobile telecommunications service" is as defined in the Mobile
749 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

750 (56) (a) "Mobile wireless service" means a telecommunications service, regardless of
751 the technology used, if:

- 752 (i) the origination point of the conveyance, routing, or transmission is not fixed;
- 753 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or
- 754 (iii) the origination point described in Subsection (56)(a)(i) and the termination point
755 described in Subsection (56)(a)(ii) are not fixed.

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

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

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

- 762 (i) primarily and customarily used to provide or increase the ability to move from one
763 place to another;
- 764 (ii) appropriate for use in a:
 - 765 (A) home; or
 - 766 (B) motor vehicle; and
- 767 (iii) not generally used by persons with normal mobility.

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

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

- 772 (i) a motor vehicle;
- 773 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
- 774 vehicle manufacturer;
- 775 (iii) durable medical equipment; or
- 776 (iv) a prosthetic device.

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

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

782 (a) except as provided in Subsection (59)(b), has selected a certified automated system
783 to perform the seller's sales tax functions for agreement sales and use taxes; and

784 (b) notwithstanding Subsection (59)(a), retains responsibility for remitting all of the
785 sales tax:

- 786 (i) collected by the seller; and
- 787 (ii) to the appropriate local taxing jurisdiction.

788 (60) (a) Subject to Subsection (60)(b), "model 3 seller" means a seller that has:

- 789 (i) sales in at least five states that are members of the agreement;
- 790 (ii) total annual sales revenues of at least \$500,000,000;
- 791 (iii) a proprietary system that calculates the amount of tax:

- 792 (A) for an agreement sales and use tax; and
- 793 (B) due to each local taxing jurisdiction; and

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

795 (b) For purposes of Subsection (60)(a), "model 3 seller" includes an affiliated group of
796 sellers using the same proprietary system.

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

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

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

801 (64) (a) "Other fuels" means products that burn independently to produce heat or
802 energy.

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

805 (65) (a) "Paging service" means a telecommunications service that provides
806 transmission of a coded radio signal for the purpose of activating a specific pager.

807 (b) For purposes of Subsection (65)(a), the transmission of a coded radio signal
808 includes a transmission by message or sound.

809 (66) "Pawnbroker" is as defined in Section 13-32a-102.

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

811 (68) (a) "Permanently attached to real property" means that for tangible personal
812 property attached to real property:

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

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

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

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

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

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

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

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

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

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

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

829 (iii) property attached to oil, gas, or water pipelines, other than the property listed in
830 Subsection (68)(c)(iii).

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

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

- 834 (A) convenience;
- 835 (B) stability; or
- 836 (C) for an obvious temporary purpose;
- 837 (ii) the detachment of tangible personal property from real property other than the
- 838 detachment described in Subsection (68)(b)(ii);
- 839 (iii) an attachment of the following tangible personal property to real property if the
- 840 attachment to real property is only through a line that supplies water, electricity, gas,
- 841 telecommunications, cable, or supplies a similar item as determined by the commission by rule
- 842 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
 - 843 (A) a refrigerator;
 - 844 (B) a washer;
 - 845 (C) a dryer;
 - 846 (D) a stove;
 - 847 (E) a television;
 - 848 (F) a computer;
 - 849 (G) a telephone; or
 - 850 (H) tangible personal property similar to Subsections (68)(c)(iii)(A) through (G) as
 - 851 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
 - 852 Administrative Rulemaking Act; or
 - 853 (iv) the following if attached to real property, regardless of whether the attachment to
 - 854 real property is only through a line that supplies water, electricity, gas, telephone, cable, or
 - 855 supplies a similar item as determined by the commission by rule made in accordance with Title
 - 856 63G, Chapter 3, Utah Administrative Rulemaking Act:
 - 857 (A) a hot water heater;
 - 858 (B) a water softener system; or
 - 859 (C) a water filtration system.
 - 860 (69) "Person" includes any individual, firm, partnership, joint venture, association,
 - 861 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
 - 862 municipality, district, or other local governmental entity of the state, or any group or
 - 863 combination acting as a unit.
 - 864 (70) "Place of primary use":

865 (a) for telecommunications service other than mobile telecommunications service,
866 means the street address representative of where the purchaser's use of the telecommunications
867 service primarily occurs, which shall be:

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

872 (71) (a) "Postpaid calling service" means a telecommunications service a person
873 obtains by making a payment on a call-by-call basis:

- 874 (i) through the use of a:
 - 875 (A) bank card;
 - 876 (B) credit card;
 - 877 (C) debit card; or
 - 878 (D) travel card; or
- 879 (ii) by a charge made to a telephone number that is not associated with the origination
880 or termination of the telecommunications service.

881 (b) "Postpaid calling service" includes a service that would be a prepaid wireless
882 calling service if the service were exclusively a telecommunications service.

883 (72) "Postproduction" means an activity related to the finishing or duplication of a
884 medium described in Subsection 59-12-104[~~(55)~~](54)(a).

885 (73) "Prepaid calling service" means a telecommunications service:

- 886 (a) that allows a purchaser access to telecommunications service that is exclusively
887 telecommunications service;
- 888 (b) that:
 - 889 (i) is paid for in advance; and
 - 890 (ii) enables the origination of a call using an:
 - 891 (A) access number; or
 - 892 (B) authorization code;
 - 893 (c) that is dialed:
 - 894 (i) manually; or
 - 895 (ii) electronically; and

- 896 (d) sold in predetermined units or dollars that decline:
- 897 (i) by a known amount; and
- 898 (ii) with use.
- 899 (74) "Prepaid wireless calling service" means a telecommunications service:
- 900 (a) that provides the right to utilize:
- 901 (i) mobile wireless service; and
- 902 (ii) other service that is not a telecommunications service, including:
- 903 (A) the download of a product transferred electronically;
- 904 (B) a content service; or
- 905 (C) an ancillary service;
- 906 (b) that:
- 907 (i) is paid for in advance; and
- 908 (ii) enables the origination of a call using an:
- 909 (A) access number; or
- 910 (B) authorization code;
- 911 (c) that is dialed:
- 912 (i) manually; or
- 913 (ii) electronically; and
- 914 (d) sold in predetermined units or dollars that decline:
- 915 (i) by a known amount; and
- 916 (ii) with use.
- 917 (75) (a) "Prepared food" means:
- 918 (i) food:
- 919 (A) sold in a heated state; or
- 920 (B) heated by a seller;
- 921 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 922 item; or
- 923 (iii) except as provided in Subsection (75)(c), food sold with an eating utensil provided
- 924 by the seller, including a:
- 925 (A) plate;
- 926 (B) knife;

- 927 (C) fork;
- 928 (D) spoon;
- 929 (E) glass;
- 930 (F) cup;
- 931 (G) napkin; or
- 932 (H) straw.
- 933 (b) "Prepared food" does not include:
- 934 (i) food that a seller only:
- 935 (A) cuts;
- 936 (B) repackages; or
- 937 (C) pasteurizes; or
- 938 (ii) (A) the following:
- 939 (I) raw egg;
- 940 (II) raw fish;
- 941 (III) raw meat;
- 942 (IV) raw poultry; or
- 943 (V) a food containing an item described in Subsections (75)(b)(ii)(A)(I) through (IV);
- 944 and
- 945 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 946 Food and Drug Administration's Food Code that a consumer cook the items described in
- 947 Subsection (75)(b)(ii)(A) to prevent food borne illness; or
- 948 (iii) the following if sold without eating utensils provided by the seller:
- 949 (A) food and food ingredients sold by a seller if the seller's proper primary
- 950 classification under the 2002 North American Industry Classification System of the federal
- 951 Executive Office of the President, Office of Management and Budget, is manufacturing in
- 952 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
- 953 Manufacturing;
- 954 (B) food and food ingredients sold in an unheated state:
- 955 (I) by weight or volume; and
- 956 (II) as a single item; or
- 957 (C) a bakery item, including:

- 958 (I) a bagel;
 - 959 (II) a bar;
 - 960 (III) a biscuit;
 - 961 (IV) bread;
 - 962 (V) a bun;
 - 963 (VI) a cake;
 - 964 (VII) a cookie;
 - 965 (VIII) a croissant;
 - 966 (IX) a danish;
 - 967 (X) a donut;
 - 968 (XI) a muffin;
 - 969 (XII) a pastry;
 - 970 (XIII) a pie;
 - 971 (XIV) a roll;
 - 972 (XV) a tart;
 - 973 (XVI) a torte; or
 - 974 (XVII) a tortilla.
- 975 (c) Notwithstanding Subsection (75)(a)(iii), an eating utensil provided by the seller
- 976 does not include the following used to transport the food:
- 977 (i) a container; or
 - 978 (ii) packaging.
- 979 (76) "Prescription" means an order, formula, or recipe that is issued:
- 980 (a) (i) orally;
 - 981 (ii) in writing;
 - 982 (iii) electronically; or
 - 983 (iv) by any other manner of transmission; and
- 984 (b) by a licensed practitioner authorized by the laws of a state.
- 985 (77) (a) Except as provided in Subsection (77)(b)(ii) or (iii), "prewritten computer
- 986 software" means computer software that is not designed and developed:
- 987 (i) by the author or other creator of the computer software; and
 - 988 (ii) to the specifications of a specific purchaser.

989 (b) "Prewritten computer software" includes:

990 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
991 software is not designed and developed:

992 (A) by the author or other creator of the computer software; and

993 (B) to the specifications of a specific purchaser;

994 (ii) notwithstanding Subsection (77)(a), computer software designed and developed by
995 the author or other creator of the computer software to the specifications of a specific purchaser
996 if the computer software is sold to a person other than the purchaser; or

997 (iii) notwithstanding Subsection (77)(a) and except as provided in Subsection (77)(c),
998 prewritten computer software or a prewritten portion of prewritten computer software:

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

1000 (B) if the modification or enhancement described in Subsection (77)(b)(iii)(A) is
1001 designed and developed to the specifications of a specific purchaser.

1002 (c) Notwithstanding Subsection (77)(b)(iii), "prewritten computer software" does not
1003 include a modification or enhancement described in Subsection (77)(b)(iii) if the charges for
1004 the modification or enhancement are:

1005 (i) reasonable; and

1006 (ii) separately stated on the invoice or other statement of price provided to the
1007 purchaser.

1008 (78) (a) "Private communication service" means a telecommunications service:

1009 (i) that entitles a customer to exclusive or priority use of one or more communications
1010 channels between or among termination points; and

1011 (ii) regardless of the manner in which the one or more communications channels are
1012 connected.

1013 (b) "Private communications service" includes the following provided in connection
1014 with the use of one or more communications channels:

1015 (i) an extension line;

1016 (ii) a station; or

1017 (iii) switching capacity.

1018 (79) (a) "Prosthetic device" means a device that is worn on or in the body to:

1019 (i) artificially replace a missing portion of the body;

- 1020 (ii) prevent or correct a physical deformity or physical malfunction; or
- 1021 (iii) support a weak or deformed portion of the body.
- 1022 (b) "Prosthetic device" includes:
- 1023 (i) parts used in the repairs or renovation of a prosthetic device;
- 1024 (ii) replacement parts for a prosthetic device;
- 1025 (iii) a dental prosthesis; or
- 1026 (iv) a hearing aid.
- 1027 (c) "Prosthetic device" does not include:
- 1028 (i) corrective eyeglasses; or
- 1029 (ii) contact lenses.
- 1030 (80) (a) "Protective equipment" means an item:
- 1031 (i) for human wear; and
- 1032 (ii) that is:
- 1033 (A) designed as protection:
- 1034 (I) to the wearer against injury or disease; or
- 1035 (II) against damage or injury of other persons or property; and
- 1036 (B) not suitable for general use.
- 1037 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1038 commission shall make rules:
- 1039 (i) listing the items that constitute "protective equipment"; and
- 1040 (ii) that are consistent with the list of items that constitute "protective equipment"
- 1041 under the agreement.
- 1042 (81) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or
- 1043 printed matter, other than a photocopy:
- 1044 (i) regardless of:
- 1045 (A) characteristics;
- 1046 (B) copyright;
- 1047 (C) form;
- 1048 (D) format;
- 1049 (E) method of reproduction; or
- 1050 (F) source; and

1051 (ii) made available in printed or electronic format.

1052 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1053 commission may by rule define the term "photocopy."

1054 (82) (a) "Purchase price" and "sales price" mean the total amount of consideration:

1055 (i) valued in money; and

1056 (ii) for which tangible personal property, a product transferred electronically, or
1057 services are:

1058 (A) sold;

1059 (B) leased; or

1060 (C) rented.

1061 (b) "Purchase price" and "sales price" include:

1062 (i) the seller's cost of the tangible personal property, a product transferred
1063 electronically, or services sold;

1064 (ii) expenses of the seller, including:

1065 (A) the cost of materials used;

1066 (B) a labor cost;

1067 (C) a service cost;

1068 (D) interest;

1069 (E) a loss;

1070 (F) the cost of transportation to the seller; or

1071 (G) a tax imposed on the seller;

1072 (iii) a charge by the seller for any service necessary to complete the sale; or

1073 (iv) consideration a seller receives from a person other than the purchaser if:

1074 (A) (I) the seller actually receives consideration from a person other than the purchaser;

1075 and

1076 (II) the consideration described in Subsection (82)(b)(iv)(A)(I) is directly related to a
1077 price reduction or discount on the sale;

1078 (B) the seller has an obligation to pass the price reduction or discount through to the
1079 purchaser;

1080 (C) the amount of the consideration attributable to the sale is fixed and determinable by
1081 the seller at the time of the sale to the purchaser; and

1082 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the
1083 seller to claim a price reduction or discount; and

1084 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,
1085 coupon, or other documentation with the understanding that the person other than the seller
1086 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;

1087 (II) the purchaser identifies that purchaser to the seller as a member of a group or
1088 organization allowed a price reduction or discount, except that a preferred customer card that is
1089 available to any patron of a seller does not constitute membership in a group or organization
1090 allowed a price reduction or discount; or

1091 (III) the price reduction or discount is identified as a third party price reduction or
1092 discount on the:

1093 (Aa) invoice the purchaser receives; or

1094 (Bb) certificate, coupon, or other documentation the purchaser presents.

1095 (c) "Purchase price" and "sales price" do not include:

1096 (i) a discount:

1097 (A) in a form including:

1098 (I) cash;

1099 (II) term; or

1100 (III) coupon;

1101 (B) that is allowed by a seller;

1102 (C) taken by a purchaser on a sale; and

1103 (D) that is not reimbursed by a third party; or

1104 (ii) the following if separately stated on an invoice, bill of sale, or similar document
1105 provided to the purchaser:

1106 (A) the following from credit extended on the sale of tangible personal property or
1107 services:

1108 (I) a carrying charge;

1109 (II) a financing charge; or

1110 (III) an interest charge;

1111 (B) a delivery charge;

1112 (C) an installation charge;

- 1113 (D) a manufacturer rebate on a motor vehicle; or
- 1114 (E) a tax or fee legally imposed directly on the consumer.
- 1115 (83) "Purchaser" means a person to whom:
- 1116 (a) a sale of tangible personal property is made;
- 1117 (b) a product is transferred electronically; or
- 1118 (c) a service is furnished.
- 1119 (84) "Regularly rented" means:
- 1120 (a) rented to a guest for value three or more times during a calendar year; or
- 1121 (b) advertised or held out to the public as a place that is regularly rented to guests for
- 1122 value.
- 1123 (85) "Renewable energy" means:
- 1124 (a) biomass energy;
- 1125 (b) hydroelectric energy;
- 1126 (c) geothermal energy;
- 1127 (d) solar energy; or
- 1128 (e) wind energy.
- 1129 (86) (a) "Renewable energy production facility" means a facility that:
- 1130 (i) uses renewable energy to produce electricity; and
- 1131 (ii) has a production capacity of 20 kilowatts or greater.
- 1132 (b) A facility is a renewable energy production facility regardless of whether the
- 1133 facility is:
- 1134 (i) connected to an electric grid; or
- 1135 (ii) located on the premises of an electricity consumer.
- 1136 (87) "Rental" is as defined in Subsection (48).
- 1137 (88) "Repairs or renovations of tangible personal property" means:
- 1138 (a) a repair or renovation of tangible personal property that is not permanently attached
- 1139 to real property; or
- 1140 (b) attaching tangible personal property or a product that is transferred electronically to
- 1141 other tangible personal property if the other tangible personal property to which the tangible
- 1142 personal property or product that is transferred electronically is attached is not permanently
- 1143 attached to real property.

1144 (89) "Research and development" means the process of inquiry or experimentation
1145 aimed at the discovery of facts, devices, technologies, or applications and the process of
1146 preparing those devices, technologies, or applications for marketing.

1147 (90) (a) "Residential telecommunications services" means a telecommunications
1148 service or an ancillary service that is provided to an individual for personal use:

1149 (i) at a residential address; or

1150 (ii) at an institution, including a nursing home or a school, if the telecommunications
1151 service or ancillary service is provided to and paid for by the individual residing at the
1152 institution rather than the institution.

1153 (b) For purposes of Subsection (90)(a), a residential address includes an:

1154 (i) apartment; or

1155 (ii) other individual dwelling unit.

1156 (91) "Residential use" means the use in or around a home, apartment building, sleeping
1157 quarters, and similar facilities or accommodations.

1158 (92) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
1159 than:

1160 (a) resale;

1161 (b) sublease; or

1162 (c) subrent.

1163 (93) (a) "Retailer" means any person engaged in a regularly organized business in
1164 tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and
1165 who is selling to the user or consumer and not for resale.

1166 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
1167 engaged in the business of selling to users or consumers within the state.

1168 (94) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
1169 otherwise, in any manner, of tangible personal property or any other taxable transaction under
1170 Subsection 59-12-103(1), for consideration.

1171 (b) "Sale" includes:

1172 (i) installment and credit sales;

1173 (ii) any closed transaction constituting a sale;

1174 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this

1175 chapter;

1176 (iv) any transaction if the possession of property is transferred but the seller retains the
1177 title as security for the payment of the price; and

1178 (v) any transaction under which right to possession, operation, or use of any article of
1179 tangible personal property is granted under a lease or contract and the transfer of possession
1180 would be taxable if an outright sale were made.

1181 (95) "Sale at retail" is as defined in Subsection (92).

1182 (96) "Sale-leaseback transaction" means a transaction by which title to tangible
1183 personal property or a product transferred electronically that is subject to a tax under this
1184 chapter is transferred:

1185 (a) by a purchaser-lessee;

1186 (b) to a lessor;

1187 (c) for consideration; and

1188 (d) if:

1189 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
1190 of the tangible personal property or product transferred electronically;

1191 (ii) the sale of the tangible personal property or product transferred electronically to the
1192 lessor is intended as a form of financing:

1193 (A) for the tangible personal property or product transferred electronically; and

1194 (B) to the purchaser-lessee; and

1195 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
1196 is required to:

1197 (A) capitalize the tangible personal property or product transferred electronically for
1198 financial reporting purposes; and

1199 (B) account for the lease payments as payments made under a financing arrangement.

1200 (97) "Sales price" is as defined in Subsection (82).

1201 (98) (a) "Sales relating to schools" means the following sales by, amounts paid to, or
1202 amounts charged by a school:

1203 (i) sales that are directly related to the school's educational functions or activities
1204 including:

1205 (A) the sale of:

- 1206 (I) textbooks;
- 1207 (II) textbook fees;
- 1208 (III) laboratory fees;
- 1209 (IV) laboratory supplies; or
- 1210 (V) safety equipment;
- 1211 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
- 1212 that:
- 1213 (I) a student is specifically required to wear as a condition of participation in a
- 1214 school-related event or school-related activity; and
- 1215 (II) is not readily adaptable to general or continued usage to the extent that it takes the
- 1216 place of ordinary clothing;
- 1217 (C) sales of the following if the net or gross revenues generated by the sales are
- 1218 deposited into a school district fund or school fund dedicated to school meals:
- 1219 (I) food and food ingredients; or
- 1220 (II) prepared food; or
- 1221 (D) transportation charges for official school activities; or
- 1222 (ii) amounts paid to or amounts charged by a school for admission to a school-related
- 1223 event or school-related activity.
- 1224 (b) "Sales relating to schools" does not include:
- 1225 (i) bookstore sales of items that are not educational materials or supplies;
- 1226 (ii) except as provided in Subsection (98)(a)(i)(B):
- 1227 (A) clothing;
- 1228 (B) clothing accessories or equipment;
- 1229 (C) protective equipment; or
- 1230 (D) sports or recreational equipment; or
- 1231 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 1232 event or school-related activity if the amounts paid or charged are passed through to a person:
- 1233 (A) other than a:
- 1234 (I) school;
- 1235 (II) nonprofit organization authorized by a school board or a governing body of a
- 1236 private school to organize and direct a competitive secondary school activity; or

1237 (III) nonprofit association authorized by a school board or a governing body of a
1238 private school to organize and direct a competitive secondary school activity; and

1239 (B) that is required to collect sales and use taxes under this chapter.

1240 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1241 commission may make rules defining the term "passed through."

1242 (99) For purposes of this section and Section 59-12-104, "school":

1243 (a) means:

1244 (i) an elementary school or a secondary school that:

1245 (A) is a:

1246 (I) public school; or

1247 (II) private school; and

1248 (B) provides instruction for one or more grades kindergarten through 12; or

1249 (ii) a public school district; and

1250 (b) includes the Electronic High School as defined in Section 53A-15-1002.

1251 (100) "Seller" means a person that makes a sale, lease, or rental of:

1252 (a) tangible personal property;

1253 (b) a product transferred electronically; or

1254 (c) a service.

1255 (101) (a) "Semiconductor fabricating, processing, research, or development materials"
1256 means tangible personal property or a product transferred electronically if the tangible personal
1257 property or product transferred electronically is:

1258 (i) used primarily in the process of:

1259 (A) (I) manufacturing a semiconductor;

1260 (II) fabricating a semiconductor; or

1261 (III) research or development of a:

1262 (Aa) semiconductor; or

1263 (Bb) semiconductor manufacturing process; or

1264 (B) maintaining an environment suitable for a semiconductor; or

1265 (ii) consumed primarily in the process of:

1266 (A) (I) manufacturing a semiconductor;

1267 (II) fabricating a semiconductor; or

- 1268 (III) research or development of a:
- 1269 (Aa) semiconductor; or
- 1270 (Bb) semiconductor manufacturing process; or
- 1271 (B) maintaining an environment suitable for a semiconductor.
- 1272 (b) "Semiconductor fabricating, processing, research, or development materials"
- 1273 includes:
- 1274 (i) parts used in the repairs or renovations of tangible personal property or a product
- 1275 transferred electronically described in Subsection (101)(a); or
- 1276 (ii) a chemical, catalyst, or other material used to:
- 1277 (A) produce or induce in a semiconductor a:
- 1278 (I) chemical change; or
- 1279 (II) physical change;
- 1280 (B) remove impurities from a semiconductor; or
- 1281 (C) improve the marketable condition of a semiconductor.
- 1282 (102) "Senior citizen center" means a facility having the primary purpose of providing
- 1283 services to the aged as defined in Section 62A-3-101.
- 1284 (103) "Simplified electronic return" means the electronic return:
- 1285 (a) described in Section 318(C) of the agreement; and
- 1286 (b) approved by the governing board of the agreement.
- 1287 (104) "Solar energy" means the sun used as the sole source of energy for producing
- 1288 electricity.
- 1289 (105) (a) "Sports or recreational equipment" means an item:
- 1290 (i) designed for human use; and
- 1291 (ii) that is:
- 1292 (A) worn in conjunction with:
- 1293 (I) an athletic activity; or
- 1294 (II) a recreational activity; and
- 1295 (B) not suitable for general use.
- 1296 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1297 commission shall make rules:
- 1298 (i) listing the items that constitute "sports or recreational equipment"; and

1299 (ii) that are consistent with the list of items that constitute "sports or recreational
1300 equipment" under the agreement.

1301 (106) "State" means the state of Utah, its departments, and agencies.

1302 (107) "Storage" means any keeping or retention of tangible personal property or any
1303 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except
1304 sale in the regular course of business.

1305 (108) (a) Except as provided in Subsection (108)(c), "tangible personal property"
1306 means personal property that:

1307 (i) may be:

1308 (A) seen;

1309 (B) weighed;

1310 (C) measured;

1311 (D) felt; or

1312 (E) touched; or

1313 (ii) is in any manner perceptible to the senses.

1314 (b) "Tangible personal property" includes:

1315 (i) electricity;

1316 (ii) water;

1317 (iii) gas;

1318 (iv) steam; or

1319 (v) prewritten computer software.

1320 (c) "Tangible personal property" does not include a product that is transferred
1321 electronically.

1322 (d) "Tangible personal property" does not include the following if attached to real
1323 property, regardless of whether the attachment to real property is only through a line that
1324 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
1325 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1326 Rulemaking Act:

1327 (i) a hot water heater;

1328 (ii) a water softener system; or

1329 (iii) a water filtration system.

1330 (109) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon
1331 and require further processing other than mechanical blending before becoming finished
1332 petroleum products.

1333 (110) (a) "Telecommunications enabling or facilitating equipment, machinery, or
1334 software" means an item listed in Subsection (110)(b) if that item is purchased or leased
1335 primarily to enable or facilitate one or more of the following to function:

- 1336 (i) telecommunications switching or routing equipment, machinery, or software; or
- 1337 (ii) telecommunications transmission equipment, machinery, or software.

1338 (b) The following apply to Subsection (110)(a):

1339 (i) a pole;

1340 (ii) software;

1341 (iii) a supplementary power supply;

1342 (iv) temperature or environmental equipment or machinery;

1343 (v) test equipment;

1344 (vi) a tower; or

1345 (vii) equipment, machinery, or software that functions similarly to an item listed in
1346 Subsections (110)(b)(i) through (vi) as determined by the commission by rule made in
1347 accordance with Subsection (110)(c).

1348 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1349 commission may by rule define what constitutes equipment, machinery, or software that
1350 functions similarly to an item listed in Subsections (110)(b)(i) through (vi).

1351 (111) "Telecommunications equipment, machinery, or software required for 911
1352 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.
1353 Sec. 20.18.

1354 (112) "Telecommunications maintenance or repair equipment, machinery, or software"
1355 means equipment, machinery, or software purchased or leased primarily to maintain or repair
1356 one or more of the following, regardless of whether the equipment, machinery, or software is
1357 purchased or leased as a spare part or as an upgrade or modification to one or more of the
1358 following:

1359 (a) telecommunications enabling or facilitating equipment, machinery, or software;

1360 (b) telecommunications switching or routing equipment, machinery, or software; or

- 1361 (c) telecommunications transmission equipment, machinery, or software.
- 1362 (113) (a) "Telecommunications service" means the electronic conveyance, routing, or
- 1363 transmission of audio, data, video, voice, or any other information or signal to a point, or
- 1364 among or between points.
- 1365 (b) "Telecommunications service" includes:
- 1366 (i) an electronic conveyance, routing, or transmission with respect to which a computer
- 1367 processing application is used to act:
- 1368 (A) on the code, form, or protocol of the content;
- 1369 (B) for the purpose of electronic conveyance, routing, or transmission; and
- 1370 (C) regardless of whether the service:
- 1371 (I) is referred to as voice over Internet protocol service; or
- 1372 (II) is classified by the Federal Communications Commission as enhanced or value
- 1373 added;
- 1374 (ii) an 800 service;
- 1375 (iii) a 900 service;
- 1376 (iv) a fixed wireless service;
- 1377 (v) a mobile wireless service;
- 1378 (vi) a postpaid calling service;
- 1379 (vii) a prepaid calling service;
- 1380 (viii) a prepaid wireless calling service; or
- 1381 (ix) a private communications service.
- 1382 (c) "Telecommunications service" does not include:
- 1383 (i) advertising, including directory advertising;
- 1384 (ii) an ancillary service;
- 1385 (iii) a billing and collection service provided to a third party;
- 1386 (iv) a data processing and information service if:
- 1387 (A) the data processing and information service allows data to be:
- 1388 (I) (Aa) acquired;
- 1389 (Bb) generated;
- 1390 (Cc) processed;
- 1391 (Dd) retrieved; or

- 1392 (Ee) stored; and
- 1393 (II) delivered by an electronic transmission to a purchaser; and
- 1394 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 1395 or information;
- 1396 (v) installation or maintenance of the following on a customer's premises:
- 1397 (A) equipment; or
- 1398 (B) wiring;
- 1399 (vi) Internet access service;
- 1400 (vii) a paging service;
- 1401 (viii) a product transferred electronically, including:
- 1402 (A) music;
- 1403 (B) reading material;
- 1404 (C) a ring tone;
- 1405 (D) software; or
- 1406 (E) video;
- 1407 (ix) a radio and television audio and video programming service:
- 1408 (A) regardless of the medium; and
- 1409 (B) including:
- 1410 (I) furnishing conveyance, routing, or transmission of a television audio and video
- 1411 programming service by a programming service provider;
- 1412 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
- 1413 (III) audio and video programming services delivered by a commercial mobile radio
- 1414 service provider as defined in 47 C.F.R. Sec. 20.3;
- 1415 (x) a value-added nonvoice data service; or
- 1416 (xi) tangible personal property.
- 1417 (114) (a) " Telecommunications service provider" means a person that:
- 1418 (i) owns, controls, operates, or manages a telecommunications service; and
- 1419 (ii) engages in an activity described in Subsection (114)(a)(i) for the shared use with or
- 1420 resale to any person of the telecommunications service.
- 1421 (b) A person described in Subsection (114)(a) is a telecommunications service provider
- 1422 whether or not the Public Service Commission of Utah regulates:

1423 (i) that person; or
1424 (ii) the telecommunications service that the person owns, controls, operates, or
1425 manages.

1426 (115) (a) "Telecommunications switching or routing equipment, machinery, or
1427 software" means an item listed in Subsection (115)(b) if that item is purchased or leased
1428 primarily for switching or routing:

- 1429 (i) an ancillary service;
- 1430 (ii) data communications;
- 1431 (iii) voice communications; or
- 1432 (iv) telecommunications service.

1433 (b) The following apply to Subsection (115)(a):

- 1434 (i) a bridge;
- 1435 (ii) a computer;
- 1436 (iii) a cross connect;
- 1437 (iv) a modem;
- 1438 (v) a multiplexer;
- 1439 (vi) plug in circuitry;
- 1440 (vii) a router;
- 1441 (viii) software;
- 1442 (ix) a switch; or
- 1443 (x) equipment, machinery, or software that functions similarly to an item listed in
1444 Subsections (115)(b)(i) through (ix) as determined by the commission by rule made in
1445 accordance with Subsection (115)(c).

1446 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1447 commission may by rule define what constitutes equipment, machinery, or software that
1448 functions similarly to an item listed in Subsections (115)(b)(i) through (ix).

1449 (116) (a) "Telecommunications transmission equipment, machinery, or software"
1450 means an item listed in Subsection (116)(b) if that item is purchased or leased primarily for
1451 sending, receiving, or transporting:

- 1452 (i) an ancillary service;
- 1453 (ii) data communications;

- 1454 (iii) voice communications; or
1455 (iv) telecommunications service.
- 1456 (b) The following apply to Subsection (116)(a):
- 1457 (i) an amplifier;
1458 (ii) a cable;
1459 (iii) a closure;
1460 (iv) a conduit;
1461 (v) a controller;
1462 (vi) a duplexer;
1463 (vii) a filter;
1464 (viii) an input device;
1465 (ix) an input/output device;
1466 (x) an insulator;
1467 (xi) microwave machinery or equipment;
1468 (xii) an oscillator;
1469 (xiii) an output device;
1470 (xiv) a pedestal;
1471 (xv) a power converter;
1472 (xvi) a power supply;
1473 (xvii) a radio channel;
1474 (xviii) a radio receiver;
1475 (xix) a radio transmitter;
1476 (xx) a repeater;
1477 (xxi) software;
1478 (xxii) a terminal;
1479 (xxiii) a timing unit;
1480 (xxiv) a transformer;
1481 (xxv) a wire; or
1482 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
1483 Subsections (116)(b)(i) through (xxv) as determined by the commission by rule made in
1484 accordance with Subsection (116)(c).

1485 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1486 commission may by rule define what constitutes equipment, machinery, or software that
1487 functions similarly to an item listed in Subsections (116)(b)(i) through (xxv).

1488 (117) "Tobacco" means:

1489 (a) a cigarette;

1490 (b) a cigar;

1491 (c) chewing tobacco;

1492 (d) pipe tobacco; or

1493 (e) any other item that contains tobacco.

1494 (118) "Unassisted amusement device" means an amusement device, skill device, or
1495 ride device that is started and stopped by the purchaser or renter of the right to use or operate
1496 the amusement device, skill device, or ride device.

1497 (119) (a) "Use" means the exercise of any right or power over tangible personal
1498 property, a product transferred electronically, or a service under Subsection 59-12-103(1),
1499 incident to the ownership or the leasing of that tangible personal property, product transferred
1500 electronically, or service.

1501 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal
1502 property, a product transferred electronically, or a service in the regular course of business and
1503 held for resale.

1504 (120) "Value-added nonvoice data service" means a service:

1505 (a) that otherwise meets the definition of a telecommunications service except that a
1506 computer processing application is used to act primarily for a purpose other than conveyance,
1507 routing, or transmission; and

1508 (b) with respect to which a computer processing application is used to act on data or
1509 information:

1510 (i) code;

1511 (ii) content;

1512 (iii) form; or

1513 (iv) protocol.

1514 (121) (a) Subject to Subsection (121)(b), "vehicle" means the following that are
1515 required to be titled, registered, or titled and registered:

- 1516 (i) an aircraft as defined in Section 72-10-102;
- 1517 (ii) a vehicle as defined in Section 41-1a-102;
- 1518 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1519 (iv) a vessel as defined in Section 41-1a-102.
- 1520 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:
- 1521 (i) a vehicle described in Subsection (121)(a); or
- 1522 (ii) (A) a locomotive;
- 1523 (B) a freight car;
- 1524 (C) railroad work equipment; or
- 1525 (D) other railroad rolling stock.
- 1526 (122) "Vehicle dealer" means a person engaged in the business of buying, selling, or
- 1527 exchanging a vehicle as defined in Subsection (121).
- 1528 (123) (a) "Vertical service" means an ancillary service that:
- 1529 (i) is offered in connection with one or more telecommunications services; and
- 1530 (ii) offers an advanced calling feature that allows a customer to:
- 1531 (A) identify a caller; and
- 1532 (B) manage multiple calls and call connections.
- 1533 (b) "Vertical service" includes an ancillary service that allows a customer to manage a
- 1534 conference bridging service.
- 1535 (124) (a) "Voice mail service" means an ancillary service that enables a customer to
- 1536 receive, send, or store a recorded message.
- 1537 (b) "Voice mail service" does not include a vertical service that a customer is required
- 1538 to have in order to utilize a voice mail service.
- 1539 (125) (a) Except as provided in Subsection (125)(b), "waste energy facility" means a
- 1540 facility that generates electricity:
- 1541 (i) using as the primary source of energy waste materials that would be placed in a
- 1542 landfill or refuse pit if it were not used to generate electricity, including:
- 1543 (A) tires;
- 1544 (B) waste coal; or
- 1545 (C) oil shale; and
- 1546 (ii) in amounts greater than actually required for the operation of the facility.

1547 (b) "Waste energy facility" does not include a facility that incinerates:

1548 (i) municipal solid waste;

1549 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or

1550 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1551 (126) "Watercraft" means a vessel as defined in Section 73-18-2.

1552 (127) "Wind energy" means wind used as the sole source of energy to produce
1553 electricity.

1554 (128) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
1555 location by the United States Postal Service.

1556 Section 3. Section **59-12-103** is amended to read:

1557 **59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use**
1558 **tax revenues.**

1559 (1) A tax is imposed on the purchaser as provided in this part for amounts paid or
1560 charged for the following transactions:

1561 (a) retail sales of tangible personal property made within the state;

1562 (b) amounts paid for:

1563 (i) telecommunications service, other than mobile telecommunications service, that
1564 originates and terminates within the boundaries of this state;

1565 (ii) mobile telecommunications service that originates and terminates within the
1566 boundaries of one state only to the extent permitted by the Mobile Telecommunications
1567 Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or

1568 (iii) an ancillary service associated with a:

1569 (A) telecommunications service described in Subsection (1)(b)(i); or

1570 (B) mobile telecommunications service described in Subsection (1)(b)(ii);

1571 (c) sales of the following for commercial use:

1572 (i) gas;

1573 (ii) electricity;

1574 (iii) heat;

1575 (iv) coal;

1576 (v) fuel oil; or

1577 (vi) other fuels;

- 1578 (d) sales of the following for residential use:
- 1579 (i) gas;
- 1580 (ii) electricity;
- 1581 (iii) heat;
- 1582 (iv) coal;
- 1583 (v) fuel oil; or
- 1584 (vi) other fuels;
- 1585 (e) sales of prepared food;
- 1586 (f) except as provided in Section 59-12-104, amounts paid or charged as admission or
- 1587 user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,
- 1588 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,
- 1589 fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit
- 1590 television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf
- 1591 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,
- 1592 tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises,
- 1593 horseback rides, sports activities, or any other amusement, entertainment, recreation,
- 1594 exhibition, cultural, or athletic activity;
- 1595 (g) amounts paid or charged for services for repairs or renovations of tangible personal
- 1596 property, unless Section 59-12-104 provides for an exemption from sales and use tax for:
- 1597 (i) the tangible personal property; and
- 1598 (ii) parts used in the repairs or renovations of the tangible personal property described
- 1599 in Subsection (1)(g)(i), whether or not any parts are actually used in the repairs or renovations
- 1600 of that tangible personal property;
- 1601 (h) except as provided in Subsection 59-12-104(7), amounts paid or charged for
- 1602 assisted cleaning or washing of tangible personal property;
- 1603 (i) amounts paid or charged for tourist home, hotel, motel, or trailer court
- 1604 accommodations and services that are regularly rented for less than 30 consecutive days;
- 1605 (j) amounts paid or charged for laundry or dry cleaning services;
- 1606 (k) amounts paid or charged for leases or rentals of tangible personal property if within
- 1607 this state the tangible personal property is:
- 1608 (i) stored;

- 1609 (ii) used; or
- 1610 (iii) otherwise consumed;
- 1611 (l) amounts paid or charged for tangible personal property if within this state the
- 1612 tangible personal property is:
- 1613 (i) stored;
- 1614 (ii) used; or
- 1615 (iii) consumed; and
- 1616 [~~(m)~~ amounts paid or charged for prepaid telephone calling cards; and]
- 1617 [~~(m)~~ (m) amounts paid or charged for a sale:
- 1618 (i) (A) of a product that:
- 1619 (I) is transferred electronically; and
- 1620 (II) would be subject to a tax under this chapter if the product was transferred in a
- 1621 manner other than electronically; or
- 1622 (B) of a repair or renovation of a product that:
- 1623 (I) is transferred electronically; and
- 1624 (II) would be subject to a tax under this chapter if the product was transferred in a
- 1625 manner other than electronically; and
- 1626 (ii) regardless of whether the sale provides:
- 1627 (A) a right of permanent use of the product; or
- 1628 (B) a right to use the product that is less than a permanent use, including a right:
- 1629 (I) for a definite or specified length of time; and
- 1630 (II) that terminates upon the occurrence of a condition.
- 1631 (2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax
- 1632 is imposed on a transaction described in Subsection (1) equal to the sum of:
- 1633 (i) a state tax imposed on the transaction at a tax rate equal to the sum of:
- 1634 (A) 4.70%; and
- 1635 (B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales
- 1636 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211
- 1637 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional
- 1638 State Sales and Use Tax Act; and
- 1639 (II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales

1640 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211
1641 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state
1642 imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

1643 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
1644 transaction under this chapter other than this part.

1645 (b) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed
1646 on a transaction described in Subsection (1)(d) equal to the sum of:

1647 (i) a state tax imposed on the transaction at a tax rate of 2%; and

1648 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
1649 transaction under this chapter other than this part.

1650 (c) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed
1651 on amounts paid or charged for food and food ingredients equal to the sum of:

1652 (i) a state tax imposed on the amounts paid or charged for food and food ingredients at
1653 a tax rate of 1.75%; and

1654 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
1655 amounts paid or charged for food and food ingredients under this chapter other than this part.

1656 (d) (i) For a bundled transaction that is attributable to food and food ingredients and
1657 tangible personal property other than food and food ingredients, a state tax and a local tax is
1658 imposed on the entire bundled transaction equal to the sum of:

1659 (A) a state tax imposed on the entire bundled transaction equal to the sum of:

1660 (I) the tax rate described in Subsection (2)(a)(i)(A); and

1661 (II) (Aa) the tax rate the state imposes in accordance with Part 18, Additional State
1662 Sales and Use Tax Act, if the location of the transaction as determined under Sections
1663 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18,
1664 Additional State Sales and Use Tax Act; and

1665 (Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State
1666 Sales and Use Tax Act, if the location of the transaction as determined under Sections
1667 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which
1668 the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

1669 (B) a local tax imposed on the entire bundled transaction at the sum of the tax rates
1670 described in Subsection (2)(a)(ii).

1671 (ii) Subject to Subsection (2)(d)(iii), for a bundled transaction other than a bundled
1672 transaction described in Subsection (2)(d)(i):

1673 (A) if the sales price of the bundled transaction is attributable to tangible personal
1674 property, a product, or a service that is subject to taxation under this chapter and tangible
1675 personal property, a product, or service that is not subject to taxation under this chapter, the
1676 entire bundled transaction is subject to taxation under this chapter unless:

1677 (I) the seller is able to identify by reasonable and verifiable standards the tangible
1678 personal property, product, or service that is not subject to taxation under this chapter from the
1679 books and records the seller keeps in the seller's regular course of business; or

1680 (II) state or federal law provides otherwise; or

1681 (B) if the sales price of a bundled transaction is attributable to two or more items of
1682 tangible personal property, products, or services that are subject to taxation under this chapter
1683 at different rates, the entire bundled transaction is subject to taxation under this chapter at the
1684 higher tax rate unless:

1685 (I) the seller is able to identify by reasonable and verifiable standards the tangible
1686 personal property, product, or service that is subject to taxation under this chapter at the lower
1687 tax rate from the books and records the seller keeps in the seller's regular course of business; or

1688 (II) state or federal law provides otherwise.

1689 (iii) For purposes of Subsection (2)(d)(ii), books and records that a seller keeps in the
1690 seller's regular course of business includes books and records the seller keeps in the regular
1691 course of business for nontax purposes.

1692 (e) Subject to Subsections (2)(f) and (g), a tax rate repeal or tax rate change for a tax
1693 rate imposed under the following shall take effect on the first day of a calendar quarter:

1694 (i) Subsection (2)(a)(i)(A);

1695 (ii) Subsection (2)(b)(i);

1696 (iii) Subsection (2)(c)(i); or

1697 (iv) Subsection (2)(d)(i)(A)(I).

1698 (f) (i) A tax rate increase shall take effect on the first day of the first billing period that
1699 begins after the effective date of the tax rate increase if the billing period for the transaction
1700 begins before the effective date of a tax rate increase imposed under:

1701 (A) Subsection (2)(a)(i)(A);

- 1702 (B) Subsection (2)(b)(i);
- 1703 (C) Subsection (2)(c)(i); or
- 1704 (D) Subsection (2)(d)(i)(A)(I).
- 1705 (ii) The repeal of a tax or a tax rate decrease shall take effect on the first day of the last
- 1706 billing period that began before the effective date of the repeal of the tax or the tax rate
- 1707 decrease if the billing period for the transaction begins before the effective date of the repeal of
- 1708 the tax or the tax rate decrease imposed under:
 - 1709 (A) Subsection (2)(a)(i)(A);
 - 1710 (B) Subsection (2)(b)(i);
 - 1711 (C) Subsection (2)(c)(i); or
 - 1712 (D) Subsection (2)(d)(i)(A)(I).
- 1713 (g) (i) For a tax rate described in Subsection (2)(g)(ii), if a tax due on a catalogue sale
- 1714 is computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal
- 1715 or change in a tax rate takes effect:
 - 1716 (A) on the first day of a calendar quarter; and
 - 1717 (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.
- 1718 (ii) Subsection (2)(g)(i) applies to the tax rates described in the following:
 - 1719 (A) Subsection (2)(a)(i)(A);
 - 1720 (B) Subsection (2)(b)(i);
 - 1721 (C) Subsection (2)(c)(i); or
 - 1722 (D) Subsection (2)(d)(i)(A)(I).
- 1723 (iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
- 1724 the commission may by rule define the term "catalogue sale."
- 1725 (3) (a) The following state taxes shall be deposited into the General Fund:
 - 1726 (i) the tax imposed by Subsection (2)(a)(i)(A);
 - 1727 (ii) the tax imposed by Subsection (2)(b)(i);
 - 1728 (iii) the tax imposed by Subsection (2)(c)(i); or
 - 1729 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).
- 1730 (b) The following local taxes shall be distributed to a county, city, or town as provided
- 1731 in this chapter:
 - 1732 (i) the tax imposed by Subsection (2)(a)(ii);

- 1733 (ii) the tax imposed by Subsection (2)(b)(ii);
1734 (iii) the tax imposed by Subsection (2)(c)(i); and
1735 (iv) the tax imposed by Subsection (2)(d)(i)(B).
- 1736 (4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
1737 2003, the lesser of the following amounts shall be used as provided in Subsections (4)(b)
1738 through (g):
- 1739 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:
1740 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and
1741 (B) for the fiscal year; or
1742 (ii) \$17,500,000.
- 1743 (b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount
1744 described in Subsection (4)(a) shall be transferred each year as dedicated credits to the
1745 Department of Natural Resources to:
- 1746 (A) implement the measures described in Subsections 63-34-14(4)(a) through (d) to
1747 protect sensitive plant and animal species; or
1748 (B) award grants, up to the amount authorized by the Legislature in an appropriations
1749 act, to political subdivisions of the state to implement the measures described in Subsections
1750 63-34-14(4)(a) through (d) to protect sensitive plant and animal species.
- 1751 (ii) Money transferred to the Department of Natural Resources under Subsection
1752 (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other
1753 person to list or attempt to have listed a species as threatened or endangered under the
1754 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.
- 1755 (iii) At the end of each fiscal year:
1756 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
1757 Conservation and Development Fund created in Section 73-10-24;
1758 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
1759 Program Subaccount created in Section 73-10c-5; and
1760 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
1761 Program Subaccount created in Section 73-10c-5.
- 1762 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in
1763 Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund

1764 created in Section 4-18-6.

1765 (d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described
1766 in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water
1767 Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of
1768 water rights.

1769 (ii) At the end of each fiscal year:

1770 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
1771 Conservation and Development Fund created in Section 73-10-24;

1772 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
1773 Program Subaccount created in Section 73-10c-5; and

1774 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
1775 Program Subaccount created in Section 73-10c-5.

1776 (e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described
1777 in Subsection (4)(a) shall be deposited in the Water Resources Conservation and Development
1778 Fund created in Section 73-10-24 for use by the Division of Water Resources.

1779 (ii) In addition to the uses allowed of the Water Resources Conservation and
1780 Development Fund under Section 73-10-24, the Water Resources Conservation and
1781 Development Fund may also be used to:

1782 (A) conduct hydrologic and geotechnical investigations by the Division of Water
1783 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of
1784 quantifying surface and ground water resources and describing the hydrologic systems of an
1785 area in sufficient detail so as to enable local and state resource managers to plan for and
1786 accommodate growth in water use without jeopardizing the resource;

1787 (B) fund state required dam safety improvements; and

1788 (C) protect the state's interest in interstate water compact allocations, including the
1789 hiring of technical and legal staff.

1790 (f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
1791 in Subsection (4)(a) shall be deposited in the Utah Wastewater Loan Program Subaccount
1792 created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

1793 (g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
1794 in Subsection (4)(a) shall be deposited in the Drinking Water Loan Program Subaccount

1795 created in Section 73-10c-5 for use by the Division of Drinking Water to:

1796 (i) provide for the installation and repair of collection, treatment, storage, and
1797 distribution facilities for any public water system, as defined in Section 19-4-102;

1798 (ii) develop underground sources of water, including springs and wells; and

1799 (iii) develop surface water sources.

1800 (5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
1801 2006, the difference between the following amounts shall be expended as provided in this
1802 Subsection (5), if that difference is greater than \$1:

1803 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the
1804 fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

1805 (ii) \$17,500,000.

1806 (b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:

1807 (A) transferred each fiscal year to the Department of Natural Resources as dedicated
1808 credits; and

1809 (B) expended by the Department of Natural Resources for watershed rehabilitation or
1810 restoration.

1811 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described
1812 in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund
1813 created in Section 73-10-24.

1814 (c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the
1815 remaining difference described in Subsection (5)(a) shall be:

1816 (A) transferred each fiscal year to the Division of Water Resources as dedicated
1817 credits; and

1818 (B) expended by the Division of Water Resources for cloud-seeding projects
1819 authorized by Title 73, Chapter 15, Modification of Weather.

1820 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described
1821 in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund
1822 created in Section 73-10-24.

1823 (d) After making the transfers required by Subsections (5)(b) and (c), 94% of the
1824 remaining difference described in Subsection (5)(a) shall be deposited into the Water
1825 Resources Conservation and Development Fund created in Section 73-10-24 for use by the

1826 Division of Water Resources for:
1827 (i) preconstruction costs:
1828 (A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter
1829 26, Bear River Development Act; and
1830 (B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project
1831 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;
1832 (ii) the cost of employing a civil engineer to oversee any project authorized by Title 73,
1833 Chapter 26, Bear River Development Act;
1834 (iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project
1835 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and
1836 (iv) other uses authorized under Sections 73-10-24, 73-10-25.1, 73-10-30, and
1837 Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).
1838 (e) Any unexpended monies described in Subsection (5)(d) that remain in the Water
1839 Resources Conservation and Development Fund at the end of the fiscal year are nonlapsing.
1840 (f) After making the transfers required by Subsections (5)(b) and (c) and subject to
1841 Subsection (5)(g), 6% of the remaining difference described in Subsection (5)(a) shall be
1842 transferred each year as dedicated credits to the Division of Water Rights to cover the costs
1843 incurred for employing additional technical staff for the administration of water rights.
1844 (g) At the end of each fiscal year, any unexpended dedicated credits described in
1845 Subsection (5)(f) over \$150,000 lapse to the Water Resources Conservation and Development
1846 Fund created in Section 73-10-24.
1847 (6) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
1848 2003, and for taxes listed under Subsection (3)(a), the amount of revenue generated by a 1/16%
1849 tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited in
1850 the Transportation Fund created by Section 72-2-102.
1851 (7) (a) Notwithstanding Subsection (3)(a) and until Subsection (7)(b) applies,
1852 beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial
1853 Highway Fund Restricted Account created in Section 72-2-118 a portion of the taxes listed
1854 under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate on the taxable
1855 transactions under Subsection (1).
1856 (b) Notwithstanding Subsection (3)(a), when the highway general obligation bonds

1857 have been paid off and the highway projects completed that are intended to be paid from
1858 revenues deposited in the Centennial Highway Fund Restricted Account as determined by the
1859 Executive Appropriations Committee under Subsection 72-2-118(6)(d), the Division of
1860 Finance shall deposit into the Transportation Investment Fund of 2005 created by Section
1861 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated
1862 by a 1/64% tax rate on the taxable transactions under Subsection (1).

1863 (8) (a) Notwithstanding Subsection (3)(a), in addition to the amount deposited in
1864 Subsection (7)(a), and until Subsection (8)(b) applies, for a fiscal year beginning on or after
1865 July 1, 2007, the Division of Finance shall deposit into the Centennial Highway Fund
1866 Restricted Account created by Section 72-2-118 a portion of the taxes listed under Subsection
1867 (3)(a) equal to 8.3% of the revenues collected from the following taxes, which represents a
1868 portion of the approximately 17% of sales and use tax revenues generated annually by the sales
1869 and use tax on vehicles and vehicle-related products:

- 1870 (i) the tax imposed by Subsection (2)(a)(i)(A);
- 1871 (ii) the tax imposed by Subsection (2)(b)(i);
- 1872 (iii) the tax imposed by Subsection (2)(c)(i); and
- 1873 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

1874 (b) Notwithstanding Subsection (3)(a) and in addition to the amounts deposited under
1875 Subsection (7)(b), when the highway general obligation bonds have been paid off and the
1876 highway projects completed that are intended to be paid from revenues deposited in the
1877 Centennial Highway Fund Restricted Account as determined by the Executive Appropriations
1878 Committee under Subsection 72-2-118(6)(d), the Division of Finance shall deposit into the
1879 Transportation Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes
1880 listed under Subsection (3)(a) equal to 8.3% of the revenues collected from the following taxes,
1881 which represents a portion of the approximately 17% of sales and use tax revenues generated
1882 annually by the sales and use tax on vehicles and vehicle-related products:

- 1883 (i) the tax imposed by Subsection (2)(a)(i)(A);
- 1884 (ii) the tax imposed by Subsection (2)(b)(i);
- 1885 (iii) the tax imposed by Subsection (2)(c)(i); and
- 1886 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

1887 (9) (a) Notwithstanding Subsection (3)(a) and for the fiscal year 2008-09 only, the

1888 Division of Finance shall deposit \$55,000,000 of the revenues generated by the taxes listed
1889 under Subsection (3)(a) into the Critical Highway Needs Fund created by Section 72-2-125.

1890 (b) Notwithstanding Subsection (3)(a) and until Subsection (9)(c) applies, for a fiscal
1891 year beginning on or after July 1, 2009, the Division of Finance shall annually deposit
1892 \$90,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the
1893 Critical Highway Needs Fund created by Section 72-2-125.

1894 (c) Notwithstanding Subsection (3)(a) and in addition to any amounts deposited under
1895 Subsections (7) and (8), when the general obligation bonds authorized by Section 63B-16-101
1896 have been paid off and the highway projects completed that are included in the prioritized
1897 project list under Subsection 72-2-125(4) as determined in accordance with Subsection
1898 72-2-125(6), the Division of Finance shall annually deposit \$90,000,000 of the revenues
1899 generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund
1900 of 2005 created by Section 72-2-124.

1901 (10) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year
1902 2008-09, \$915,000 shall be deposited into the Qualified Emergency Food Agencies Fund
1903 created by Section 9-4-1409 and expended as provided in Section 9-4-1409.

1904 (11) (a) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection
1905 (11)(a)(ii), and until Subsection (11)(b) applies, beginning on January 1, 2009, the Division of
1906 Finance shall deposit into the Critical Highway Needs Fund created by Section 72-2-125 the
1907 amount of tax revenue generated by a .025% tax rate on the transactions described in
1908 Subsection (1).

1909 (ii) For purposes of Subsection (11)(a)(i), the Division of Finance may not deposit into
1910 the Critical Highway Needs Fund any tax revenue generated by amounts paid or charged for
1911 food and food ingredients, except for tax revenue generated by a bundled transaction
1912 attributable to food and food ingredients and tangible personal property other than food and
1913 food ingredients described in Subsection (2)(e).

1914 (b) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection (11)(b)(ii),
1915 and in addition to any amounts deposited under Subsections (7), (9), and (10), when the general
1916 obligation bonds authorized by Section 63B-16-101 have been paid off and the highway
1917 projects completed that are included in the prioritized project list under Subsection 72-2-125(4)
1918 as determined in accordance with Subsection 72-2-125(6), the Division of Finance shall

1919 deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the
1920 amount of tax revenue generated by a .025% tax rate on the transactions described in
1921 Subsection (1).

1922 (ii) For purposes of Subsection (11)(b)(i), the Division of Finance may not deposit into
1923 the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or
1924 charged for food and food ingredients, except for tax revenue generated by a bundled
1925 transaction attributable to food and food ingredients and tangible personal property other than
1926 food and food ingredients described in Subsection (2)(e).

1927 (12) (a) Notwithstanding Subsection (3)(a), and except as provided in Subsection
1928 (12)(b), beginning on January 1, 2009, the Division of Finance shall deposit into the
1929 Transportation Fund created by Section 72-2-102 the amount of tax revenue generated by a
1930 .025% tax rate on the transactions described in Subsection (1) to be expended to address
1931 chokepoints in construction management.

1932 (b) For purposes of Subsection (12)(a), the Division of Finance may not deposit into
1933 the Transportation Fund any tax revenue generated by amounts paid or charged for food and
1934 food ingredients, except for tax revenue generated by a bundled transaction attributable to food
1935 and food ingredients and tangible personal property other than food and food ingredients
1936 described in Subsection (2)(e).

1937 Section 4. Section **59-12-104** is amended to read:

1938 **59-12-104. Exemptions.**

1939 The following sales and uses are exempt from the taxes imposed by this chapter:

1940 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
1941 under Chapter 13, Motor and Special Fuel Tax Act;

1942 (2) sales to the state, its institutions, and its political subdivisions; however, this
1943 exemption does not apply to sales of:

1944 (a) construction materials except:

1945 (i) construction materials purchased by or on behalf of institutions of the public
1946 education system as defined in Utah Constitution Article X, Section 2, provided the
1947 construction materials are clearly identified and segregated and installed or converted to real
1948 property which is owned by institutions of the public education system; and

1949 (ii) construction materials purchased by the state, its institutions, or its political

1950 subdivisions which are installed or converted to real property by employees of the state, its
1951 institutions, or its political subdivisions; or
1952 (b) tangible personal property in connection with the construction, operation,
1953 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities
1954 providing additional project capacity, as defined in Section 11-13-103;
1955 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:
1956 (i) the proceeds of each sale do not exceed \$1; and
1957 (ii) the seller or operator of the vending machine reports an amount equal to 150% of
1958 the cost of the item described in Subsection (3)(b) as goods consumed; and
1959 (b) Subsection (3)(a) applies to:
1960 (i) food and food ingredients; or
1961 (ii) prepared food;
1962 (4) sales of the following to a commercial airline carrier for in-flight consumption:
1963 (a) food and food ingredients;
1964 (b) prepared food; or
1965 (c) services related to Subsection (4)(a) or (b);
1966 (5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts
1967 and equipment:
1968 (A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002
1969 North American Industry Classification System of the federal Executive Office of the
1970 President, Office of Management and Budget; and
1971 (II) for:
1972 (Aa) installation in an aircraft, including services relating to the installation of parts or
1973 equipment in the aircraft;
1974 (Bb) renovation of an aircraft; or
1975 (Cc) repair of an aircraft; or
1976 (B) for installation in an aircraft operated by a common carrier in interstate or foreign
1977 commerce; or
1978 (ii) beginning on October 1, 2008, sales of parts and equipment for installation in an
1979 aircraft operated by a common carrier in interstate or foreign commerce; and
1980 (b) notwithstanding the time period of Subsection 59-12-110(2) for filing for a refund,

1981 a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a
1982 refund:

1983 (i) if the sale is made on or after July 1, 2008, but on or before September 30, 2008;

1984 (ii) as if Subsection (5)(a)(i)(B) were in effect on the day on which the sale is made;

1985 (iii) if the person did not claim the exemption allowed by Subsection (5)(a)(i)(B) for
1986 the sale prior to filing for the refund;

1987 (iv) for sales and use taxes paid under this chapter on the sale;

1988 (v) in accordance with Section 59-12-110; and

1989 (vi) subject to any extension allowed for filing for a refund under Section 59-12-110, if
1990 the person files for the refund on or before September 30, 2011;

1991 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
1992 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
1993 exhibitor, distributor, or commercial television or radio broadcaster;

1994 (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal
1995 property if the cleaning or washing of the tangible personal property is not assisted cleaning or
1996 washing of tangible personal property;

1997 (b) if a seller that sells at the same business location assisted cleaning or washing of
1998 tangible personal property and cleaning or washing of tangible personal property that is not
1999 assisted cleaning or washing of tangible personal property, the exemption described in
2000 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning
2001 or washing of the tangible personal property; and

2002 (c) for purposes of Subsection (7)(b) and in accordance with Title 63G, Chapter 3,
2003 Utah Administrative Rulemaking Act, the commission may make rules:

2004 (i) governing the circumstances under which sales are at the same business location;
2005 and

2006 (ii) establishing the procedures and requirements for a seller to separately account for
2007 sales of assisted cleaning or washing of tangible personal property;

2008 (8) sales made to or by religious or charitable institutions in the conduct of their regular
2009 religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are
2010 fulfilled;

2011 (9) sales of a vehicle of a type required to be registered under the motor vehicle laws of

2012 this state if the vehicle is:

2013 (a) not registered in this state; and

2014 (b) (i) not used in this state; or

2015 (ii) used in this state:

2016 (A) if the vehicle is not used to conduct business, for a time period that does not

2017 exceed the longer of:

2018 (I) 30 days in any calendar year; or

2019 (II) the time period necessary to transport the vehicle to the borders of this state; or

2020 (B) if the vehicle is used to conduct business, for the time period necessary to transport

2021 the vehicle to the borders of this state;

2022 (10) (a) amounts paid for an item described in Subsection (10)(b) if:

2023 (i) the item is intended for human use; and

2024 (ii) (A) a prescription was issued for the item; or

2025 (B) the item was purchased by a hospital or other medical facility; and

2026 (b) (i) Subsection (10)(a) applies to:

2027 (A) a drug;

2028 (B) a syringe; or

2029 (C) a stoma supply; and

2030 (ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

2031 commission may by rule define the terms:

2032 (A) "syringe"; or

2033 (B) "stoma supply";

2034 (11) sales or use of property, materials, or services used in the construction of or

2035 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

2036 (12) (a) sales of an item described in Subsection (12)(c) served by:

2037 (i) the following if the item described in Subsection (12)(c) is not available to the

2038 general public:

2039 (A) a church; or

2040 (B) a charitable institution;

2041 (ii) an institution of higher education if:

2042 (A) the item described in Subsection (12)(c) is not available to the general public; or

2043 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
2044 offered by the institution of higher education; or
2045 (b) sales of an item described in Subsection (12)(c) provided for a patient by:
2046 (i) a medical facility; or
2047 (ii) a nursing facility; and
2048 (c) Subsections (12)(a) and (b) apply to:
2049 (i) food and food ingredients;
2050 (ii) prepared food; or
2051 (iii) alcoholic beverages;
2052 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property
2053 or a product transferred electronically by a person:
2054 (i) regardless of the number of transactions involving the sale of that tangible personal
2055 property or product transferred electronically by that person; and
2056 (ii) not regularly engaged in the business of selling that type of tangible personal
2057 property or product transferred electronically;
2058 (b) this Subsection (13) does not apply if:
2059 (i) the sale is one of a series of sales of a character to indicate that the person is
2060 regularly engaged in the business of selling that type of tangible personal property or product
2061 transferred electronically;
2062 (ii) the person holds that person out as regularly engaged in the business of selling that
2063 type of tangible personal property or product transferred electronically;
2064 (iii) the person sells an item of tangible personal property or product transferred
2065 electronically that the person purchased as a sale that is exempt under Subsection (25); or
2066 (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of
2067 this state in which case the tax is based upon:
2068 (A) the bill of sale or other written evidence of value of the vehicle or vessel being
2069 sold; or
2070 (B) in the absence of a bill of sale or other written evidence of value, the fair market
2071 value of the vehicle or vessel being sold at the time of the sale as determined by the
2072 commission; and
2073 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

2074 commission shall make rules establishing the circumstances under which:

2075 (i) a person is regularly engaged in the business of selling a type of tangible personal
2076 property or product transferred electronically;

2077 (ii) a sale of tangible personal property or a product transferred electronically is one of
2078 a series of sales of a character to indicate that a person is regularly engaged in the business of
2079 selling that type of tangible personal property or product transferred electronically; or

2080 (iii) a person holds that person out as regularly engaged in the business of selling a type
2081 of tangible personal property or product transferred electronically;

2082 (14) (a) except as provided in Subsection (14)(b), amounts paid or charged on or after
2083 July 1, 2006, for a purchase or lease by a manufacturing facility other than a cogeneration
2084 facility, for the following:

2085 (i) machinery and equipment that:

2086 (A) is used:

2087 (I) for a manufacturing facility other than a manufacturing facility that is a scrap
2088 recycler described in Subsection 59-12-102(52)(b):

2089 (Aa) in the manufacturing process; and

2090 (Bb) to manufacture an item sold as tangible personal property; or

2091 (II) for a manufacturing facility that is a scrap recycler described in Subsection
2092 59-12-102(52)(b), to process an item sold as tangible personal property; and

2093 (B) has an economic life of three or more years; and

2094 (ii) normal operating repair or replacement parts that:

2095 (A) have an economic life of three or more years; and

2096 (B) are used:

2097 (I) for a manufacturing facility in the state other than a manufacturing facility that is a
2098 scrap recycler described in Subsection 59-12-102(52)(b), in the manufacturing process; or

2099 (II) for a manufacturing facility in the state that is a scrap recycler described in
2100 Subsection 59-12-102(52)(b), to process an item sold as tangible personal property;

2101 (b) (i) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a
2102 manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006,
2103 for the following:

2104 (A) machinery and equipment that:

2105 (I) is used:
2106 (Aa) in the manufacturing process; and
2107 (Bb) to manufacture an item sold as tangible personal property; and
2108 (II) has an economic life of three or more years; and
2109 (B) normal operating repair or replacement parts that:
2110 (I) are used in the manufacturing process in a manufacturing facility in the state; and
2111 (II) have an economic life of three or more years; and
2112 (ii) for amounts paid or charged on or after July 1, 2005, but on or before June 30,
2113 2006, for a purchase or lease described in Subsection (14)(b)(i), a cogeneration facility may
2114 claim the exemption allowed by Subsection (14)(b)(i) by filing for a refund:
2115 (A) for sales and use taxes paid under this chapter on the purchase or lease payment;
2116 and
2117 (B) in accordance with Section 59-12-110;
2118 (c) amounts paid or charged for a purchase or lease made on or after January 1, 2008,
2119 by an establishment described in NAICS Subsector 212, Mining (except Oil and Gas), or
2120 NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for
2121 Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining,
2122 of the 2002 North American Industry Classification System of the federal Executive Office of
2123 the President, Office of Management and Budget:
2124 (i) machinery and equipment that:
2125 (A) are used in:
2126 (I) the production process, other than the production of real property; or
2127 (II) research and development; and
2128 (B) have an economic life of three or more years; and
2129 (ii) normal operating repair or replacement parts that:
2130 (A) have an economic life of three or more years; and
2131 (B) are used in:
2132 (I) the production process, other than the production of real property, in an
2133 establishment described in this Subsection (14)(c) in the state; or
2134 (II) research and development in an establishment described in this Subsection (14)(c)
2135 in the state;

2136 (d) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter 3,
2137 Utah Administrative Rulemaking Act, the commission:

2138 (i) shall by rule define the term "establishment"; and

2139 (ii) may by rule define what constitutes:

2140 (A) processing an item sold as tangible personal property;

2141 (B) the production process, other than the production of real property; or

2142 (C) research and development; and

2143 (e) on or before October 1, 2011, and every five years after October 1, 2011, the
2144 commission shall:

2145 (i) review the exemptions described in this Subsection (14) and make
2146 recommendations to the Revenue and Taxation Interim Committee concerning whether the
2147 exemptions should be continued, modified, or repealed; and

2148 (ii) include in its report:

2149 (A) the cost of the exemptions;

2150 (B) the purpose and effectiveness of the exemptions; and

2151 (C) the benefits of the exemptions to the state;

2152 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:

2153 (i) tooling;

2154 (ii) special tooling;

2155 (iii) support equipment;

2156 (iv) special test equipment; or

2157 (v) parts used in the repairs or renovations of tooling or equipment described in

2158 Subsections (15)(a)(i) through (iv); and

2159 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:

2160 (i) the tooling, equipment, or parts are used or consumed exclusively in the
2161 performance of any aerospace or electronics industry contract with the United States

2162 government or any subcontract under that contract; and

2163 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),

2164 title to the tooling, equipment, or parts is vested in the United States government as evidenced
2165 by:

2166 (A) a government identification tag placed on the tooling, equipment, or parts; or

2167 (B) listing on a government-approved property record if placing a government
2168 identification tag on the tooling, equipment, or parts is impractical;

2169 (16) sales of newspapers or newspaper subscriptions;

2170 (17) (a) except as provided in Subsection (17)(b), tangible personal property or a
2171 product transferred electronically traded in as full or part payment of the purchase price, except
2172 that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer,
2173 trade-ins are limited to other vehicles only, and the tax is based upon:

2174 (i) the bill of sale or other written evidence of value of the vehicle being sold and the
2175 vehicle being traded in; or

2176 (ii) in the absence of a bill of sale or other written evidence of value, the then existing
2177 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
2178 commission; and

2179 (b) notwithstanding Subsection (17)(a), Subsection (17)(a) does not apply to the
2180 following items of tangible personal property or products transferred electronically traded in as
2181 full or part payment of the purchase price:

2182 (i) money;

2183 (ii) electricity;

2184 (iii) water;

2185 (iv) gas; or

2186 (v) steam;

2187 (18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property
2188 or a product transferred electronically used or consumed primarily and directly in farming
2189 operations, regardless of whether the tangible personal property or product transferred
2190 electronically:

2191 (A) becomes part of real estate; or

2192 (B) is installed by a:

2193 (I) farmer;

2194 (II) contractor; or

2195 (III) subcontractor; or

2196 (ii) sales of parts used in the repairs or renovations of tangible personal property or a
2197 product transferred electronically if the tangible personal property or product transferred

2198 electronically is exempt under Subsection (18)(a)(i); and
2199 (b) notwithstanding Subsection (18)(a), amounts paid or charged for the following are
2200 subject to the taxes imposed by this chapter:
2201 (i) (A) subject to Subsection (18)(b)(i)(B), the following if used in a manner that is
2202 incidental to farming:
2203 (I) machinery;
2204 (II) equipment;
2205 (III) materials; or
2206 (IV) supplies; and
2207 (B) tangible personal property that is considered to be used in a manner that is
2208 incidental to farming includes:
2209 (I) hand tools; or
2210 (II) maintenance and janitorial equipment and supplies;
2211 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product
2212 transferred electronically if the tangible personal property or product transferred electronically
2213 is used in an activity other than farming; and
2214 (B) tangible personal property or a product transferred electronically that is considered
2215 to be used in an activity other than farming includes:
2216 (I) office equipment and supplies; or
2217 (II) equipment and supplies used in:
2218 (Aa) the sale or distribution of farm products;
2219 (Bb) research; or
2220 (Cc) transportation; or
2221 (iii) a vehicle required to be registered by the laws of this state during the period
2222 ending two years after the date of the vehicle's purchase;
2223 (19) sales of hay;
2224 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or
2225 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or
2226 garden, farm, or other agricultural produce is sold by:
2227 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other
2228 agricultural produce;

2229 (b) an employee of the producer described in Subsection (20)(a); or
2230 (c) a member of the immediate family of the producer described in Subsection (20)(a);
2231 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
2232 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

2233 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
2234 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
2235 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
2236 manufacturer, processor, wholesaler, or retailer;

2237 (23) a product stored in the state for resale;

2238 (24) (a) purchases of a product if:

2239 (i) the product is:

2240 (A) purchased outside of this state;

2241 (B) brought into this state:

2242 (I) at any time after the purchase described in Subsection (24)(a)(i)(A); and
2243 (II) by a nonresident person who is not living or working in this state at the time of the
2244 purchase;

2245 (C) used for the personal use or enjoyment of the nonresident person described in
2246 Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and

2247 (D) not used in conducting business in this state; and

2248 (ii) for:

2249 (A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of
2250 the product for a purpose for which the product is designed occurs outside of this state;

2251 (B) a boat, the boat is registered outside of this state; or

2252 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
2253 outside of this state;

2254 (b) the exemption provided for in Subsection (24)(a) does not apply to:

2255 (i) a lease or rental of a product; or

2256 (ii) a sale of a vehicle exempt under Subsection (33); and

2257 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
2258 purposes of Subsection (24)(a), the commission may by rule define what constitutes the
2259 following:

- 2260 (i) conducting business in this state if that phrase has the same meaning in this
- 2261 Subsection (24) as in Subsection [~~(64)~~] (63);
- 2262 (ii) the first use of a product if that phrase has the same meaning in this Subsection (24)
- 2263 as in Subsection [~~(64)~~] (63); or
- 2264 (iii) a purpose for which a product is designed if that phrase has the same meaning in
- 2265 this Subsection (24) as in Subsection [~~(64)~~] (63);
- 2266 (25) a product purchased for resale in this state, in the regular course of business, either
- 2267 in its original form or as an ingredient or component part of a manufactured or compounded
- 2268 product;
- 2269 (26) a product upon which a sales or use tax was paid to some other state, or one of its
- 2270 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
- 2271 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if
- 2272 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax
- 2273 Act;
- 2274 (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a
- 2275 person for use in compounding a service taxable under the subsections;
- 2276 (28) purchases made in accordance with the special supplemental nutrition program for
- 2277 women, infants, and children established in 42 U.S.C. Sec. 1786;
- 2278 (29) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers,
- 2279 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens
- 2280 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification
- 2281 Manual of the federal Executive Office of the President, Office of Management and Budget;
- 2282 (30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State
- 2283 Boating Act, a boat trailer, or an outboard motor if the boat, boat trailer, or outboard motor is:
- 2284 (a) not registered in this state; and
- 2285 (b) (i) not used in this state; or
- 2286 (ii) used in this state:
- 2287 (A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a
- 2288 time period that does not exceed the longer of:
- 2289 (I) 30 days in any calendar year; or
- 2290 (II) the time period necessary to transport the boat, boat trailer, or outboard motor to

2291 the borders of this state; or
2292 (B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time
2293 period necessary to transport the boat, boat trailer, or outboard motor to the borders of this
2294 state;
2295 (31) sales of aircraft manufactured in Utah;
2296 (32) amounts paid for the purchase of telecommunications service for purposes of
2297 providing telecommunications service;
2298 (33) sales, leases, or uses of the following:
2299 (a) a vehicle by an authorized carrier; or
2300 (b) tangible personal property that is installed on a vehicle:
2301 (i) sold or leased to or used by an authorized carrier; and
2302 (ii) before the vehicle is placed in service for the first time;
2303 (34) (a) 45% of the sales price of any new manufactured home; and
2304 (b) 100% of the sales price of any used manufactured home;
2305 (35) sales relating to schools and fundraising sales;
2306 (36) sales or rentals of durable medical equipment if:
2307 (a) a person presents a prescription for the durable medical equipment; and
2308 (b) the durable medical equipment is used for home use only;
2309 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
2310 Section 72-11-102; and
2311 (b) the commission shall by rule determine the method for calculating sales exempt
2312 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;
2313 (38) sales to a ski resort of:
2314 (a) snowmaking equipment;
2315 (b) ski slope grooming equipment;
2316 (c) passenger ropeways as defined in Section 72-11-102; or
2317 (d) parts used in the repairs or renovations of equipment or passenger ropeways
2318 described in Subsections (38)(a) through (c);
2319 (39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
2320 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for
2321 amusement, entertainment, or recreation an unassisted amusement device as defined in Section

2322 59-12-102;

2323 (b) if a seller that sells or rents at the same business location the right to use or operate
2324 for amusement, entertainment, or recreation one or more unassisted amusement devices and
2325 one or more assisted amusement devices, the exemption described in Subsection (40)(a)
2326 applies if the seller separately accounts for the sales or rentals of the right to use or operate for
2327 amusement, entertainment, or recreation for the assisted amusement devices; and

2328 (c) for purposes of Subsection (40)(b) and in accordance with Title 63G, Chapter 3,
2329 Utah Administrative Rulemaking Act, the commission may make rules:

2330 (i) governing the circumstances under which sales are at the same business location;
2331 and

2332 (ii) establishing the procedures and requirements for a seller to separately account for
2333 the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for
2334 assisted amusement devices;

2335 (41) (a) sales of photocopies by:

2336 (i) a governmental entity; or

2337 (ii) an entity within the state system of public education, including:

2338 (A) a school; or

2339 (B) the State Board of Education; or

2340 (b) sales of publications by a governmental entity;

2341 (42) amounts paid for admission to an athletic event at an institution of higher
2342 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
2343 20 U.S.C. Sec. 1681 et seq.;

2344 [~~43~~] sales of telecommunications service charged to a prepaid telephone calling card;]

2345 [~~44~~] (43) (a) sales made to or by:

2346 (i) an area agency on aging; or

2347 (ii) a senior citizen center owned by a county, city, or town; or

2348 (b) sales made by a senior citizen center that contracts with an area agency on aging;

2349 [~~45~~] (44) sales or leases of semiconductor fabricating, processing, research, or
2350 development materials regardless of whether the semiconductor fabricating, processing,
2351 research, or development materials:

2352 (a) actually come into contact with a semiconductor; or

2353 (b) ultimately become incorporated into real property;

2354 ~~[(46)]~~ (45) an amount paid by or charged to a purchaser for accommodations and
2355 services described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under
2356 Section 59-12-104.2;

2357 ~~[(47)]~~ (46) beginning on September 1, 2001, the lease or use of a vehicle issued a
2358 temporary sports event registration certificate in accordance with Section 41-3-306 for the
2359 event period specified on the temporary sports event registration certificate;

2360 ~~[(48)]~~ (47) sales or uses of electricity, if the sales or uses are:

2361 (a) made under a tariff adopted by the Public Service Commission of Utah only for
2362 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy
2363 source, as designated in the tariff by the Public Service Commission of Utah; and

2364 (b) for an amount of electricity that is:

2365 (i) unrelated to the amount of electricity used by the person purchasing the electricity
2366 under the tariff described in Subsection ~~[(48)]~~ (47)(a); and

2367 (ii) equivalent to the number of kilowatthours specified in the tariff described in
2368 Subsection ~~[(48)]~~ (47)(a) that may be purchased under the tariff described in Subsection ~~[(48)]~~
2369 (47)(a);

2370 ~~[(49)]~~ (48) sales or rentals of mobility enhancing equipment if a person presents a
2371 prescription for the mobility enhancing equipment;

2372 ~~[(50)]~~ (49) sales of water in a:

2373 (a) pipe;

2374 (b) conduit;

2375 (c) ditch; or

2376 (d) reservoir;

2377 ~~[(51)]~~ (50) sales of currency or coinage that constitute legal tender of the United States
2378 or of a foreign nation;

2379 ~~[(52)]~~ (51) (a) sales of an item described in Subsection ~~[(52)]~~ (51)(b) if the item:

2380 (i) does not constitute legal tender of any nation; and

2381 (ii) has a gold, silver, or platinum content of 80% or more; and

2382 (b) Subsection ~~[(52)]~~ (51)(a) applies to a gold, silver, or platinum:

2383 (i) ingot;

2384 (ii) bar;

2385 (iii) medallion; or

2386 (iv) decorative coin;

2387 [~~53~~] (52) amounts paid on a sale-leaseback transaction;

2388 [~~54~~] (53) sales of a prosthetic device:

2389 (a) for use on or in a human; and

2390 (b) (i) for which a prescription is required; or

2391 (ii) if the prosthetic device is purchased by a hospital or other medical facility;

2392 [~~55~~] (54) (a) except as provided in Subsection [~~55~~] (54)(b), purchases, leases, or

2393 rentals of machinery or equipment by an establishment described in Subsection [~~55~~] (54)(c) if

2394 the machinery or equipment is primarily used in the production or postproduction of the

2395 following media for commercial distribution:

2396 (i) a motion picture;

2397 (ii) a television program;

2398 (iii) a movie made for television;

2399 (iv) a music video;

2400 (v) a commercial;

2401 (vi) a documentary; or

2402 (vii) a medium similar to Subsections [~~55~~] (54)(a)(i) through (vi) as determined by

2403 the commission by administrative rule made in accordance with Subsection [~~55~~] (54)(d); or

2404 (b) notwithstanding Subsection [~~55~~] (54)(a), purchases, leases, or rentals of

2405 machinery or equipment by an establishment described in Subsection [~~55~~] (54)(c) that is used

2406 for the production or postproduction of the following are subject to the taxes imposed by this

2407 chapter:

2408 (i) a live musical performance;

2409 (ii) a live news program; or

2410 (iii) a live sporting event;

2411 (c) the following establishments listed in the 1997 North American Industry

2412 Classification System of the federal Executive Office of the President, Office of Management

2413 and Budget, apply to Subsections [~~55~~] (54)(a) and (b):

2414 (i) NAICS Code 512110; or

- 2415 (ii) NAICS Code 51219; and
- 2416 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 2417 commission may by rule:
- 2418 (i) prescribe what constitutes a medium similar to Subsections [~~55~~] (54)(a)(i) through
- 2419 (vi); or
- 2420 (ii) define:
- 2421 (A) "commercial distribution";
- 2422 (B) "live musical performance";
- 2423 (C) "live news program"; or
- 2424 (D) "live sporting event";
- 2425 [~~56~~] (55) (a) leases of seven or more years or purchases made on or after July 1, 2004
- 2426 but on or before June 30, 2019, of machinery or equipment that:
- 2427 (i) is leased or purchased for or by a facility that:
- 2428 (A) is a renewable energy production facility;
- 2429 (B) is located in the state; and
- 2430 (C) (I) becomes operational on or after July 1, 2004; or
- 2431 (II) has its generation capacity increased by one or more megawatts on or after July 1,
- 2432 2004 as a result of the use of the machinery or equipment;
- 2433 (ii) has an economic life of five or more years; and
- 2434 (iii) is used to make the facility or the increase in capacity of the facility described in
- 2435 Subsection [~~56~~] (55)(a)(i) operational up to the point of interconnection with an existing
- 2436 transmission grid including:
- 2437 (A) a wind turbine;
- 2438 (B) generating equipment;
- 2439 (C) a control and monitoring system;
- 2440 (D) a power line;
- 2441 (E) substation equipment;
- 2442 (F) lighting;
- 2443 (G) fencing;
- 2444 (H) pipes; or
- 2445 (I) other equipment used for locating a power line or pole; and

- 2446 (b) this Subsection [~~(56)~~] (55) does not apply to:
- 2447 (i) machinery or equipment used in construction of:
- 2448 (A) a new renewable energy production facility; or
- 2449 (B) the increase in the capacity of a renewable energy production facility;
- 2450 (ii) contracted services required for construction and routine maintenance activities;
- 2451 and
- 2452 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
- 2453 of the facility described in Subsection [~~(56)~~] (55)(a)(i)(C)(II), machinery or equipment used or
- 2454 acquired after:
- 2455 (A) the renewable energy production facility described in Subsection [~~(56)~~] (55)(a)(i) is
- 2456 operational as described in Subsection [~~(56)~~] (55)(a)(iii); or
- 2457 (B) the increased capacity described in Subsection [~~(56)~~] (55)(a)(i) is operational as
- 2458 described in Subsection [~~(56)~~] (55)(a)(iii);
- 2459 [~~(57)~~] (56) (a) leases of seven or more years or purchases made on or after July 1, 2004
- 2460 but on or before June 30, 2019, of machinery or equipment that:
- 2461 (i) is leased or purchased for or by a facility that:
- 2462 (A) is a waste energy production facility;
- 2463 (B) is located in the state; and
- 2464 (C) (I) becomes operational on or after July 1, 2004; or
- 2465 (II) has its generation capacity increased by one or more megawatts on or after July 1,
- 2466 2004 as a result of the use of the machinery or equipment;
- 2467 (ii) has an economic life of five or more years; and
- 2468 (iii) is used to make the facility or the increase in capacity of the facility described in
- 2469 Subsection [~~(57)~~] (56)(a)(i) operational up to the point of interconnection with an existing
- 2470 transmission grid including:
- 2471 (A) generating equipment;
- 2472 (B) a control and monitoring system;
- 2473 (C) a power line;
- 2474 (D) substation equipment;
- 2475 (E) lighting;
- 2476 (F) fencing;

- 2477 (G) pipes; or
- 2478 (H) other equipment used for locating a power line or pole; and
- 2479 (b) this Subsection [~~(57)~~] (56) does not apply to:
 - 2480 (i) machinery or equipment used in construction of:
 - 2481 (A) a new waste energy facility; or
 - 2482 (B) the increase in the capacity of a waste energy facility;
 - 2483 (ii) contracted services required for construction and routine maintenance activities;
 - 2484 and
 - 2485 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
 - 2486 described in Subsection [~~(57)~~] (56)(a)(i)(C)(II), machinery or equipment used or acquired after:
 - 2487 (A) the waste energy facility described in Subsection [~~(57)~~] (56)(a)(i) is operational as
 - 2488 described in Subsection [~~(57)~~] (56)(a)(iii); or
 - 2489 (B) the increased capacity described in Subsection [~~(57)~~] (56)(a)(i) is operational as
 - 2490 described in Subsection [~~(57)~~] (56)(a)(iii);
 - 2491 [~~(58)~~] (57) (a) leases of five or more years or purchases made on or after July 1, 2004
 - 2492 but on or before June 30, 2019, of machinery or equipment that:
 - 2493 (i) is leased or purchased for or by a facility that:
 - 2494 (A) is located in the state;
 - 2495 (B) produces fuel from biomass energy including:
 - 2496 (I) methanol; or
 - 2497 (II) ethanol; and
 - 2498 (C) (I) becomes operational on or after July 1, 2004; or
 - 2499 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004 as
 - 2500 a result of the installation of the machinery or equipment;
 - 2501 (ii) has an economic life of five or more years; and
 - 2502 (iii) is installed on the facility described in Subsection [~~(58)~~] (57)(a)(i);
 - 2503 (b) this Subsection [~~(58)~~] (57) does not apply to:
 - 2504 (i) machinery or equipment used in construction of:
 - 2505 (A) a new facility described in Subsection [~~(58)~~] (57)(a)(i); or
 - 2506 (B) the increase in capacity of the facility described in Subsection [~~(58)~~] (57)(a)(i); or
 - 2507 (ii) contracted services required for construction and routine maintenance activities;

2508 and

2509 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
2510 described in Subsection [~~(58)~~] (57)(a)(i)(C)(II), machinery or equipment used or acquired after:

2511 (A) the facility described in Subsection [~~(58)~~] (57)(a)(i) is operational; or

2512 (B) the increased capacity described in Subsection [~~(58)~~] (57)(a)(i) is operational;

2513 [~~(59)~~] (58) (a) subject to Subsection [~~(59)~~] (58)(b) or (c), sales of tangible personal
2514 property or a product transferred electronically to a person within this state if that tangible
2515 personal property or product transferred electronically is subsequently shipped outside the state
2516 and incorporated pursuant to contract into and becomes a part of real property located outside
2517 of this state;

2518 (b) the exemption under Subsection [~~(59)~~] (58)(a) is not allowed to the extent that the
2519 other state or political entity to which the tangible personal property is shipped imposes a sales,
2520 use, gross receipts, or other similar transaction excise tax on the transaction against which the
2521 other state or political entity allows a credit for sales and use taxes imposed by this chapter; and

2522 (c) notwithstanding the time period of Subsection 59-12-110(2)(b) for filing for a
2523 refund, a person may claim the exemption allowed by this Subsection [~~(59)~~] (58) for a sale by
2524 filing for a refund:

2525 (i) if the sale is made on or after July 1, 2004, but on or before June 30, 2008;

2526 (ii) as if this Subsection [~~(59)~~] (58) as in effect on July 1, 2008, were in effect on the
2527 day on which the sale is made;

2528 (iii) if the person did not claim the exemption allowed by this Subsection [~~(59)~~] (58)
2529 for the sale prior to filing for the refund;

2530 (iv) for sales and use taxes paid under this chapter on the sale;

2531 (v) in accordance with Section 59-12-110; and

2532 (vi) subject to any extension allowed for filing for a refund under Section 59-12-110, if
2533 the person files for the refund on or before June 30, 2011;

2534 [~~(60)~~] (59) purchases:

2535 (a) of one or more of the following items in printed or electronic format:

2536 (i) a list containing information that includes one or more:

2537 (A) names; or

2538 (B) addresses; or

- 2539 (ii) a database containing information that includes one or more:
- 2540 (A) names; or
- 2541 (B) addresses; and
- 2542 (b) used to send direct mail;
- 2543 ~~[(61)]~~ (60) redemptions or repurchases of a product by a person if that product was:
- 2544 (a) delivered to a pawnbroker as part of a pawn transaction; and
- 2545 (b) redeemed or repurchased within the time period established in a written agreement
- 2546 between the person and the pawnbroker for redeeming or repurchasing the product;
- 2547 ~~[(62)]~~ (61) (a) purchases or leases of an item described in Subsection ~~[(62)]~~ (61)(b) if
- 2548 the item:
- 2549 (i) is purchased or leased by, or on behalf of, a telecommunications service provider;
- 2550 and
- 2551 (ii) has a useful economic life of one or more years; and
- 2552 (b) the following apply to Subsection ~~[(62)]~~ (61)(a):
- 2553 (i) telecommunications enabling or facilitating equipment, machinery, or software;
- 2554 (ii) telecommunications equipment, machinery, or software required for 911 service;
- 2555 (iii) telecommunications maintenance or repair equipment, machinery, or software;
- 2556 (iv) telecommunications switching or routing equipment, machinery, or software; or
- 2557 (v) telecommunications transmission equipment, machinery, or software;
- 2558 ~~[(63)]~~ (62) (a) beginning on July 1, 2006, and ending on June 30, 2016, purchases of
- 2559 tangible personal property or a product transferred electronically that are used in the research
- 2560 and development of coal-to-liquids, oil shale, or tar sands technology; and
- 2561 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 2562 commission may, for purposes of Subsection ~~[(63)]~~ (62)(a), make rules defining what
- 2563 constitutes purchases of tangible personal property or a product transferred electronically that
- 2564 are used in the research and development of coal-to-liquids, oil shale, and tar sands technology;
- 2565 ~~[(64)]~~ (63) (a) purchases of tangible personal property or a product transferred
- 2566 electronically if:
- 2567 (i) the tangible personal property or product transferred electronically is:
- 2568 (A) purchased outside of this state;
- 2569 (B) brought into this state at any time after the purchase described in Subsection ~~[(64)]~~

2570 ~~(63)~~(a)(i)(A); and
2571 (C) used in conducting business in this state; and
2572 (ii) for:
2573 (A) tangible personal property or a product transferred electronically other than the
2574 tangible personal property described in Subsection [~~(64)~~] ~~(63)~~(a)(ii)(B), the first use of the
2575 property for a purpose for which the property is designed occurs outside of this state; or
2576 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
2577 outside of this state;
2578 (b) the exemption provided for in Subsection [~~(64)~~] ~~(63)~~(a) does not apply to:
2579 (i) a lease or rental of tangible personal property or a product transferred electronically;
2580 or
2581 (ii) a sale of a vehicle exempt under Subsection (33); and
2582 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
2583 purposes of Subsection [~~(64)~~] ~~(63)~~(a), the commission may by rule define what constitutes the
2584 following:
2585 (i) conducting business in this state if that phrase has the same meaning in this
2586 Subsection [~~(64)~~] ~~(63)~~ as in Subsection (24);
2587 (ii) the first use of tangible personal property or a product transferred electronically if
2588 that phrase has the same meaning in this Subsection [~~(64)~~] ~~(63)~~ as in Subsection (24); or
2589 (iii) a purpose for which tangible personal property or a product transferred
2590 electronically is designed if that phrase has the same meaning in this Subsection [~~(64)~~] ~~(63)~~ as
2591 in Subsection (24);
2592 [~~(65)~~] ~~(64)~~ sales of disposable home medical equipment or supplies if:
2593 (a) a person presents a prescription for the disposable home medical equipment or
2594 supplies;
2595 (b) the disposable home medical equipment or supplies are used exclusively by the
2596 person to whom the prescription described in Subsection [~~(65)~~] ~~(64)~~(a) is issued; and
2597 (c) the disposable home medical equipment and supplies are listed as eligible for
2598 payment under:
2599 (i) Title XVIII, federal Social Security Act; or
2600 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;

2601 [~~(66)~~] (65) sales:

2602 (a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit

2603 District Act; or

2604 (b) of tangible personal property to a subcontractor of a public transit district, if the

2605 tangible personal property is:

2606 (i) clearly identified; and

2607 (ii) installed or converted to real property owned by the public transit district;

2608 [~~(67)~~] (66) sales of construction materials:

2609 (a) purchased on or after July 1, 2010;

2610 (b) purchased by, on behalf of, or for the benefit of an international airport:

2611 (i) located within a county of the first class; and

2612 (ii) that has a United States customs office on its premises; and

2613 (c) if the construction materials are:

2614 (i) clearly identified;

2615 (ii) segregated; and

2616 (iii) installed or converted to real property:

2617 (A) owned or operated by the international airport described in Subsection [~~(67)~~]

2618 (66)(b); and

2619 (B) located at the international airport described in Subsection [~~(67)~~] (66)(b);

2620 [~~(68)~~] (67) sales of construction materials:

2621 (a) purchased on or after July 1, 2008;

2622 (b) purchased by, on behalf of, or for the benefit of a new airport:

2623 (i) located within a county of the second class; and

2624 (ii) that is owned or operated by a city in which an airline as defined in Section

2625 59-2-102 is headquartered; and

2626 (c) if the construction materials are:

2627 (i) clearly identified;

2628 (ii) segregated; and

2629 (iii) installed or converted to real property:

2630 (A) owned or operated by the new airport described in Subsection [~~(68)~~] (67)(b);

2631 (B) located at the new airport described in Subsection [~~(68)~~] (67)(b); and

2632 (C) as part of the construction of the new airport described in Subsection [~~(68)~~
2633 (67)(b); and
2634 [~~(69)~~] (68) sales of fuel to a common carrier that is a railroad for use in a locomotive
2635 engine.

2636 Section 5. Section **59-12-104.5** is amended to read:

2637 **59-12-104.5. Utah Tax Review Commission review of sales and use tax system.**

2638 (1) The Utah Tax Review Commission, in cooperation with the governor's office and
2639 the commission, shall review the sales and use tax system of the state as provided in this
2640 section.

2641 (2) (a) Beginning with the 2009 interim, and one or more times every ten years after
2642 the 2009 interim, the Utah Tax Review Commission shall make findings and recommendations
2643 as to whether:

- 2644 (i) the sales and use tax is broadly based;
- 2645 (ii) the sales and use tax base reflects the overall economy;
- 2646 (iii) the sales and use tax mitigates regressive impacts;
- 2647 (iv) the sales and use tax is administratively simple; and
- 2648 (v) the sales and use tax promotes compliance.

2649 (b) On or before the November interim meeting of the year in which the Utah Tax
2650 Review Commission makes the findings and recommendations required by Subsection (2)(a),
2651 the Utah Tax Review Commission shall report its findings and recommendations made in
2652 accordance with Subsection (2)(a) to:

- 2653 (i) the governor; and
- 2654 (ii) the Revenue and Taxation Interim Committee.

2655 (3) Notwithstanding Subsection (2):

2656 (a) the Utah Tax Review Commission shall review Subsection 59-12-104(28) before
2657 October 1 of the year after the year in which Congress permits a state to participate in the
2658 special supplemental nutrition program under 42 U.S.C. Sec. 1786 even if state or local sales
2659 taxes are collected within the state on purchases of food under that program;

2660 (b) the Utah Tax Review Commission shall review Subsection 59-12-104(21) before
2661 October 1 of the year after the year in which Congress permits a state to participate in the food
2662 stamp program under the Food Stamp Act, 7 U.S.C. Sec. 2011 et seq., even if state or local

2663 sales taxes are collected within the state on purchases of food under that program; and

2664 (c) the Utah Tax Review Commission shall review Subsection 59-12-104[~~(63)~~](62)

2665 before the October 2011 interim meeting.

2666 Section 6. Section **59-12-105** is amended to read:

2667 **59-12-105. Certain exempt sales to be reported -- Penalties.**

2668 (1) An owner or purchaser shall report to the commission the amount of sales or uses
2669 exempt under Subsection 59-12-104(14) or [~~(45)~~](44).

2670 (2) A report required by Subsection (1) shall be filed:

2671 (a) with the commission; and

2672 (b) on a form prescribed by the commission.

2673 (3) (a) Notwithstanding Section 59-1-401, and except as provided in Subsections (3)(b)

2674 and (4), if the owner or purchaser fails to report the full amount of the exemptions granted

2675 under Subsection 59-12-104(14) or [~~(45)~~](44) on the report required by Subsection (1), the

2676 commission shall impose a penalty equal to the lesser of:

2677 (i) 10% of the sales and use tax that would have been imposed if the exemption had not
2678 applied; or

2679 (ii) \$1,000.

2680 (b) Notwithstanding Subsection (3)(a)(i), the commission may not impose a penalty
2681 under Subsection (3)(a)(i) if the owner or purchaser files an amended report:

2682 (i) containing the amount of the exemption; and

2683 (ii) before the owner or purchaser receives a notice of audit from the commission.

2684 (4) (a) The commission may waive, reduce, or compromise a penalty imposed under
2685 this section if the commission finds there are reasonable grounds for the waiver, reduction, or
2686 compromise.

2687 (b) If the commission waives, reduces, or compromises a penalty under Subsection

2688 (4)(a), the commission shall make a record of the grounds for waiving, reducing, or

2689 compromising the penalty.

2690 Section 7. **Effective date.**

2691 This bill takes effect on July 1, 2009.

Legislative Review Note
as of 11-25-08 3:33 PM

Office of Legislative Research and General Counsel

S.B. 36 - Sales and Use Tax Amendments

Fiscal Note

2009 General Session
State of Utah

State Impact

Enactment of this bill will decrease revenue to the General Fund by \$37,000 in FY 2010 and \$39,000 in FY 2011. Revenue to the Transportation Fund will decrease by \$400 in FY 2010 and \$500 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	(\$37,000)	(\$39,000)
Transportation Fund	\$0	\$0	\$0	\$0	(\$400)	(\$500)
Total	\$0	\$0	\$0	\$0	(\$37,400)	(\$39,500)

Individual, Business and/or Local Impact

Telecommunications companies that purchase plastic used in making certain calling cards will be subject to use tax. The expected amount is \$1,200. Revenue to local governments will decrease by \$16,000 in FY 2010 and \$17,000 in FY 2011. Individuals that recharge a prepaid calling card for exclusive international or interstate calls will be exempt from sales tax. The expected amount of this exemption is \$38,000 in FY 2010 and \$40,000 in FY 2011.