

1 **SALES AND USE TAX AMENDMENTS**

2 2010 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Wayne A. Harper**

5 Senate Sponsor: Curtis S. Bramble

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Municipal Energy Sales and Use Tax Act and the Sales and Use
10 Tax Act to address definitions, the administration of the municipal energy sales and
11 use tax, provisions related to the collection, remittance, and payment of a tax on direct
12 mail and certain sales and use taxes, and determining the location of certain
13 transactions.

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ modifies a definition and defines terms;
- 17 ▶ provides that the administrative fee the State Tax Commission charges with respect
18 to the municipal energy sales and use tax shall be expended to administer the
19 municipal energy sales and use tax;
- 20 ▶ addresses the collection, remittance, and payment of a tax on direct mail and
21 certain sales and use taxes;
- 22 ▶ addresses the determination of the location of certain transactions; and
- 23 ▶ makes technical and conforming changes.

24 **Monies Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 This bill takes effect on July 1, 2010.

28 **Utah Code Sections Affected:**

29 AMENDS:

- 30 **10-1-303**, as last amended by Laws of Utah 2000, Chapter 251
- 31 **10-1-307**, as last amended by Laws of Utah 2009, Chapter 212
- 32 **59-12-102**, as last amended by Laws of Utah 2009, Chapters 203 and 314
- 33 **59-12-123**, as enacted by Laws of Utah 2008, Chapter 384
- 34 **59-12-211**, as enacted by Laws of Utah 2008, Chapter 384

35 ENACTS:

36 **59-12-211.1**, Utah Code Annotated 1953



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

39 Section 1. Section **10-1-303** is amended to read:

40 **10-1-303. Definitions.**

41 As used in this part:

- 42 (1) "Commission" means the State Tax Commission.
- 43 (2) "Contractual franchise fee" means:
 - 44 (a) a fee:
 - 45 (i) provided for in a franchise agreement; and
 - 46 (ii) that is consideration for the franchise agreement; or
 - 47 (b) (i) a fee similar to Subsection (2)(a); or
 - 48 (ii) any combination of Subsections (2)(a) and (b).
- 49 (3) (a) "Delivered value" means the fair market value of the taxable energy delivered

50 for sale or use in the municipality and includes:

- 51 (i) the value of the energy itself; and
- 52 (ii) any transportation, freight, customer demand charges, services charges, or other
- 53 costs typically incurred in providing taxable energy in usable form to each class of customer in
- 54 the municipality.

55 (b) "Delivered value" does not include the amount of a tax paid under:

- 56 (i) Title 59, Chapter 12, [~~Part 1, Tax Collection;~~] Sales and Use Tax Act; or
- 57 [~~(ii) Title 59, Chapter 12, Part 2, Local Sales and Use Tax Act; or~~]

58 [~~(iii)~~] (ii) this part.

59 (4) "De minimis amount" means an amount of taxable energy that does not exceed the
60 greater of:

61 (a) 5% of the energy supplier's estimated total Utah gross receipts from sales of
62 property or services; or

63 (b) \$10,000.

64 (5) "Energy supplier" means a person supplying taxable energy, except that the
65 commission may by rule exclude from this definition a person supplying a de minimis amount
66 of taxable energy.

67 (6) "Franchise agreement" means a franchise or an ordinance, contract, or agreement
68 granting a franchise.

69 (7) "Franchise tax" means:

70 (a) a franchise tax;

71 (b) a tax similar to a franchise tax; or

72 (c) any combination of Subsections (7)(a) and (b).

73 (8) "Person" is as defined in Section 59-12-102.

74 (9) "Taxable energy" means gas and electricity.

75 Section 2. Section **10-1-307** is amended to read:

76 **10-1-307. Administration, collection, and enforcement of taxes by commission --**
77 **Distribution of revenues -- Charge for services -- Collection of taxes by municipality.**

78 (1) Except as provided in Subsection (3), the commission shall administer, collect, and
79 enforce the municipal energy sales and use tax from energy suppliers according to the
80 procedures established in:

81 (a) Title 59, Chapter 1, General Taxation Policies; and

82 (b) Title 59, Chapter 12, Part 1, Tax Collection, except for Sections 59-12-107.1 and
83 59-12-123.

84 (2) (a) Except as provided in Subsections 10-1-203(3)(d), 10-1-305(5), and
85 10-1-310(2) and subject to Subsection (6), the commission shall pay a municipality the

86 difference between:

87 (i) the entire amount collected by the commission from the municipal energy sales and
88 use tax authorized by this part based on:

89 (A) the point of sale of the taxable energy if a taxable sale occurs in a municipality
90 that imposes a municipal energy sales and use tax as provided in this part; or

91 (B) the point of use of the taxable energy if the use occurs in a municipality that
92 imposes a municipal energy sales and use tax as provided in this part; and

93 (ii) the administration fee charged in accordance with Subsection (2)(c).

94 (b) In accordance with Subsection (2)(a), the commission shall transfer to the
95 municipality monthly by electronic transfer the revenues generated by the municipal energy
96 sales and use tax levied by the municipality and collected by the commission.

97 (c) (i) The commission shall charge a municipality imposing a municipal energy sales
98 and use tax a fee for administering the tax at the percentage provided in Section 59-12-206,
99 except that the commission may not charge a fee for taxes collected by a municipality under
100 Subsection (3).

101 (ii) The fee charged under Subsection (2)(c)(i) shall be:

102 (A) deposited in the Sales and Use Tax Administrative Fees Account; and

103 [~~(B) used for sales tax administration as provided in Subsection 59-12-206(2).~~]

104 (B) expended to administer the municipal energy sales and use tax imposed under this
105 part.

106 (3) An energy supplier shall pay the municipal energy sales and use tax revenues it
107 collects from its customers under this part directly to each municipality in which the energy
108 supplier has sales of taxable energy if:

109 (a) the municipality is the energy supplier; or

110 (b) (i) the energy supplier estimates that the municipal energy sales and use tax
111 collected annually by the energy supplier from its Utah customers equals \$1,000,000 or more;
112 and

113 (ii) the energy supplier collects the tax imposed by this part.

114 (4) An energy supplier paying a tax under this part directly to a municipality may
115 retain the percentage of the tax authorized under Subsection 59-12-108(2) for the energy
116 supplier's costs of collecting and remitting the tax.

117 (5) An energy supplier paying the tax under this part directly to a municipality shall
118 file an information return with the commission, at least annually, on a form prescribed by the
119 commission.

120 (6) (a) As used in this Subsection (6):

121 (i) "2005 base amount" means, for a municipality that imposes a municipal energy
122 sales and use tax, the natural gas portion of municipal energy sales and use tax proceeds paid
123 to the municipality for fiscal year 2005.

124 (ii) "2006 base amount" means, for a municipality that imposes a municipal energy
125 sales and use tax, the natural gas portion of municipal energy sales and use tax proceeds paid
126 to the municipality for fiscal year 2006, reduced by the 2006 rebate amount.

127 (iii) "2006 rebate amount" means, for a municipality that imposes a municipal energy
128 sales and use tax, the difference between:

129 (A) the natural gas portion of municipal energy sales and use tax proceeds paid to the
130 municipality for fiscal year 2006; and

131 (B) the 2005 base amount, plus:

132 (I) 10% of the 2005 base amount; and

133 (II) the natural gas portion of municipal energy sales and use tax proceeds paid to the
134 municipality for fiscal year 2006 attributable to an increase in the rate of the municipal energy
135 sales and use tax implemented by the municipality during fiscal year 2006.

136 (iv) "2007 rebate amount" means, for a municipality that imposes a municipal energy
137 sales and use tax, the difference between:

138 (A) the natural gas portion of municipal energy sales and use tax proceeds paid to the
139 municipality for fiscal year 2007; and

140 (B) the 2006 base amount, plus:

141 (I) 10% of the 2006 base amount; and

142 (II) the natural gas portion of municipal energy sales and use tax proceeds paid to the
143 municipality for fiscal year 2007 attributable to an increase in the rate of the municipal energy
144 sales and use tax implemented by the municipality during fiscal year 2007.

145 (v) "Fiscal year 2005" means the period beginning July 1, 2004 and ending June 30,
146 2005.

147 (vi) "Fiscal year 2006" means the period beginning July 1, 2005 and ending June 30,
148 2006.

149 (vii) "Fiscal year 2007" means the period beginning July 1, 2006 and ending June 30,
150 2007.

151 (viii) "Gas supplier" means an energy supplier that supplies natural gas.

152 (ix) "Natural gas portion" means the amount of municipal energy sales and use tax
153 proceeds attributable to sales and uses of natural gas.

154 (b) (i) In December 2006, each gas supplier shall reduce the natural gas portion of
155 municipal energy sales and use gas proceeds to be paid to a municipality by the 2006 rebate
156 amount.

157 (ii) If the 2006 rebate amount exceeds the amount of the natural gas portion of
158 municipal energy sales and use tax proceeds for December 2006, the gas supplier shall reduce
159 the natural gas portion of municipal energy sales and use tax proceeds to be paid to a
160 municipality each month thereafter until the 2006 rebate amount is exhausted.

161 (iii) For December 2006 and for each month thereafter that the gas supplier is required
162 under Subsection (6)(b)(ii) to reduce the natural gas portion of municipal energy sales and use
163 tax proceeds to be paid to a municipality:

164 (A) each municipality imposing a municipal energy sales and use tax shall provide the
165 gas supplier with the amount by which its municipal energy sales and use tax rate applicable
166 to the sales and uses of natural gas would need to be reduced in order to reduce the natural gas
167 portion of municipal energy sales and use tax proceeds by the same amount as the reduction to
168 the municipality; and

169 (B) each gas supplier shall reduce the municipal energy sales and use tax rate

170 applicable to sales and uses of natural gas by the amount of the tax rate reduction provided by
171 the municipality.

172 (c) (i) In December 2007, each gas supplier shall reduce the natural gas portion of
173 municipal energy sales and use tax proceeds to be paid to a municipality by the 2007 rebate
174 amount.

175 (ii) If the 2007 rebate amount exceeds the amount of the natural gas portion of
176 municipal energy sales and use tax proceeds for December 2007, the gas supplier shall reduce
177 the natural gas portion of municipal energy sales and use tax proceeds to be paid to a
178 municipality each month thereafter until the 2007 rebate amount is exhausted.

179 (iii) For December 2007 and for each month thereafter that the gas supplier is required
180 under Subsection (6)(c)(ii) to reduce the natural gas portion of municipal energy sales and use
181 tax proceeds to be paid to a municipality:

182 (A) each municipality imposing a municipal energy sales and use tax shall provide the
183 gas supplier with the amount by which its municipal energy sales and use tax rate applicable
184 to the sales and uses of natural gas would need to be reduced in order to reduce the natural gas
185 portion of municipal energy sales and use tax proceeds by the same amount as the reduction to
186 the municipality; and

187 (B) each gas supplier shall reduce the municipal energy sales and use tax rate
188 applicable to sales and uses of natural gas by the amount of the tax rate reduction provided by
189 the municipality.

190 (d) Nothing in this Subsection (6) may be construed to require a reduction under
191 Subsection (6)(b) or (c) if the rebate amount is zero or negative.

192 Section 3. Section **59-12-102** is amended to read:

193 **59-12-102. Definitions.**

194 As used in this chapter:

195 (1) "800 service" means a telecommunications service that:

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

197 (b) is typically marketed:

- 198 (i) under the name 800 toll-free calling;
- 199 (ii) under the name 855 toll-free calling;
- 200 (iii) under the name 866 toll-free calling;
- 201 (iv) under the name 877 toll-free calling;
- 202 (v) under the name 888 toll-free calling; or
- 203 (vi) under a name similar to Subsections (1)(b)(i) through (v) as designated by the
- 204 Federal Communications Commission.
- 205 (2) (a) "900 service" means an inbound toll telecommunications service that:
- 206 (i) a subscriber purchases;
- 207 (ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to
- 208 the subscriber's:
- 209 (A) prerecorded announcement; or
- 210 (B) live service; and
- 211 (iii) is typically marketed:
- 212 (A) under the name 900 service; or
- 213 (B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal
- 214 Communications Commission.
- 215 (b) "900 service" does not include a charge for:
- 216 (i) a collection service a seller of a telecommunications service provides to a
- 217 subscriber; or
- 218 (ii) the following a subscriber sells to the subscriber's customer:
- 219 (A) a product; or
- 220 (B) a service.
- 221 (3) (a) "Admission or user fees" includes season passes.
- 222 (b) "Admission or user fees" does not include annual membership dues to private
- 223 organizations.
- 224 (4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on
- 225 November 12, 2002, including amendments made to the Streamlined Sales and Use Tax

226 Agreement after November 12, 2002.

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

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

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

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

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

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

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

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

235 (e) Section 59-12-204;

236 (f) Section 59-12-401;

237 (g) Section 59-12-402;

238 (h) Section 59-12-501;

239 (i) Section 59-12-502;

240 (j) Section 59-12-703;

241 (k) Section 59-12-802;

242 (l) Section 59-12-804;

243 (m) Section 59-12-1001;

244 (n) Section 59-12-1102;

245 (o) Section 59-12-1302;

246 (p) Section 59-12-1402;

247 (q) Section 59-12-1503;

248 (r) Section 59-12-1703;

249 (s) Section 59-12-1802;

250 (t) Section 59-12-1903;

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

252 (v) Section 59-12-2103.

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

- 254 (8) "Alcoholic beverage" means a beverage that:
255 (a) is suitable for human consumption; and
256 (b) contains .5% or more alcohol by volume.
- 257 (9) (a) "Ancillary service" means a service associated with, or incidental to, the
258 provision of telecommunications service.
- 259 (b) "Ancillary service" includes:
260 (i) a conference bridging service;
261 (ii) a detailed communications billing service;
262 (iii) directory assistance;
263 (iv) a vertical service; or
264 (v) a voice mail service.
- 265 (10) "Area agency on aging" is as defined in Section 62A-3-101.
- 266 (11) "Assisted amusement device" means an amusement device, skill device, or ride
267 device that is started and stopped by an individual:
268 (a) who is not the purchaser or renter of the right to use or operate the amusement
269 device, skill device, or ride device; and
270 (b) at the direction of the seller of the right to use the amusement device, skill device,
271 or ride device.
- 272 (12) "Assisted cleaning or washing of tangible personal property" means cleaning or
273 washing of tangible personal property if the cleaning or washing labor is primarily performed
274 by an individual:
275 (a) who is not the purchaser of the cleaning or washing of the tangible personal
276 property; and
277 (b) at the direction of the seller of the cleaning or washing of the tangible personal
278 property.
- 279 (13) "Authorized carrier" means:
280 (a) in the case of vehicles operated over public highways, the holder of credentials
281 indicating that the vehicle is or will be operated pursuant to both the International Registration

282 Plan and the International Fuel Tax Agreement;

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

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

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

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

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

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

292 (B) animal waste;

293 (C) methane produced:

294 (I) at landfills; or

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

296 (D) aquatic plants; and

297 (E) agricultural products.

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

299 (i) black liquor;

300 (ii) treated woods; or

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

302 (A) at landfills; or

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

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

307 (i) distinct and identifiable; and

308 (ii) sold for one nonitemized price.

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

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

313 (ii) the sale of real property;

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

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

316 (A) the tangible personal property:

317 (I) is essential to the use of the service; and

318 (II) is provided exclusively in connection with the service; and

319 (B) the service is the true object of the transaction;

320 (v) the retail sale of two services if:

321 (A) one service is provided that is essential to the use or receipt of a second service;

322 (B) the first service is provided exclusively in connection with the second service; and

323 (C) the second service is the true object of the transaction;

324 (vi) a transaction that includes tangible personal property or a product subject to
325 taxation under this chapter and tangible personal property or a product that is not subject to
326 taxation under this chapter if the:

327 (A) seller's purchase price of the tangible personal property or product subject to
328 taxation under this chapter is de minimis; or

329 (B) seller's sales price of the tangible personal property or product subject to taxation
330 under this chapter is de minimis; and

331 (vii) the retail sale of tangible personal property that is not subject to taxation under
332 this chapter and tangible personal property that is subject to taxation under this chapter if:

333 (A) that retail sale includes:

334 (I) food and food ingredients;

335 (II) a drug;

336 (III) durable medical equipment;

337 (IV) mobility enhancing equipment;

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

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

368 (A) a bill of sale;

369 (B) a contract;

370 (C) an invoice;

371 (D) a lease agreement;

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

373 (F) a price list;

374 (G) a rate card;

375 (H) a receipt; or

376 (I) a service agreement.

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

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

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

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

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

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

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

393 (f) For purposes of Subsection (15)(b)(vii)(B), a seller may not use a combination of

394 the seller's purchase price and the seller's sales price to determine if tangible personal property
395 subject to taxation under this chapter is 50% or less of the seller's total purchase price or sales
396 price of that retail sale.

397 (16) "Certified automated system" means software certified by the governing board of
398 the agreement that:

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

401 (i) on a transaction; and

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

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

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

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

407 (a) by the governing board of the agreement; and

408 (b) to perform all of a seller's sales and use tax functions for an agreement sales and
409 use tax other than the seller's obligation under Section 59-12-124 to remit a tax on the seller's
410 own purchases.

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

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

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

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

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

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

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

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

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

430 (22) "Component part" includes:

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

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

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

436 (d) feed, seeds, and seedlings.

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

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

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

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

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

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

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

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

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

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

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

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

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

455 (i) by a seller of:

456 (A) tangible personal property;

457 (B) a product transferred electronically; or

458 (C) services; and

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

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

463 (i) transportation;

464 (ii) shipping;

465 (iii) postage;

466 (iv) handling;

467 (v) crating; or

468 (vi) packing.

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

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

472 (a) is intended to supplement the diet;

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

474 (i) a vitamin;

475 (ii) a mineral;

476 (iii) an herb or other botanical;

477 (iv) an amino acid;

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

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

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

483 (A) tablet form;

484 (B) capsule form;

485 (C) powder form;

486 (D) softgel form;

487 (E) gelcap form; or

488 (F) liquid form; or

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

491 (A) as conventional food; and

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

493 (I) a meal; or

494 (II) the diet; and

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

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

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

498 (31) (a) "Direct mail" means printed material delivered or distributed by United States
499 mail or other delivery service:

500 (i) to:

501 (A) a mass audience; or

502 (B) addressees on a mailing list provided:

503 (I) by a purchaser of the mailing list; or

504 (II) at the discretion of the 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
507 a 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
- 560 the 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
608 school 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
671 charge 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
683 the 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
698 as 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
- 705 media 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
769 of 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 registered under the agreement that has selected a
778 certified service provider as the seller's agent to perform all of the seller's sales and use tax
779 functions for agreement sales and use taxes other than the seller's obligation under Section
780 59-12-124 to remit a tax on the seller's own purchases.

781 (59) "Model 2 seller" means a seller registered under the agreement 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 registered under
- 789 the agreement that has:
 - 790 (i) sales in at least five states that are members of the agreement;
 - 791 (ii) total annual sales revenues of at least \$500,000,000;
 - 792 (iii) a proprietary system that calculates the amount of tax:
 - 793 (A) for an agreement sales and use tax; and
 - 794 (B) due to each local taxing jurisdiction; and
 - 795 (iv) entered into a performance agreement with the governing board of the agreement.
- 796 (b) For purposes of Subsection (60)(a), "model 3 seller" includes an affiliated group of
- 797 sellers using the same proprietary system.
- 798 (61) "Model 4 seller" means a seller that is registered under the agreement and is not a
- 799 model 1 seller, model 2 seller, or model 3 seller.
- 800 [~~(61)~~] (62) "Modular home" means a modular unit as defined in Section 58-56-3.
- 801 [~~(62)~~] (63) "Motor vehicle" is as defined in Section 41-1a-102.
- 802 [~~(63)~~] (64) "Oil shale" means a group of fine black to dark brown shales containing
- 803 bituminous material that yields petroleum upon distillation.
- 804 [~~(64)~~] (65) (a) "Other fuels" means products that burn independently to produce heat
- 805 or energy.
- 806 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible
- 807 personal property.
- 808 [~~(65)~~] (66) (a) "Paging service" means a telecommunications service that provides
- 809 transmission of a coded radio signal for the purpose of activating a specific pager.
- 810 (b) For purposes of Subsection [~~(65)~~] (66)(a), the transmission of a coded radio signal
- 811 includes a transmission by message or sound.
- 812 [~~(66)~~] (67) "Pawnbroker" is as defined in Section 13-32a-102.
- 813 [~~(67)~~] (68) "Pawn transaction" is as defined in Section 13-32a-102.

814 [~~(68)~~] (69) (a) "Permanently attached to real property" means that for tangible personal
815 property attached to real property:

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

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

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

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

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

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

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

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

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

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

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

832 (iii) property attached to oil, gas, or water pipelines, except for the property listed in
833 Subsection [~~(68)~~] (69)(c)(iii) or (iv).

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

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

837 (A) convenience;

838 (B) stability; or

839 (C) for an obvious temporary purpose;

840 (ii) the detachment of tangible personal property from real property except for the
841 detachment described in Subsection [~~(68)~~] (69)(b)(ii);

842 (iii) an attachment of the following tangible personal property to real property if the
843 attachment to real property is only through a line that supplies water, electricity, gas,
844 telecommunications, cable, or supplies a similar item as determined by the commission by rule
845 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

846 (A) a computer;

847 (B) a telephone;

848 (C) a television; or

849 (D) tangible personal property similar to Subsections [~~68~~] (69)(c)(iii)(A) through (C)
850 as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
851 Administrative Rulemaking Act; or

852 (iv) an item listed in Subsection [~~108~~] (109)(c).

853 [~~69~~] (70) "Person" includes any individual, firm, partnership, joint venture,
854 association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county,
855 city, municipality, district, or other local governmental entity of the state, or any group or
856 combination acting as a unit.

857 [~~70~~] (71) "Place of primary use":

858 (a) for telecommunications service other than mobile telecommunications service,
859 means the street address representative of where the customer's use of the telecommunications
860 service primarily occurs, which shall be:

861 (i) the residential street address of the customer; or

862 (ii) the primary business street address of the customer; or

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

865 [~~71~~] (72) (a) "Postpaid calling service" means a telecommunications service a person
866 obtains by making a payment on a call-by-call basis:

867 (i) through the use of a:

868 (A) bank card;

869 (B) credit card;

870 (C) debit card; or
871 (D) travel card; or
872 (ii) by a charge made to a telephone number that is not associated with the origination
873 or termination of the telecommunications service.

874 (b) "Postpaid calling service" includes a service, except for a prepaid wireless calling
875 service, that would be a prepaid wireless calling service if the service were exclusively a
876 telecommunications service.

877 [~~(72)~~] (73) "Postproduction" means an activity related to the finishing or duplication
878 of a medium described in Subsection 59-12-104(54)(a).

879 [~~(73)~~] (74) "Prepaid calling service" means a telecommunications service:

880 (a) that allows a purchaser access to telecommunications service that is exclusively
881 telecommunications service;

882 (b) that:

883 (i) is paid for in advance; and

884 (ii) enables the origination of a call using an:

885 (A) access number; or

886 (B) authorization code;

887 (c) that is dialed:

888 (i) manually; or

889 (ii) electronically; and

890 (d) sold in predetermined units or dollars that decline:

891 (i) by a known amount; and

892 (ii) with use.

893 [~~(74)~~] (75) "Prepaid wireless calling service" means a telecommunications service:

894 (a) that provides the right to utilize:

895 (i) mobile wireless service; and

896 (ii) other service that is not a telecommunications service, including:

897 (A) the download of a product transferred electronically;

- 898 (B) a content service; or
- 899 (C) an ancillary service;
- 900 (b) that:
- 901 (i) is paid for in advance; and
- 902 (ii) enables the origination of a call using an:
- 903 (A) access number; or
- 904 (B) authorization code;
- 905 (c) that is dialed:
- 906 (i) manually; or
- 907 (ii) electronically; and
- 908 (d) sold in predetermined units or dollars that decline:
- 909 (i) by a known amount; and
- 910 (ii) with use.
- 911 [~~(75)~~] (76) (a) "Prepared food" means:
- 912 (i) food:
- 913 (A) sold in a heated state; or
- 914 (B) heated by a seller;
- 915 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 916 item; or
- 917 (iii) except as provided in Subsection [~~(75)~~] (76)(c), food sold with an eating utensil
- 918 provided by the seller, including a:
- 919 (A) plate;
- 920 (B) knife;
- 921 (C) fork;
- 922 (D) spoon;
- 923 (E) glass;
- 924 (F) cup;
- 925 (G) napkin; or

- 926 (H) straw.
- 927 (b) "Prepared food" does not include:
- 928 (i) food that a seller only:
- 929 (A) cuts;
- 930 (B) repackages; or
- 931 (C) pasteurizes; or
- 932 (ii) (A) the following:
- 933 (I) raw egg;
- 934 (II) raw fish;
- 935 (III) raw meat;
- 936 (IV) raw poultry; or
- 937 (V) a food containing an item described in Subsections [~~(75)~~] (76)(b)(ii)(A)(I) through
- 938 (IV); and
- 939 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 940 Food and Drug Administration's Food Code that a consumer cook the items described in
- 941 Subsection [~~(75)~~] (76)(b)(ii)(A) to prevent food borne illness; or
- 942 (iii) the following if sold without eating utensils provided by the seller:
- 943 (A) food and food ingredients sold by a seller if the seller's proper primary
- 944 classification under the 2002 North American Industry Classification System of the federal
- 945 Executive Office of the President, Office of Management and Budget, is manufacturing in
- 946 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
- 947 Manufacturing;
- 948 (B) food and food ingredients sold in an unheated state:
- 949 (I) by weight or volume; and
- 950 (II) as a single item; or
- 951 (C) a bakery item, including:
- 952 (I) a bagel;
- 953 (II) a bar;

- 954 (III) a biscuit;
- 955 (IV) bread;
- 956 (V) a bun;
- 957 (VI) a cake;
- 958 (VII) a cookie;
- 959 (VIII) a croissant;
- 960 (IX) a danish;
- 961 (X) a donut;
- 962 (XI) a muffin;
- 963 (XII) a pastry;
- 964 (XIII) a pie;
- 965 (XIV) a roll;
- 966 (XV) a tart;
- 967 (XVI) a torte; or
- 968 (XVII) a tortilla.

969 (c) Notwithstanding Subsection [~~(75)~~] (76)(a)(iii), an eating utensil provided by the
970 seller does not include the following used to transport the food:

- 971 (i) a container; or
- 972 (ii) packaging.

973 [~~(76)~~] (77) "Prescription" means an order, formula, or recipe that is issued:

- 974 (a) (i) orally;
- 975 (ii) in writing;
- 976 (iii) electronically; or
- 977 (iv) by any other manner of transmission; and

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

979 [~~(77)~~] (78) (a) Except as provided in Subsection [~~(77)~~] (78)(b)(ii) or (iii), "prewritten
980 computer software" means computer software that is not designed and developed:

- 981 (i) by the author or other creator of the computer software; and

982 (ii) to the specifications of a specific purchaser.

983 (b) "Prewritten computer software" includes:

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

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

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

988 (ii) notwithstanding Subsection [~~(77)~~] (78)(a), computer software designed and
989 developed by the author or other creator of the computer software to the specifications of a
990 specific purchaser if the computer software is sold to a person other than the purchaser; or

991 (iii) notwithstanding Subsection [~~(77)~~] (78)(a) and except as provided in Subsection
992 [~~(77)~~] (78)(c), prewritten computer software or a prewritten portion of prewritten computer
993 software:

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

995 (B) if the modification or enhancement described in Subsection [~~(77)~~] (78)(b)(iii)(A)
996 is designed and developed to the specifications of a specific purchaser.

997 (c) Notwithstanding Subsection [~~(77)~~] (78)(b)(iii), "prewritten computer software"
998 does not include a modification or enhancement described in Subsection [~~(77)~~] (78)(b)(iii) if
999 the charges for the modification or enhancement are:

1000 (i) reasonable; and

1001 (ii) separately stated on the invoice or other statement of price provided to the
1002 purchaser.

1003 [~~(78)~~] (79) (a) "Private communication service" means a telecommunications service:

1004 (i) that entitles a customer to exclusive or priority use of one or more communications
1005 channels between or among termination points; and

1006 (ii) regardless of the manner in which the one or more communications channels are
1007 connected.

1008 (b) "Private communications service" includes the following provided in connection
1009 with the use of one or more communications channels:

- 1010 (i) an extension line;
- 1011 (ii) a station;
- 1012 (iii) switching capacity; or
- 1013 (iv) another associated service that is provided in connection with the use of one or
- 1014 more communications channels as defined in Section 59-12-215.

1015 [~~79~~] (80) (a) "Prosthetic device" means a device that is worn on or in the body to:

- 1016 (i) artificially replace a missing portion of the body;
- 1017 (ii) prevent or correct a physical deformity or physical malfunction; or
- 1018 (iii) support a weak or deformed portion of the body.

1019 (b) "Prosthetic device" includes:

- 1020 (i) parts used in the repairs or renovation of a prosthetic device;
- 1021 (ii) replacement parts for a prosthetic device;
- 1022 (iii) a dental prosthesis; or
- 1023 (iv) a hearing aid.

1024 (c) "Prosthetic device" does not include:

- 1025 (i) corrective eyeglasses; or
- 1026 (ii) contact lenses.

1027 [~~80~~] (81) (a) "Protective equipment" means an item:

- 1028 (i) for human wear; and
- 1029 (ii) that is:
 - 1030 (A) designed as protection:
 - 1031 (I) to the wearer against injury or disease; or
 - 1032 (II) against damage or injury of other persons or property; and
 - 1033 (B) not suitable for general use.

1034 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
1035 the commission shall make rules:

- 1036 (i) listing the items that constitute "protective equipment"; and
- 1037 (ii) that are consistent with the list of items that constitute "protective equipment"

1038 under the agreement.

1039 ~~[(81)]~~ (82) (a) For purposes of Subsection 59-12-104(41), "publication" means any
1040 written or printed matter, other than a photocopy:

1041 (i) regardless of:

1042 (A) characteristics;

1043 (B) copyright;

1044 (C) form;

1045 (D) format;

1046 (E) method of reproduction; or

1047 (F) source; and

1048 (ii) made available in printed or electronic format.

1049 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
1050 the commission may by rule define the term "photocopy."

1051 ~~[(82)]~~ (83) (a) "Purchase price" and "sales price" mean the total amount of
1052 consideration:

1053 (i) valued in money; and

1054 (ii) for which tangible personal property, a product transferred electronically, or
1055 services are:

1056 (A) sold;

1057 (B) leased; or

1058 (C) rented.

1059 (b) "Purchase price" and "sales price" include:

1060 (i) the seller's cost of the tangible personal property, a product transferred
1061 electronically, or services sold;

1062 (ii) expenses of the seller, including:

1063 (A) the cost of materials used;

1064 (B) a labor cost;

1065 (C) a service cost;

- 1066 (D) interest;
- 1067 (E) a loss;
- 1068 (F) the cost of transportation to the seller; or
- 1069 (G) a tax imposed on the seller;
- 1070 (iii) a charge by the seller for any service necessary to complete the sale; or
- 1071 (iv) consideration a seller receives from a person other than the purchaser if:
- 1072 (A) (I) the seller actually receives consideration from a person other than the
- 1073 purchaser; and
- 1074 (II) the consideration described in Subsection [~~82~~] (83)(b)(iv)(A)(I) is directly related
- 1075 to a price reduction or discount on the sale;
- 1076 (B) the seller has an obligation to pass the price reduction or discount through to the
- 1077 purchaser;
- 1078 (C) the amount of the consideration attributable to the sale is fixed and determinable
- 1079 by the seller at the time of the sale to the purchaser; and
- 1080 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the
- 1081 seller to claim a price reduction or discount; and
- 1082 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,
- 1083 coupon, or other documentation with the understanding that the person other than the seller
- 1084 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;
- 1085 (II) the purchaser identifies that purchaser to the seller as a member of a group or
- 1086 organization allowed a price reduction or discount, except that a preferred customer card that
- 1087 is available to any patron of a seller does not constitute membership in a group or organization
- 1088 allowed a price reduction or discount; or
- 1089 (III) the price reduction or discount is identified as a third party price reduction or
- 1090 discount on the:
- 1091 (Aa) invoice the purchaser receives; or
- 1092 (Bb) certificate, coupon, or other documentation the purchaser presents.
- 1093 (c) "Purchase price" and "sales price" do not include:

- 1094 (i) a discount:
- 1095 (A) in a form including:
- 1096 (I) cash;
- 1097 (II) term; or
- 1098 (III) coupon;
- 1099 (B) that is allowed by a seller;
- 1100 (C) taken by a purchaser on a sale; and
- 1101 (D) that is not reimbursed by a third party; or
- 1102 (ii) the following if separately stated on an invoice, bill of sale, or similar document
- 1103 provided to the purchaser:
- 1104 (A) the following from credit extended on the sale of tangible personal property or
- 1105 services:
- 1106 (I) a carrying charge;
- 1107 (II) a financing charge; or
- 1108 (III) an interest charge;
- 1109 (B) a delivery charge;
- 1110 (C) an installation charge;
- 1111 (D) a manufacturer rebate on a motor vehicle; or
- 1112 (E) a tax or fee legally imposed directly on the consumer.
- 1113 [~~(83)~~] (84) "Purchaser" means a person to whom:
- 1114 (a) a sale of tangible personal property is made;
- 1115 (b) a product is transferred electronically; or
- 1116 (c) a service is furnished.
- 1117 [~~(84)~~] (85) "Regularly rented" means:
- 1118 (a) rented to a guest for value three or more times during a calendar year; or
- 1119 (b) advertised or held out to the public as a place that is regularly rented to guests for
- 1120 value.
- 1121 [~~(85)~~] (86) "Renewable energy" means:

1122 (a) biomass energy;

1123 (b) hydroelectric energy;

1124 (c) geothermal energy;

1125 (d) solar energy; or

1126 (e) wind energy.

1127 ~~[(86)]~~ (87) (a) "Renewable energy production facility" means a facility that:

1128 (i) uses renewable energy to produce electricity; and

1129 (ii) has a production capacity of 20 kilowatts or greater.

1130 (b) A facility is a renewable energy production facility regardless of whether the

1131 facility is:

1132 (i) connected to an electric grid; or

1133 (ii) located on the premises of an electricity consumer.

1134 ~~[(87)]~~ (88) "Rental" is as defined in Subsection (48).

1135 ~~[(88)]~~ (89) "Repairs or renovations of tangible personal property" means:

1136 (a) a repair or renovation of tangible personal property that is not permanently

1137 attached to real property; or

1138 (b) attaching tangible personal property or a product that is transferred electronically

1139 to other tangible personal property if the other tangible personal property to which the tangible

1140 personal property or product that is transferred electronically is attached is not permanently

1141 attached to real property.

1142 ~~[(89)]~~ (90) "Research and development" means the process of inquiry or

1143 experimentation aimed at the discovery of facts, devices, technologies, or applications and the

1144 process of preparing those devices, technologies, or applications for marketing.

1145 ~~[(90)]~~ (91) (a) "Residential telecommunications services" means a telecommunications

1146 service or an ancillary service that is provided to an individual for personal use:

1147 (i) at a residential address; or

1148 (ii) at an institution, including a nursing home or a school, if the telecommunications

1149 service or ancillary service is provided to and paid for by the individual residing at the

1150 institution rather than the institution.

1151 (b) For purposes of Subsection [~~90~~] (91)(a), a residential address includes an:

1152 (i) apartment; or

1153 (ii) other individual dwelling unit.

1154 [~~91~~] (92) "Residential use" means the use in or around a home, apartment building,
1155 sleeping quarters, and similar facilities or accommodations.

1156 [~~92~~] (93) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose
1157 other than:

1158 (a) resale;

1159 (b) sublease; or

1160 (c) subrent.

1161 [~~93~~] (94) (a) "Retailer" means any person engaged in a regularly organized business
1162 in tangible personal property or any other taxable transaction under Subsection 59-12-103(1),
1163 and who is selling to the user or consumer and not for resale.

1164 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
1165 engaged in the business of selling to users or consumers within the state.

1166 [~~94~~] (95) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
1167 otherwise, in any manner, of tangible personal property or any other taxable transaction under
1168 Subsection 59-12-103(1), for consideration.

1169 (b) "Sale" includes:

1170 (i) installment and credit sales;

1171 (ii) any closed transaction constituting a sale;

1172 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
1173 chapter;

1174 (iv) any transaction if the possession of property is transferred but the seller retains the
1175 title as security for the payment of the price; and

1176 (v) any transaction under which right to possession, operation, or use of any article of
1177 tangible personal property is granted under a lease or contract and the transfer of possession

1178 would be taxable if an outright sale were made.

1179 ~~[(95)]~~ (96) "Sale at retail" is as defined in Subsection ~~[(92)]~~ (93).

1180 ~~[(96)]~~ (97) "Sale-leaseback transaction" means a transaction by which title to tangible

1181 personal property or a product transferred electronically that is subject to a tax under this

1182 chapter is transferred:

1183 (a) by a purchaser-lessee;

1184 (b) to a lessor;

1185 (c) for consideration; and

1186 (d) if:

1187 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase

1188 of the tangible personal property or product transferred electronically;

1189 (ii) the sale of the tangible personal property or product transferred electronically to

1190 the lessor is intended as a form of financing:

1191 (A) for the tangible personal property or product transferred electronically; and

1192 (B) to the purchaser-lessee; and

1193 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee

1194 is required to:

1195 (A) capitalize the tangible personal property or product transferred electronically for

1196 financial reporting purposes; and

1197 (B) account for the lease payments as payments made under a financing arrangement.

1198 ~~[(97)]~~ (98) "Sales price" is as defined in Subsection ~~[(82)]~~ (83).

1199 ~~[(98)]~~ (99) (a) "Sales relating to schools" means the following sales by, amounts paid

1200 to, or amounts charged by a school:

1201 (i) sales that are directly related to the school's educational functions or activities

1202 including:

1203 (A) the sale of:

1204 (I) textbooks;

1205 (II) textbook fees;

- 1206 (III) laboratory fees;
- 1207 (IV) laboratory supplies; or
- 1208 (V) safety equipment;
- 1209 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
- 1210 that:
- 1211 (I) a student is specifically required to wear as a condition of participation in a
- 1212 school-related event or school-related activity; and
- 1213 (II) is not readily adaptable to general or continued usage to the extent that it takes the
- 1214 place of ordinary clothing;
- 1215 (C) sales of the following if the net or gross revenues generated by the sales are
- 1216 deposited into a school district fund or school fund dedicated to school meals:
- 1217 (I) food and food ingredients; or
- 1218 (II) prepared food; or
- 1219 (D) transportation charges for official school activities; or
- 1220 (ii) amounts paid to or amounts charged by a school for admission to a school-related
- 1221 event or school-related activity.
- 1222 (b) "Sales relating to schools" does not include:
- 1223 (i) bookstore sales of items that are not educational materials or supplies;
- 1224 (ii) except as provided in Subsection [~~98~~] (99)(a)(i)(B):
- 1225 (A) clothing;
- 1226 (B) clothing accessories or equipment;
- 1227 (C) protective equipment; or
- 1228 (D) sports or recreational equipment; or
- 1229 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 1230 event or school-related activity if the amounts paid or charged are passed through to a person:
- 1231 (A) other than a:
- 1232 (I) school;
- 1233 (II) nonprofit organization authorized by a school board or a governing body of a

1234 private school to organize and direct a competitive secondary school activity; or
1235 (III) nonprofit association authorized by a school board or a governing body of a
1236 private school to organize and direct a competitive secondary school activity; and
1237 (B) that is required to collect sales and use taxes under this chapter.
1238 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1239 commission may make rules defining the term "passed through."
1240 [~~99~~] (100) For purposes of this section and Section 59-12-104, "school":
1241 (a) means:
1242 (i) an elementary school or a secondary school that:
1243 (A) is a:
1244 (I) public school; or
1245 (II) private school; and
1246 (B) provides instruction for one or more grades kindergarten through 12; or
1247 (ii) a public school district; and
1248 (b) includes the Electronic High School as defined in Section 53A-15-1002.
1249 [~~100~~] (101) "Seller" means a person that makes a sale, lease, or rental of:
1250 (a) tangible personal property;
1251 (b) a product transferred electronically; or
1252 (c) a service.
1253 [~~101~~] (102) (a) "Semiconductor fabricating, processing, research, or development
1254 materials" means tangible personal property or a product transferred electronically if the
1255 tangible personal property or product transferred electronically is:
1256 (i) used primarily in the process of:
1257 (A) (I) manufacturing a semiconductor;
1258 (II) fabricating a semiconductor; or
1259 (III) research or development of a:
1260 (Aa) semiconductor; or
1261 (Bb) semiconductor manufacturing process; or

- 1262 (B) maintaining an environment suitable for a semiconductor; or
- 1263 (ii) consumed primarily in the process of:
- 1264 (A) (I) manufacturing a semiconductor;
- 1265 (II) fabricating a semiconductor; or
- 1266 (III) research or development of a:
- 1267 (Aa) semiconductor; or
- 1268 (Bb) semiconductor manufacturing process; or
- 1269 (B) maintaining an environment suitable for a semiconductor.
- 1270 (b) "Semiconductor fabricating, processing, research, or development materials"
- 1271 includes:
- 1272 (i) parts used in the repairs or renovations of tangible personal property or a product
- 1273 transferred electronically described in Subsection [~~(101)~~] (102)(a); or
- 1274 (ii) a chemical, catalyst, or other material used to:
- 1275 (A) produce or induce in a semiconductor a:
- 1276 (I) chemical change; or
- 1277 (II) physical change;
- 1278 (B) remove impurities from a semiconductor; or
- 1279 (C) improve the marketable condition of a semiconductor.
- 1280 [~~(102)~~] (103) "Senior citizen center" means a facility having the primary purpose of
- 1281 providing services to the aged as defined in Section 62A-3-101.
- 1282 [~~(103)~~] (104) "Simplified electronic return" means the electronic return:
- 1283 (a) described in Section 318(C) of the agreement; and
- 1284 (b) approved by the governing board of the agreement.
- 1285 [~~(104)~~] (105) "Solar energy" means the sun used as the sole source of energy for
- 1286 producing electricity.
- 1287 [~~(105)~~] (106) (a) "Sports or recreational equipment" means an item:
- 1288 (i) designed for human use; and
- 1289 (ii) that is:

- 1290 (A) worn in conjunction with:
- 1291 (I) an athletic activity; or
- 1292 (II) a recreational activity; and
- 1293 (B) not suitable for general use.
- 1294 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
- 1295 the commission shall make rules:
- 1296 (i) listing the items that constitute "sports or recreational equipment"; and
- 1297 (ii) that are consistent with the list of items that constitute "sports or recreational
- 1298 equipment" under the agreement.
- 1299 [~~(106)~~] (107) "State" means the state of Utah, its departments, and agencies.
- 1300 [~~(107)~~] (108) "Storage" means any keeping or retention of tangible personal property
- 1301 or any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose
- 1302 except sale in the regular course of business.
- 1303 [~~(108)~~] (109) (a) Except as provided in Subsection [~~(108)~~] (109) (d) or (e), "tangible
- 1304 personal property" means personal property that:
- 1305 (i) may be:
- 1306 (A) seen;
- 1307 (B) weighed;
- 1308 (C) measured;
- 1309 (D) felt; or
- 1310 (E) touched; or
- 1311 (ii) is in any manner perceptible to the senses.
- 1312 (b) "Tangible personal property" includes:
- 1313 (i) electricity;
- 1314 (ii) water;
- 1315 (iii) gas;
- 1316 (iv) steam; or
- 1317 (v) prewritten computer software.

1318 (c) "Tangible personal property" includes the following regardless of whether the item
1319 is attached to real property:

1320 (i) a dishwasher;

1321 (ii) a dryer;

1322 (iii) a freezer;

1323 (iv) a microwave;

1324 (v) a refrigerator;

1325 (vi) a stove;

1326 (vii) a washer; or

1327 (viii) an item similar to Subsections [~~(108)~~] (109)(c)(i) through (vii) as determined by
1328 the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1329 Rulemaking Act.

1330 (d) "Tangible personal property" does not include a product that is transferred
1331 electronically.

1332 (e) "Tangible personal property" does not include the following if attached to real
1333 property, regardless of whether the attachment to real property is only through a line that
1334 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by
1335 the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1336 Rulemaking Act:

1337 (i) a hot water heater;

1338 (ii) a water filtration system; or

1339 (iii) a water softener system.

1340 [~~(109)~~] (110) "Tar sands" means impregnated sands that yield mixtures of liquid
1341 hydrocarbon and require further processing other than mechanical blending before becoming
1342 finished petroleum products.

1343 [~~(110)~~] (111) (a) "Telecommunications enabling or facilitating equipment, machinery,
1344 or software" means an item listed in Subsection [~~(110)~~] (111)(b) if that item is purchased or
1345 leased primarily to enable or facilitate one or more of the following to function:

- 1346 (i) telecommunications switching or routing equipment, machinery, or software; or
- 1347 (ii) telecommunications transmission equipment, machinery, or software.

1348 (b) The following apply to Subsection [~~(110)~~] (111)(a):

- 1349 (i) a pole;
- 1350 (ii) software;
- 1351 (iii) a supplementary power supply;
- 1352 (iv) temperature or environmental equipment or machinery;
- 1353 (v) test equipment;
- 1354 (vi) a tower; or
- 1355 (vii) equipment, machinery, or software that functions similarly to an item listed in
- 1356 Subsections [~~(110)~~] (111)(b)(i) through (vi) as determined by the commission by rule made in
- 1357 accordance with Subsection [~~(110)~~] (111)(c).

1358 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1359 commission may by rule define what constitutes equipment, machinery, or software that

1360 functions similarly to an item listed in Subsections [~~(110)~~] (111)(b)(i) through (vi).

1361 [~~(111)~~] (112) "Telecommunications equipment, machinery, or software required for

1362 911 service" means equipment, machinery, or software that is required to comply with 47

1363 C.F.R. Sec. 20.18.

1364 [~~(112)~~] (113) "Telecommunications maintenance or repair equipment, machinery, or

1365 software" means equipment, machinery, or software purchased or leased primarily to maintain

1366 or repair one or more of the following, regardless of whether the equipment, machinery, or

1367 software is purchased or leased as a spare part or as an upgrade or modification to one or more

1368 of the following:

- 1369 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 1370 (b) telecommunications switching or routing equipment, machinery, or software; or
- 1371 (c) telecommunications transmission equipment, machinery, or software.

1372 [~~(113)~~] (114) (a) "Telecommunications service" means the electronic conveyance,

1373 routing, or transmission of audio, data, video, voice, or any other information or signal to a

- 1374 point, or among or between points.
- 1375 (b) "Telecommunications service" includes:
- 1376 (i) an electronic conveyance, routing, or transmission with respect to which a
- 1377 computer processing application is used to act:
- 1378 (A) on the code, form, or protocol of the content;
- 1379 (B) for the purpose of electronic conveyance, routing, or transmission; and
- 1380 (C) regardless of whether the service:
- 1381 (I) is referred to as voice over Internet protocol service; or
- 1382 (II) is classified by the Federal Communications Commission as enhanced or value
- 1383 added;
- 1384 (ii) an 800 service;
- 1385 (iii) a 900 service;
- 1386 (iv) a fixed wireless service;
- 1387 (v) a mobile wireless service;
- 1388 (vi) a postpaid calling service;
- 1389 (vii) a prepaid calling service;
- 1390 (viii) a prepaid wireless calling service; or
- 1391 (ix) a private communications service.
- 1392 (c) "Telecommunications service" does not include:
- 1393 (i) advertising, including directory advertising;
- 1394 (ii) an ancillary service;
- 1395 (iii) a billing and collection service provided to a third party;
- 1396 (iv) a data processing and information service if:
- 1397 (A) the data processing and information service allows data to be:
- 1398 (I) (Aa) acquired;
- 1399 (Bb) generated;
- 1400 (Cc) processed;
- 1401 (Dd) retrieved; or

- 1402 (Ee) stored; and
- 1403 (II) delivered by an electronic transmission to a purchaser; and
- 1404 (B) the purchaser's primary purpose for the underlying transaction is the processed
- 1405 data or information;
- 1406 (v) installation or maintenance of the following on a customer's premises:
- 1407 (A) equipment; or
- 1408 (B) wiring;
- 1409 (vi) Internet access service;
- 1410 (vii) a paging service;
- 1411 (viii) a product transferred electronically, including:
- 1412 (A) music;
- 1413 (B) reading material;
- 1414 (C) a ring tone;
- 1415 (D) software; or
- 1416 (E) video;
- 1417 (ix) a radio and television audio and video programming service:
- 1418 (A) regardless of the medium; and
- 1419 (B) including:
- 1420 (I) furnishing conveyance, routing, or transmission of a television audio and video
- 1421 programming service by a programming service provider;
- 1422 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
- 1423 (III) audio and video programming services delivered by a commercial mobile radio
- 1424 service provider as defined in 47 C.F.R. Sec. 20.3;
- 1425 (x) a value-added nonvoice data service; or
- 1426 (xi) tangible personal property.
- 1427 [~~(114)~~] (115) (a) "Telecommunications service provider" means a person that:
- 1428 (i) owns, controls, operates, or manages a telecommunications service; and
- 1429 (ii) engages in an activity described in Subsection [~~(114)~~] (115)(a)(i) for the shared

1430 use with or resale to any person of the telecommunications service.

1431 (b) A person described in Subsection [~~(114)~~] (115)(a) is a telecommunications service
1432 provider whether or not the Public Service Commission of Utah regulates:

1433 (i) that person; or

1434 (ii) the telecommunications service that the person owns, controls, operates, or
1435 manages.

1436 [~~(115)~~] (116) (a) "Telecommunications switching or routing equipment, machinery, or
1437 software" means an item listed in Subsection [~~(115)~~] (116)(b) if that item is purchased or
1438 leased primarily for switching or routing:

1439 (i) an ancillary service;

1440 (ii) data communications;

1441 (iii) voice communications; or

1442 (iv) telecommunications service.

1443 (b) The following apply to Subsection [~~(115)~~] (116)(a):

1444 (i) a bridge;

1445 (ii) a computer;

1446 (iii) a cross connect;

1447 (iv) a modem;

1448 (v) a multiplexer;

1449 (vi) plug in circuitry;

1450 (vii) a router;

1451 (viii) software;

1452 (ix) a switch; or

1453 (x) equipment, machinery, or software that functions similarly to an item listed in

1454 Subsections [~~(115)~~] (116)(b)(i) through (ix) as determined by the commission by rule made in
1455 accordance with Subsection [~~(115)~~] (116)(c).

1456 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1457 commission may by rule define what constitutes equipment, machinery, or software that

- 1458 functions similarly to an item listed in Subsections [~~(115)~~] (116)(b)(i) through (ix).
- 1459 [~~(116)~~] (117) (a) "Telecommunications transmission equipment, machinery, or
- 1460 software" means an item listed in Subsection [~~(116)~~] (117)(b) if that item is purchased or
- 1461 leased primarily for sending, receiving, or transporting:
- 1462 (i) an ancillary service;
 - 1463 (ii) data communications;
 - 1464 (iii) voice communications; or
 - 1465 (iv) telecommunications service.
- 1466 (b) The following apply to Subsection [~~(116)~~] (117)(a):
- 1467 (i) an amplifier;
 - 1468 (ii) a cable;
 - 1469 (iii) a closure;
 - 1470 (iv) a conduit;
 - 1471 (v) a controller;
 - 1472 (vi) a duplexer;
 - 1473 (vii) a filter;
 - 1474 (viii) an input device;
 - 1475 (ix) an input/output device;
 - 1476 (x) an insulator;
 - 1477 (xi) microwave machinery or equipment;
 - 1478 (xii) an oscillator;
 - 1479 (xiii) an output device;
 - 1480 (xiv) a pedestal;
 - 1481 (xv) a power converter;
 - 1482 (xvi) a power supply;
 - 1483 (xvii) a radio channel;
 - 1484 (xviii) a radio receiver;
 - 1485 (xix) a radio transmitter;

1486 (xx) a repeater;
1487 (xxi) software;
1488 (xxii) a terminal;
1489 (xxiii) a timing unit;
1490 (xxiv) a transformer;
1491 (xxv) a wire; or
1492 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
1493 Subsections [~~(H6)~~] (117)(b)(i) through (xxv) as determined by the commission by rule made
1494 in accordance with Subsection [~~(H6)~~] (117)(c).

1495 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1496 commission may by rule define what constitutes equipment, machinery, or software that
1497 functions similarly to an item listed in Subsections [~~(H6)~~] (117)(b)(i) through (xxv).

1498 [~~(H7)~~] (118) "Tobacco" means:

- 1499 (a) a cigarette;
- 1500 (b) a cigar;
- 1501 (c) chewing tobacco;
- 1502 (d) pipe tobacco; or
- 1503 (e) any other item that contains tobacco.

1504 [~~(H8)~~] (119) "Unassisted amusement device" means an amusement device, skill
1505 device, or ride device that is started and stopped by the purchaser or renter of the right to use
1506 or operate the amusement device, skill device, or ride device.

1507 [~~(H9)~~] (120) (a) "Use" means the exercise of any right or power over tangible
1508 personal property, a product transferred electronically, or a service under Subsection
1509 59-12-103(1), incident to the ownership or the leasing of that tangible personal property,
1510 product transferred electronically, or service.

1511 (b) "Use" does not include the sale, display, demonstration, or trial of tangible
1512 personal property, a product transferred electronically, or a service in the regular course of
1513 business and held for resale.

1514 [~~(120)~~] (121) "Value-added nonvoice data service" means a service:

1515 (a) that otherwise meets the definition of a telecommunications service except that a
1516 computer processing application is used to act primarily for a purpose other than conveyance,
1517 routing, or transmission; and

1518 (b) with respect to which a computer processing application is used to act on data or
1519 information:

- 1520 (i) code;
- 1521 (ii) content;
- 1522 (iii) form; or
- 1523 (iv) protocol.

1524 [~~(121)~~] (122) (a) Subject to Subsection [~~(121)~~] (122)(b), "vehicle" means the
1525 following that are required to be titled, registered, or titled and registered:

- 1526 (i) an aircraft as defined in Section 72-10-102;
- 1527 (ii) a vehicle as defined in Section 41-1a-102;
- 1528 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1529 (iv) a vessel as defined in Section 41-1a-102.

1530 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

- 1531 (i) a vehicle described in Subsection [~~(121)~~] (122)(a); or
- 1532 (ii) (A) a locomotive;
- 1533 (B) a freight car;
- 1534 (C) railroad work equipment; or
- 1535 (D) other railroad rolling stock.

1536 [~~(122)~~] (123) "Vehicle dealer" means a person engaged in the business of buying,
1537 selling, or exchanging a vehicle as defined in Subsection [~~(121)~~] (122).

1538 [~~(123)~~] (124) (a) "Vertical service" means an ancillary service that:

- 1539 (i) is offered in connection with one or more telecommunications services; and
- 1540 (ii) offers an advanced calling feature that allows a customer to:
1541 (A) identify a caller; and

1542 (B) manage multiple calls and call connections.

1543 (b) "Vertical service" includes an ancillary service that allows a customer to manage a
1544 conference bridging service.

1545 ~~[(124)]~~ (125) (a) "Voice mail service" means an ancillary service that enables a
1546 customer to receive, send, or store a recorded message.

1547 (b) "Voice mail service" does not include a vertical service that a customer is required
1548 to have in order to utilize a voice mail service.

1549 ~~[(125)]~~ (126) (a) Except as provided in Subsection ~~[(125)]~~ (126)(b), "waste energy
1550 facility" means a facility that generates electricity:

1551 (i) using as the primary source of energy waste materials that would be placed in a
1552 landfill or refuse pit if it were not used to generate electricity, including:

1553 (A) tires;

1554 (B) waste coal; or

1555 (C) oil shale; and

1556 (ii) in amounts greater than actually required for the operation of the facility.

1557 (b) "Waste energy facility" does not include a facility that incinerates:

1558 (i) municipal solid waste;

1559 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or

1560 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1561 ~~[(126)]~~ (127) "Watercraft" means a vessel as defined in Section 73-18-2.

1562 ~~[(127)]~~ (128) "Wind energy" means wind used as the sole source of energy to produce
1563 electricity.

1564 ~~[(128)]~~ (129) "ZIP Code" means a Zoning Improvement Plan Code assigned to a
1565 geographic location by the United States Postal Service.

1566 Section 4. Section **59-12-123** is amended to read:

1567 **59-12-123. Definitions -- Collection, remittance, and payment of a tax on direct**
1568 **mail.**

1569 (1) As used in this section:

1570 (a) "Advertising and promotional direct mail" means printed material:
 1571 (i) that meets the definition of direct mail under Section 59-12-102; and
 1572 (ii) if the primary purpose of the printed material is to:
 1573 (A) attract public attention to a business, organization, person, or product; or
 1574 (B) attempt to popularize, secure, or sell financial support for a business, organization,
 1575 person, or product.

1576 (b) For purposes of Subsection (1)(a), "product" means:

- 1577 (i) tangible personal property;
- 1578 (ii) a product transferred electronically; or
- 1579 (iii) a service.

1580 [(+) (2) Notwithstanding Section 59-12-107 and except as provided in Subsection
 1581 [(6) (7), a purchaser of advertising and promotional direct mail [~~that is not a holder of a direct~~
 1582 ~~payment permit under Section 59-12-107.1 shall] may provide to a seller at the time of a
 1583 transaction:~~

- 1584 (a) a form:
 - 1585 (i) prescribed by the commission; and
 - 1586 (ii) indicating that the transaction is a direct mail transaction; [~~or~~]
- 1587 (b) an agreement certificate of exemption indicating that the transaction is a direct
 1588 mail transaction;

1589 (c) a direct payment permit under Section 59-12-107.1; or

1590 [(b) (d) information that indicates the locations of the recipients to which the
 1591 advertising and promotional direct mail is delivered.

1592 [(2) (3) If a seller receives a form, certificate, or permit described in Subsection
 1593 [(+)(a);] (2)(a), (b), or (c) from a purchaser:

1594 (a) if the seller acts in the absence of bad faith, the seller:

1595 [(a) (i) is not liable to collect or remit [~~an~~] agreement sales and use tax for that
 1596 transaction; and

1597 [(b) (ii) shall keep a record of the form, certificate, or permit described in Subsection

1598 ~~[(1)(a)]~~ (2)(a), (b), or (c) for three years ~~[from]~~ after the date the seller files a return with the
 1599 commission reporting that transaction~~[-]; and~~

1600 ~~[(3) The]~~ (b) the purchaser that provides the form, certificate, or permit described in
 1601 Subsection ~~[(1)]~~ (2)(a), (b), or (c) shall:

1602 ~~[(a)]~~ (i) determine the amount of ~~[an]~~ agreement sales and use tax due on the
 1603 transaction ~~[in accordance with Sections 59-12-211 and 59-12-212]~~ in the location where the
 1604 advertising and promotional direct mail is delivered; and

1605 ~~[(b)]~~ (ii) report and remit to the commission the ~~[agreement sales and use tax due on~~
 1606 ~~the transaction]~~ amount described in Subsection (3)(b)(i) in accordance with Section
 1607 59-12-107.

1608 (4) ~~[The]~~ A form or certificate described in Subsection ~~[(1)(a)]~~ (2)(a) or (b) is in effect
 1609 for all transactions between the seller described in Subsection ~~[(2)(a)]~~ (3) and the purchaser
 1610 described in Subsection ~~[(1)]~~ (3):

1611 (a) beginning ~~[when]~~ on the date the seller receives the form or certificate in
 1612 accordance with Subsection (2)(a) or (b); and

1613 (b) ending ~~[when]~~ on the date the purchaser revokes the form or certificate in writing.

1614 (5) (a) If a seller receives the information described in Subsection ~~[(1)(b)]~~ (2)(d) from
 1615 a purchaser that indicates the locations of the recipients to which the advertising and
 1616 promotional direct mail is delivered, the seller shall collect and remit agreement sales and use
 1617 tax to the commission in accordance with the information the purchaser provides.

1618 (b) If a seller collects and remits ~~[an]~~ agreement sales and use tax to the commission in
 1619 accordance with Subsection (5)(a), the seller is not liable for any further obligation to collect
 1620 or remit ~~[an]~~ agreement sales and use tax to the commission on the transaction unless the seller
 1621 acts in bad faith.

1622 ~~[(6) If a purchaser of direct mail provides a seller with a direct payment permit in~~
 1623 ~~accordance with Section 59-12-107.1, the purchaser may not be required to provide to the~~
 1624 ~~seller:]~~

1625 ~~[(a) the form required by Subsection (1)(a); or]~~

1626 ~~[(b) the information required by Subsection (1)(b).]~~
1627 ~~[(7) A seller shall collect and remit an agreement sales and use tax in accordance with~~
1628 ~~Section 59-12-107 if a purchaser of direct mail does not provide the seller with:]~~
1629 ~~[(a) a direct payment permit in accordance with Section 59-12-107.1; or]~~
1630 ~~[(b) the:]~~
1631 ~~[(i) form required by Subsection (1)(a); or]~~
1632 ~~[(ii) information required by Subsection (1)(b).]~~
1633 (6) If a purchaser of advertising and promotional direct mail described in Subsection
1634 (2) does not provide the seller with the form, certificate, permit, or information described in
1635 Subsection (2) at the time of the transaction, the seller shall:
1636 (a) determine the amount of agreement sales and use tax due on the transaction in
1637 accordance with Subsection 59-12-211(6); and
1638 (b) collect and remit to the commission the amount described in Subsection (6)(a) in
1639 accordance with Section 59-12-107.
1640 (7) (a) Except as provided in Subsection (7)(b), this Subsection (7) applies to direct
1641 mail if the direct mail is delivered or distributed:
1642 (i) from a location within the state; and
1643 (ii) to a location within the state.
1644 (b) A purchaser of direct mail may provide a seller with:
1645 (i) a form:
1646 (A) prescribed by the commission; and
1647 (B) indicating that the transaction is a direct mail transaction;
1648 (ii) an agreement certificate of exemption indicating that the transaction is a direct
1649 mail transaction; or
1650 (iii) a direct payment permit under Section 59-12-107.1.
1651 (c) If a seller receives a form, certificate, or permit described in Subsection (7)(b) from
1652 a purchaser:
1653 (i) if the seller acts in the absence of bad faith, the seller:

1654 (A) is not liable to collect or remit agreement sales and use tax for that transaction;

1655 and

1656 (B) shall keep a record of the form, certificate, or permit described in Subsection
1657 (7)(b) for three years after the date the seller files a return with the commission reporting the
1658 transaction; and

1659 (ii) the purchaser that provides the form, certificate, or permit described in Subsection
1660 (7)(b) shall:

1661 (A) determine the amount of agreement sales and use tax due on the transaction in
1662 accordance with Section 59-12-211.1; and

1663 (B) report and remit to the commission the amount described in Subsection
1664 (7)(c)(ii)(A) in accordance with Section 59-12-107.

1665 (d) Except as provided in Subsection (7)(f), if a purchaser of direct mail described in
1666 Subsection (7)(b) does not provide the seller with the form, certificate, or permit described in
1667 Subsection (7)(b) at the time of the transaction, the seller shall:

1668 (i) determine the amount of agreement sales and use tax due on the transaction in
1669 accordance with Subsection 59-12-211(6);

1670 (ii) collect and remit to the commission the amount described in Subsection (7)(d)(i)
1671 in accordance with Section 59-12-107; and

1672 (iii) is not liable for any additional sales and use tax under this chapter.

1673 (e) If a seller knows that direct mail will be delivered or distributed to a location in
1674 another state, the seller shall:

1675 (i) determine the amount of agreement sales and use tax due on the transaction in
1676 accordance with Subsection (5); and

1677 (ii) collect and remit to the commission the amount described in Subsection (7)(e)(i)
1678 in accordance with Section 59-12-107.

1679 (f) A seller may:

1680 (i) elect to determine the amount of agreement sales and use tax due on the sale of
1681 advertising and promotional direct mail in accordance with Subsection (5) or (6); and

1682 (ii) collect and remit to the commission the amount described in Subsection (7)(f)(i) in
1683 accordance with Section 59-12-107.

1684 (8) A form, certificate, or permit described in Subsection (7)(b) is in effect for all
1685 transactions between a seller and a purchaser:

1686 (a) beginning on the date the seller receives the form, certificate, or permit in
1687 accordance with Subsection (7)(b); and

1688 (b) ending on the date the purchaser revokes the form, certificate, or permit in writing.

1689 (9) This section applies to:

1690 (a) a transaction that is a sale of a service only if the service is an integral part of the
1691 production and distribution of direct mail; or

1692 (b) a bundled transaction that includes advertising and promotional direct mail only if
1693 the primary purpose of the transaction is the sale of tangible personal property, a product
1694 transferred electronically, or a service that is advertising and promotional direct mail.

1695 (10) This section does not apply to a transaction that includes:

1696 (a) the development of billing information; or

1697 (b) the provision of any data processing service that is more than incidental regardless
1698 of whether advertising and promotional direct mail is included in the same mailing.

1699 Section 5. Section **59-12-211** is amended to read:

1700 **59-12-211. Definitions -- Location of certain transactions -- Reports to**
1701 **commission -- Direct payment provision for a seller making certain purchases --**
1702 **Exceptions.**

1703 (1) As used in this section:

1704 (a) (i) "Receipt" and "receive" mean:

1705 (A) taking possession of tangible personal property;

1706 (B) making first use of a service; or

1707 (C) for a product transferred electronically, the earlier of:

1708 (I) taking possession of the product transferred electronically; or

1709 (II) making first use of the product transferred electronically.

- 1710 (ii) "Receipt" and "receive" do not include possession by a shipping company on
1711 behalf of a purchaser.
- 1712 (b) "Transportation equipment" means:
- 1713 (i) a locomotive or rail car that is used to carry a person or property in interstate
1714 commerce;
- 1715 (ii) a truck or truck-tractor:
- 1716 (A) with a gross vehicle weight rating of 10,001 pounds or more;
- 1717 (B) registered under Section 41-1a-301; and
- 1718 (C) operated under the authority of a carrier authorized and certificated:
- 1719 (I) by the United States Department of Transportation or another federal authority; and
- 1720 (II) to engage in carrying a person or property in interstate commerce;
- 1721 (iii) a trailer, semitrailer, or passenger bus that is:
- 1722 (A) registered under Section 41-1a-301; and
- 1723 (B) operated under the authority of a carrier authorized and certificated:
- 1724 (I) by the United States Department of Transportation or another federal authority; and
- 1725 (II) to engage in carrying a person or property in interstate commerce;
- 1726 (iv) an aircraft that is operated by an air carrier authorized and certificated:
- 1727 (A) by the United States Department of Transportation or another federal or foreign
1728 authority; and
- 1729 (B) to engage in carrying a person or property in interstate commerce; or
- 1730 (v) a container designed for use on, or a component part attached or secured on an
1731 item of equipment listed in, Subsections (1)(b)(i) through (iv).
- 1732 (2) Except as provided in Subsections (8) and (13), if tangible personal property, a
1733 product transferred electronically, or a service that is subject to taxation under this chapter is
1734 received by a purchaser at a business location of a seller, the location of the transaction is the
1735 business location of the seller.
- 1736 (3) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9),
1737 (11), and (13), if tangible personal property, a product transferred electronically, or a service

1738 that is subject to taxation under this chapter is not received by a purchaser at a business
1739 location of a seller, the location of the transaction is the location where the purchaser takes
1740 receipt of the tangible personal property or service.

1741 (4) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9),
1742 (11), and (13), if Subsection (2) or (3) does not apply, the location of the transaction is the
1743 location indicated by an address for or other information on the purchaser if:

1744 (a) the address or other information is available from the seller's business records; and

1745 (b) use of the address or other information from the seller's records does not constitute
1746 bad faith.

1747 (5) (a) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9),
1748 (11), and (13), if Subsection (2), (3), or (4) does not apply, the location of the transaction is
1749 the location indicated by an address for the purchaser if:

1750 (i) the address is obtained during the consummation of the transaction; and

1751 (ii) use of the address described in Subsection (5)(a)(i) does not constitute bad faith.

1752 (b) An address used under Subsection (5)(a) includes the address of a purchaser's
1753 payment instrument if no other address is available.

1754 (6) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9),
1755 (11), and (13), if Subsection (2), (3), (4), or (5) does not apply or if a seller does not have
1756 sufficient information to apply Subsection (2), (3), (4), or (5), the location of the transaction is
1757 the location indicated by the address from which:

1758 (a) except as provided in Subsection (6)(b), for tangible personal property that is
1759 subject to taxation under this chapter, the tangible personal property is shipped;

1760 (b) for computer software delivered electronically or for a product transferred
1761 electronically that is subject to taxation under this chapter, the computer software or product
1762 transferred electronically is first available for transmission by the seller; or

1763 (c) for a service that is subject to taxation under this chapter, the service is provided.

1764 (7) (a) For purposes of this Subsection (7), "shared ZIP Code" means a nine-digit ZIP
1765 Code that is located within two or more local taxing jurisdictions.

1766 (b) If the location of a transaction determined under Subsections (3) through (6) is in a
1767 shared ZIP Code, the location of the transaction is:

1768 (i) if there is only one local taxing jurisdiction that imposes the lowest agreement
1769 combined tax rate for the shared ZIP Code, the local taxing jurisdiction that imposes the
1770 lowest agreement combined tax rate; or

1771 (ii) if two or more local taxing jurisdictions impose the lowest agreement combined
1772 tax rate for the shared ZIP Code, the local taxing jurisdiction that:

1773 (A) imposes the lowest agreement combined tax rate for the shared ZIP Code; and

1774 (B) has located within the local taxing jurisdiction the largest number of street
1775 addresses within the shared ZIP Code.

1776 (c) ~~[For]~~ Notwithstanding any provision under this chapter authorizing or requiring
1777 the imposition of a sales and use tax, for purposes of Subsection (7)(b), a seller shall collect a
1778 sales and use tax imposed under this chapter at the lowest agreement combined tax rate
1779 imposed within the local taxing jurisdiction in which the transaction is located under
1780 Subsection (7)(b) [notwithstanding].

1781 [~~(i) Section 59-12-204;~~]

1782 [~~(ii) Section 59-12-401;~~]

1783 [~~(iii) Section 59-12-402;~~]

1784 [~~(iv) Section 59-12-501;~~]

1785 [~~(v) Section 59-12-502;~~]

1786 [~~(vi) Section 59-12-703;~~]

1787 [~~(vii) Section 59-12-802;~~]

1788 [~~(viii) Section 59-12-804;~~]

1789 [~~(ix) Section 59-12-1001;~~]

1790 [~~(x) Section 59-12-1102;~~]

1791 [~~(xi) Section 59-12-1302;~~]

1792 [~~(xii) Section 59-12-1402;~~]

1793 [~~(xiii) Section 59-12-1503;~~]

1794 [~~(xiv) Section 59-12-1703; or~~]

1795 [~~(xv) Section 59-12-1802;~~]

1796 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
1797 the commission may make rules:

1798 (i) providing for the circumstances under which a seller has exercised due diligence in
1799 determining the nine-digit ZIP Code for an address; or

1800 (ii) notwithstanding Subsection (7)(b), for determining the local taxing jurisdiction
1801 within which a transaction is located if a seller is unable to determine the local taxing
1802 jurisdiction within which the transaction is located under Subsection (7)(b).

1803 (8) The location of a transaction made with a direct payment permit described in
1804 Section 59-12-107.1 is the location where receipt of the tangible personal property, product, or
1805 service by the purchaser occurs.

1806 (9) The location of a purchase of direct mail is the location [~~described in Subsection~~
1807 ~~(6), if the purchaser of the direct mail;~~ determined in accordance with Section 59-12-123.

1808 [~~(a) has not been issued a direct payment permit under Section 59-12-107.1; and]~~

1809 [~~(b) does not provide the seller the form or information described in Subsection~~
1810 ~~59-12-123(1).~~]

1811 (10) (a) Except as provided in Subsection (10)(b), the location of a transaction
1812 determined under Subsections (3) through (6), (8), or (9), is the local taxing jurisdiction within
1813 which:

1814 (i) the nine-digit ZIP Code assigned to the location determined under Subsections (3)
1815 through (6), (8), or (9) is located; or

1816 (ii) the five-digit ZIP Code assigned to the location determined under Subsections (3)
1817 through (6), (8), or (9) is located if:

1818 (A) a nine-digit ZIP Code is not available for the location determined under
1819 Subsections (3) through (6), (8), or (9); or

1820 (B) after exercising due diligence, a seller or certified service provider is unable to
1821 determine a nine-digit ZIP Code for the location determined under Subsections (3) through

1822 (6), (8), or (9).

1823 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
1824 the commission may make rules for determining the local taxing jurisdiction within which a
1825 transaction is located if a seller or certified service provider is unable to determine the local
1826 taxing jurisdiction within which the transaction is located under Subsection (10)(a).

1827 (11) (a) As used in this Subsection (11), "florist delivery transaction" means a
1828 transaction commenced by a florist that transmits an order:

1829 (i) by:

1830 (A) telegraph;

1831 (B) telephone; or

1832 (C) a means of communication similar to Subsection (11)(a)(i)(A) or (B); and

1833 (ii) for delivery to another place:

1834 (A) in this state; or

1835 (B) outside this state.

1836 (b) Notwithstanding Subsections (3) through (6), beginning on January 1, 2009, and
1837 ending on December 31, 2009, the location of a florist delivery transaction is the business
1838 location of the florist that commences the florist delivery transaction.

1839 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1840 commission may by rule:

1841 (i) define:

1842 (A) "business location"; and

1843 (B) "florist";

1844 (ii) define what constitutes a means of communication similar to Subsection

1845 (11)(a)(i)(A) or (B); and

1846 (iii) provide procedures for determining when a transaction is commenced.

1847 (12) (a) A tax collected under this chapter shall be reported to the commission on a
1848 form that identifies the location of each transaction that occurs during the return filing period.

1849 (b) The form described in Subsection (12)(a) shall be filed with the commission as

1850 required under this chapter.

1851 (13) This section does not apply to:

1852 (a) amounts charged by a seller for:

1853 (i) telecommunications service; or

1854 (ii) the retail sale or transfer of:

1855 (A) a motor vehicle other than a motor vehicle that is transportation equipment;

1856 (B) an aircraft other than an aircraft that is transportation equipment;

1857 (C) a watercraft;

1858 (D) a modular home;

1859 (E) a manufactured home; or

1860 (F) a mobile home; or

1861 (iii) except as provided in Section 59-12-214, the lease or rental of tangible personal

1862 property other than tangible personal property that is transportation equipment;

1863 (b) a tax ~~[paid under this chapter:]~~ a person pays in accordance with Subsection

1864 59-12-107(1)(d); or

1865 ~~[(i) by a seller; and]~~

1866 ~~[(ii) for the seller's purchases; or]~~

1867 (c) a retail sale of tangible personal property or a product transferred electronically if:

1868 (i) the seller receives the order for the tangible personal property or product transferred

1869 electronically in this state;

1870 (ii) receipt of the tangible personal property or product transferred electronically by the

1871 purchaser or the purchaser's donee occurs in this state;

1872 (iii) the location where receipt of the tangible personal property or product transferred

1873 electronically by the purchaser occurs is determined in accordance with Subsections (3)

1874 through (5); and

1875 (iv) at the time the seller receives the order, the record keeping system that the seller

1876 uses to calculate the proper amount of tax imposed under this chapter captures the location

1877 where the order is received.

1878 Section 6. Section **59-12-211.1** is enacted to read:

1879 **59-12-211.1. Location of a transaction that is subject to a use tax.**

1880 (1) Subject to Subsection (2), a person that is required by Subsection 59-12-107(1)(d)
1881 to pay a use tax on a transaction shall report the location of that transaction at the person's
1882 location.

1883 (2) For purposes of Subsection (1), if a person has more than one location in this state,
1884 the person shall report the location of the transaction at the location at which tangible personal
1885 property, a product transferred electronically, or a service is received.

1886 Section 7. **Effective date.**

1887 This bill takes effect on July 1, 2010.