

1                   **SALES AND USE TAX EXEMPTION FOR AN**  
2                   **ENERGY EFFICIENT STOVE OR ENERGY**  
3                   **EFFICIENT STOVE FUEL**

4                   2010 GENERAL SESSION

5                   STATE OF UTAH

6                   **Chief Sponsor: Gene Davis**

7                   House Sponsor: Todd E. Kiser

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9                   **LONG TITLE**

10                  **General Description:**

11                    This bill amends the Sales and Use Tax Act to provide a sales and use tax exemption.

12                  **Highlighted Provisions:**

13                    This bill:

- 14                    ▶ defines terms;
- 15                    ▶ provides a sales and use tax exemption for the purchase of an energy efficient stove
- 16                    or energy efficient stove fuel; and
- 17                    ▶ makes technical and conforming changes.

18                  **Monies Appropriated in this Bill:**

19                    None

20                  **Other Special Clauses:**

21                    This bill takes effect on July 1, 2010.

22                  **Utah Code Sections Affected:**

23                    AMENDS:

24                    **59-12-102**, as last amended by Laws of Utah 2009, Chapters 203 and 314

25                    **59-12-104**, as last amended by Laws of Utah 2009, Chapters 31, 203, 212, and 385

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



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

29 **59-12-102. Definitions.**

30 As used in this chapter:

31 (1) "800 service" means a telecommunications service that:

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

33 (b) is typically marketed:

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

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

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

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

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

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

40 Federal Communications Commission.

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

42 (i) a subscriber purchases;

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

44 the subscriber's:

45 (A) prerecorded announcement; or

46 (B) live service; and

47 (iii) is typically marketed:

48 (A) under the name 900 service; or

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

50 Communications Commission.

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

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

53 subscriber; or

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

55 (A) a product; or

56 (B) a service.

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

58 (b) "Admission or user fees" does not include annual membership dues to private

59 organizations.

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

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

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

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

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

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

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

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

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

71 (e) Section 59-12-204;

72 (f) Section 59-12-401;

73 (g) Section 59-12-402;

74 (h) Section 59-12-501;

75 (i) Section 59-12-502;

76 (j) Section 59-12-703;

77 (k) Section 59-12-802;

78 (l) Section 59-12-804;

79 (m) Section 59-12-1001;

80 (n) Section 59-12-1102;

81 (o) Section 59-12-1302;

82 (p) Section 59-12-1402;

83 (q) Section 59-12-1503;

84 (r) Section 59-12-1703;

85 (s) Section 59-12-1802;

86 (t) Section 59-12-1903;

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

88 (v) Section 59-12-2103.

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

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

91 (a) is suitable for human consumption; and

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

93 (9) (a) "Ancillary service" means a service associated with, or incidental to, the

94 provision of telecommunications service.

95 (b) "Ancillary service" includes:

96 (i) a conference bridging service;

97 (ii) a detailed communications billing service;

98 (iii) directory assistance;

99 (iv) a vertical service; or

100 (v) a voice mail service.

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

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

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

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

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

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

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

115 (13) "Authorized carrier" means:

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

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

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

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

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

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

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

128 (B) animal waste;

129 (C) methane produced:

130 (I) at landfills; or

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

132 (D) aquatic plants; and

133 (E) agricultural products.

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

135 (i) black liquor;

136 (ii) treated woods; or

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

138 (A) at landfills; or

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

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

142 (i) distinct and identifiable; and

143 (ii) sold for one nonitemized price.

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

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

146 the basis of the selection by the purchaser of the items of tangible personal property included in  
147 the transaction;

148 (ii) the sale of real property;

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

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

151 (A) the tangible personal property:

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

- 183 (A) packaging that:
- 184 (I) accompanies the sale of the tangible personal property, product, or service; and
- 185 (II) is incidental or immaterial to the sale of the tangible personal property, product, or
- 186 service;
- 187 (B) tangible personal property, a product, or a service provided free of charge with the
- 188 purchase of another item of tangible personal property, a product, or a service; or
- 189 (C) an item of tangible personal property, a product, or a service included in the
- 190 definition of "purchase price."
- 191 (ii) For purposes of Subsection (15)(c)(i)(B), an item of tangible personal property, a
- 192 product, or a service is provided free of charge with the purchase of another item of tangible
- 193 personal property, a product, or a service if the sales price of the purchased item of tangible
- 194 personal property, product, or service does not vary depending on the inclusion of the tangible
- 195 personal property, product, or service provided free of charge.
- 196 (d) (i) For purposes of Subsection (15)(a)(ii), property sold for one nonitemized price
- 197 does not include a price that is separately identified by product on the following, regardless of
- 198 whether the following is in paper format or electronic format:
- 199 (A) a binding sales document; or
- 200 (B) another supporting sales-related document that is available to a purchaser.
- 201 (ii) For purposes of Subsection (15)(d)(i), a binding sales document or another
- 202 supporting sales-related document that is available to a purchaser includes:
- 203 (A) a bill of sale;
- 204 (B) a contract;
- 205 (C) an invoice;
- 206 (D) a lease agreement;
- 207 (E) a periodic notice of rates and services;
- 208 (F) a price list;
- 209 (G) a rate card;
- 210 (H) a receipt; or
- 211 (I) a service agreement.
- 212 (e) (i) For purposes of Subsection (15)(b)(vi), the sales price of tangible personal
- 213 property or a product subject to taxation under this chapter is de minimis if:

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

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

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

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

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

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

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

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

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

235 (i) on a transaction; and

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

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

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

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

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

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



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

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

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

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

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

253 (20) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other  
254 fuels that does not constitute industrial use under Subsection [~~46~~] (48) or residential use  
255 under Subsection [~~91~~] (93).

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

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

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

264 (22) "Component part" includes:

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

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

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

270 (d) feed, seeds, and seedlings.

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

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

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

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

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

- 276 (a) a computer to perform a task; or
- 277 (b) automatic data processing equipment to perform a task.
- 278 (25) (a) "Conference bridging service" means an ancillary service that links two or
- 279 more participants of an audio conference call or video conference call.
- 280 (b) "Conference bridging service" includes providing a telephone number as part of the
- 281 ancillary service described in Subsection (25)(a).
- 282 (c) "Conference bridging service" does not include a telecommunications service used
- 283 to reach the ancillary service described in Subsection (25)(a).
- 284 (26) "Construction materials" means any tangible personal property that will be
- 285 converted into real property.
- 286 (27) "Delivered electronically" means delivered to a purchaser by means other than
- 287 tangible storage media.
- 288 (28) (a) "Delivery charge" means a charge:
- 289 (i) by a seller of:
- 290 (A) tangible personal property;
- 291 (B) a product transferred electronically; or
- 292 (C) services; and
- 293 (ii) for preparation and delivery of the tangible personal property, product transferred
- 294 electronically, or services described in Subsection (28)(a)(i) to a location designated by the
- 295 purchaser.
- 296 (b) "Delivery charge" includes a charge for the following:
- 297 (i) transportation;
- 298 (ii) shipping;
- 299 (iii) postage;
- 300 (iv) handling;
- 301 (v) crating; or
- 302 (vi) packing.
- 303 (29) "Detailed telecommunications billing service" means an ancillary service of
- 304 separately stating information pertaining to individual calls on a customer's billing statement.
- 305 (30) "Dietary supplement" means a product, other than tobacco, that:
- 306 (a) is intended to supplement the diet;

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

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

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

- 400 (i) electrical capabilities;
- 401 (ii) digital capabilities;
- 402 (iii) magnetic capabilities;
- 403 (iv) wireless capabilities;
- 404 (v) optical capabilities;
- 405 (vi) electromagnetic capabilities; or
- 406 (vii) capabilities similar to Subsections (36)(b)(i) through (vi).

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

408 (38) "Energy efficient stove" means a stove that:

409 (a) uses the burning of energy efficient stove fuel to heat a dwelling or heat water for  
410 use in a dwelling; and

411 (b) has a thermal efficiency rating of at least 75%, as measured using a lower heating  
412 value.

413 (39) "Energy efficient stove fuel" means any plant-derived fuel available on a  
414 renewable or recurring basis, including agricultural crops and trees, wood and wood waste and  
415 residues including wood pellets, plants including aquatic plants, grasses, residues, and fibers.

416 [~~38~~] (40) "Fixed guideway" means a public transit facility that uses and occupies:

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

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

419 [~~39~~] (41) "Fixed wireless service" means a telecommunications service that provides  
420 radio communication between fixed points.

421 [~~40~~] (42) (a) "Food and food ingredients" means substances:

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

423 (A) liquid form;

424 (B) concentrated form;

425 (C) solid form;

426 (D) frozen form;

427 (E) dried form; or

428 (F) dehydrated form; and

429 (ii) that are:

430 (A) sold for:

- 431 (I) ingestion by humans; or  
432 (II) chewing by humans; and  
433 (B) consumed for the substance's:  
434 (I) taste; or  
435 (II) nutritional value.  
436 (b) "Food and food ingredients" includes an item described in Subsection [~~(75)~~]  
437 ~~(77)~~(b)(iii).  
438 (c) "Food and food ingredients" does not include:  
439 (i) an alcoholic beverage;  
440 (ii) tobacco; or  
441 (iii) prepared food.  
442 [~~(41)~~] (43) (a) "Fundraising sales" means sales:  
443 (i) (A) made by a school; or  
444 (B) made by a school student;  
445 (ii) that are for the purpose of raising funds for the school to purchase equipment,  
446 materials, or provide transportation; and  
447 (iii) that are part of an officially sanctioned school activity.  
448 (b) For purposes of Subsection [~~(41)~~] (43)(a)(iii), "officially sanctioned school activity"  
449 means a school activity:  
450 (i) that is conducted in accordance with a formal policy adopted by the school or school  
451 district governing the authorization and supervision of fundraising activities;  
452 (ii) that does not directly or indirectly compensate an individual teacher or other  
453 educational personnel by direct payment, commissions, or payment in kind; and  
454 (iii) the net or gross revenues from which are deposited in a dedicated account  
455 controlled by the school or school district.  
456 [~~(42)~~] (44) "Geothermal energy" means energy contained in heat that continuously  
457 flows outward from the earth that is used as the sole source of energy to produce electricity.  
458 [~~(43)~~] (45) "Governing board of the agreement" means the governing board of the  
459 agreement that is:  
460 (a) authorized to administer the agreement; and  
461 (b) established in accordance with the agreement.

462            [~~(44)~~] (46) (a) For purposes of Subsection 59-12-104(41), "governmental entity"  
463 means:

464            (i) the executive branch of the state, including all departments, institutions, boards,  
465 divisions, bureaus, offices, commissions, and committees;

466            (ii) the judicial branch of the state, including the courts, the Judicial Council, the  
467 Office of the Court Administrator, and similar administrative units in the judicial branch;

468            (iii) the legislative branch of the state, including the House of Representatives, the  
469 Senate, the Legislative Printing Office, the Office of Legislative Research and General  
470 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal  
471 Analyst;

472            (iv) the National Guard;

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

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

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

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

478            (ii) a school;

479            (iii) the State Board of Education;

480            (iv) the State Board of Regents; or

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

482            [~~(45)~~] (47) "Hydroelectric energy" means water used as the sole source of energy to  
483 produce electricity.

484            [~~(46)~~] (48) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil,  
485 or other fuels:

486            (a) in mining or extraction of minerals;

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

489            (i) commercial greenhouses;

490            (ii) irrigation pumps;

491            (iii) farm machinery;

492            (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not



493 registered under Title 41, Chapter 1a, Part 2, Registration; and

494 (v) other farming activities;

495 (c) in manufacturing tangible personal property at an establishment described in SIC

496 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal

497 Executive Office of the President, Office of Management and Budget;

498 (d) by a scrap recycler if:

499 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process

500 one or more of the following items into prepared grades of processed materials for use in new

501 products:

502 (A) iron;

503 (B) steel;

504 (C) nonferrous metal;

505 (D) paper;

506 (E) glass;

507 (F) plastic;

508 (G) textile; or

509 (H) rubber; and

510 (ii) the new products under Subsection [~~(46)~~] (48)(d)(i) would otherwise be made with

511 nonrecycled materials; or

512 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a

513 cogeneration facility as defined in Section 54-2-1.

514 [~~(47)~~] (49) (a) Except as provided in Subsection [~~(47)~~] (49)(b), "installation charge"

515 means a charge for installing:

516 (i) tangible personal property; or

517 (ii) a product transferred electronically.

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

519 (i) tangible personal property; or

520 (ii) a product transferred electronically.

521 [~~(48)~~] (50) (a) "Lease" or "rental" means a transfer of possession or control of tangible

522 personal property or a product transferred electronically for:

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

524 (B) an indeterminate term; and  
525 (ii) consideration.

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

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

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

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

536 (A) upon completion of required payments; and

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

538 (I) \$100; or

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

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

543 (d) For purposes of Subsection [~~(48)~~] (50)(c)(iii), an operator is necessary for  
544 equipment to perform as designed if the operator's duties exceed the:

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

546 (ii) maintenance of tangible personal property; or

547 (iii) inspection of tangible personal property.

548 [~~(49)~~] (51) "Load and leave" means delivery to a purchaser by use of a tangible storage  
549 media if the tangible storage media is not physically transferred to the purchaser.

550 [~~(50)~~] (52) "Local taxing jurisdiction" means a:

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

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

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

554 [~~(51)~~] (53) "Manufactured home" is as defined in Section 58-56-3.

555 [~~(52)~~] (54) For purposes of Section 59-12-104, "manufacturing facility" means:

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

559 (b) a scrap recycler if:

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

563 (A) iron;

564 (B) steel;

565 (C) nonferrous metal;

566 (D) paper;

567 (E) glass;

568 (F) plastic;

569 (G) textile; or

570 (H) rubber; and

571 (ii) the new products under Subsection [~~(52)~~] (54)(b)(i) would otherwise be made with  
572 nonrecycled materials; or

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

574 [~~(53)~~] (55) "Member of the immediate family of the producer" means a person who is  
575 related to a producer described in Subsection 59-12-104(20)(a) as a:

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

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

578 (ii) a foster child or foster stepchild;

579 (b) grandchild or stepgrandchild;

580 (c) grandparent or stepgrandparent;

581 (d) nephew or stepnephew;

582 (e) niece or stepniece;

583 (f) parent or stepparent;

584 (g) sibling or stepsibling;

585 (h) spouse;

586 (i) person who is the spouse of a person described in Subsections [~~(53)~~] (55)(a) through  
587 (g); or

588 (j) person similar to a person described in Subsections [~~(53)~~] (55)(a) through (i) as  
589 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah  
590 Administrative Rulemaking Act.

591 [~~(54)~~] (56) "Mobile home" is as defined in Section 58-56-3.

592 [~~(55)~~] (57) "Mobile telecommunications service" is as defined in the Mobile  
593 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

594 [~~(56)~~] (58) (a) "Mobile wireless service" means a telecommunications service,  
595 regardless of the technology used, if:

- 596 (i) the origination point of the conveyance, routing, or transmission is not fixed;
- 597 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or
- 598 (iii) the origination point described in Subsection [~~(56)~~] (58)(a)(i) and the termination  
599 point described in Subsection [~~(56)~~] (58)(a)(ii) are not fixed.

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

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

604 [~~(57)~~] (59) (a) Except as provided in Subsection [~~(57)~~] (59)(c), "mobility enhancing  
605 equipment" means equipment that is:

- 606 (i) primarily and customarily used to provide or increase the ability to move from one  
607 place to another;
- 608 (ii) appropriate for use in a:
  - 609 (A) home; or
  - 610 (B) motor vehicle; and
- 611 (iii) not generally used by persons with normal mobility.

612 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of  
613 the equipment described in Subsection [~~(57)~~] (59)(a).

614 (c) Notwithstanding Subsection [~~(57)~~] (59)(a), "mobility enhancing equipment" does  
615 not include:

- 616 (i) a motor vehicle;

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

619 (iii) durable medical equipment; or

620 (iv) a prosthetic device.

621 ~~[(58)]~~ (60) "Model 1 seller" means a seller that has selected a certified service provider  
622 as the seller's agent to perform all of the seller's sales and use tax functions for agreement sales  
623 and use taxes other than the seller's obligation under Section 59-12-124 to remit a tax on the  
624 seller's own purchases.

625 ~~[(59)]~~ (61) "Model 2 seller" means a seller that:

626 (a) except as provided in Subsection ~~[(59)]~~ (61)(b), has selected a certified automated  
627 system to perform the seller's sales tax functions for agreement sales and use taxes; and

628 (b) notwithstanding Subsection ~~[(59)]~~ (61)(a), retains responsibility for remitting all of  
629 the sales tax:

630 (i) collected by the seller; and

631 (ii) to the appropriate local taxing jurisdiction.

632 ~~[(60)]~~ (62) (a) Subject to Subsection ~~[(60)]~~ (62)(b), "model 3 seller" means a seller that  
633 has:

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

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

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

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

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

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

640 (b) For purposes of Subsection ~~[(60)]~~ (62)(a), "model 3 seller" includes an affiliated  
641 group of sellers using the same proprietary system.

642 ~~[(61)]~~ (63) "Modular home" means a modular unit as defined in Section 58-56-3.

643 ~~[(62)]~~ (64) "Motor vehicle" is as defined in Section 41-1a-102.

644 ~~[(63)]~~ (65) "Oil shale" means a group of fine black to dark brown shales containing  
645 bituminous material that yields petroleum upon distillation.

646 ~~[(64)]~~ (66) (a) "Other fuels" means products that burn independently to produce heat or  
647 energy.

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

650 ~~[(65)]~~ (67) (a) "Paging service" means a telecommunications service that provides  
651 transmission of a coded radio signal for the purpose of activating a specific pager.

652 (b) For purposes of Subsection ~~[(65)]~~ (67)(a), the transmission of a coded radio signal  
653 includes a transmission by message or sound.

654 ~~[(66)]~~ (68) "Pawnbroker" is as defined in Section 13-32a-102.

655 ~~[(67)]~~ (69) "Pawn transaction" is as defined in Section 13-32a-102.

656 ~~[(68)]~~ (70) (a) "Permanently attached to real property" means that for tangible personal  
657 property attached to real property:

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

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

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

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

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

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

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

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

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

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

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

674 (iii) property attached to oil, gas, or water pipelines, except for the property listed in  
675 Subsection ~~[(68)]~~ (70)(c)(iii) or (iv).

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

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

- 679 (A) convenience;
- 680 (B) stability; or
- 681 (C) for an obvious temporary purpose;
- 682 (ii) the detachment of tangible personal property from real property except for the
- 683 detachment described in Subsection [~~(68)~~] (70)(b)(ii);
- 684 (iii) an attachment of the following tangible personal property to real property if the
- 685 attachment to real property is only through a line that supplies water, electricity, gas,
- 686 telecommunications, cable, or supplies a similar item as determined by the commission by rule
- 687 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
- 688 (A) a computer;
- 689 (B) a telephone;
- 690 (C) a television; or
- 691 (D) tangible personal property similar to Subsections [~~(68)~~] (70)(c)(iii)(A) through (C)
- 692 as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
- 693 Administrative Rulemaking Act; or
- 694 (iv) an item listed in Subsection [~~(108)~~] (110)(c).
- 695 [~~(69)~~] (71) "Person" includes any individual, firm, partnership, joint venture,
- 696 association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county,
- 697 city, municipality, district, or other local governmental entity of the state, or any group or
- 698 combination acting as a unit.
- 699 [~~(70)~~] (72) "Place of primary use":
- 700 (a) for telecommunications service other than mobile telecommunications service,
- 701 means the street address representative of where the customer's use of the telecommunications
- 702 service primarily occurs, which shall be:
- 703 (i) the residential street address of the customer; or
- 704 (ii) the primary business street address of the customer; or
- 705 (b) for mobile telecommunications service, is as defined in the Mobile
- 706 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
- 707 [~~(71)~~] (73) (a) "Postpaid calling service" means a telecommunications service a person
- 708 obtains by making a payment on a call-by-call basis:
- 709 (i) through the use of a:

710 (A) bank card;  
711 (B) credit card;  
712 (C) debit card; or  
713 (D) travel card; or  
714 (ii) by a charge made to a telephone number that is not associated with the origination  
715 or termination of the telecommunications service.

716 (b) "Postpaid calling service" includes a service, except for a prepaid wireless calling  
717 service, that would be a prepaid wireless calling service if the service were exclusively a  
718 telecommunications service.

719 [~~72~~] (74) "Postproduction" means an activity related to the finishing or duplication of  
720 a medium described in Subsection 59-12-104(54)(a).

721 [~~73~~] (75) "Prepaid calling service" means a telecommunications service:

722 (a) that allows a purchaser access to telecommunications service that is exclusively  
723 telecommunications service;

724 (b) that:

725 (i) is paid for in advance; and

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

727 (A) access number; or

728 (B) authorization code;

729 (c) that is dialed:

730 (i) manually; or

731 (ii) electronically; and

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

733 (i) by a known amount; and

734 (ii) with use.

735 [~~74~~] (76) "Prepaid wireless calling service" means a telecommunications service:

736 (a) that provides the right to utilize:

737 (i) mobile wireless service; and

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

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

740 (B) a content service; or



- 741 (C) an ancillary service;
- 742 (b) that:
- 743 (i) is paid for in advance; and
- 744 (ii) enables the origination of a call using an:
- 745 (A) access number; or
- 746 (B) authorization code;
- 747 (c) that is dialed:
- 748 (i) manually; or
- 749 (ii) electronically; and
- 750 (d) sold in predetermined units or dollars that decline:
- 751 (i) by a known amount; and
- 752 (ii) with use.
- 753 [~~(75)~~] (77) (a) "Prepared food" means:
- 754 (i) food:
- 755 (A) sold in a heated state; or
- 756 (B) heated by a seller;
- 757 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 758 item; or
- 759 (iii) except as provided in Subsection [~~(75)~~] (77)(c), food sold with an eating utensil
- 760 provided by the seller, including a:
- 761 (A) plate;
- 762 (B) knife;
- 763 (C) fork;
- 764 (D) spoon;
- 765 (E) glass;
- 766 (F) cup;
- 767 (G) napkin; or
- 768 (H) straw.
- 769 (b) "Prepared food" does not include:
- 770 (i) food that a seller only:
- 771 (A) cuts;

- 772 (B) repackages; or
- 773 (C) pasteurizes; or
- 774 (ii) (A) the following:
  - 775 (I) raw egg;
  - 776 (II) raw fish;
  - 777 (III) raw meat;
  - 778 (IV) raw poultry; or
  - 779 (V) a food containing an item described in Subsections [~~(75)~~] (77)(b)(ii)(A)(I) through
  - 780 (IV); and
- 781 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 782 Food and Drug Administration's Food Code that a consumer cook the items described in
- 783 Subsection [~~(75)~~] (77)(b)(ii)(A) to prevent food borne illness; or
- 784 (iii) the following if sold without eating utensils provided by the seller:
  - 785 (A) food and food ingredients sold by a seller if the seller's proper primary
  - 786 classification under the 2002 North American Industry Classification System of the federal
  - 787 Executive Office of the President, Office of Management and Budget, is manufacturing in
  - 788 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
  - 789 Manufacturing;
  - 790 (B) food and food ingredients sold in an unheated state:
    - 791 (I) by weight or volume; and
    - 792 (II) as a single item; or
    - 793 (C) a bakery item, including:
      - 794 (I) a bagel;
      - 795 (II) a bar;
      - 796 (III) a biscuit;
      - 797 (IV) bread;
      - 798 (V) a bun;
      - 799 (VI) a cake;
      - 800 (VII) a cookie;
      - 801 (VIII) a croissant;
      - 802 (IX) a danish;

- 803 (X) a donut;
  - 804 (XI) a muffin;
  - 805 (XII) a pastry;
  - 806 (XIII) a pie;
  - 807 (XIV) a roll;
  - 808 (XV) a tart;
  - 809 (XVI) a torte; or
  - 810 (XVII) a tortilla.
- 811 (c) Notwithstanding Subsection [~~(75)~~] (77)(a)(iii), an eating utensil provided by the
- 812 seller does not include the following used to transport the food:
- 813 (i) a container; or
  - 814 (ii) packaging.
- 815 [~~(76)~~] (78) "Prescription" means an order, formula, or recipe that is issued:
- 816 (a) (i) orally;
  - 817 (ii) in writing;
  - 818 (iii) electronically; or
  - 819 (iv) by any other manner of transmission; and
- 820 (b) by a licensed practitioner authorized by the laws of a state.
- 821 [~~(77)~~] (79) (a) Except as provided in Subsection [~~(77)~~] (79)(b)(ii) or (iii), "prewritten
- 822 computer software" means computer software that is not designed and developed:
- 823 (i) by the author or other creator of the computer software; and
  - 824 (ii) to the specifications of a specific purchaser.
- 825 (b) "Prewritten computer software" includes:
- 826 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
  - 827 software is not designed and developed:
    - 828 (A) by the author or other creator of the computer software; and
    - 829 (B) to the specifications of a specific purchaser;
  - 830 (ii) notwithstanding Subsection [~~(77)~~] (79)(a), computer software designed and
  - 831 developed by the author or other creator of the computer software to the specifications of a
  - 832 specific purchaser if the computer software is sold to a person other than the purchaser; or
  - 833 (iii) notwithstanding Subsection [~~(77)~~] (79)(a) and except as provided in Subsection

834 [~~(77)~~] (79)(c), prewritten computer software or a prewritten portion of prewritten computer  
835 software:

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

837 (B) if the modification or enhancement described in Subsection [~~(77)~~] (79)(b)(iii)(A) is  
838 designed and developed to the specifications of a specific purchaser.

839 (c) Notwithstanding Subsection [~~(77)~~] (79)(b)(iii), "prewritten computer software"  
840 does not include a modification or enhancement described in Subsection [~~(77)~~] (79)(b)(iii) if  
841 the charges for the modification or enhancement are:

842 (i) reasonable; and

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

845 [~~(78)~~] (80) (a) "Private communication service" means a telecommunications service:

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

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

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

852 (i) an extension line;

853 (ii) a station;

854 (iii) switching capacity; or

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

857 [~~(79)~~] (81) (a) "Prosthetic device" means a device that is worn on or in the body to:

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

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

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

861 (b) "Prosthetic device" includes:

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

863 (ii) replacement parts for a prosthetic device;

864 (iii) a dental prosthesis; or

- 865 (iv) a hearing aid.
- 866 (c) "Prosthetic device" does not include:
- 867 (i) corrective eyeglasses; or
- 868 (ii) contact lenses.
- 869 ~~[(80)]~~ (82) (a) "Protective equipment" means an item:
- 870 (i) for human wear; and
- 871 (ii) that is:
- 872 (A) designed as protection:
- 873 (I) to the wearer against injury or disease; or
- 874 (II) against damage or injury of other persons or property; and
- 875 (B) not suitable for general use.
- 876 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 877 commission shall make rules:
- 878 (i) listing the items that constitute "protective equipment"; and
- 879 (ii) that are consistent with the list of items that constitute "protective equipment"
- 880 under the agreement.
- 881 ~~[(81)]~~ (83) (a) For purposes of Subsection 59-12-104(41), "publication" means any
- 882 written or printed matter, other than a photocopy:
- 883 (i) regardless of:
- 884 (A) characteristics;
- 885 (B) copyright;
- 886 (C) form;
- 887 (D) format;
- 888 (E) method of reproduction; or
- 889 (F) source; and
- 890 (ii) made available in printed or electronic format.
- 891 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 892 commission may by rule define the term "photocopy."
- 893 ~~[(82)]~~ (84) (a) "Purchase price" and "sales price" mean the total amount of
- 894 consideration:
- 895 (i) valued in money; and

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

- 898 (A) sold;
- 899 (B) leased; or
- 900 (C) rented.

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

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

904 (ii) expenses of the seller, including:

- 905 (A) the cost of materials used;
- 906 (B) a labor cost;
- 907 (C) a service cost;
- 908 (D) interest;
- 909 (E) a loss;
- 910 (F) the cost of transportation to the seller; or
- 911 (G) a tax imposed on the seller;

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

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

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

916 (II) the consideration described in Subsection [~~82~~] (84)(b)(iv)(A)(I) is directly related  
917 to a price reduction or discount on the sale;

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

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

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

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

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

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

933 (Aa) invoice the purchaser receives; or

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

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

936 (i) a discount:

937 (A) in a form including:

938 (I) cash;

939 (II) term; or

940 (III) coupon;

941 (B) that is allowed by a seller;

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

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

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

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

948 (I) a carrying charge;

949 (II) a financing charge; or

950 (III) an interest charge;

951 (B) a delivery charge;

952 (C) an installation charge;

953 (D) a manufacturer rebate on a motor vehicle; or

954 (E) a tax or fee legally imposed directly on the consumer.

955 [~~(83)~~] (85) "Purchaser" means a person to whom:

956 (a) a sale of tangible personal property is made;

957 (b) a product is transferred electronically; or

958 (c) a service is furnished.

959 [~~(84)~~] (86) "Regularly rented" means:

960 (a) rented to a guest for value three or more times during a calendar year; or

961 (b) advertised or held out to the public as a place that is regularly rented to guests for

962 value.

963 [~~(85)~~] (87) "Renewable energy" means:

964 (a) biomass energy;

965 (b) hydroelectric energy;

966 (c) geothermal energy;

967 (d) solar energy; or

968 (e) wind energy.

969 [~~(86)~~] (88) (a) "Renewable energy production facility" means a facility that:

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

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

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

973 facility is:

974 (i) connected to an electric grid; or

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

976 [~~(87)~~] (89) "Rental" is as defined in Subsection [~~(48)~~] (50).

977 [~~(88)~~] (90) "Repairs or renovations of tangible personal property" means:

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

980 (b) attaching tangible personal property or a product that is transferred electronically to  
981 other tangible personal property if the other tangible personal property to which the tangible  
982 personal property or product that is transferred electronically is attached is not permanently  
983 attached to real property.

984 [~~(89)~~] (91) "Research and development" means the process of inquiry or  
985 experimentation aimed at the discovery of facts, devices, technologies, or applications and the  
986 process of preparing those devices, technologies, or applications for marketing.

987 [~~(90)~~] (92) (a) "Residential telecommunications services" means a telecommunications  
988 service or an ancillary service that is provided to an individual for personal use:



989 (i) at a residential address; or

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

993 (b) For purposes of Subsection [~~90~~] (92)(a), a residential address includes an:

994 (i) apartment; or

995 (ii) other individual dwelling unit.

996 [~~91~~] (93) "Residential use" means the use in or around a home, apartment building,  
997 sleeping quarters, and similar facilities or accommodations.

998 [~~92~~] (94) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose  
999 other than:

1000 (a) resale;

1001 (b) sublease; or

1002 (c) subrent.

1003 [~~93~~] (95) (a) "Retailer" means any person engaged in a regularly organized business  
1004 in tangible personal property or any other taxable transaction under Subsection 59-12-103(1),  
1005 and who is selling to the user or consumer and not for resale.

1006 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly  
1007 engaged in the business of selling to users or consumers within the state.

1008 [~~94~~] (96) (a) "Sale" means any transfer of title, exchange, or barter, conditional or  
1009 otherwise, in any manner, of tangible personal property or any other taxable transaction under  
1010 Subsection 59-12-103(1), for consideration.

1011 (b) "Sale" includes:

1012 (i) installment and credit sales;

1013 (ii) any closed transaction constituting a sale;

1014 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this  
1015 chapter;

1016 (iv) any transaction if the possession of property is transferred but the seller retains the  
1017 title as security for the payment of the price; and

1018 (v) any transaction under which right to possession, operation, or use of any article of  
1019 tangible personal property is granted under a lease or contract and the transfer of possession

1020 would be taxable if an outright sale were made.

1021 ~~[(95)]~~ (97) "Sale at retail" is as defined in Subsection ~~[(92)]~~ (94).

1022 ~~[(96)]~~ (98) "Sale-leaseback transaction" means a transaction by which title to tangible

1023 personal property or a product transferred electronically that is subject to a tax under this

1024 chapter is transferred:

1025 (a) by a purchaser-lessee;

1026 (b) to a lessor;

1027 (c) for consideration; and

1028 (d) if:

1029 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase

1030 of the tangible personal property or product transferred electronically;

1031 (ii) the sale of the tangible personal property or product transferred electronically to the

1032 lessor is intended as a form of financing:

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

1034 (B) to the purchaser-lessee; and

1035 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee

1036 is required to:

1037 (A) capitalize the tangible personal property or product transferred electronically for

1038 financial reporting purposes; and

1039 (B) account for the lease payments as payments made under a financing arrangement.

1040 ~~[(97)]~~ (99) "Sales price" is as defined in Subsection ~~[(82)]~~ (84).

1041 ~~[(98)]~~ (100) (a) "Sales relating to schools" means the following sales by, amounts paid

1042 to, or amounts charged by a school:

1043 (i) sales that are directly related to the school's educational functions or activities

1044 including:

1045 (A) the sale of:

1046 (I) textbooks;

1047 (II) textbook fees;

1048 (III) laboratory fees;

1049 (IV) laboratory supplies; or

1050 (V) safety equipment;

1051 (B) the sale of a uniform, protective equipment, or sports or recreational equipment  
1052 that:  
1053 (I) a student is specifically required to wear as a condition of participation in a  
1054 school-related event or school-related activity; and  
1055 (II) is not readily adaptable to general or continued usage to the extent that it takes the  
1056 place of ordinary clothing;  
1057 (C) sales of the following if the net or gross revenues generated by the sales are  
1058 deposited into a school district fund or school fund dedicated to school meals:  
1059 (I) food and food ingredients; or  
1060 (II) prepared food; or  
1061 (D) transportation charges for official school activities; or  
1062 (ii) amounts paid to or amounts charged by a school for admission to a school-related  
1063 event or school-related activity.  
1064 (b) "Sales relating to schools" does not include:  
1065 (i) bookstore sales of items that are not educational materials or supplies;  
1066 (ii) except as provided in Subsection [~~(98)~~] (100)(a)(i)(B):  
1067 (A) clothing;  
1068 (B) clothing accessories or equipment;  
1069 (C) protective equipment; or  
1070 (D) sports or recreational equipment; or  
1071 (iii) amounts paid to or amounts charged by a school for admission to a school-related  
1072 event or school-related activity if the amounts paid or charged are passed through to a person:  
1073 (A) other than a:  
1074 (I) school;  
1075 (II) nonprofit organization authorized by a school board or a governing body of a  
1076 private school to organize and direct a competitive secondary school activity; or  
1077 (III) nonprofit association authorized by a school board or a governing body of a  
1078 private school to organize and direct a competitive secondary school activity; and  
1079 (B) that is required to collect sales and use taxes under this chapter.  
1080 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1081 commission may make rules defining the term "passed through."

- 1082            [~~(99)~~] (101) For purposes of this section and Section 59-12-104, "school":
- 1083            (a) means:
- 1084            (i) an elementary school or a secondary school that:
- 1085            (A) is a:
- 1086            (I) public school; or
- 1087            (II) private school; and
- 1088            (B) provides instruction for one or more grades kindergarten through 12; or
- 1089            (ii) a public school district; and
- 1090            (b) includes the Electronic High School as defined in Section 53A-15-1002.
- 1091            [~~(100)~~] (102) "Seller" means a person that makes a sale, lease, or rental of:
- 1092            (a) tangible personal property;
- 1093            (b) a product transferred electronically; or
- 1094            (c) a service.
- 1095            [~~(101)~~] (103) (a) "Semiconductor fabricating, processing, research, or development
- 1096 materials" means tangible personal property or a product transferred electronically if the
- 1097 tangible personal property or product transferred electronically is:
- 1098            (i) used primarily in the process of:
- 1099            (A) (I) manufacturing a semiconductor;
- 1100            (II) fabricating a semiconductor; or
- 1101            (III) research or development of a:
- 1102            (Aa) semiconductor; or
- 1103            (Bb) semiconductor manufacturing process; or
- 1104            (B) maintaining an environment suitable for a semiconductor; or
- 1105            (ii) consumed primarily in the process of:
- 1106            (A) (I) manufacturing a semiconductor;
- 1107            (II) fabricating a semiconductor; or
- 1108            (III) research or development of a:
- 1109            (Aa) semiconductor; or
- 1110            (Bb) semiconductor manufacturing process; or
- 1111            (B) maintaining an environment suitable for a semiconductor.
- 1112            (b) "Semiconductor fabricating, processing, research, or development materials"

1113 includes:

1114 (i) parts used in the repairs or renovations of tangible personal property or a product  
1115 transferred electronically described in Subsection [~~(101)~~] (103)(a); or

1116 (ii) a chemical, catalyst, or other material used to:

1117 (A) produce or induce in a semiconductor a:

1118 (I) chemical change; or

1119 (II) physical change;

1120 (B) remove impurities from a semiconductor; or

1121 (C) improve the marketable condition of a semiconductor.

1122 [~~(102)~~] (104) "Senior citizen center" means a facility having the primary purpose of  
1123 providing services to the aged as defined in Section 62A-3-101.

1124 [~~(103)~~] (105) "Simplified electronic return" means the electronic return:

1125 (a) described in Section 318(C) of the agreement; and

1126 (b) approved by the governing board of the agreement.

1127 [~~(104)~~] (106) "Solar energy" means the sun used as the sole source of energy for  
1128 producing electricity.

1129 [~~(105)~~] (107) (a) "Sports or recreational equipment" means an item:

1130 (i) designed for human use; and

1131 (ii) that is:

1132 (A) worn in conjunction with:

1133 (I) an athletic activity; or

1134 (II) a recreational activity; and

1135 (B) not suitable for general use.

1136 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1137 commission shall make rules:

1138 (i) listing the items that constitute "sports or recreational equipment"; and

1139 (ii) that are consistent with the list of items that constitute "sports or recreational  
1140 equipment" under the agreement.

1141 [~~(106)~~] (108) "State" means the state of Utah, its departments, and agencies.

1142 [~~(107)~~] (109) "Storage" means any keeping or retention of tangible personal property or  
1143 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose

1144 except sale in the regular course of business.

1145           ~~[(108)]~~ (110) (a) Except as provided in Subsection ~~[(108)]~~ (110) (d) or (e), "tangible  
1146 personal property" means personal property that:

1147           (i) may be:

1148           (A) seen;

1149           (B) weighed;

1150           (C) measured;

1151           (D) felt; or

1152           (E) touched; or

1153           (ii) is in any manner perceptible to the senses.

1154           (b) "Tangible personal property" includes:

1155           (i) electricity;

1156           (ii) water;

1157           (iii) gas;

1158           (iv) steam; or

1159           (v) prewritten computer software.

1160           (c) "Tangible personal property" includes the following regardless of whether the item  
1161 is attached to real property:

1162           (i) a dishwasher;

1163           (ii) a dryer;

1164           (iii) a freezer;

1165           (iv) a microwave;

1166           (v) a refrigerator;

1167           (vi) a stove;

1168           (vii) a washer; or

1169           (viii) an item similar to Subsections ~~[(108)]~~ (110)(c)(i) through (vii) as determined by  
1170 the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
1171 Rulemaking Act.

1172           (d) "Tangible personal property" does not include a product that is transferred  
1173 electronically.

1174           (e) "Tangible personal property" does not include the following if attached to real

1175 property, regardless of whether the attachment to real property is only through a line that  
1176 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the  
1177 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
1178 Rulemaking Act:

- 1179 (i) a hot water heater;
- 1180 (ii) a water filtration system; or
- 1181 (iii) a water softener system.

1182 [~~(109)~~] (111) "Tar sands" means impregnated sands that yield mixtures of liquid  
1183 hydrocarbon and require further processing other than mechanical blending before becoming  
1184 finished petroleum products.

1185 [~~(110)~~] (112) (a) "Telecommunications enabling or facilitating equipment, machinery,  
1186 or software" means an item listed in Subsection [~~(110)~~] (112)(b) if that item is purchased or  
1187 leased primarily to enable or facilitate one or more of the following to function:

- 1188 (i) telecommunications switching or routing equipment, machinery, or software; or
- 1189 (ii) telecommunications transmission equipment, machinery, or software.

1190 (b) The following apply to Subsection [~~(110)~~] (112)(a):

- 1191 (i) a pole;
- 1192 (ii) software;
- 1193 (iii) a supplementary power supply;
- 1194 (iv) temperature or environmental equipment or machinery;
- 1195 (v) test equipment;
- 1196 (vi) a tower; or

1197 (vii) equipment, machinery, or software that functions similarly to an item listed in  
1198 Subsections [~~(110)~~] (112)(b)(i) through (vi) as determined by the commission by rule made in  
1199 accordance with Subsection [~~(110)~~] (112)(c).

1200 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1201 commission may by rule define what constitutes equipment, machinery, or software that  
1202 functions similarly to an item listed in Subsections [~~(110)~~] (112)(b)(i) through (vi).

1203 [~~(111)~~] (113) "Telecommunications equipment, machinery, or software required for  
1204 911 service" means equipment, machinery, or software that is required to comply with 47  
1205 C.F.R. Sec. 20.18.

1206            [~~(H2)~~] (114) "Telecommunications maintenance or repair equipment, machinery, or  
1207 software" means equipment, machinery, or software purchased or leased primarily to maintain  
1208 or repair one or more of the following, regardless of whether the equipment, machinery, or  
1209 software is purchased or leased as a spare part or as an upgrade or modification to one or more  
1210 of the following:

- 1211            (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 1212            (b) telecommunications switching or routing equipment, machinery, or software; or
- 1213            (c) telecommunications transmission equipment, machinery, or software.

1214            [~~(H3)~~] (115) (a) "Telecommunications service" means the electronic conveyance,  
1215 routing, or transmission of audio, data, video, voice, or any other information or signal to a  
1216 point, or among or between points.

1217            (b) "Telecommunications service" includes:

1218            (i) an electronic conveyance, routing, or transmission with respect to which a computer  
1219 processing application is used to act:

1220            (A) on the code, form, or protocol of the content;

1221            (B) for the purpose of electronic conveyance, routing, or transmission; and

1222            (C) regardless of whether the service:

1223            (I) is referred to as voice over Internet protocol service; or

1224            (II) is classified by the Federal Communications Commission as enhanced or value  
1225 added;

1226            (ii) an 800 service;

1227            (iii) a 900 service;

1228            (iv) a fixed wireless service;

1229            (v) a mobile wireless service;

1230            (vi) a postpaid calling service;

1231            (vii) a prepaid calling service;

1232            (viii) a prepaid wireless calling service; or

1233            (ix) a private communications service.

1234            (c) "Telecommunications service" does not include:

1235            (i) advertising, including directory advertising;

1236            (ii) an ancillary service;



- 1237 (iii) a billing and collection service provided to a third party;
- 1238 (iv) a data processing and information service if:
- 1239 (A) the data processing and information service allows data to be:
- 1240 (I) (Aa) acquired;
- 1241 (Bb) generated;
- 1242 (Cc) processed;
- 1243 (Dd) retrieved; or
- 1244 (Ee) stored; and
- 1245 (II) delivered by an electronic transmission to a purchaser; and
- 1246 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 1247 or information;
- 1248 (v) installation or maintenance of the following on a customer's premises:
- 1249 (A) equipment; or
- 1250 (B) wiring;
- 1251 (vi) Internet access service;
- 1252 (vii) a paging service;
- 1253 (viii) a product transferred electronically, including:
- 1254 (A) music;
- 1255 (B) reading material;
- 1256 (C) a ring tone;
- 1257 (D) software; or
- 1258 (E) video;
- 1259 (ix) a radio and television audio and video programming service:
- 1260 (A) regardless of the medium; and
- 1261 (B) including:
- 1262 (I) furnishing conveyance, routing, or transmission of a television audio and video
- 1263 programming service by a programming service provider;
- 1264 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
- 1265 (III) audio and video programming services delivered by a commercial mobile radio
- 1266 service provider as defined in 47 C.F.R. Sec. 20.3;
- 1267 (x) a value-added nonvoice data service; or

- 1268 (xi) tangible personal property.
- 1269 [~~(114)~~] (116) (a) "Telecommunications service provider" means a person that:
- 1270 (i) owns, controls, operates, or manages a telecommunications service; and
- 1271 (ii) engages in an activity described in Subsection [~~(114)~~] (116)(a)(i) for the shared use
- 1272 with or resale to any person of the telecommunications service.
- 1273 (b) A person described in Subsection [~~(114)~~] (116)(a) is a telecommunications service
- 1274 provider whether or not the Public Service Commission of Utah regulates:
- 1275 (i) that person; or
- 1276 (ii) the telecommunications service that the person owns, controls, operates, or
- 1277 manages.
- 1278 [~~(115)~~] (117) (a) "Telecommunications switching or routing equipment, machinery, or
- 1279 software" means an item listed in Subsection [~~(115)~~] (117)(b) if that item is purchased or
- 1280 leased primarily for switching or routing:
- 1281 (i) an ancillary service;
- 1282 (ii) data communications;
- 1283 (iii) voice communications; or
- 1284 (iv) telecommunications service.
- 1285 (b) The following apply to Subsection [~~(115)~~] (117)(a):
- 1286 (i) a bridge;
- 1287 (ii) a computer;
- 1288 (iii) a cross connect;
- 1289 (iv) a modem;
- 1290 (v) a multiplexer;
- 1291 (vi) plug in circuitry;
- 1292 (vii) a router;
- 1293 (viii) software;
- 1294 (ix) a switch; or
- 1295 (x) equipment, machinery, or software that functions similarly to an item listed in
- 1296 Subsections [~~(115)~~] (117)(b)(i) through (ix) as determined by the commission by rule made in
- 1297 accordance with Subsection [~~(115)~~] (117)(c).
- 1298 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1299 commission may by rule define what constitutes equipment, machinery, or software that  
1300 functions similarly to an item listed in Subsections [~~(115)~~] (117)(b)(i) through (ix).

1301 [~~(116)~~] (118) (a) "Telecommunications transmission equipment, machinery, or  
1302 software" means an item listed in Subsection [~~(116)~~] (118)(b) if that item is purchased or  
1303 leased primarily for sending, receiving, or transporting:

- 1304 (i) an ancillary service;
- 1305 (ii) data communications;
- 1306 (iii) voice communications; or
- 1307 (iv) telecommunications service.

1308 (b) The following apply to Subsection [~~(116)~~] (118)(a):

- 1309 (i) an amplifier;
- 1310 (ii) a cable;
- 1311 (iii) a closure;
- 1312 (iv) a conduit;
- 1313 (v) a controller;
- 1314 (vi) a duplexer;
- 1315 (vii) a filter;
- 1316 (viii) an input device;
- 1317 (ix) an input/output device;
- 1318 (x) an insulator;
- 1319 (xi) microwave machinery or equipment;
- 1320 (xii) an oscillator;
- 1321 (xiii) an output device;
- 1322 (xiv) a pedestal;
- 1323 (xv) a power converter;
- 1324 (xvi) a power supply;
- 1325 (xvii) a radio channel;
- 1326 (xviii) a radio receiver;
- 1327 (xix) a radio transmitter;
- 1328 (xx) a repeater;
- 1329 (xxi) software;

1330 (xxii) a terminal;  
1331 (xxiii) a timing unit;  
1332 (xxiv) a transformer;  
1333 (xxv) a wire; or  
1334 (xxvi) equipment, machinery, or software that functions similarly to an item listed in  
1335 Subsections [~~(118)~~] (118)(b)(i) through (xxv) as determined by the commission by rule made in  
1336 accordance with Subsection [~~(118)~~] (118)(c).

1337 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1338 commission may by rule define what constitutes equipment, machinery, or software that  
1339 functions similarly to an item listed in Subsections [~~(118)~~] (118)(b)(i) through (xxv).

1340 [~~(119)~~] (119) "Tobacco" means:

- 1341 (a) a cigarette;
- 1342 (b) a cigar;
- 1343 (c) chewing tobacco;
- 1344 (d) pipe tobacco; or
- 1345 (e) any other item that contains tobacco.

1346 [~~(120)~~] (120) "Unassisted amusement device" means an amusement device, skill  
1347 device, or ride device that is started and stopped by the purchaser or renter of the right to use or  
1348 operate the amusement device, skill device, or ride device.

1349 [~~(121)~~] (121) (a) "Use" means the exercise of any right or power over tangible personal  
1350 property, a product transferred electronically, or a service under Subsection 59-12-103(1),  
1351 incident to the ownership or the leasing of that tangible personal property, product transferred  
1352 electronically, or service.

1353 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal  
1354 property, a product transferred electronically, or a service in the regular course of business and  
1355 held for resale.

1356 [~~(122)~~] (122) "Value-added nonvoice data service" means a service:

1357 (a) that otherwise meets the definition of a telecommunications service except that a  
1358 computer processing application is used to act primarily for a purpose other than conveyance,  
1359 routing, or transmission; and

1360 (b) with respect to which a computer processing application is used to act on data or

1361 information:

- 1362 (i) code;
- 1363 (ii) content;
- 1364 (iii) form; or
- 1365 (iv) protocol.

1366 [~~(121)~~] (123) (a) Subject to Subsection [~~(121)~~] (123)(b), "vehicle" means the following  
1367 that are required to be titled, registered, or titled and registered:

- 1368 (i) an aircraft as defined in Section 72-10-102;
- 1369 (ii) a vehicle as defined in Section 41-1a-102;
- 1370 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1371 (iv) a vessel as defined in Section 41-1a-102.

1372 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

- 1373 (i) a vehicle described in Subsection [~~(121)~~] (123)(a); or
- 1374 (ii) (A) a locomotive;
- 1375 (B) a freight car;
- 1376 (C) railroad work equipment; or
- 1377 (D) other railroad rolling stock.

1378 [~~(122)~~] (124) "Vehicle dealer" means a person engaged in the business of buying,  
1379 selling, or exchanging a vehicle as defined in Subsection [~~(121)~~] (123).

1380 [~~(123)~~] (125) (a) "Vertical service" means an ancillary service that:

- 1381 (i) is offered in connection with one or more telecommunications services; and
- 1382 (ii) offers an advanced calling feature that allows a customer to:
  - 1383 (A) identify a caller; and
  - 1384 (B) manage multiple calls and call connections.

1385 (b) "Vertical service" includes an ancillary service that allows a customer to manage a  
1386 conference bridging service.

1387 [~~(124)~~] (126) (a) "Voice mail service" means an ancillary service that enables a  
1388 customer to receive, send, or store a recorded message.

1389 (b) "Voice mail service" does not include a vertical service that a customer is required  
1390 to have in order to utilize a voice mail service.

1391 [~~(125)~~] (127) (a) Except as provided in Subsection [~~(125)~~] (127)(b), "waste energy

1392 facility" means a facility that generates electricity:

1393 (i) using as the primary source of energy waste materials that would be placed in a  
1394 landfill or refuse pit if it were not used to generate electricity, including:

1395 (A) tires;

1396 (B) waste coal; or

1397 (C) oil shale; and

1398 (ii) in amounts greater than actually required for the operation of the facility.

1399 (b) "Waste energy facility" does not include a facility that incinerates:

1400 (i) municipal solid waste;

1401 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or

1402 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1403 [~~126~~] (128) "Watercraft" means a vessel as defined in Section 73-18-2.

1404 [~~127~~] (129) "Wind energy" means wind used as the sole source of energy to produce  
1405 electricity.

1406 [~~128~~] (130) "ZIP Code" means a Zoning Improvement Plan Code assigned to a  
1407 geographic location by the United States Postal Service.

1408 Section 2. Section **59-12-104** is amended to read:

1409 **59-12-104. Exemptions.**

1410 The following sales and uses are exempt from the taxes imposed by this chapter:

1411 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax  
1412 under Chapter 13, Motor and Special Fuel Tax Act;

1413 (2) sales to the state, its institutions, and its political subdivisions; however, this  
1414 exemption does not apply to sales of:

1415 (a) construction materials except:

1416 (i) construction materials purchased by or on behalf of institutions of the public  
1417 education system as defined in Utah Constitution Article X, Section 2, provided the  
1418 construction materials are clearly identified and segregated and installed or converted to real  
1419 property which is owned by institutions of the public education system; and

1420 (ii) construction materials purchased by the state, its institutions, or its political  
1421 subdivisions which are installed or converted to real property by employees of the state, its  
1422 institutions, or its political subdivisions; or

1423 (b) tangible personal property in connection with the construction, operation,  
1424 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities  
1425 providing additional project capacity, as defined in Section 11-13-103;

1426 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:

1427 (i) the proceeds of each sale do not exceed \$1; and

1428 (ii) the seller or operator of the vending machine reports an amount equal to 150% of  
1429 the cost of the item described in Subsection (3)(b) as goods consumed; and

1430 (b) Subsection (3)(a) applies to:

1431 (i) food and food ingredients; or

1432 (ii) prepared food;

1433 (4) (a) sales of the following to a commercial airline carrier for in-flight consumption:

1434 (i) alcoholic beverages;

1435 (ii) food and food ingredients; or

1436 (iii) prepared food;

1437 (b) sales of tangible personal property or a product transferred electronically:

1438 (i) to a passenger;

1439 (ii) by a commercial airline carrier; and

1440 (iii) during a flight for in-flight consumption or in-flight use by the passenger; or

1441 (c) services related to Subsection (4)(a) or (b);

1442 (5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts  
1443 and equipment:

1444 (A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002  
1445 North American Industry Classification System of the federal Executive Office of the  
1446 President, Office of Management and Budget; and

1447 (II) for:

1448 (Aa) installation in an aircraft, including services relating to the installation of parts or  
1449 equipment in the aircraft;

1450 (Bb) renovation of an aircraft; or

1451 (Cc) repair of an aircraft; or

1452 (B) for installation in an aircraft operated by a common carrier in interstate or foreign  
1453 commerce; or

1454 (ii) beginning on October 1, 2008, sales of parts and equipment for installation in an  
1455 aircraft operated by a common carrier in interstate or foreign commerce; and

1456 (b) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,  
1457 a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a  
1458 refund:

1459 (i) if the sale is made on or after July 1, 2008, but on or before September 30, 2008;

1460 (ii) as if Subsection (5)(a)(i)(B) were in effect on the day on which the sale is made;

1461 (iii) if the person did not claim the exemption allowed by Subsection (5)(a)(i)(B) for  
1462 the sale prior to filing for the refund;

1463 (iv) for sales and use taxes paid under this chapter on the sale;

1464 (v) in accordance with Section 59-1-1410; and

1465 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if  
1466 the person files for the refund on or before September 30, 2011;

1467 (6) sales of commercials, motion picture films, prerecorded audio program tapes or  
1468 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture  
1469 exhibitor, distributor, or commercial television or radio broadcaster;

1470 (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal  
1471 property if the cleaning or washing of the tangible personal property is not assisted cleaning or  
1472 washing of tangible personal property;

1473 (b) if a seller that sells at the same business location assisted cleaning or washing of  
1474 tangible personal property and cleaning or washing of tangible personal property that is not  
1475 assisted cleaning or washing of tangible personal property, the exemption described in  
1476 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning  
1477 or washing of the tangible personal property; and

1478 (c) for purposes of Subsection (7)(b) and in accordance with Title 63G, Chapter 3,  
1479 Utah Administrative Rulemaking Act, the commission may make rules:

1480 (i) governing the circumstances under which sales are at the same business location;  
1481 and

1482 (ii) establishing the procedures and requirements for a seller to separately account for  
1483 sales of assisted cleaning or washing of tangible personal property;

1484 (8) sales made to or by religious or charitable institutions in the conduct of their regular



1485 religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are  
1486 fulfilled;

1487 (9) sales of a vehicle of a type required to be registered under the motor vehicle laws of  
1488 this state if the vehicle is:

1489 (a) not registered in this state; and

1490 (b) (i) not used in this state; or

1491 (ii) used in this state:

1492 (A) if the vehicle is not used to conduct business, for a time period that does not  
1493 exceed the longer of:

1494 (I) 30 days in any calendar year; or

1495 (II) the time period necessary to transport the vehicle to the borders of this state; or

1496 (B) if the vehicle is used to conduct business, for the time period necessary to transport  
1497 the vehicle to the borders of this state;

1498 (10) (a) amounts paid for an item described in Subsection (10)(b) if:

1499 (i) the item is intended for human use; and

1500 (ii) (A) a prescription was issued for the item; or

1501 (B) the item was purchased by a hospital or other medical facility; and

1502 (b) (i) Subsection (10)(a) applies to:

1503 (A) a drug;

1504 (B) a syringe; or

1505 (C) a stoma supply; and

1506 (ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1507 commission may by rule define the terms:

1508 (A) "syringe"; or

1509 (B) "stoma supply";

1510 (11) sales or use of property, materials, or services used in the construction of or  
1511 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

1512 (12) (a) sales of an item described in Subsection (12)(c) served by:

1513 (i) the following if the item described in Subsection (12)(c) is not available to the  
1514 general public:

1515 (A) a church; or

- 1516 (B) a charitable institution;
- 1517 (ii) an institution of higher education if:
- 1518 (A) the item described in Subsection (12)(c) is not available to the general public; or
- 1519 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
- 1520 offered by the institution of higher education; or
- 1521 (b) sales of an item described in Subsection (12)(c) provided for a patient by:
- 1522 (i) a medical facility; or
- 1523 (ii) a nursing facility; and
- 1524 (c) Subsections (12)(a) and (b) apply to:
- 1525 (i) food and food ingredients;
- 1526 (ii) prepared food; or
- 1527 (iii) alcoholic beverages;
- 1528 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property
- 1529 or a product transferred electronically by a person:
- 1530 (i) regardless of the number of transactions involving the sale of that tangible personal
- 1531 property or product transferred electronically by that person; and
- 1532 (ii) not regularly engaged in the business of selling that type of tangible personal
- 1533 property or product transferred electronically;
- 1534 (b) this Subsection (13) does not apply if:
- 1535 (i) the sale is one of a series of sales of a character to indicate that the person is
- 1536 regularly engaged in the business of selling that type of tangible personal property or product
- 1537 transferred electronically;
- 1538 (ii) the person holds that person out as regularly engaged in the business of selling that
- 1539 type of tangible personal property or product transferred electronically;
- 1540 (iii) the person sells an item of tangible personal property or product transferred
- 1541 electronically that the person purchased as a sale that is exempt under Subsection (25); or
- 1542 (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of
- 1543 this state in which case the tax is based upon:
- 1544 (A) the bill of sale or other written evidence of value of the vehicle or vessel being
- 1545 sold; or
- 1546 (B) in the absence of a bill of sale or other written evidence of value, the fair market

1547 value of the vehicle or vessel being sold at the time of the sale as determined by the  
1548 commission; and

1549 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1550 commission shall make rules establishing the circumstances under which:

1551 (i) a person is regularly engaged in the business of selling a type of tangible personal  
1552 property or product transferred electronically;

1553 (ii) a sale of tangible personal property or a product transferred electronically is one of  
1554 a series of sales of a character to indicate that a person is regularly engaged in the business of  
1555 selling that type of tangible personal property or product transferred electronically; or

1556 (iii) a person holds that person out as regularly engaged in the business of selling a type  
1557 of tangible personal property or product transferred electronically;

1558 (14) (a) except as provided in Subsection (14)(b), amounts paid or charged on or after  
1559 July 1, 2006, for a purchase or lease by a manufacturing facility except for a cogeneration  
1560 facility, for the following:

1561 (i) machinery and equipment that:

1562 (A) are used:

1563 (I) for a manufacturing facility except for a manufacturing facility that is a scrap  
1564 recycler described in Subsection 59-12-102~~(52)~~(54)(b):

1565 (Aa) in the manufacturing process;

1566 (Bb) to manufacture an item sold as tangible personal property; and

1567 (Cc) beginning on July 1, 2009, in a manufacturing facility described in this Subsection  
1568 (14)(a)(i)(A)(I) in the state; or

1569 (II) for a manufacturing facility that is a scrap recycler described in Subsection  
1570 59-12-102~~(52)~~(54)(b):

1571 (Aa) to process an item sold as tangible personal property; and

1572 (Bb) beginning on July 1, 2009, in a manufacturing facility described in this Subsection  
1573 (14)(a)(i)(A)(II) in the state; and

1574 (B) have an economic life of three or more years; and

1575 (ii) normal operating repair or replacement parts that:

1576 (A) have an economic life of three or more years; and

1577 (B) are used:

1578 (I) for a manufacturing facility except for a manufacturing facility that is a scrap  
1579 recycler described in Subsection 59-12-102[(52)](54)(b):

1580 (Aa) in the manufacturing process; and

1581 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(I) in the  
1582 state; or

1583 (II) for a manufacturing facility that is a scrap recycler described in Subsection  
1584 59-12-102[(52)](54)(b):

1585 (Aa) to process an item sold as tangible personal property; and

1586 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(II) in the  
1587 state;

1588 (b) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a  
1589 manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006,  
1590 for the following:

1591 (i) machinery and equipment that:

1592 (A) are used:

1593 (I) in the manufacturing process;

1594 (II) to manufacture an item sold as tangible personal property; and

1595 (III) beginning on July 1, 2009, in a manufacturing facility described in this Subsection  
1596 (14)(b) in the state; and

1597 (B) have an economic life of three or more years; and

1598 (ii) normal operating repair or replacement parts that:

1599 (A) are used:

1600 (I) in the manufacturing process; and

1601 (II) in a manufacturing facility described in this Subsection (14)(b) in the state; and

1602 (B) have an economic life of three or more years;

1603 (c) amounts paid or charged for a purchase or lease made on or after January 1, 2008,  
1604 by an establishment described in NAICS Subsector 212, Mining (except Oil and Gas), or  
1605 NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for  
1606 Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining,  
1607 of the 2002 North American Industry Classification System of the federal Executive Office of  
1608 the President, Office of Management and Budget:

- 1609 (i) machinery and equipment that:  
1610 (A) are used:  
1611 (I) (Aa) in the production process, other than the production of real property; or  
1612 (Bb) in research and development; and  
1613 (II) beginning on July 1, 2009, in an establishment described in this Subsection (14)(c)  
1614 in the state; and  
1615 (B) have an economic life of three or more years; and  
1616 (ii) normal operating repair or replacement parts that:  
1617 (A) have an economic life of three or more years; and  
1618 (B) are used in:  
1619 (I) (Aa) the production process, except for the production of real property; and  
1620 (Bb) an establishment described in this Subsection (14)(c) in the state; or  
1621 (II) (Aa) research and development; and  
1622 (Bb) in an establishment described in this Subsection (14)(c) in the state;  
1623 (d) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter 3,  
1624 Utah Administrative Rulemaking Act, the commission:  
1625 (i) shall by rule define the term "establishment"; and  
1626 (ii) may by rule define what constitutes:  
1627 (A) processing an item sold as tangible personal property;  
1628 (B) the production process, except for the production of real property; or  
1629 (C) research and development; and  
1630 (e) on or before October 1, 2011, and every five years after October 1, 2011, the  
1631 commission shall:  
1632 (i) review the exemptions described in this Subsection (14) and make  
1633 recommendations to the Revenue and Taxation Interim Committee concerning whether the  
1634 exemptions should be continued, modified, or repealed; and  
1635 (ii) include in its report:  
1636 (A) an estimate of the cost of the exemptions;  
1637 (B) the purpose and effectiveness of the exemptions; and  
1638 (C) the benefits of the exemptions to the state;  
1639 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:

- 1640 (i) tooling;
- 1641 (ii) special tooling;
- 1642 (iii) support equipment;
- 1643 (iv) special test equipment; or
- 1644 (v) parts used in the repairs or renovations of tooling or equipment described in
- 1645 Subsections (15)(a)(i) through (iv); and
- 1646 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:
- 1647 (i) the tooling, equipment, or parts are used or consumed exclusively in the
- 1648 performance of any aerospace or electronics industry contract with the United States
- 1649 government or any subcontract under that contract; and
- 1650 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
- 1651 title to the tooling, equipment, or parts is vested in the United States government as evidenced
- 1652 by:
- 1653 (A) a government identification tag placed on the tooling, equipment, or parts; or
- 1654 (B) listing on a government-approved property record if placing a government
- 1655 identification tag on the tooling, equipment, or parts is impractical;
- 1656 (16) sales of newspapers or newspaper subscriptions;
- 1657 (17) (a) except as provided in Subsection (17)(b), tangible personal property or a
- 1658 product transferred electronically traded in as full or part payment of the purchase price, except
- 1659 that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer,
- 1660 trade-ins are limited to other vehicles only, and the tax is based upon:
- 1661 (i) the bill of sale or other written evidence of value of the vehicle being sold and the
- 1662 vehicle being traded in; or
- 1663 (ii) in the absence of a bill of sale or other written evidence of value, the then existing
- 1664 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
- 1665 commission; and
- 1666 (b) notwithstanding Subsection (17)(a), Subsection (17)(a) does not apply to the
- 1667 following items of tangible personal property or products transferred electronically traded in as
- 1668 full or part payment of the purchase price:
- 1669 (i) money;
- 1670 (ii) electricity;

1671 (iii) water;  
1672 (iv) gas; or  
1673 (v) steam;

1674 (18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property  
1675 or a product transferred electronically used or consumed primarily and directly in farming  
1676 operations, regardless of whether the tangible personal property or product transferred  
1677 electronically:

1678 (A) becomes part of real estate; or  
1679 (B) is installed by a:

1680 (I) farmer;  
1681 (II) contractor; or  
1682 (III) subcontractor; or

1683 (ii) sales of parts used in the repairs or renovations of tangible personal property or a  
1684 product transferred electronically if the tangible personal property or product transferred  
1685 electronically is exempt under Subsection (18)(a)(i); and

1686 (b) notwithstanding Subsection (18)(a), amounts paid or charged for the following are  
1687 subject to the taxes imposed by this chapter:

1688 (i) (A) subject to Subsection (18)(b)(i)(B), the following if used in a manner that is  
1689 incidental to farming:

1690 (I) machinery;  
1691 (II) equipment;  
1692 (III) materials; or  
1693 (IV) supplies; and

1694 (B) tangible personal property that is considered to be used in a manner that is  
1695 incidental to farming includes:

1696 (I) hand tools; or  
1697 (II) maintenance and janitorial equipment and supplies;

1698 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product  
1699 transferred electronically if the tangible personal property or product transferred electronically  
1700 is used in an activity other than farming; and

1701 (B) tangible personal property or a product transferred electronically that is considered

1702 to be used in an activity other than farming includes:

1703 (I) office equipment and supplies; or

1704 (II) equipment and supplies used in:

1705 (Aa) the sale or distribution of farm products;

1706 (Bb) research; or

1707 (Cc) transportation; or

1708 (iii) a vehicle required to be registered by the laws of this state during the period

1709 ending two years after the date of the vehicle's purchase;

1710 (19) sales of hay;

1711 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or

1712 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or

1713 garden, farm, or other agricultural produce is sold by:

1714 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other

1715 agricultural produce;

1716 (b) an employee of the producer described in Subsection (20)(a); or

1717 (c) a member of the immediate family of the producer described in Subsection (20)(a);

1718 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued

1719 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

1720 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,

1721 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,

1722 wholesaler, or retailer for use in packaging tangible personal property to be sold by that

1723 manufacturer, processor, wholesaler, or retailer;

1724 (23) a product stored in the state for resale;

1725 (24) (a) purchases of a product if:

1726 (i) the product is:

1727 (A) purchased outside of this state;

1728 (B) brought into this state:

1729 (I) at any time after the purchase described in Subsection (24)(a)(i)(A); and

1730 (II) by a nonresident person who is not living or working in this state at the time of the

1731 purchase;

1732 (C) used for the personal use or enjoyment of the nonresident person described in



1733 Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and  
1734 (D) not used in conducting business in this state; and  
1735 (ii) for:  
1736 (A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of  
1737 the product for a purpose for which the product is designed occurs outside of this state;  
1738 (B) a boat, the boat is registered outside of this state; or  
1739 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered  
1740 outside of this state;  
1741 (b) the exemption provided for in Subsection (24)(a) does not apply to:  
1742 (i) a lease or rental of a product; or  
1743 (ii) a sale of a vehicle exempt under Subsection (33); and  
1744 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for  
1745 purposes of Subsection (24)(a), the commission may by rule define what constitutes the  
1746 following:  
1747 (i) conducting business in this state if that phrase has the same meaning in this  
1748 Subsection (24) as in Subsection (63);  
1749 (ii) the first use of a product if that phrase has the same meaning in this Subsection (24)  
1750 as in Subsection (63); or  
1751 (iii) a purpose for which a product is designed if that phrase has the same meaning in  
1752 this Subsection (24) as in Subsection (63);  
1753 (25) a product purchased for resale in this state, in the regular course of business, either  
1754 in its original form or as an ingredient or component part of a manufactured or compounded  
1755 product;  
1756 (26) a product upon which a sales or use tax was paid to some other state, or one of its  
1757 subdivisions, except that the state shall be paid any difference between the tax paid and the tax  
1758 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if  
1759 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax  
1760 Act;  
1761 (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a  
1762 person for use in compounding a service taxable under the subsections;  
1763 (28) purchases made in accordance with the special supplemental nutrition program for

1764 women, infants, and children established in 42 U.S.C. Sec. 1786;  
1765 (29) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers,  
1766 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens  
1767 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification  
1768 Manual of the federal Executive Office of the President, Office of Management and Budget;  
1769 (30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State  
1770 Boating Act, a boat trailer, or an outboard motor if the boat, boat trailer, or outboard motor is:  
1771 (a) not registered in this state; and  
1772 (b) (i) not used in this state; or  
1773 (ii) used in this state:  
1774 (A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a  
1775 time period that does not exceed the longer of:  
1776 (I) 30 days in any calendar year; or  
1777 (II) the time period necessary to transport the boat, boat trailer, or outboard motor to  
1778 the borders of this state; or  
1779 (B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time  
1780 period necessary to transport the boat, boat trailer, or outboard motor to the borders of this  
1781 state;  
1782 (31) sales of aircraft manufactured in Utah;  
1783 (32) amounts paid for the purchase of telecommunications service for purposes of  
1784 providing telecommunications service;  
1785 (33) sales, leases, or uses of the following:  
1786 (a) a vehicle by an authorized carrier; or  
1787 (b) tangible personal property that is installed on a vehicle:  
1788 (i) sold or leased to or used by an authorized carrier; and  
1789 (ii) before the vehicle is placed in service for the first time;  
1790 (34) (a) 45% of the sales price of any new manufactured home; and  
1791 (b) 100% of the sales price of any used manufactured home;  
1792 (35) sales relating to schools and fundraising sales;  
1793 (36) sales or rentals of durable medical equipment if:  
1794 (a) a person presents a prescription for the durable medical equipment; and

- 1795 (b) the durable medical equipment is used for home use only;
- 1796 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
- 1797 Section 72-11-102; and
- 1798 (b) the commission shall by rule determine the method for calculating sales exempt
- 1799 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;
- 1800 (38) sales to a ski resort of:
- 1801 (a) snowmaking equipment;
- 1802 (b) ski slope grooming equipment;
- 1803 (c) passenger ropeways as defined in Section 72-11-102; or
- 1804 (d) parts used in the repairs or renovations of equipment or passenger ropeways
- 1805 described in Subsections (38)(a) through (c);
- 1806 (39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
- 1807 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for
- 1808 amusement, entertainment, or recreation an unassisted amusement device as defined in Section
- 1809 59-12-102;
- 1810 (b) if a seller that sells or rents at the same business location the right to use or operate
- 1811 for amusement, entertainment, or recreation one or more unassisted amusement devices and
- 1812 one or more assisted amusement devices, the exemption described in Subsection (40)(a)
- 1813 applies if the seller separately accounts for the sales or rentals of the right to use or operate for
- 1814 amusement, entertainment, or recreation for the assisted amusement devices; and
- 1815 (c) for purposes of Subsection (40)(b) and in accordance with Title 63G, Chapter 3,
- 1816 Utah Administrative Rulemaking Act, the commission may make rules:
- 1817 (i) governing the circumstances under which sales are at the same business location;
- 1818 and
- 1819 (ii) establishing the procedures and requirements for a seller to separately account for
- 1820 the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for
- 1821 assisted amusement devices;
- 1822 (41) (a) sales of photocopies by:
- 1823 (i) a governmental entity; or
- 1824 (ii) an entity within the state system of public education, including:
- 1825 (A) a school; or

1826 (B) the State Board of Education; or  
1827 (b) sales of publications by a governmental entity;  
1828 (42) amounts paid for admission to an athletic event at an institution of higher  
1829 education that is subject to the provisions of Title IX of the Education Amendments of 1972,  
1830 20 U.S.C. Sec. 1681 et seq.;

1831 (43) (a) sales made to or by:  
1832 (i) an area agency on aging; or  
1833 (ii) a senior citizen center owned by a county, city, or town; or  
1834 (b) sales made by a senior citizen center that contracts with an area agency on aging;

1835 (44) sales or leases of semiconductor fabricating, processing, research, or development  
1836 materials regardless of whether the semiconductor fabricating, processing, research, or  
1837 development materials:  
1838 (a) actually come into contact with a semiconductor; or  
1839 (b) ultimately become incorporated into real property;

1840 (45) an amount paid by or charged to a purchaser for accommodations and services  
1841 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section  
1842 59-12-104.2;

1843 (46) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary  
1844 sports event registration certificate in accordance with Section 41-3-306 for the event period  
1845 specified on the temporary sports event registration certificate;

1846 (47) sales or uses of electricity, if the sales or uses are:  
1847 (a) made under a tariff adopted by the Public Service Commission of Utah only for  
1848 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy  
1849 source, as designated in the tariff by the Public Service Commission of Utah; and  
1850 (b) for an amount of electricity that is:  
1851 (i) unrelated to the amount of electricity used by the person purchasing the electricity  
1852 under the tariff described in Subsection (47)(a); and  
1853 (ii) equivalent to the number of kilowatthours specified in the tariff described in  
1854 Subsection (47)(a) that may be purchased under the tariff described in Subsection (47)(a);

1855 (48) sales or rentals of mobility enhancing equipment if a person presents a  
1856 prescription for the mobility enhancing equipment;

- 1857 (49) sales of water in a:
- 1858 (a) pipe;
- 1859 (b) conduit;
- 1860 (c) ditch; or
- 1861 (d) reservoir;
- 1862 (50) sales of currency or coinage that constitute legal tender of the United States or of a
- 1863 foreign nation;
- 1864 (51) (a) sales of an item described in Subsection (51)(b) if the item:
- 1865 (i) does not constitute legal tender of any nation; and
- 1866 (ii) has a gold, silver, or platinum content of 80% or more; and
- 1867 (b) Subsection (51)(a) applies to a gold, silver, or platinum:
- 1868 (i) ingot;
- 1869 (ii) bar;
- 1870 (iii) medallion; or
- 1871 (iv) decorative coin;
- 1872 (52) amounts paid on a sale-leaseback transaction;
- 1873 (53) sales of a prosthetic device:
- 1874 (a) for use on or in a human; and
- 1875 (b) (i) for which a prescription is required; or
- 1876 (ii) if the prosthetic device is purchased by a hospital or other medical facility;
- 1877 (54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of
- 1878 machinery or equipment by an establishment described in Subsection (54)(c) if the machinery
- 1879 or equipment is primarily used in the production or postproduction of the following media for
- 1880 commercial distribution:
- 1881 (i) a motion picture;
- 1882 (ii) a television program;
- 1883 (iii) a movie made for television;
- 1884 (iv) a music video;
- 1885 (v) a commercial;
- 1886 (vi) a documentary; or
- 1887 (vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the

1888 commission by administrative rule made in accordance with Subsection (54)(d); or  
1889 (b) notwithstanding Subsection (54)(a), purchases, leases, or rentals of machinery or  
1890 equipment by an establishment described in Subsection (54)(c) that is used for the production  
1891 or postproduction of the following are subject to the taxes imposed by this chapter:  
1892 (i) a live musical performance;  
1893 (ii) a live news program; or  
1894 (iii) a live sporting event;  
1895 (c) the following establishments listed in the 1997 North American Industry  
1896 Classification System of the federal Executive Office of the President, Office of Management  
1897 and Budget, apply to Subsections (54)(a) and (b):  
1898 (i) NAICS Code 512110; or  
1899 (ii) NAICS Code 51219; and  
1900 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1901 commission may by rule:  
1902 (i) prescribe what constitutes a medium similar to Subsections (54)(a)(i) through (vi);  
1903 or  
1904 (ii) define:  
1905 (A) "commercial distribution";  
1906 (B) "live musical performance";  
1907 (C) "live news program"; or  
1908 (D) "live sporting event";  
1909 (55) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on  
1910 or before June 30, 2019, of machinery or equipment that:  
1911 (i) is leased or purchased for or by a facility that:  
1912 (A) is a renewable energy production facility;  
1913 (B) is located in the state; and  
1914 (C) (I) becomes operational on or after July 1, 2004; or  
1915 (II) has its generation capacity increased by one or more megawatts on or after July 1,  
1916 2004 as a result of the use of the machinery or equipment;  
1917 (ii) has an economic life of five or more years; and  
1918 (iii) is used to make the facility or the increase in capacity of the facility described in

1919 Subsection (55)(a)(i) operational up to the point of interconnection with an existing  
1920 transmission grid including:  
1921 (A) a wind turbine;  
1922 (B) generating equipment;  
1923 (C) a control and monitoring system;  
1924 (D) a power line;  
1925 (E) substation equipment;  
1926 (F) lighting;  
1927 (G) fencing;  
1928 (H) pipes; or  
1929 (I) other equipment used for locating a power line or pole; and  
1930 (b) this Subsection (55) does not apply to:  
1931 (i) machinery or equipment used in construction of:  
1932 (A) a new renewable energy production facility; or  
1933 (B) the increase in the capacity of a renewable energy production facility;  
1934 (ii) contracted services required for construction and routine maintenance activities;  
1935 and  
1936 (iii) unless the machinery or equipment is used or acquired for an increase in capacity  
1937 of the facility described in Subsection (55)(a)(i)(C)(II), machinery or equipment used or  
1938 acquired after:  
1939 (A) the renewable energy production facility described in Subsection (55)(a)(i) is  
1940 operational as described in Subsection (55)(a)(iii); or  
1941 (B) the increased capacity described in Subsection (55)(a)(i) is operational as described  
1942 in Subsection (55)(a)(iii);  
1943 (56) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on  
1944 or before June 30, 2019, of machinery or equipment that:  
1945 (i) is leased or purchased for or by a facility that:  
1946 (A) is a waste energy production facility;  
1947 (B) is located in the state; and  
1948 (C) (I) becomes operational on or after July 1, 2004; or  
1949 (II) has its generation capacity increased by one or more megawatts on or after July 1,

1950 2004 as a result of the use of the machinery or equipment;

1951 (ii) has an economic life of five or more years; and

1952 (iii) is used to make the facility or the increase in capacity of the facility described in

1953 Subsection (56)(a)(i) operational up to the point of interconnection with an existing

1954 transmission grid including:

1955 (A) generating equipment;

1956 (B) a control and monitoring system;

1957 (C) a power line;

1958 (D) substation equipment;

1959 (E) lighting;

1960 (F) fencing;

1961 (G) pipes; or

1962 (H) other equipment used for locating a power line or pole; and

1963 (b) this Subsection (56) does not apply to:

1964 (i) machinery or equipment used in construction of:

1965 (A) a new waste energy facility; or

1966 (B) the increase in the capacity of a waste energy facility;

1967 (ii) contracted services required for construction and routine maintenance activities;

1968 and

1969 (iii) unless the machinery or equipment is used or acquired for an increase in capacity

1970 described in Subsection (56)(a)(i)(C)(II), machinery or equipment used or acquired after:

1971 (A) the waste energy facility described in Subsection (56)(a)(i) is operational as

1972 described in Subsection (56)(a)(iii); or

1973 (B) the increased capacity described in Subsection (56)(a)(i) is operational as described

1974 in Subsection (56)(a)(iii);

1975 (57) (a) leases of five or more years or purchases made on or after July 1, 2004 but on

1976 or before June 30, 2019, of machinery or equipment that:

1977 (i) is leased or purchased for or by a facility that:

1978 (A) is located in the state;

1979 (B) produces fuel from biomass energy including:

1980 (I) methanol; or



1981 (II) ethanol; and  
1982 (C) (I) becomes operational on or after July 1, 2004; or  
1983 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004 as  
1984 a result of the installation of the machinery or equipment;  
1985 (ii) has an economic life of five or more years; and  
1986 (iii) is installed on the facility described in Subsection (57)(a)(i);  
1987 (b) this Subsection (57) does not apply to:  
1988 (i) machinery or equipment used in construction of:  
1989 (A) a new facility described in Subsection (57)(a)(i); or  
1990 (B) the increase in capacity of the facility described in Subsection (57)(a)(i); or  
1991 (ii) contracted services required for construction and routine maintenance activities;  
1992 and  
1993 (iii) unless the machinery or equipment is used or acquired for an increase in capacity  
1994 described in Subsection (57)(a)(i)(C)(II), machinery or equipment used or acquired after:  
1995 (A) the facility described in Subsection (57)(a)(i) is operational; or  
1996 (B) the increased capacity described in Subsection (57)(a)(i) is operational;  
1997 (58) (a) subject to Subsection (58)(b) or (c), sales of tangible personal property or a  
1998 product transferred electronically to a person within this state if that tangible personal property  
1999 or product transferred electronically is subsequently shipped outside the state and incorporated  
2000 pursuant to contract into and becomes a part of real property located outside of this state;  
2001 (b) the exemption under Subsection (58)(a) is not allowed to the extent that the other  
2002 state or political entity to which the tangible personal property is shipped imposes a sales, use,  
2003 gross receipts, or other similar transaction excise tax on the transaction against which the other  
2004 state or political entity allows a credit for sales and use taxes imposed by this chapter; and  
2005 (c) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,  
2006 a person may claim the exemption allowed by this Subsection (58) for a sale by filing for a  
2007 refund:  
2008 (i) if the sale is made on or after July 1, 2004, but on or before June 30, 2008;  
2009 (ii) as if this Subsection (58) as in effect on July 1, 2008, were in effect on the day on  
2010 which the sale is made;  
2011 (iii) if the person did not claim the exemption allowed by this Subsection (58) for the

2012 sale prior to filing for the refund;

2013 (iv) for sales and use taxes paid under this chapter on the sale;

2014 (v) in accordance with Section 59-1-1410; and

2015 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if

2016 the person files for the refund on or before June 30, 2011;

2017 (59) purchases:

2018 (a) of one or more of the following items in printed or electronic format:

2019 (i) a list containing information that includes one or more:

2020 (A) names; or

2021 (B) addresses; or

2022 (ii) a database containing information that includes one or more:

2023 (A) names; or

2024 (B) addresses; and

2025 (b) used to send direct mail;

2026 (60) redemptions or repurchases of a product by a person if that product was:

2027 (a) delivered to a pawnbroker as part of a pawn transaction; and

2028 (b) redeemed or repurchased within the time period established in a written agreement

2029 between the person and the pawnbroker for redeeming or repurchasing the product;

2030 (61) (a) purchases or leases of an item described in Subsection (61)(b) if the item:

2031 (i) is purchased or leased by, or on behalf of, a telecommunications service provider;

2032 and

2033 (ii) has a useful economic life of one or more years; and

2034 (b) the following apply to Subsection (61)(a):

2035 (i) telecommunications enabling or facilitating equipment, machinery, or software;

2036 (ii) telecommunications equipment, machinery, or software required for 911 service;

2037 (iii) telecommunications maintenance or repair equipment, machinery, or software;

2038 (iv) telecommunications switching or routing equipment, machinery, or software; or

2039 (v) telecommunications transmission equipment, machinery, or software;

2040 (62) (a) beginning on July 1, 2006, and ending on June 30, 2016, purchases of tangible

2041 personal property or a product transferred electronically that are used in the research and

2042 development of coal-to-liquids, oil shale, or tar sands technology; and

2043 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
2044 commission may, for purposes of Subsection (62)(a), make rules defining what constitutes  
2045 purchases of tangible personal property or a product transferred electronically that are used in  
2046 the research and development of coal-to-liquids, oil shale, and tar sands technology;

2047 (63) (a) purchases of tangible personal property or a product transferred electronically  
2048 if:

2049 (i) the tangible personal property or product transferred electronically is:

2050 (A) purchased outside of this state;

2051 (B) brought into this state at any time after the purchase described in Subsection  
2052 (63)(a)(i)(A); and

2053 (C) used in conducting business in this state; and

2054 (ii) for:

2055 (A) tangible personal property or a product transferred electronically other than the  
2056 tangible personal property described in Subsection (63)(a)(ii)(B), the first use of the property  
2057 for a purpose for which the property is designed occurs outside of this state; or

2058 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered  
2059 outside of this state;

2060 (b) the exemption provided for in Subsection (63)(a) does not apply to:

2061 (i) a lease or rental of tangible personal property or a product transferred electronically;  
2062 or

2063 (ii) a sale of a vehicle exempt under Subsection (33); and

2064 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for  
2065 purposes of Subsection (63)(a), the commission may by rule define what constitutes the  
2066 following:

2067 (i) conducting business in this state if that phrase has the same meaning in this  
2068 Subsection (63) as in Subsection (24);

2069 (ii) the first use of tangible personal property or a product transferred electronically if  
2070 that phrase has the same meaning in this Subsection (63) as in Subsection (24); or

2071 (iii) a purpose for which tangible personal property or a product transferred  
2072 electronically is designed if that phrase has the same meaning in this Subsection (63) as in  
2073 Subsection (24);

- 2074 (64) sales of disposable home medical equipment or supplies if:
- 2075 (a) a person presents a prescription for the disposable home medical equipment or
- 2076 supplies;
- 2077 (b) the disposable home medical equipment or supplies are used exclusively by the
- 2078 person to whom the prescription described in Subsection (64)(a) is issued; and
- 2079 (c) the disposable home medical equipment and supplies are listed as eligible for
- 2080 payment under:
- 2081 (i) Title XVIII, federal Social Security Act; or
- 2082 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;
- 2083 (65) sales:
- 2084 (a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit
- 2085 District Act; or
- 2086 (b) of tangible personal property to a subcontractor of a public transit district, if the
- 2087 tangible personal property is:
- 2088 (i) clearly identified; and
- 2089 (ii) installed or converted to real property owned by the public transit district;
- 2090 (66) sales of construction materials:
- 2091 (a) purchased on or after July 1, 2010;
- 2092 (b) purchased by, on behalf of, or for the benefit of an international airport:
- 2093 (i) located within a county of the first class; and
- 2094 (ii) that has a United States customs office on its premises; and
- 2095 (c) if the construction materials are:
- 2096 (i) clearly identified;
- 2097 (ii) segregated; and
- 2098 (iii) installed or converted to real property:
- 2099 (A) owned or operated by the international airport described in Subsection (66)(b); and
- 2100 (B) located at the international airport described in Subsection (66)(b);
- 2101 (67) sales of construction materials:
- 2102 (a) purchased on or after July 1, 2008;
- 2103 (b) purchased by, on behalf of, or for the benefit of a new airport:
- 2104 (i) located within a county of the second class; and

2105 (ii) that is owned or operated by a city in which an airline as defined in Section  
2106 59-2-102 is headquartered; and  
2107 (c) if the construction materials are:  
2108 (i) clearly identified;  
2109 (ii) segregated; and  
2110 (iii) installed or converted to real property:  
2111 (A) owned or operated by the new airport described in Subsection (67)(b);  
2112 (B) located at the new airport described in Subsection (67)(b); and  
2113 (C) as part of the construction of the new airport described in Subsection (67)(b); ~~and~~  
2114 (68) sales of fuel to a common carrier that is a railroad for use in a locomotive  
2115 engine[-]; and  
2116 (69) purchases of:  
2117 (a) an energy efficient stove; or  
2118 (b) energy efficient stove fuel.  
2119 Section 3. **Effective date.**  
2120 This bill takes effect on July 1, 2010.

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Legislative Review Note  
as of 2-2-10 11:59 AM

Office of Legislative Research and General Counsel

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**Fiscal Note****S.B. 135 - Sales and Use Tax Exemption for an Energy Efficient Stove or  
Energy Efficient Stove Fuel**

2010 General Session

State of Utah

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**State Impact**

Enactment of this bill could reduce General Fund revenue by \$112,900 in FY 2011 and \$115,600 in FY 2012.

	<u>FY 2010 Approp.</u>	<u>FY 2011 Approp.</u>	<u>FY 2012 Approp.</u>	<u>FY 2010 Revenue</u>	<u>FY 2011 Revenue</u>	<u>FY 2012 Revenue</u>
General Fund	\$0	\$0	\$0	\$0	(\$112,900)	(\$115,600)
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>(\$112,900)</b>	<b>(\$115,600)</b>

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

Enactment of this bill could reduce local government sales tax revenue by \$48,500 in FY 2011 and \$49,700 in FY 2012. Individuals and businesses purchasing energy efficient stoves or fuel for energy efficient stoves will not pay sales tax.