

**SALES AND USE TAX MODIFICATIONS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**Committee Note:**

The Revenue and Taxation Interim Committee recommended this bill.

**General Description:**

This bill amends the Sales and Use Tax Act to address definitions, the tax rate at which sales and use taxes are collected, and the location of a transaction involving a prepaid calling service or prepaid wireless calling service.

**Highlighted Provisions:**

This bill:

- ▶ modifies the definition of bundled transaction;
- ▶ addresses the collection of a sales and use tax at the lowest agreement combined tax rate;
- ▶ addresses the determination of the location of a transaction involving a prepaid calling service or prepaid wireless calling service; and
- ▶ makes technical and conforming changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill takes effect on July 1, 2010.

**Utah Code Sections Affected:**

AMENDS:



28 59-12-102, as last amended by Laws of Utah 2009, Chapters 203 and 314

29 59-12-211, as enacted by Laws of Utah 2008, Chapter 384



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

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

33 **59-12-102. Definitions.**

34 As used in this chapter:

35 (1) "800 service" means a telecommunications service that:

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

37 (b) is typically marketed:

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

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

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

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

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

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

44 Federal Communications Commission.

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

46 (i) a subscriber purchases;

47 (ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to

48 the subscriber's:

49 (A) prerecorded announcement; or

50 (B) live service; and

51 (iii) is typically marketed:

52 (A) under the name 900 service; or

53 (B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal

54 Communications Commission.

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

56 (i) a collection service a seller of a telecommunications service provides to a

57 subscriber; or

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

- 59 (A) a product; or
- 60 (B) a service.
- 61 (3) (a) "Admission or user fees" includes season passes.
- 62 (b) "Admission or user fees" does not include annual membership dues to private
- 63 organizations.
- 64 (4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on
- 65 November 12, 2002, including amendments made to the Streamlined Sales and Use Tax
- 66 Agreement after November 12, 2002.
- 67 (5) "Agreement combined tax rate" means the sum of the tax rates:
- 68 (a) listed under Subsection (6); and
- 69 (b) that are imposed within a local taxing jurisdiction.
- 70 (6) "Agreement sales and use tax" means a tax imposed under:
- 71 (a) Subsection 59-12-103(2)(a)(i)(A);
- 72 (b) Subsection 59-12-103(2)(b)(i);
- 73 (c) Subsection 59-12-103(2)(c)(i);
- 74 (d) Subsection 59-12-103(2)(d)(i)(A)(I);
- 75 (e) Section 59-12-204;
- 76 (f) Section 59-12-401;
- 77 (g) Section 59-12-402;
- 78 (h) Section 59-12-501;
- 79 (i) Section 59-12-502;
- 80 (j) Section 59-12-703;
- 81 (k) Section 59-12-802;
- 82 (l) Section 59-12-804;
- 83 (m) Section 59-12-1001;
- 84 (n) Section 59-12-1102;
- 85 (o) Section 59-12-1302;
- 86 (p) Section 59-12-1402;
- 87 (q) Section 59-12-1503;
- 88 (r) Section 59-12-1703;
- 89 (s) Section 59-12-1802;

- 90 (t) Section 59-12-1903;
- 91 (u) Section 59-12-2003; or
- 92 (v) Section 59-12-2103.
- 93 (7) "Aircraft" is as defined in Section 72-10-102.
- 94 (8) "Alcoholic beverage" means a beverage that:
- 95 (a) is suitable for human consumption; and
- 96 (b) contains .5% or more alcohol by volume.
- 97 (9) (a) "Ancillary service" means a service associated with, or incidental to, the
- 98 provision of telecommunications service.
- 99 (b) "Ancillary service" includes:
- 100 (i) a conference bridging service;
- 101 (ii) a detailed communications billing service;
- 102 (iii) directory assistance;
- 103 (iv) a vertical service; or
- 104 (v) a voice mail service.
- 105 (10) "Area agency on aging" is as defined in Section 62A-3-101.
- 106 (11) "Assisted amusement device" means an amusement device, skill device, or ride
- 107 device that is started and stopped by an individual:
- 108 (a) who is not the purchaser or renter of the right to use or operate the amusement
- 109 device, skill device, or ride device; and
- 110 (b) at the direction of the seller of the right to use the amusement device, skill device,
- 111 or ride device.
- 112 (12) "Assisted cleaning or washing of tangible personal property" means cleaning or
- 113 washing of tangible personal property if the cleaning or washing labor is primarily performed
- 114 by an individual:
- 115 (a) who is not the purchaser of the cleaning or washing of the tangible personal
- 116 property; and
- 117 (b) at the direction of the seller of the cleaning or washing of the tangible personal
- 118 property.
- 119 (13) "Authorized carrier" means:
- 120 (a) in the case of vehicles operated over public highways, the holder of credentials

121 indicating that the vehicle is or will be operated pursuant to both the International Registration  
122 Plan and the International Fuel Tax Agreement;

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

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

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

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

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

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

132 (B) animal waste;

133 (C) methane produced:

134 (I) at landfills; or

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

136 (D) aquatic plants; and

137 (E) agricultural products.

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

139 (i) black liquor;

140 (ii) treated woods; or

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

142 (A) at landfills; or

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

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

146 (i) distinct and identifiable; and

147 (ii) sold for one nonitemized price.

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

149 (i) the sale of tangible personal property if the sales price varies, or is negotiable, on

150 the basis of the selection by the purchaser of the items of tangible personal property included in

151 the transaction;

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

183 (II) the seller's sales price of the tangible personal property subject to taxation under  
184 this chapter is 50% or less of the seller's total sales price of that retail sale.

185 (c) (i) For purposes of Subsection (15)(a)(i), tangible personal property, a product, or a  
186 service that is distinct and identifiable does not include:

187 (A) packaging that:

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

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

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

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

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

200 (d) (i) For purposes of Subsection (15)(a)(ii), property sold for one nonitemized price  
201 does not include a price that is separately identified by tangible personal property, product, or  
202 service on the following, regardless of whether the following is in paper format or electronic  
203 format:

204 (A) a binding sales document; or

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

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

208 (A) a bill of sale;

209 (B) a contract;

210 (C) an invoice;

211 (D) a lease agreement;

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

213 (F) a price list;

- 214 (G) a rate card;
- 215 (H) a receipt; or
- 216 (I) a service agreement.

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

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

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

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

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

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

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

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

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

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

240 (i) on a transaction; and

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

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

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



245 (17) "Certified service provider" means an agent certified:  
246 (a) by the governing board of the agreement; and  
247 (b) to perform all of a seller's sales and use tax functions for an agreement sales and  
248 use tax other than the seller's obligation under Section 59-12-124 to remit a tax on the seller's  
249 own purchases.

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

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

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

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

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

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

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

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

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

269 (22) "Component part" includes:

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

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

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

275 (d) feed, seeds, and seedlings.

- 276 (23) "Computer" means an electronic device that accepts information:
- 277 (a) (i) in digital form; or
- 278 (ii) in a form similar to digital form; and
- 279 (b) manipulates that information for a result based on a sequence of instructions.
- 280 (24) "Computer software" means a set of coded instructions designed to cause:
- 281 (a) a computer to perform a task; or
- 282 (b) automatic data processing equipment to perform a task.
- 283 (25) (a) "Conference bridging service" means an ancillary service that links two or
- 284 more participants of an audio conference call or video conference call.
- 285 (b) "Conference bridging service" includes providing a telephone number as part of the
- 286 ancillary service described in Subsection (25)(a).
- 287 (c) "Conference bridging service" does not include a telecommunications service used
- 288 to reach the ancillary service described in Subsection (25)(a).
- 289 (26) "Construction materials" means any tangible personal property that will be
- 290 converted into real property.
- 291 (27) "Delivered electronically" means delivered to a purchaser by means other than
- 292 tangible storage media.
- 293 (28) (a) "Delivery charge" means a charge:
- 294 (i) by a seller of:
- 295 (A) tangible personal property;
- 296 (B) a product transferred electronically; or
- 297 (C) services; and
- 298 (ii) for preparation and delivery of the tangible personal property, product transferred
- 299 electronically, or services described in Subsection (28)(a)(i) to a location designated by the
- 300 purchaser.
- 301 (b) "Delivery charge" includes a charge for the following:
- 302 (i) transportation;
- 303 (ii) shipping;
- 304 (iii) postage;
- 305 (iv) handling;
- 306 (v) crating; or

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

338 mail or other delivery service:

339 (i) to:

340 (A) a mass audience; or

341 (B) addressees on a mailing list provided:

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

343 (II) at the discretion of the purchaser of the mailing list; and

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

345 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a

346 purchaser to a seller of direct mail for inclusion in a package containing the printed material.

347 (c) "Direct mail" does not include multiple items of printed material delivered to a

348 single address.

349 (32) "Directory assistance" means an ancillary service of providing:

350 (a) address information; or

351 (b) telephone number information.

352 (33) (a) "Disposable home medical equipment or supplies" means medical equipment

353 or supplies that:

354 (i) cannot withstand repeated use; and

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

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

357 (B) a health care provider as defined in Section 78B-3-403;

358 (C) an office of a health care provider described in Subsection (33)(a)(ii)(B); or

359 (D) a person similar to a person described in Subsections (33)(a)(ii)(A) through (C).

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

361 (i) a drug;

362 (ii) durable medical equipment;

363 (iii) a hearing aid;

364 (iv) a hearing aid accessory;

365 (v) mobility enhancing equipment; or

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

367 (A) eyeglasses; or

368 (B) contact lenses.

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

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

373 (i) recognized in:

374 (A) the official United States Pharmacopoeia;

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

376 (C) the official National Formulary; or

377 (D) a supplement to a publication listed in Subsections (34)(a)(i)(A) through (C);

378 (ii) intended for use in the:

379 (A) diagnosis of disease;

380 (B) cure of disease;

381 (C) mitigation of disease;

382 (D) treatment of disease; or

383 (E) prevention of disease; or

384 (iii) intended to affect:

385 (A) the structure of the body; or

386 (B) any function of the body.

387 (b) "Drug" does not include:

388 (i) food and food ingredients;

389 (ii) a dietary supplement;

390 (iii) an alcoholic beverage; or

391 (iv) a prosthetic device.

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

394 (i) can withstand repeated use;

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

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

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

398 (b) "Durable medical equipment" includes parts used in the repair or replacement of the  
399 equipment described in Subsection (35)(a).

400 (c) Notwithstanding Subsection (35)(a), "durable medical equipment" does not include  
401 mobility enhancing equipment.

402 (36) "Electronic" means:

403 (a) relating to technology; and

404 (b) having:

405 (i) electrical capabilities;

406 (ii) digital capabilities;

407 (iii) magnetic capabilities;

408 (iv) wireless capabilities;

409 (v) optical capabilities;

410 (vi) electromagnetic capabilities; or

411 (vii) capabilities similar to Subsections (36)(b)(i) through (vi).

412 (37) "Employee" is as defined in Section 59-10-401.

413 (38) "Fixed guideway" means a public transit facility that uses and occupies:

414 (a) rail for the use of public transit; or

415 (b) a separate right-of-way for the use of public transit.

416 (39) "Fixed wireless service" means a telecommunications service that provides radio  
417 communication between fixed points.

418 (40) (a) "Food and food ingredients" means substances:

419 (i) regardless of whether the substances are in:

420 (A) liquid form;

421 (B) concentrated form;

422 (C) solid form;

423 (D) frozen form;

424 (E) dried form; or

425 (F) dehydrated form; and

426 (ii) that are:

427 (A) sold for:

428 (I) ingestion by humans; or

429 (II) chewing by humans; and

430 (B) consumed for the substance's:

- 431 (I) taste; or
- 432 (II) nutritional value.
- 433 (b) "Food and food ingredients" includes an item described in Subsection (75)(b)(iii).
- 434 (c) "Food and food ingredients" does not include:
- 435 (i) an alcoholic beverage;
- 436 (ii) tobacco; or
- 437 (iii) prepared food.
- 438 (41) (a) "Fundraising sales" means sales:
- 439 (i) (A) made by a school; or
- 440 (B) made by a school student;
- 441 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 442 materials, or provide transportation; and
- 443 (iii) that are part of an officially sanctioned school activity.
- 444 (b) For purposes of Subsection (41)(a)(iii), "officially sanctioned school activity"
- 445 means a school activity:
- 446 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 447 district governing the authorization and supervision of fundraising activities;
- 448 (ii) that does not directly or indirectly compensate an individual teacher or other
- 449 educational personnel by direct payment, commissions, or payment in kind; and
- 450 (iii) the net or gross revenues from which are deposited in a dedicated account
- 451 controlled by the school or school district.
- 452 (42) "Geothermal energy" means energy contained in heat that continuously flows
- 453 outward from the earth that is used as the sole source of energy to produce electricity.
- 454 (43) "Governing board of the agreement" means the governing board of the agreement
- 455 that is:
- 456 (a) authorized to administer the agreement; and
- 457 (b) established in accordance with the agreement.
- 458 (44) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:
- 459 (i) the executive branch of the state, including all departments, institutions, boards,
- 460 divisions, bureaus, offices, commissions, and committees;
- 461 (ii) the judicial branch of the state, including the courts, the Judicial Council, the

462 Office of the Court Administrator, and similar administrative units in the judicial branch;  
463 (iii) the legislative branch of the state, including the House of Representatives, the  
464 Senate, the Legislative Printing Office, the Office of Legislative Research and General  
465 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal  
466 Analyst;

467 (iv) the National Guard;

468 (v) an independent entity as defined in Section 63E-1-102; or

469 (vi) a political subdivision as defined in Section 17B-1-102.

470 (b) "Governmental entity" does not include the state systems of public and higher  
471 education, including:

472 (i) a college campus of the Utah College of Applied Technology;

473 (ii) a school;

474 (iii) the State Board of Education;

475 (iv) the State Board of Regents; or

476 (v) a state institution of higher education as defined in Section 53B-3-102.

477 (45) "Hydroelectric energy" means water used as the sole source of energy to produce  
478 electricity.

479 (46) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or  
480 other fuels:

481 (a) in mining or extraction of minerals;

482 (b) in agricultural operations to produce an agricultural product up to the time of  
483 harvest or placing the agricultural product into a storage facility, including:

484 (i) commercial greenhouses;

485 (ii) irrigation pumps;

486 (iii) farm machinery;

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

489 (v) other farming activities;

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



493 (d) by a scrap recycler if:

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

497 (A) iron;

498 (B) steel;

499 (C) nonferrous metal;

500 (D) paper;

501 (E) glass;

502 (F) plastic;

503 (G) textile; or

504 (H) rubber; and

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

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

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

511 (i) tangible personal property; or

512 (ii) a product transferred electronically.

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

514 (i) tangible personal property; or

515 (ii) a product transferred electronically.

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

518 (i) (A) a fixed term; or

519 (B) an indeterminate term; and

520 (ii) consideration.

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

524 Code.

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

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

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

531 (A) upon completion of required payments; and

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

533 (I) \$100; or

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

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

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

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

541 (ii) maintenance of tangible personal property; or

542 (iii) inspection of tangible personal property.

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

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

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

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

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

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

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

551 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard

552 Industrial Classification Manual of the federal Executive Office of the President, Office of  
553 Management and Budget;

554 (b) a scrap recycler if:

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

- 558 (A) iron;
- 559 (B) steel;
- 560 (C) nonferrous metal;
- 561 (D) paper;
- 562 (E) glass;
- 563 (F) plastic;
- 564 (G) textile; or
- 565 (H) rubber; and

566 (ii) the new products under Subsection (52)(b)(i) would otherwise be made with  
567 nonrecycled materials; or

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

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

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

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

573 (ii) a foster child or foster stepchild;

574 (b) grandchild or stepgrandchild;

575 (c) grandparent or stepgrandparent;

576 (d) nephew or stepnephew;

577 (e) niece or stepniece;

578 (f) parent or stepparent;

579 (g) sibling or stepsibling;

580 (h) spouse;

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

582 or

583 (j) person similar to a person described in Subsections (53)(a) through (i) as

584 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah

585 Administrative Rulemaking Act.

586 (54) "Mobile home" is as defined in Section 58-56-3.  
587 (55) "Mobile telecommunications service" is as defined in the Mobile  
588 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.  
589 (56) (a) "Mobile wireless service" means a telecommunications service, regardless of  
590 the technology used, if:  
591 (i) the origination point of the conveyance, routing, or transmission is not fixed;  
592 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or  
593 (iii) the origination point described in Subsection (56)(a)(i) and the termination point  
594 described in Subsection (56)(a)(ii) are not fixed.  
595 (b) "Mobile wireless service" includes a telecommunications service that is provided  
596 by a commercial mobile radio service provider.  
597 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
598 commission may by rule define "commercial mobile radio service provider."  
599 (57) (a) Except as provided in Subsection (57)(c), "mobility enhancing equipment"  
600 means equipment that is:  
601 (i) primarily and customarily used to provide or increase the ability to move from one  
602 place to another;  
603 (ii) appropriate for use in a:  
604 (A) home; or  
605 (B) motor vehicle; and  
606 (iii) not generally used by persons with normal mobility.  
607 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of  
608 the equipment described in Subsection (57)(a).  
609 (c) Notwithstanding Subsection (57)(a), "mobility enhancing equipment" does not  
610 include:  
611 (i) a motor vehicle;  
612 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor  
613 vehicle manufacturer;  
614 (iii) durable medical equipment; or  
615 (iv) a prosthetic device.  
616 (58) "Model 1 seller" means a seller that has selected a certified service provider as the

617 seller's agent to perform all of the seller's sales and use tax functions for agreement sales and  
618 use taxes other than the seller's obligation under Section 59-12-124 to remit a tax on the seller's  
619 own purchases.

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

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

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

625 (i) collected by the seller; and

626 (ii) to the appropriate local taxing jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 648 (66) "Pawnbroker" is as defined in Section 13-32a-102.
- 649 (67) "Pawn transaction" is as defined in Section 13-32a-102.
- 650 (68) (a) "Permanently attached to real property" means that for tangible personal  
651 property attached to real property:
- 652 (i) the attachment of the tangible personal property to the real property:
- 653 (A) is essential to the use of the tangible personal property; and
- 654 (B) suggests that the tangible personal property will remain attached to the real  
655 property in the same place over the useful life of the tangible personal property; or
- 656 (ii) if the tangible personal property is detached from the real property, the detachment  
657 would:
- 658 (A) cause substantial damage to the tangible personal property; or
- 659 (B) require substantial alteration or repair of the real property to which the tangible  
660 personal property is attached.
- 661 (b) "Permanently attached to real property" includes:
- 662 (i) the attachment of an accessory to the tangible personal property if the accessory is:
- 663 (A) essential to the operation of the tangible personal property; and
- 664 (B) attached only to facilitate the operation of the tangible personal property;
- 665 (ii) a temporary detachment of tangible personal property from real property for a  
666 repair or renovation if the repair or renovation is performed where the tangible personal  
667 property and real property are located; or
- 668 (iii) property attached to oil, gas, or water pipelines, except for the property listed in  
669 Subsection (68)(c)(iii) or (iv).
- 670 (c) "Permanently attached to real property" does not include:
- 671 (i) the attachment of portable or movable tangible personal property to real property if  
672 that portable or movable tangible personal property is attached to real property only for:
- 673 (A) convenience;
- 674 (B) stability; or
- 675 (C) for an obvious temporary purpose;
- 676 (ii) the detachment of tangible personal property from real property except for the  
677 detachment described in Subsection (68)(b)(ii);
- 678 (iii) an attachment of the following tangible personal property to real property if the

679 attachment to real property is only through a line that supplies water, electricity, gas,  
680 telecommunications, cable, or supplies a similar item as determined by the commission by rule  
681 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

682 (A) a computer;

683 (B) a telephone;

684 (C) a television; or

685 (D) tangible personal property similar to Subsections (68)(c)(iii)(A) through (C) as  
686 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah  
687 Administrative Rulemaking Act; or

688 (iv) an item listed in Subsection (108)(c).

689 (69) "Person" includes any individual, firm, partnership, joint venture, association,  
690 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,  
691 municipality, district, or other local governmental entity of the state, or any group or  
692 combination acting as a unit.

693 (70) "Place of primary use":

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

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

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

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

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

703 (i) through the use of a:

704 (A) bank card;

705 (B) credit card;

706 (C) debit card; or

707 (D) travel card; or

708 (ii) by a charge made to a telephone number that is not associated with the origination  
709 or termination of the telecommunications service.

710 (b) "Postpaid calling service" includes a service, except for a prepaid wireless calling  
711 service, that would be a prepaid wireless calling service if the service were exclusively a  
712 telecommunications service.

713 (72) "Postproduction" means an activity related to the finishing or duplication of a  
714 medium described in Subsection 59-12-104(54)(a).

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

716 (a) that allows a purchaser access to telecommunications service that is exclusively  
717 telecommunications service;

718 (b) that:

719 (i) is paid for in advance; and

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

721 (A) access number; or

722 (B) authorization code;

723 (c) that is dialed:

724 (i) manually; or

725 (ii) electronically; and

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

727 (i) by a known amount; and

728 (ii) with use.

729 (74) "Prepaid wireless calling service" means a telecommunications service:

730 (a) that provides the right to utilize:

731 (i) mobile wireless service; and

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

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

734 (B) a content service; or

735 (C) an ancillary service;

736 (b) that:

737 (i) is paid for in advance; and

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

739 (A) access number; or

740 (B) authorization code;



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

772 (IV) raw poultry; or  
773 (V) a food containing an item described in Subsections (75)(b)(ii)(A)(I) through (IV);  
774 and  
775 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the  
776 Food and Drug Administration's Food Code that a consumer cook the items described in  
777 Subsection (75)(b)(ii)(A) to prevent food borne illness; or  
778 (iii) the following if sold without eating utensils provided by the seller:  
779 (A) food and food ingredients sold by a seller if the seller's proper primary  
780 classification under the 2002 North American Industry Classification System of the federal  
781 Executive Office of the President, Office of Management and Budget, is manufacturing in  
782 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla  
783 Manufacturing;  
784 (B) food and food ingredients sold in an unheated state:  
785 (I) by weight or volume; and  
786 (II) as a single item; or  
787 (C) a bakery item, including:  
788 (I) a bagel;  
789 (II) a bar;  
790 (III) a biscuit;  
791 (IV) bread;  
792 (V) a bun;  
793 (VI) a cake;  
794 (VII) a cookie;  
795 (VIII) a croissant;  
796 (IX) a danish;  
797 (X) a donut;  
798 (XI) a muffin;  
799 (XII) a pastry;  
800 (XIII) a pie;  
801 (XIV) a roll;  
802 (XV) a tart;

803 (XVI) a torte; or

804 (XVII) a tortilla.

805 (c) Notwithstanding Subsection (75)(a)(iii), an eating utensil provided by the seller  
806 does not include the following used to transport the food:

807 (i) a container; or

808 (ii) packaging.

809 (76) "Prescription" means an order, formula, or recipe that is issued:

810 (a) (i) orally;

811 (ii) in writing;

812 (iii) electronically; or

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

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

815 (77) (a) Except as provided in Subsection (77)(b)(ii) or (iii), "prewritten computer  
816 software" means computer software that is not designed and developed:

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

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

819 (b) "Prewritten computer software" includes:

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

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

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

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

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

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

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

832 (c) Notwithstanding Subsection (77)(b)(iii), "prewritten computer software" does not  
833 include a modification or enhancement described in Subsection (77)(b)(iii) if the charges for

834 the modification or enhancement are:

835 (i) reasonable; and

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

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

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

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

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

845 (i) an extension line;

846 (ii) a station;

847 (iii) switching capacity; or

848 (iv) another associated service that is provided in connection with the use of one or  
849 more communications channels as defined in Section 59-12-215.

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

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

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

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

854 (b) "Prosthetic device" includes:

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

856 (ii) replacement parts for a prosthetic device;

857 (iii) a dental prosthesis; or

858 (iv) a hearing aid.

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

860 (i) corrective eyeglasses; or

861 (ii) contact lenses.

862 (80) (a) "Protective equipment" means an item:

863 (i) for human wear; and

864 (ii) that is:

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

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

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

- 958 (c) geothermal energy;
- 959 (d) solar energy; or
- 960 (e) wind energy.
- 961 (86) (a) "Renewable energy production facility" means a facility that:
- 962 (i) uses renewable energy to produce electricity; and
- 963 (ii) has a production capacity of 20 kilowatts or greater.
- 964 (b) A facility is a renewable energy production facility regardless of whether the
- 965 facility is:
- 966 (i) connected to an electric grid; or
- 967 (ii) located on the premises of an electricity consumer.
- 968 (87) "Rental" is as defined in Subsection (48).
- 969 (88) "Repairs or renovations of tangible personal property" means:
- 970 (a) a repair or renovation of tangible personal property that is not permanently attached
- 971 to real property; or
- 972 (b) attaching tangible personal property or a product that is transferred electronically to
- 973 other tangible personal property if the other tangible personal property to which the tangible
- 974 personal property or product that is transferred electronically is attached is not permanently
- 975 attached to real property.
- 976 (89) "Research and development" means the process of inquiry or experimentation
- 977 aimed at the discovery of facts, devices, technologies, or applications and the process of
- 978 preparing those devices, technologies, or applications for marketing.
- 979 (90) (a) "Residential telecommunications services" means a telecommunications
- 980 service or an ancillary service that is provided to an individual for personal use:
- 981 (i) at a residential address; or
- 982 (ii) at an institution, including a nursing home or a school, if the telecommunications
- 983 service or ancillary service is provided to and paid for by the individual residing at the
- 984 institution rather than the institution.
- 985 (b) For purposes of Subsection (90)(a), a residential address includes an:
- 986 (i) apartment; or
- 987 (ii) other individual dwelling unit.
- 988 (91) "Residential use" means the use in or around a home, apartment building, sleeping



989 quarters, and similar facilities or accommodations.

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

992 (a) resale;

993 (b) sublease; or

994 (c) subrent.

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

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

1000 (94) (a) "Sale" means any transfer of title, exchange, or barter, conditional or  
1001 otherwise, in any manner, of tangible personal property or any other taxable transaction under  
1002 Subsection 59-12-103(1), for consideration.

1003 (b) "Sale" includes:

1004 (i) installment and credit sales;

1005 (ii) any closed transaction constituting a sale;

1006 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this  
1007 chapter;

1008 (iv) any transaction if the possession of property is transferred but the seller retains the  
1009 title as security for the payment of the price; and

1010 (v) any transaction under which right to possession, operation, or use of any article of  
1011 tangible personal property is granted under a lease or contract and the transfer of possession  
1012 would be taxable if an outright sale were made.

1013 (95) "Sale at retail" is as defined in Subsection (92).

1014 (96) "Sale-leaseback transaction" means a transaction by which title to tangible  
1015 personal property or a product transferred electronically that is subject to a tax under this  
1016 chapter is transferred:

1017 (a) by a purchaser-lessee;

1018 (b) to a lessor;

1019 (c) for consideration; and

1020 (d) if:

1021 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase

1022 of the tangible personal property or product transferred electronically;

1023 (ii) the sale of the tangible personal property or product transferred electronically to the

1024 lessor is intended as a form of financing:

1025 (A) for the tangible personal property or product transferred electronically; and

1026 (B) to the purchaser-lessee; and

1027 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee

1028 is required to:

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

1030 financial reporting purposes; and

1031 (B) account for the lease payments as payments made under a financing arrangement.

1032 (97) "Sales price" is as defined in Subsection (82).

1033 (98) (a) "Sales relating to schools" means the following sales by, amounts paid to, or

1034 amounts charged by a school:

1035 (i) sales that are directly related to the school's educational functions or activities

1036 including:

1037 (A) the sale of:

1038 (I) textbooks;

1039 (II) textbook fees;

1040 (III) laboratory fees;

1041 (IV) laboratory supplies; or

1042 (V) safety equipment;

1043 (B) the sale of a uniform, protective equipment, or sports or recreational equipment

1044 that:

1045 (I) a student is specifically required to wear as a condition of participation in a

1046 school-related event or school-related activity; and

1047 (II) is not readily adaptable to general or continued usage to the extent that it takes the

1048 place of ordinary clothing;

1049 (C) sales of the following if the net or gross revenues generated by the sales are

1050 deposited into a school district fund or school fund dedicated to school meals:

- 1051 (I) food and food ingredients; or  
1052 (II) prepared food; or  
1053 (D) transportation charges for official school activities; or  
1054 (ii) amounts paid to or amounts charged by a school for admission to a school-related  
1055 event or school-related activity.
- 1056 (b) "Sales relating to schools" does not include:  
1057 (i) bookstore sales of items that are not educational materials or supplies;  
1058 (ii) except as provided in Subsection (98)(a)(i)(B):  
1059 (A) clothing;  
1060 (B) clothing accessories or equipment;  
1061 (C) protective equipment; or  
1062 (D) sports or recreational equipment; or  
1063 (iii) amounts paid to or amounts charged by a school for admission to a school-related  
1064 event or school-related activity if the amounts paid or charged are passed through to a person:  
1065 (A) other than a:  
1066 (I) school;  
1067 (II) nonprofit organization authorized by a school board or a governing body of a  
1068 private school to organize and direct a competitive secondary school activity; or  
1069 (III) nonprofit association authorized by a school board or a governing body of a  
1070 private school to organize and direct a competitive secondary school activity; and  
1071 (B) that is required to collect sales and use taxes under this chapter.  
1072 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1073 commission may make rules defining the term "passed through."  
1074 (99) For purposes of this section and Section 59-12-104, "school":  
1075 (a) means:  
1076 (i) an elementary school or a secondary school that:  
1077 (A) is a:  
1078 (I) public school; or  
1079 (II) private school; and  
1080 (B) provides instruction for one or more grades kindergarten through 12; or  
1081 (ii) a public school district; and

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

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

- 1144 (E) touched; or
- 1145 (ii) is in any manner perceptible to the senses.
- 1146 (b) "Tangible personal property" includes:
- 1147 (i) electricity;
- 1148 (ii) water;
- 1149 (iii) gas;
- 1150 (iv) steam; or
- 1151 (v) prewritten computer software.
- 1152 (c) "Tangible personal property" includes the following regardless of whether the item
- 1153 is attached to real property:
- 1154 (i) a dishwasher;
- 1155 (ii) a dryer;
- 1156 (iii) a freezer;
- 1157 (iv) a microwave;
- 1158 (v) a refrigerator;
- 1159 (vi) a stove;
- 1160 (vii) a washer; or
- 1161 (viii) an item similar to Subsections (108)(c)(i) through (vii) as determined by the
- 1162 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 1163 Rulemaking Act.
- 1164 (d) "Tangible personal property" does not include a product that is transferred
- 1165 electronically.
- 1166 (e) "Tangible personal property" does not include the following if attached to real
- 1167 property, regardless of whether the attachment to real property is only through a line that
- 1168 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
- 1169 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 1170 Rulemaking Act:
- 1171 (i) a hot water heater;
- 1172 (ii) a water filtration system; or
- 1173 (iii) a water softener system.
- 1174 (109) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon

1175 and require further processing other than mechanical blending before becoming finished  
1176 petroleum products.

1177 (110) (a) "Telecommunications enabling or facilitating equipment, machinery, or  
1178 software" means an item listed in Subsection (110)(b) if that item is purchased or leased  
1179 primarily to enable or facilitate one or more of the following to function:

1180 (i) telecommunications switching or routing equipment, machinery, or software; or

1181 (ii) telecommunications transmission equipment, machinery, or software.

1182 (b) The following apply to Subsection (110)(a):

1183 (i) a pole;

1184 (ii) software;

1185 (iii) a supplementary power supply;

1186 (iv) temperature or environmental equipment or machinery;

1187 (v) test equipment;

1188 (vi) a tower; or

1189 (vii) equipment, machinery, or software that functions similarly to an item listed in

1190 Subsections (110)(b)(i) through (vi) as determined by the commission by rule made in

1191 accordance with Subsection (110)(c).

1192 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1193 commission may by rule define what constitutes equipment, machinery, or software that

1194 functions similarly to an item listed in Subsections (110)(b)(i) through (vi).

1195 (111) "Telecommunications equipment, machinery, or software required for 911

1196 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.

1197 Sec. 20.18.

1198 (112) "Telecommunications maintenance or repair equipment, machinery, or software"

1199 means equipment, machinery, or software purchased or leased primarily to maintain or repair

1200 one or more of the following, regardless of whether the equipment, machinery, or software is

1201 purchased or leased as a spare part or as an upgrade or modification to one or more of the

1202 following:

1203 (a) telecommunications enabling or facilitating equipment, machinery, or software;

1204 (b) telecommunications switching or routing equipment, machinery, or software; or

1205 (c) telecommunications transmission equipment, machinery, or software.

1206 (113) (a) "Telecommunications service" means the electronic conveyance, routing, or  
1207 transmission of audio, data, video, voice, or any other information or signal to a point, or  
1208 among or between points.

1209 (b) "Telecommunications service" includes:

1210 (i) an electronic conveyance, routing, or transmission with respect to which a computer  
1211 processing application is used to act:

1212 (A) on the code, form, or protocol of the content;

1213 (B) for the purpose of electronic conveyance, routing, or transmission; and

1214 (C) regardless of whether the service:

1215 (I) is referred to as voice over Internet protocol service; or

1216 (II) is classified by the Federal Communications Commission as enhanced or value  
1217 added;

1218 (ii) an 800 service;

1219 (iii) a 900 service;

1220 (iv) a fixed wireless service;

1221 (v) a mobile wireless service;

1222 (vi) a postpaid calling service;

1223 (vii) a prepaid calling service;

1224 (viii) a prepaid wireless calling service; or

1225 (ix) a private communications service.

1226 (c) "Telecommunications service" does not include:

1227 (i) advertising, including directory advertising;

1228 (ii) an ancillary service;

1229 (iii) a billing and collection service provided to a third party;

1230 (iv) a data processing and information service if:

1231 (A) the data processing and information service allows data to be:

1232 (I) (Aa) acquired;

1233 (Bb) generated;

1234 (Cc) processed;

1235 (Dd) retrieved; or

1236 (Ee) stored; and



- 1237 (II) delivered by an electronic transmission to a purchaser; and
- 1238 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 1239 or information;
- 1240 (v) installation or maintenance of the following on a customer's premises:
- 1241 (A) equipment; or
- 1242 (B) wiring;
- 1243 (vi) Internet access service;
- 1244 (vii) a paging service;
- 1245 (viii) a product transferred electronically, including:
- 1246 (A) music;
- 1247 (B) reading material;
- 1248 (C) a ring tone;
- 1249 (D) software; or
- 1250 (E) video;
- 1251 (ix) a radio and television audio and video programming service:
- 1252 (A) regardless of the medium; and
- 1253 (B) including:
- 1254 (I) furnishing conveyance, routing, or transmission of a television audio and video
- 1255 programming service by a programming service provider;
- 1256 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
- 1257 (III) audio and video programming services delivered by a commercial mobile radio
- 1258 service provider as defined in 47 C.F.R. Sec. 20.3;
- 1259 (x) a value-added nonvoice data service; or
- 1260 (xi) tangible personal property.
- 1261 (114) (a) "Telecommunications service provider" means a person that:
- 1262 (i) owns, controls, operates, or manages a telecommunications service; and
- 1263 (ii) engages in an activity described in Subsection (114)(a)(i) for the shared use with or
- 1264 resale to any person of the telecommunications service.
- 1265 (b) A person described in Subsection (114)(a) is a telecommunications service provider
- 1266 whether or not the Public Service Commission of Utah regulates:
- 1267 (i) that person; or

1268 (ii) the telecommunications service that the person owns, controls, operates, or  
1269 manages.

1270 (115) (a) "Telecommunications switching or routing equipment, machinery, or  
1271 software" means an item listed in Subsection (115)(b) if that item is purchased or leased  
1272 primarily for switching or routing:

- 1273 (i) an ancillary service;
- 1274 (ii) data communications;
- 1275 (iii) voice communications; or
- 1276 (iv) telecommunications service.

1277 (b) The following apply to Subsection (115)(a):

- 1278 (i) a bridge;
- 1279 (ii) a computer;
- 1280 (iii) a cross connect;
- 1281 (iv) a modem;
- 1282 (v) a multiplexer;
- 1283 (vi) plug in circuitry;
- 1284 (vii) a router;
- 1285 (viii) software;
- 1286 (ix) a switch; or
- 1287 (x) equipment, machinery, or software that functions similarly to an item listed in  
1288 Subsections (115)(b)(i) through (ix) as determined by the commission by rule made in  
1289 accordance with Subsection (115)(c).

1290 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1291 commission may by rule define what constitutes equipment, machinery, or software that  
1292 functions similarly to an item listed in Subsections (115)(b)(i) through (ix).

1293 (116) (a) "Telecommunications transmission equipment, machinery, or software"  
1294 means an item listed in Subsection (116)(b) if that item is purchased or leased primarily for  
1295 sending, receiving, or transporting:

- 1296 (i) an ancillary service;
- 1297 (ii) data communications;
- 1298 (iii) voice communications; or

- 1299 (iv) telecommunications service.
- 1300 (b) The following apply to Subsection (116)(a):
- 1301 (i) an amplifier;
- 1302 (ii) a cable;
- 1303 (iii) a closure;
- 1304 (iv) a conduit;
- 1305 (v) a controller;
- 1306 (vi) a duplexer;
- 1307 (vii) a filter;
- 1308 (viii) an input device;
- 1309 (ix) an input/output device;
- 1310 (x) an insulator;
- 1311 (xi) microwave machinery or equipment;
- 1312 (xii) an oscillator;
- 1313 (xiii) an output device;
- 1314 (xiv) a pedestal;
- 1315 (xv) a power converter;
- 1316 (xvi) a power supply;
- 1317 (xvii) a radio channel;
- 1318 (xviii) a radio receiver;
- 1319 (xix) a radio transmitter;
- 1320 (xx) a repeater;
- 1321 (xxi) software;
- 1322 (xxii) a terminal;
- 1323 (xxiii) a timing unit;
- 1324 (xxiv) a transformer;
- 1325 (xxv) a wire; or
- 1326 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
- 1327 Subsections (116)(b)(i) through (xxv) as determined by the commission by rule made in
- 1328 accordance with Subsection (116)(c).
- 1329 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1330 commission may by rule define what constitutes equipment, machinery, or software that  
1331 functions similarly to an item listed in Subsections (116)(b)(i) through (xxv).

1332 (117) "Tobacco" means:

1333 (a) a cigarette;

1334 (b) a cigar;

1335 (c) chewing tobacco;

1336 (d) pipe tobacco; or

1337 (e) any other item that contains tobacco.

1338 (118) "Unassisted amusement device" means an amusement device, skill device, or  
1339 ride device that is started and stopped by the purchaser or renter of the right to use or operate  
1340 the amusement device, skill device, or ride device.

1341 (119) (a) "Use" means the exercise of any right or power over tangible personal  
1342 property, a product transferred electronically, or a service under Subsection 59-12-103(1),  
1343 incident to the ownership or the leasing of that tangible personal property, product transferred  
1344 electronically, or service.

1345 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal  
1346 property, a product transferred electronically, or a service in the regular course of business and  
1347 held for resale.

1348 (120) "Value-added nonvoice data service" means a service:

1349 (a) that otherwise meets the definition of a telecommunications service except that a  
1350 computer processing application is used to act primarily for a purpose other than conveyance,  
1351 routing, or transmission; and

1352 (b) with respect to which a computer processing application is used to act on data or  
1353 information:

1354 (i) code;

1355 (ii) content;

1356 (iii) form; or

1357 (iv) protocol.

1358 (121) (a) Subject to Subsection (121)(b), "vehicle" means the following that are  
1359 required to be titled, registered, or titled and registered:

1360 (i) an aircraft as defined in Section 72-10-102;

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

- 1392 (i) municipal solid waste;
- 1393 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or
- 1394 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.
- 1395 (126) "Watercraft" means a vessel as defined in Section 73-18-2.
- 1396 (127) "Wind energy" means wind used as the sole source of energy to produce
- 1397 electricity.
- 1398 (128) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
- 1399 location by the United States Postal Service.
- 1400 Section 2. Section **59-12-211** is amended to read:
- 1401 **59-12-211. Definitions -- Location of certain transactions -- Reports to**
- 1402 **commission -- Direct payment provision for a seller making certain purchases --**
- 1403 **Exceptions.**
- 1404 (1) As used in this section:
- 1405 (a) (i) "Receipt" and "receive" mean:
- 1406 (A) taking possession of tangible personal property;
- 1407 (B) making first use of a service; or
- 1408 (C) for a product transferred electronically, the earlier of:
- 1409 (I) taking possession of the product transferred electronically; or
- 1410 (II) making first use of the product transferred electronically.
- 1411 (ii) "Receipt" and "receive" do not include possession by a shipping company on behalf
- 1412 of a purchaser.
- 1413 (b) "Transportation equipment" means:
- 1414 (i) a locomotive or rail car that is used to carry a person or property in interstate
- 1415 commerce;
- 1416 (ii) a truck or truck-tractor:
- 1417 (A) with a gross vehicle weight rating of 10,001 pounds or more;
- 1418 (B) registered under Section 41-1a-301; and
- 1419 (C) operated under the authority of a carrier authorized and certificated:
- 1420 (I) by the United States Department of Transportation or another federal authority; and
- 1421 (II) to engage in carrying a person or property in interstate commerce;
- 1422 (iii) a trailer, semitrailer, or passenger bus that is:

- 1423 (A) registered under Section 41-1a-301; and
- 1424 (B) operated under the authority of a carrier authorized and certificated:
- 1425 (I) by the United States Department of Transportation or another federal authority; and
- 1426 (II) to engage in carrying a person or property in interstate commerce;
- 1427 (iv) an aircraft that is operated by an air carrier authorized and certificated:
- 1428 (A) by the United States Department of Transportation or another federal or foreign
- 1429 authority; and
- 1430 (B) to engage in carrying a person or property in interstate commerce; or
- 1431 (v) a container designed for use on, or a component part attached or secured on, an
- 1432 item of equipment listed in[-] Subsections (1)(b)(i) through (iv).
- 1433 (2) Except as provided in Subsections (8) and (13), if tangible personal property, a
- 1434 product transferred electronically, or a service that is subject to taxation under this chapter is
- 1435 received by a purchaser at a business location of a seller, the location of the transaction is the
- 1436 business location of the seller.
- 1437 (3) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
- 1438 and (13), if tangible personal property, a product transferred electronically, or a service that is
- 1439 subject to taxation under this chapter is not received by a purchaser at a business location of a
- 1440 seller, the location of the transaction is the location where the purchaser takes receipt of the
- 1441 tangible personal property or service.
- 1442 (4) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
- 1443 and (13), if Subsection (2) or (3) does not apply, the location of the transaction is the location
- 1444 indicated by an address for or other information on the purchaser if:
- 1445 (a) the address or other information is available from the seller's business records; and
- 1446 (b) use of the address or other information from the seller's records does not constitute
- 1447 bad faith.
- 1448 (5) (a) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9),
- 1449 (11), and (13), if Subsection (2), (3), or (4) does not apply, the location of the transaction is the
- 1450 location indicated by an address for the purchaser if:
- 1451 (i) the address is obtained during the consummation of the transaction; and
- 1452 (ii) use of the address described in Subsection (5)(a)(i) does not constitute bad faith.
- 1453 (b) An address used under Subsection (5)(a) includes the address of a purchaser's

1454 payment instrument if no other address is available.

1455 (6) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),  
1456 and (13), if Subsection (2), (3), (4), or (5) does not apply or if a seller does not have sufficient  
1457 information to apply Subsection (2), (3), (4), or (5), the location of the transaction is the  
1458 location:

1459 (a) indicated by the address from which:

1460 ~~(a)~~ (i) except as provided in Subsection (6)~~(b)~~(a)(ii), for tangible personal property  
1461 that is subject to taxation under this chapter, the tangible personal property is shipped;

1462 ~~(b)~~ (ii) for computer software delivered electronically or for a product transferred  
1463 electronically that is subject to taxation under this chapter, the computer software or product  
1464 transferred electronically is first available for transmission by the seller; or

1465 ~~(c)~~ (iii) for a service that is subject to taxation under this chapter, the service is  
1466 provided~~[-]; or~~

1467 (b) as determined by the seller with respect to a prepaid wireless calling service:

1468 (i) provided in Subsection (6)(a)(iii); or

1469 (ii) associated with the mobile telephone number.

1470 (7) (a) For purposes of this Subsection (7), "shared ZIP Code" means a nine-digit ZIP  
1471 Code that is located within two or more local taxing jurisdictions.

1472 (b) If the location of a transaction determined under Subsections (3) through (6) is in a  
1473 shared ZIP Code, the location of the transaction is:

1474 (i) if there is only one local taxing jurisdiction that imposes the lowest agreement  
1475 combined tax rate for the shared ZIP Code, the local taxing jurisdiction that imposes the lowest  
1476 agreement combined tax rate; or

1477 (ii) if two or more local taxing jurisdictions impose the lowest agreement combined tax  
1478 rate for the shared ZIP Code, the local taxing jurisdiction that:

1479 (A) imposes the lowest agreement combined tax rate for the shared ZIP Code; and

1480 (B) has located within the local taxing jurisdiction the largest number of street  
1481 addresses within the shared ZIP Code.

1482 (c) For purposes of Subsection (7)(b), a seller shall collect a tax imposed under this  
1483 chapter at the lowest agreement combined tax rate imposed within the local taxing jurisdiction  
1484 in which the transaction is located under Subsection (7)(b) notwithstanding:



- 1485 (i) Section 59-12-204;
- 1486 (ii) Section 59-12-401;
- 1487 (iii) Section 59-12-402;
- 1488 (iv) Section 59-12-501;
- 1489 (v) Section 59-12-502;
- 1490 (vi) Section 59-12-703;
- 1491 (vii) Section 59-12-802;
- 1492 (viii) Section 59-12-804;
- 1493 (ix) Section 59-12-1001;
- 1494 (x) Section 59-12-1102;
- 1495 (xi) Section 59-12-1302;
- 1496 (xii) Section 59-12-1402;
- 1497 (xiii) Section 59-12-1503;
- 1498 (xiv) Section 59-12-1703; [~~or~~]
- 1499 (xv) Section 59-12-1802[~~;~~];
- 1500 (xvi) Section 59-12-1903;
- 1501 (xvii) Section 59-12-2003; or
- 1502 (xviii) Section 59-12-2103.
- 1503 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1504 commission may make rules:
  - 1505 (i) providing for the circumstances under which a seller has exercised due diligence in
  - 1506 determining the nine-digit ZIP Code for an address; or
  - 1507 (ii) notwithstanding Subsection (7)(b), for determining the local taxing jurisdiction
  - 1508 within which a transaction is located if a seller is unable to determine the local taxing
  - 1509 jurisdiction within which the transaction is located under Subsection (7)(b).
  - 1510 (8) The location of a transaction made with a direct payment permit described in
  - 1511 Section 59-12-107.1 is the location where receipt of the tangible personal property, product, or
  - 1512 service by the purchaser occurs.
  - 1513 (9) The location of a purchase of direct mail is the location described in Subsection (6),
  - 1514 if the purchaser of the direct mail:
  - 1515 (a) has not been issued a direct payment permit under Section 59-12-107.1; and

1516 (b) does not provide the seller the form or information described in Subsection  
1517 59-12-123(1).

1518 (10) (a) Except as provided in Subsection (10)(b), the location of a transaction  
1519 determined under Subsections (3) through (6), (8), or (9), is the local taxing jurisdiction within  
1520 which:

1521 (i) the nine-digit ZIP Code assigned to the location determined under Subsections (3)  
1522 through (6), (8), or (9) is located; or

1523 (ii) the five-digit ZIP Code assigned to the location determined under Subsections (3)  
1524 through (6), (8), or (9) is located if:

1525 (A) a nine-digit ZIP Code is not available for the location determined under  
1526 Subsections (3) through (6), (8), or (9); or

1527 (B) after exercising due diligence, a seller or certified service provider is unable to  
1528 determine a nine-digit ZIP Code for the location determined under Subsections (3) through (6),  
1529 (8), or (9).

1530 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1531 commission may make rules for determining the local taxing jurisdiction within which a  
1532 transaction is located if a seller or certified service provider is unable to determine the local  
1533 taxing jurisdiction within which the transaction is located under Subsection (10)(a).

1534 (11) (a) As used in this Subsection (11), "florist delivery transaction" means a  
1535 transaction commenced by a florist that transmits an order:

1536 (i) by:

1537 (A) telegraph;

1538 (B) telephone; or

1539 (C) a means of communication similar to Subsection (11)(a)(i)(A) or (B); and

1540 (ii) for delivery to another place:

1541 (A) in this state; or

1542 (B) outside this state.

1543 (b) Notwithstanding Subsections (3) through (6), beginning on January 1, 2009, and  
1544 ending on December 31, 2009, the location of a florist delivery transaction is the business  
1545 location of the florist that commences the florist delivery transaction.

1546 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

- 1547 commission may by rule:
- 1548 (i) define:
- 1549 (A) "business location"; and
- 1550 (B) "florist";
- 1551 (ii) define what constitutes a means of communication similar to Subsection
- 1552 (11)(a)(i)(A) or (B); and
- 1553 (iii) provide procedures for determining when a transaction is commenced.
- 1554 (12) (a) A tax collected under this chapter shall be reported to the commission on a
- 1555 form that identifies the location of each transaction that occurs during the return filing period.
- 1556 (b) The form described in Subsection (12)(a) shall be filed with the commission as
- 1557 required under this chapter.
- 1558 (13) This section does not apply to:
- 1559 (a) amounts charged by a seller for:
- 1560 (i) telecommunications service except for a prepaid calling service or a prepaid
- 1561 wireless calling service as provided in Subsection (6)(b) or Section 59-12-215; or
- 1562 (ii) the retail sale or transfer of:
- 1563 (A) a motor vehicle other than a motor vehicle that is transportation equipment;
- 1564 (B) an aircraft other than an aircraft that is transportation equipment;
- 1565 (C) a watercraft;
- 1566 (D) a modular home;
- 1567 (E) a manufactured home; or
- 1568 (F) a mobile home; or
- 1569 (iii) except as provided in Section 59-12-214, the lease or rental of tangible personal
- 1570 property other than tangible personal property that is transportation equipment;
- 1571 (b) a tax paid under this chapter:
- 1572 (i) by a seller; and
- 1573 (ii) for the seller's purchases; or
- 1574 (c) a retail sale of tangible personal property or a product transferred electronically if:
- 1575 (i) the seller receives the order for the tangible personal property or product transferred
- 1576 electronically in this state;
- 1577 (ii) receipt of the tangible personal property or product transferred electronically by the

1578 purchaser or the purchaser's donee occurs in this state;  
1579 (iii) the location where receipt of the tangible personal property or product transferred  
1580 electronically by the purchaser occurs is determined in accordance with Subsections (3)  
1581 through (5); and  
1582 (iv) at the time the seller receives the order, the record keeping system that the seller  
1583 uses to calculate the proper amount of tax imposed under this chapter captures the location  
1584 where the order is received.  
1585 Section 3. **Effective date.**  
1586 This bill takes effect on July 1, 2010.

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**Legislative Review Note**  
**as of 11-20-09 6:51 AM**

**Office of Legislative Research and General Counsel**

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**H.B. 50 - Sales and Use Tax Modifications**

**Fiscal Note**

2010 General Session  
State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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