

**Senator Curtis S. Bramble** proposes the following substitute bill:

**SALES AND USE TAX ACT REVISIONS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill amends the Sales and Use Tax Act to address provisions related to the imposition and administration of sales and use taxes and certain taxes, fees, and charges administered by the State Tax Commission, to address the delegates appointed to the governing board of the Streamlined Sales and Use Tax Agreement, and to make changes related to the sales and use taxation of certain computer software and purchases of a computer software maintenance contract.

**Highlighted Provisions:**

This bill:

- ▶ defines terms and modifies definitions;
- ▶ addresses the delegates appointed to the governing board of the Streamlined Sales and Use Tax Agreement;
- ▶ addresses the sales and use taxation of a product that is transferred electronically;
- ▶ addresses provisions related to sales and use tax exemption certificates;
- ▶ addresses amnesty for a seller that fails to pay certain taxes, fees, or charges administered by the State Tax Commission;
- ▶ addresses the sales and use taxation of certain computer software and purchases of a computer software maintenance contract;



- 26           ▶ addresses the location of certain transactions related to computer software; and
- 27           ▶ makes technical and conforming changes.

28 **Money Appropriated in this Bill:**

29           None

30 **Other Special Clauses:**

31           This bill takes effect on July 1, 2011.

32 **Utah Code Sections Affected:**

33 AMENDS:

34           **59-12-102**, as last amended by Laws of Utah 2010, Chapters 88, 142, 234, and 263

35           **59-12-102.3**, as enacted by Laws of Utah 2008, Chapter 384

36           **59-12-103**, as last amended by Laws of Utah 2010, Chapter 412

37           **59-12-106**, as last amended by Laws of Utah 2008, Chapters 382 and 384

38           **59-12-128**, as last amended by Laws of Utah 2009, Chapter 212

39           **59-12-211**, as last amended by Laws of Utah 2010, Chapters 142, 234, and 263



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

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

43           **59-12-102. Definitions.**

44           As used in this chapter:

45           (1) "800 service" means a telecommunications service that:

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

47           (b) is typically marketed:

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

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

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

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

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

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

54 Federal Communications Commission.

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

56           (i) a subscriber purchases;

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

59 (A) prerecorded announcement; or

60 (B) live service; and

61 (iii) is typically marketed:

62 (A) under the name 900 service; or

63 (B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal  
64 Communications Commission.

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

66 (i) a collection service a seller of a telecommunications service provides to a  
67 subscriber; or

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

69 (A) a product; or

70 (B) a service.

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

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

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

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

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

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

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

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

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

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

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

85 (e) Section 59-12-204;

86 (f) Section 59-12-401;

87 (g) Section 59-12-402;

- 88 (h) Section 59-12-703;
- 89 (i) Section 59-12-802;
- 90 (j) Section 59-12-804;
- 91 (k) Section 59-12-1102;
- 92 (l) Section 59-12-1302;
- 93 (m) Section 59-12-1402;
- 94 (n) Section 59-12-1802;
- 95 (o) Section 59-12-2003;
- 96 (p) Section 59-12-2103;
- 97 (q) Section 59-12-2213;
- 98 (r) Section 59-12-2214;
- 99 (s) Section 59-12-2215;
- 100 (t) Section 59-12-2216;
- 101 (u) Section 59-12-2217; or
- 102 (v) Section 59-12-2218.
- 103 (7) "Aircraft" is as defined in Section 72-10-102.
- 104 (8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:
  - 105 (a) except for an airline as defined in Section 59-2-102 or an affiliated group as defined
  - 106 in Subsection 59-12-107(1)(f) of an airline; and
  - 107 (b) that has the workers, expertise, and facilities to perform the following, regardless of
  - 108 whether the business entity performs the following in this state:
    - 109 (i) check, diagnose, overhaul, and repair:
      - 110 (A) an onboard system of a fixed wing turbine powered aircraft; and
      - 111 (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;
    - 112 (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft
    - 113 engine;
    - 114 (iii) perform at least the following maintenance on a fixed wing turbine powered
    - 115 aircraft:
      - 116 (A) an inspection;
      - 117 (B) a repair, including a structural repair or modification;
      - 118 (C) changing landing gear; and

- 119 (D) addressing issues related to an aging fixed wing turbine powered aircraft;
- 120 (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and
- 121 completely apply new paint to the fixed wing turbine powered aircraft; and
- 122 (v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that
- 123 results in a change in the fixed wing turbine powered aircraft's certification requirements by the
- 124 authority that certifies the fixed wing turbine powered aircraft.
- 125 (9) "Alcoholic beverage" means a beverage that:
- 126 (a) is suitable for human consumption; and
- 127 (b) contains .5% or more alcohol by volume.
- 128 (10) (a) "Ancillary service" means a service associated with, or incidental to, the
- 129 provision of telecommunications service.
- 130 (b) "Ancillary service" includes:
- 131 (i) a conference bridging service;
- 132 (ii) a detailed communications billing service;
- 133 (iii) directory assistance;
- 134 (iv) a vertical service; or
- 135 (v) a voice mail service.
- 136 (11) "Area agency on aging" is as defined in Section 62A-3-101.
- 137 (12) "Assisted amusement device" means an amusement device, skill device, or ride
- 138 device that is started and stopped by an individual:
- 139 (a) who is not the purchaser or renter of the right to use or operate the amusement
- 140 device, skill device, or ride device; and
- 141 (b) at the direction of the seller of the right to use the amusement device, skill device,
- 142 or ride device.
- 143 (13) "Assisted cleaning or washing of tangible personal property" means cleaning or
- 144 washing of tangible personal property if the cleaning or washing labor is primarily performed
- 145 by an individual:
- 146 (a) who is not the purchaser of the cleaning or washing of the tangible personal
- 147 property; and
- 148 (b) at the direction of the seller of the cleaning or washing of the tangible personal
- 149 property.

150 (14) "Authorized carrier" means:

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

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

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

158 (15) (a) Except as provided in Subsection (15)(b), "biomass energy" means any of the  
159 following that is used as the primary source of energy to produce fuel or electricity:

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

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

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

163 (B) animal waste;

164 (C) methane produced:

165 (I) at landfills; or

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

167 (D) aquatic plants; and

168 (E) agricultural products.

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

170 (i) black liquor;

171 (ii) treated woods; or

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

173 (A) at landfills; or

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

175 (16) (a) "Bundled transaction" means the sale of two or more items of tangible personal  
176 property, products, or services if the tangible personal property, products, or services are:

177 (i) distinct and identifiable; and

178 (ii) sold for one nonitemized price.

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

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

181 the basis of the selection by the purchaser of the items of tangible personal property included in  
182 the transaction;

183 (ii) the sale of real property;

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

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

186 (A) the tangible personal property:

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

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

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

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

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

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

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

194 (vi) a transaction that includes tangible personal property or a product subject to

195 taxation under this chapter and tangible personal property or a product that is not subject to

196 taxation under this chapter if the:

197 (A) seller's purchase price of the tangible personal property or product subject to

198 taxation under this chapter is de minimis; or

199 (B) seller's sales price of the tangible personal property or product subject to taxation

200 under this chapter is de minimis; and

201 (vii) the retail sale of tangible personal property that is not subject to taxation under

202 this chapter and tangible personal property that is subject to taxation under this chapter if:

203 (A) that retail sale includes:

204 (I) food and food ingredients;

205 (II) a drug;

206 (III) durable medical equipment;

207 (IV) mobility enhancing equipment;

208 (V) an over-the-counter drug;

209 (VI) a prosthetic device; or

210 (VII) a medical supply; and

211 (B) subject to Subsection (16)(f):

212 (I) the seller's purchase price of the tangible personal property subject to taxation under  
213 this chapter is 50% or less of the seller's total purchase price of that retail sale; or

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

216 (c) (i) For purposes of Subsection (16)(a)(i), tangible personal property, a product, or a  
217 service that is distinct and identifiable does not include:

218 (A) packaging that:

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

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

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

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

226 (ii) For purposes of Subsection (16)(c)(i)(B), an item of tangible personal property, a  
227 product, or a service is provided free of charge with the purchase of another item of tangible  
228 personal property, a product, or a service if the sales price of the purchased item of tangible  
229 personal property, product, or service does not vary depending on the inclusion of the tangible  
230 personal property, product, or service provided free of charge.

231 (d) (i) For purposes of Subsection (16)(a)(ii), property sold for one nonitemized price  
232 does not include a price that is separately identified by tangible personal property, product, or  
233 service on the following, regardless of whether the following is in paper format or electronic  
234 format:

235 (A) a binding sales document; or

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

237 (ii) For purposes of Subsection (16)(d)(i), a binding sales document or another  
238 supporting sales-related document that is available to a purchaser includes:

239 (A) a bill of sale;

240 (B) a contract;

241 (C) an invoice;

242 (D) a lease agreement;



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

244 (F) a price list;

245 (G) a rate card;

246 (H) a receipt; or

247 (I) a service agreement.

248 (e) (i) For purposes of Subsection (16)(b)(vi), the sales price of tangible personal  
249 property or a product subject to taxation under this chapter is de minimis if:

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

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

254 (ii) For purposes of Subsection (16)(b)(vi), a seller:

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

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

261 (iii) For purposes of Subsection (16)(b)(vi), a seller shall use the full term of a service  
262 contract to determine if the sales price of tangible personal property or a product is de minimis.

263 (f) For purposes of Subsection (16)(b)(vii)(B), a seller may not use a combination of  
264 the seller's purchase price and the seller's sales price to determine if tangible personal property  
265 subject to taxation under this chapter is 50% or less of the seller's total purchase price or sales  
266 price of that retail sale.

267 (17) "Certified automated system" means software certified by the governing board of  
268 the agreement that:

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

271 (i) on a transaction; and

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

273 (b) determines the amount of agreement sales and use tax to remit to a state that is a

274 member of the agreement; and

275 (c) maintains a record of the transaction described in Subsection (17)(a)(i).

276 (18) "Certified service provider" means an agent certified:

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

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

281 (19) (a) Subject to Subsection (19)(b), "clothing" means all human wearing apparel  
282 suitable for general use.

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

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

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

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

289 (21) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other  
290 fuels that does not constitute industrial use under Subsection [~~48~~] (49) or residential use  
291 under Subsection [~~94~~] (97).

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

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

297 (ii) For purposes of Subsection (22)(b)(i), in accordance with Title 63G, Chapter 3,  
298 Utah Administrative Rulemaking Act, the commission may make rules defining what  
299 constitutes a person's place of employment.

300 (23) "Component part" includes:

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

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

303 (c) fuel used for providing temperature control of orchards and commercial  
304 greenhouses doing a majority of their business in wholesale sales, and for providing power for

305 off-highway type farm machinery; and

306 (d) feed, seeds, and seedlings.

307 (24) "Computer" means an electronic device that accepts information:

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

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

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

311 (25) "Computer software" means a set of coded instructions designed to cause:

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

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

314 (26) "Computer software maintenance contract" means a contract that obligates a seller  
315 of computer software to provide a customer with:

316 (a) future updates or upgrades to computer software;

317 (b) support services with respect to computer software; or

318 (c) a combination of Subsections (26)(a) and (b).

319 [~~26~~] (27) (a) "Conference bridging service" means an ancillary service that links two  
320 or more participants of an audio conference call or video conference call.

321 (b) "Conference bridging service" [~~includes~~] may include providing a telephone  
322 number as part of the ancillary service described in Subsection [~~26~~] (27)(a).

323 (c) "Conference bridging service" does not include a telecommunications service used  
324 to reach the ancillary service described in Subsection [~~26~~] (27)(a).

325 [~~27~~] (28) "Construction materials" means any tangible personal property that will be  
326 converted into real property.

327 [~~28~~] (29) "Delivered electronically" means delivered to a purchaser by means other  
328 than tangible storage media.

329 [~~29~~] (30) (a) "Delivery charge" means a charge:

330 (i) by a seller of:

331 (A) tangible personal property;

332 (B) a product transferred electronically; or

333 (C) services; and

334 (ii) for preparation and delivery of the tangible personal property, product transferred  
335 electronically, or services described in Subsection [~~29~~] (30)(a)(i) to a location designated by

336 the purchaser.

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

338 (i) transportation;

339 (ii) shipping;

340 (iii) postage;

341 (iv) handling;

342 (v) crating; or

343 (vi) packing.

344 [~~(30)~~] (31) "Detailed telecommunications billing service" means an ancillary service of  
345 separately stating information pertaining to individual calls on a customer's billing statement.

346 [~~(31)~~] (32) "Dietary supplement" means a product, other than tobacco, that:

347 (a) is intended to supplement the diet;

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

349 (i) a vitamin;

350 (ii) a mineral;

351 (iii) an herb or other botanical;

352 (iv) an amino acid;

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

355 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient  
356 described in Subsections [~~(31)~~] (32)(b)(i) through (v);

357 (c) (i) except as provided in Subsection [~~(31)~~] (32)(c)(ii), is intended for ingestion in:

358 (A) tablet form;

359 (B) capsule form;

360 (C) powder form;

361 (D) softgel form;

362 (E) gelcap form; or

363 (F) liquid form; or

364 (ii) notwithstanding Subsection [~~(31)~~] (32)(c)(i), if the product is not intended for  
365 ingestion in a form described in Subsections [~~(31)~~] (32)(c)(i)(A) through (F), is not  
366 represented:

- 367 (A) as conventional food; and
- 368 (B) for use as a sole item of:
  - 369 (I) a meal; or
  - 370 (II) the diet; and
- 371 (d) is required to be labeled as a dietary supplement:
  - 372 (i) identifiable by the "Supplemental Facts" box found on the label; and
  - 373 (ii) as required by 21 C.F.R. Sec. 101.36.
- 374 [~~32~~] (33) (a) "Direct mail" means printed material delivered or distributed by United  
375 States mail or other delivery service:
  - 376 (i) to:
    - 377 (A) a mass audience; or
    - 378 (B) addressees on a mailing list provided:
      - 379 (I) by a purchaser of the mailing list; or
      - 380 (II) at the discretion of the purchaser of the mailing list; and
    - 381 (ii) if the cost of the printed material is not billed directly to the recipients.
  - 382 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a  
383 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
  - 384 (c) "Direct mail" does not include multiple items of printed material delivered to a  
385 single address.
- 386 [~~33~~] (34) "Directory assistance" means an ancillary service of providing:
  - 387 (a) address information; or
  - 388 (b) telephone number information.
- 389 [~~34~~] (35) (a) "Disposable home medical equipment or supplies" means medical  
390 equipment or supplies that:
  - 391 (i) cannot withstand repeated use; and
  - 392 (ii) are purchased by, for, or on behalf of a person other than:
    - 393 (A) a health care facility as defined in Section 26-21-2;
    - 394 (B) a health care provider as defined in Section 78B-3-403;
    - 395 (C) an office of a health care provider described in Subsection [~~34~~] (35)(a)(ii)(B); or
    - 396 (D) a person similar to a person described in Subsections [~~34~~] (35)(a)(ii)(A) through  
397 (C).

- 398 (b) "Disposable home medical equipment or supplies" does not include:
- 399 (i) a drug;
- 400 (ii) durable medical equipment;
- 401 (iii) a hearing aid;
- 402 (iv) a hearing aid accessory;
- 403 (v) mobility enhancing equipment; or
- 404 (vi) tangible personal property used to correct impaired vision, including:
- 405 (A) eyeglasses; or
- 406 (B) contact lenses.
- 407 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 408 commission may by rule define what constitutes medical equipment or supplies.
- 409 ~~[(35)]~~ (36) (a) "Drug" means a compound, substance, or preparation, or a component of
- 410 a compound, substance, or preparation that is:
- 411 (i) recognized in:
- 412 (A) the official United States Pharmacopoeia;
- 413 (B) the official Homeopathic Pharmacopoeia of the United States;
- 414 (C) the official National Formulary; or
- 415 (D) a supplement to a publication listed in Subsections ~~[(35)]~~ (36)(a)(i)(A) through
- 416 (C);
- 417 (ii) intended for use in the:
- 418 (A) diagnosis of disease;
- 419 (B) cure of disease;
- 420 (C) mitigation of disease;
- 421 (D) treatment of disease; or
- 422 (E) prevention of disease; or
- 423 (iii) intended to affect:
- 424 (A) the structure of the body; or
- 425 (B) any function of the body.
- 426 (b) "Drug" does not include:
- 427 (i) food and food ingredients;
- 428 (ii) a dietary supplement;

- 429 (iii) an alcoholic beverage; or  
430 (iv) a prosthetic device.
- 431 ~~[(36)]~~ (37) (a) Except as provided in Subsection ~~[(36)]~~ (37)(c), "durable medical  
432 equipment" means equipment that:
- 433 (i) can withstand repeated use;
  - 434 (ii) is primarily and customarily used to serve a medical purpose;
  - 435 (iii) generally is not useful to a person in the absence of illness or injury; and
  - 436 (iv) is not worn in or on the body.
- 437 (b) "Durable medical equipment" includes parts used in the repair or replacement of the  
438 equipment described in Subsection ~~[(36)]~~ (37)(a).
- 439 (c) Notwithstanding Subsection ~~[(36)]~~ (37)(a), "durable medical equipment" does not  
440 include mobility enhancing equipment.
- 441 ~~[(37)]~~ (38) "Electronic" means:
- 442 (a) relating to technology; and
  - 443 (b) having:
    - 444 (i) electrical capabilities;
    - 445 (ii) digital capabilities;
    - 446 (iii) magnetic capabilities;
    - 447 (iv) wireless capabilities;
    - 448 (v) optical capabilities;
    - 449 (vi) electromagnetic capabilities; or
    - 450 (vii) capabilities similar to Subsections ~~[(37)]~~ (38)(b)(i) through (vi).
- 451 ~~[(38)]~~ (39) "Employee" is as defined in Section 59-10-401.
- 452 ~~[(39)]~~ (40) "Fixed guideway" means a public transit facility that uses and occupies:
- 453 (a) rail for the use of public transit; or
  - 454 (b) a separate right-of-way for the use of public transit.
- 455 ~~[(40)]~~ (41) "Fixed wing turbine powered aircraft" means an aircraft that:
- 456 (a) is powered by turbine engines;
  - 457 (b) operates on jet fuel; and
  - 458 (c) has wings that are permanently attached to the fuselage of the aircraft.
- 459 ~~[(41)]~~ (42) "Fixed wireless service" means a telecommunications service that provides

460 radio communication between fixed points.

461 [~~(42)~~] (43) (a) "Food and food ingredients" means substances:

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

463 (A) liquid form;

464 (B) concentrated form;

465 (C) solid form;

466 (D) frozen form;

467 (E) dried form; or

468 (F) dehydrated form; and

469 (ii) that are:

470 (A) sold for:

471 (I) ingestion by humans; or

472 (II) chewing by humans; and

473 (B) consumed for the substance's:

474 (I) taste; or

475 (II) nutritional value.

476 (b) "Food and food ingredients" includes an item described in Subsection [~~(78)~~]

477 (80)(b)(iii).

478 (c) "Food and food ingredients" does not include:

479 (i) an alcoholic beverage;

480 (ii) tobacco; or

481 (iii) prepared food.

482 [~~(43)~~] (44) (a) "Fundraising sales" means sales:

483 (i) (A) made by a school; or

484 (B) made by a school student;

485 (ii) that are for the purpose of raising funds for the school to purchase equipment,

486 materials, or provide transportation; and

487 (iii) that are part of an officially sanctioned school activity.

488 (b) For purposes of Subsection [~~(43)~~] (44)(a)(iii), "officially sanctioned school activity"

489 means a school activity:

490 (i) that is conducted in accordance with a formal policy adopted by the school or school



491 district governing the authorization and supervision of fundraising activities;

492 (ii) that does not directly or indirectly compensate an individual teacher or other  
493 educational personnel by direct payment, commissions, or payment in kind; and

494 (iii) the net or gross revenues from which are deposited in a dedicated account  
495 controlled by the school or school district.

496 [~~44~~] (45) "Geothermal energy" means energy contained in heat that continuously  
497 flows outward from the earth that is used as the sole source of energy to produce electricity.

498 [~~45~~] (46) "Governing board of the agreement" means the governing board of the  
499 agreement that is:

500 (a) authorized to administer the agreement; and

501 (b) established in accordance with the agreement.

502 [~~46~~] (47) (a) For purposes of Subsection 59-12-104(41), "governmental entity"  
503 means:

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

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

508 (iii) the legislative branch of the state, including the House of Representatives, the  
509 Senate, the Legislative Printing Office, the Office of Legislative Research and General  
510 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal  
511 Analyst;

512 (iv) the National Guard;

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

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

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

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

518 (ii) a school;

519 (iii) the State Board of Education;

520 (iv) the State Board of Regents; or

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

522            [~~(47)~~] (48) "Hydroelectric energy" means water used as the sole source of energy to  
523 produce electricity.

524            [~~(48)~~] (49) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil,  
525 or other fuels:

526            (a) in mining or extraction of minerals;

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

529            (i) commercial greenhouses;

530            (ii) irrigation pumps;

531            (iii) farm machinery;

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

534            (v) other farming activities;

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

538            (d) by a scrap recycler if:

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

542            (A) iron;

543            (B) steel;

544            (C) nonferrous metal;

545            (D) paper;

546            (E) glass;

547            (F) plastic;

548            (G) textile; or

549            (H) rubber; and

550            (ii) the new products under Subsection [~~(48)~~] (49)(d)(i) would otherwise be made with  
551 nonrecycled materials; or

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

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

554 ~~[(49)]~~ (50) (a) Except as provided in Subsection ~~[(49)]~~ (50)(b), "installation charge"

555 means a charge for installing:

556 (i) tangible personal property; or

557 (ii) a product transferred electronically.

558 (b) "Installation charge" does not include a charge for:

559 (i) repairs or renovations of:

560 ~~[(i)]~~ (A) tangible personal property; or

561 ~~[(ii)]~~ (B) a product transferred electronically[-]; or

562 (ii) attaching tangible personal property or a product transferred electronically:

563 (A) to other tangible personal property; and

564 (B) as part of a manufacturing or fabrication process.

565 ~~[(50)]~~ (51) (a) "Lease" or "rental" means a transfer of possession or control of tangible  
566 personal property or a product transferred electronically for:

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

568 (B) an indeterminate term; and

569 (ii) consideration.

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

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

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

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

580 (A) upon completion of required payments; and

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

582 (I) \$100; or

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

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

587 (d) For purposes of Subsection [~~(50)~~] (51)(c)(iii), an operator is necessary for  
588 equipment to perform as designed if the operator's duties exceed the:

- 589 (i) set-up of tangible personal property;
- 590 (ii) maintenance of tangible personal property; or
- 591 (iii) inspection of tangible personal property.

592 [~~(51)~~] (52) "Load and leave" means delivery to a purchaser by use of a tangible storage  
593 media if the tangible storage media is not physically transferred to the purchaser.

594 [~~(52)~~] (53) "Local taxing jurisdiction" means a:

- 595 (a) county that is authorized to impose an agreement sales and use tax;
- 596 (b) city that is authorized to impose an agreement sales and use tax; or
- 597 (c) town that is authorized to impose an agreement sales and use tax.

598 [~~(53)~~] (54) "Manufactured home" is as defined in Section 58-56-3.

599 [~~(54)~~] (55) For purposes of Section 59-12-104, "manufacturing facility" means:

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

603 (b) a scrap recycler if:

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

- 607 (A) iron;
- 608 (B) steel;
- 609 (C) nonferrous metal;
- 610 (D) paper;
- 611 (E) glass;
- 612 (F) plastic;
- 613 (G) textile; or
- 614 (H) rubber; and

615 (ii) the new products under Subsection [~~54~~] (55)(b)(i) would otherwise be made with  
616 nonrecycled materials; or

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

618 [~~55~~] (56) "Member of the immediate family of the producer" means a person who is  
619 related to a producer described in Subsection 59-12-104(20)(a) as a:

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

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

622 (ii) a foster child or foster stepchild;

623 (b) grandchild or stepgrandchild;

624 (c) grandparent or stepgrandparent;

625 (d) nephew or stepnephew;

626 (e) niece or stepniece;

627 (f) parent or stepparent;

628 (g) sibling or stepsibling;

629 (h) spouse;

630 (i) person who is the spouse of a person described in Subsections [~~55~~] (56)(a) through

631 (g); or

632 (j) person similar to a person described in Subsections [~~55~~] (56)(a) through (i) as  
633 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah  
634 Administrative Rulemaking Act.

635 [~~56~~] (57) "Mobile home" is as defined in Section 58-56-3.

636 [~~57~~] (58) "Mobile telecommunications service" is as defined in the Mobile  
637 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

638 [~~58~~] (59) (a) "Mobile wireless service" means a telecommunications service,  
639 regardless of the technology used, if:

640 (i) the origination point of the conveyance, routing, or transmission is not fixed;

641 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or

642 (iii) the origination point described in Subsection [~~58~~] (59)(a)(i) and the termination  
643 point described in Subsection [~~58~~] (59)(a)(ii) are not fixed.

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

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

648 [~~59~~] (60) (a) Except as provided in Subsection [~~59~~] (60)(c), "mobility enhancing  
649 equipment" means equipment that is:

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

652 (ii) appropriate for use in a:

653 (A) home; or

654 (B) motor vehicle; and

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

656 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of  
657 the equipment described in Subsection [~~59~~] (60)(a).

658 (c) Notwithstanding Subsection [~~59~~] (60)(a), "mobility enhancing equipment" does  
659 not include:

660 (i) a motor vehicle;

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

663 (iii) durable medical equipment; or

664 (iv) a prosthetic device.

665 [~~60~~] (61) "Model 1 seller" means a seller registered under the agreement that has  
666 selected a certified service provider as the seller's agent to perform all of the seller's sales and  
667 use tax functions for agreement sales and use taxes other than the seller's obligation under  
668 Section 59-12-124 to remit a tax on the seller's own purchases.

669 [~~61~~] (62) "Model 2 seller" means a seller registered under the agreement that:

670 (a) except as provided in Subsection [~~61~~] (62)(b), has selected a certified automated  
671 system to perform the seller's sales tax functions for agreement sales and use taxes; and

672 (b) notwithstanding Subsection [~~61~~] (62)(a), retains responsibility for remitting all of  
673 the sales tax:

674 (i) collected by the seller; and

675 (ii) to the appropriate local taxing jurisdiction.

676 [~~62~~] (63) (a) Subject to Subsection [~~62~~] (63)(b), "model 3 seller" means a seller

677 registered under the agreement that has:

- 678 (i) sales in at least five states that are members of the agreement;  
679 (ii) total annual sales revenues of at least \$500,000,000;  
680 (iii) a proprietary system that calculates the amount of tax:  
681 (A) for an agreement sales and use tax; and  
682 (B) due to each local taxing jurisdiction; and  
683 (iv) entered into a performance agreement with the governing board of the agreement.

684 (b) For purposes of Subsection ~~[(62)]~~ (63)(a), "model 3 seller" includes an affiliated  
685 group of sellers using the same proprietary system.

686 ~~[(63)]~~ (64) "Model 4 seller" means a seller that is registered under the agreement and is  
687 not a model 1 seller, model 2 seller, or model 3 seller.

688 ~~[(64)]~~ (65) "Modular home" means a modular unit as defined in Section 58-56-3.

689 ~~[(65)]~~ (66) "Motor vehicle" is as defined in Section 41-1a-102.

690 ~~[(66)]~~ (67) "Oil shale" means a group of fine black to dark brown shales containing  
691 bituminous material that yields petroleum upon distillation.

692 (68) "Optional computer software maintenance contract" means a computer software  
693 maintenance contract that a customer is not obligated to purchase as a condition to the retail  
694 sale of computer software.

695 ~~[(67)]~~ (69) (a) "Other fuels" means products that burn independently to produce heat or  
696 energy.

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

699 ~~[(68)]~~ (70) (a) "Paging service" means a telecommunications service that provides  
700 transmission of a coded radio signal for the purpose of activating a specific pager.

701 (b) For purposes of Subsection ~~[(68)]~~ (70)(a), the transmission of a coded radio signal  
702 includes a transmission by message or sound.

703 ~~[(69)]~~ (71) "Pawnbroker" is as defined in Section 13-32a-102.

704 ~~[(70)]~~ (72) "Pawn transaction" is as defined in Section 13-32a-102.

705 ~~[(71)]~~ (73) (a) "Permanently attached to real property" means that for tangible personal  
706 property attached to real property:

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

- 708 (A) is essential to the use of the tangible personal property; and
- 709 (B) suggests that the tangible personal property will remain attached to the real
- 710 property in the same place over the useful life of the tangible personal property; or
- 711 (ii) if the tangible personal property is detached from the real property, the detachment
- 712 would:
- 713 (A) cause substantial damage to the tangible personal property; or
- 714 (B) require substantial alteration or repair of the real property to which the tangible
- 715 personal property is attached.
- 716 (b) "Permanently attached to real property" includes:
- 717 (i) the attachment of an accessory to the tangible personal property if the accessory is:
- 718 (A) essential to the operation of the tangible personal property; and
- 719 (B) attached only to facilitate the operation of the tangible personal property;
- 720 (ii) a temporary detachment of tangible personal property from real property for a
- 721 repair or renovation if the repair or renovation is performed where the tangible personal
- 722 property and real property are located; or
- 723 (iii) property attached to oil, gas, or water pipelines, except for the property listed in
- 724 Subsection [~~(71)~~] (73)(c)(iii) or (iv).
- 725 (c) "Permanently attached to real property" does not include:
- 726 (i) the attachment of portable or movable tangible personal property to real property if
- 727 that portable or movable tangible personal property is attached to real property only for:
- 728 (A) convenience;
- 729 (B) stability; or
- 730 (C) for an obvious temporary purpose;
- 731 (ii) the detachment of tangible personal property from real property except for the
- 732 detachment described in Subsection [~~(71)~~] (73)(b)(ii);
- 733 (iii) an attachment of the following tangible personal property to real property if the
- 734 attachment to real property is only through a line that supplies water, electricity, gas,
- 735 telecommunications, cable, or supplies a similar item as determined by the commission by rule
- 736 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
- 737 (A) a computer;
- 738 (B) a telephone;



739 (C) a television; or

740 (D) tangible personal property similar to Subsections [~~(71)~~] (73)(c)(iii)(A) through (C)  
741 as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah  
742 Administrative Rulemaking Act; or

743 (iv) an item listed in Subsection [~~(111)~~] (114)(c).

744 [~~(72)~~] (74) "Person" includes any individual, firm, partnership, joint venture,  
745 association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county,  
746 city, municipality, district, or other local governmental entity of the state, or any group or  
747 combination acting as a unit.

748 [~~(73)~~] (75) "Place of primary use":

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

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

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

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

756 [~~(74)~~] (76) (a) "Postpaid calling service" means a telecommunications service a person  
757 obtains by making a payment on a call-by-call basis:

758 (i) through the use of a:

759 (A) bank card;

760 (B) credit card;

761 (C) debit card; or

762 (D) travel card; or

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

765 (b) "Postpaid calling service" includes a service, except for a prepaid wireless calling  
766 service, that would be a prepaid wireless calling service if the service were exclusively a  
767 telecommunications service.

768 [~~(75)~~] (77) "Postproduction" means an activity related to the finishing or duplication of  
769 a medium described in Subsection 59-12-104(54)(a).

- 770            [~~(76)~~] (78) "Prepaid calling service" means a telecommunications service:
- 771            (a) that allows a purchaser access to telecommunications service that is exclusively
- 772 telecommunications service;
- 773            (b) that:
- 774            (i) is paid for in advance; and
- 775            (ii) enables the origination of a call using an:
- 776            (A) access number; or
- 777            (B) authorization code;
- 778            (c) that is dialed:
- 779            (i) manually; or
- 780            (ii) electronically; and
- 781            (d) sold in predetermined units or dollars that decline:
- 782            (i) by a known amount; and
- 783            (ii) with use.
- 784            [~~(77)~~] (79) "Prepaid wireless calling service" means a telecommunications service:
- 785            (a) that provides the right to utilize:
- 786            (i) mobile wireless service; and
- 787            (ii) other service that is not a telecommunications service, including:
- 788            (A) the download of a product transferred electronically;
- 789            (B) a content service; or
- 790            (C) an ancillary service;
- 791            (b) that:
- 792            (i) is paid for in advance; and
- 793            (ii) enables the origination of a call using an:
- 794            (A) access number; or
- 795            (B) authorization code;
- 796            (c) that is dialed:
- 797            (i) manually; or
- 798            (ii) electronically; and
- 799            (d) sold in predetermined units or dollars that decline:
- 800            (i) by a known amount; and

- 801 (ii) with use.
- 802 [~~(78)~~] (80) (a) "Prepared food" means:
- 803 (i) food:
- 804 (A) sold in a heated state; or
- 805 (B) heated by a seller;
- 806 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 807 item; or
- 808 (iii) except as provided in Subsection [~~(78)~~] (80)(c), food sold with an eating utensil
- 809 provided by the seller, including a:
- 810 (A) plate;
- 811 (B) knife;
- 812 (C) fork;
- 813 (D) spoon;
- 814 (E) glass;
- 815 (F) cup;
- 816 (G) napkin; or
- 817 (H) straw.
- 818 (b) "Prepared food" does not include:
- 819 (i) food that a seller only:
- 820 (A) cuts;
- 821 (B) repackages; or
- 822 (C) pasteurizes; or
- 823 (ii) (A) the following:
- 824 (I) raw egg;
- 825 (II) raw fish;
- 826 (III) raw meat;
- 827 (IV) raw poultry; or
- 828 (V) a food containing an item described in Subsections [~~(78)~~] (80)(b)(ii)(A)(I) through
- 829 (IV); and
- 830 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 831 Food and Drug Administration's Food Code that a consumer cook the items described in

832 Subsection [~~(78)~~] (80)(b)(ii)(A) to prevent food borne illness; or  
833 (iii) the following if sold without eating utensils provided by the seller:  
834 (A) food and food ingredients sold by a seller if the seller's proper primary  
835 classification under the 2002 North American Industry Classification System of the federal  
836 Executive Office of the President, Office of Management and Budget, is manufacturing in  
837 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla  
838 Manufacturing;  
839 (B) food and food ingredients sold in an unheated state:  
840 (I) by weight or volume; and  
841 (II) as a single item; or  
842 (C) a bakery item, including:  
843 (I) a bagel;  
844 (II) a bar;  
845 (III) a biscuit;  
846 (IV) bread;  
847 (V) a bun;  
848 (VI) a cake;  
849 (VII) a cookie;  
850 (VIII) a croissant;  
851 (IX) a danish;  
852 (X) a donut;  
853 (XI) a muffin;  
854 (XII) a pastry;  
855 (XIII) a pie;  
856 (XIV) a roll;  
857 (XV) a tart;  
858 (XVI) a torte; or  
859 (XVII) a tortilla.  
860 (c) Notwithstanding Subsection [~~(78)~~] (80)(a)(iii), an eating utensil provided by the  
861 seller does not include the following used to transport the food:  
862 (i) a container; or

863 (ii) packaging.

864 [~~(79)~~] (81) "Prescription" means an order, formula, or recipe that is issued:

865 (a) (i) orally;

866 (ii) in writing;

867 (iii) electronically; or

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

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

870 [~~(80)~~] (82) (a) Except as provided in Subsection [~~(80)~~] (82)(b)(ii) or (iii), "prewritten

871 computer software" means computer software that is not designed and developed:

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

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

874 (b) "Prewritten computer software" includes:

875 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer

876 software is not designed and developed:

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

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

879 (ii) notwithstanding Subsection [~~(80)~~] (82)(a), computer software designed and

880 developed by the author or other creator of the computer software to the specifications of a

881 specific purchaser if the computer software is sold to a person other than the purchaser; or

882 (iii) notwithstanding Subsection [~~(80)~~] (82)(a) and except as provided in Subsection

883 [~~(80)~~] (82)(c), prewritten computer software or a prewritten portion of prewritten computer

884 software:

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

886 (B) if the modification or enhancement described in Subsection [~~(80)~~] (82)(b)(iii)(A) is

887 designed and developed to the specifications of a specific purchaser.

888 (c) Notwithstanding Subsection [~~(80)~~] (82)(b)(iii), "prewritten computer software"

889 does not include a modification or enhancement described in Subsection [~~(80)~~] (82)(b)(iii) if

890 the charges for the modification or enhancement are:

891 (i) reasonable; and

892 (ii) separately stated on the invoice or other statement of price provided to the

893 purchaser.

894 ~~[(81)]~~ (83) (a) "Private communication service" means a telecommunications service:

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

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

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

901 (i) an extension line;

902 (ii) a station;

903 (iii) switching capacity; or

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

906 (84) (a) Except as provided in Subsection (84)(b), "product transferred electronically"  
907 means a product transferred electronically that would be subject to a tax under this chapter if  
908 that product was transferred in a manner other than electronically.

909 (b) "Product transferred electronically" does not include:

910 (i) an ancillary service;

911 (ii) computer software; or

912 (iii) a telecommunications service.

913 ~~[(82)]~~ (85) (a) "Prosthetic device" means a device that is worn on or in the body to:

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

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

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

917 (b) "Prosthetic device" includes:

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

919 (ii) replacement parts for a prosthetic device;

920 (iii) a dental prosthesis; or

921 (iv) a hearing aid.

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

923 (i) corrective eyeglasses; or

924 (ii) contact lenses.

- 925            [~~(83)~~] (86) (a) "Protective equipment" means an item:
- 926            (i) for human wear; and
- 927            (ii) that is:
- 928            (A) designed as protection:
- 929            (I) to the wearer against injury or disease; or
- 930            (II) against damage or injury of other persons or property; and
- 931            (B) not suitable for general use.
- 932            (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 933 commission shall make rules:
- 934            (i) listing the items that constitute "protective equipment"; and
- 935            (ii) that are consistent with the list of items that constitute "protective equipment"
- 936 under the agreement.
- 937            [~~(84)~~] (87) (a) For purposes of Subsection 59-12-104(41), "publication" means any
- 938 written or printed matter, other than a photocopy:
- 939            (i) regardless of:
- 940            (A) characteristics;
- 941            (B) copyright;
- 942            (C) form;
- 943            (D) format;
- 944            (E) method of reproduction; or
- 945            (F) source; and
- 946            (ii) made available in printed or electronic format.
- 947            (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 948 commission may by rule define the term "photocopy."
- 949            [~~(85)~~] (88) (a) "Purchase price" and "sales price" mean the total amount of
- 950 consideration:
- 951            (i) valued in money; and
- 952            (ii) for which tangible personal property, a product transferred electronically, or
- 953 services are:
- 954            (A) sold;
- 955            (B) leased; or

- 956 (C) rented.
- 957 (b) "Purchase price" and "sales price" include:
- 958 (i) the seller's cost of the tangible personal property, a product transferred
- 959 electronically, or services sold;
- 960 (ii) expenses of the seller, including:
- 961 (A) the cost of materials used;
- 962 (B) a labor cost;
- 963 (C) a service cost;
- 964 (D) interest;
- 965 (E) a loss;
- 966 (F) the cost of transportation to the seller; or
- 967 (G) a tax imposed on the seller;
- 968 (iii) a charge by the seller for any service necessary to complete the sale; or
- 969 (iv) consideration a seller receives from a person other than the purchaser if:
- 970 (A) (I) the seller actually receives consideration from a person other than the purchaser;
- 971 and
- 972 (II) the consideration described in Subsection [~~85~~] (88)(b)(iv)(A)(I) is directly related
- 973 to a price reduction or discount on the sale;
- 974 (B) the seller has an obligation to pass the price reduction or discount through to the
- 975 purchaser;
- 976 (C) the amount of the consideration attributable to the sale is fixed and determinable by
- 977 the seller at the time of the sale to the purchaser; and
- 978 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the
- 979 seller to claim a price reduction or discount; and
- 980 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,
- 981 coupon, or other documentation with the understanding that the person other than the seller
- 982 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;
- 983 (II) the purchaser identifies that purchaser to the seller as a member of a group or
- 984 organization allowed a price reduction or discount, except that a preferred customer card that is
- 985 available to any patron of a seller does not constitute membership in a group or organization
- 986 allowed a price reduction or discount; or



- 987 (III) the price reduction or discount is identified as a third party price reduction or  
988 discount on the:
- 989 (Aa) invoice the purchaser receives; or  
990 (Bb) certificate, coupon, or other documentation the purchaser presents.  
991 (c) "Purchase price" and "sales price" do not include:  
992 (i) a discount:  
993 (A) in a form including:  
994 (I) cash;  
995 (II) term; or  
996 (III) coupon;  
997 (B) that is allowed by a seller;  
998 (C) taken by a purchaser on a sale; and  
999 (D) that is not reimbursed by a third party; or  
1000 (ii) the following if separately stated on an invoice, bill of sale, or similar document  
1001 provided to the purchaser:  
1002 (A) the following from credit extended on the sale of tangible personal property or  
1003 services:  
1004 (I) a carrying charge;  
1005 (II) a financing charge; or  
1006 (III) an interest charge;  
1007 (B) a delivery charge;  
1008 (C) an installation charge;  
1009 (D) a manufacturer rebate on a motor vehicle; or  
1010 (E) a tax or fee legally imposed directly on the consumer.  
1011 [~~86~~] (89) "Purchaser" means a person to whom:  
1012 (a) a sale of tangible personal property is made;  
1013 (b) a product is transferred electronically; or  
1014 (c) a service is furnished.  
1015 [~~87~~] (90) "Regularly rented" means:  
1016 (a) rented to a guest for value three or more times during a calendar year; or  
1017 (b) advertised or held out to the public as a place that is regularly rented to guests for

1018 value.

1019 ~~[(88)]~~ (91) "Renewable energy" means:

1020 (a) biomass energy;

1021 (b) hydroelectric energy;

1022 (c) geothermal energy;

1023 (d) solar energy; or

1024 (e) wind energy.

1025 ~~[(89)]~~ (92) (a) "Renewable energy production facility" means a facility that:

1026 (i) uses renewable energy to produce electricity; and

1027 (ii) has a production capacity of 20 kilowatts or greater.

1028 (b) A facility is a renewable energy production facility regardless of whether the  
1029 facility is:

1030 (i) connected to an electric grid; or

1031 (ii) located on the premises of an electricity consumer.

1032 ~~[(90)]~~ (93) "Rental" is as defined in Subsection ~~[(50)]~~ (51).

1033 ~~[(91) "Repairs"]~~ (94) (a) Except as provided in Subsection (94)(b), "repairs or  
1034 renovations of tangible personal property" means:

1035 ~~[(a)]~~ (i) a repair or renovation of tangible personal property that is not permanently  
1036 attached to real property; or

1037 ~~[(b)]~~ (ii) attaching tangible personal property or a product ~~[that is]~~ transferred  
1038 electronically to other tangible personal property if:

1039 (A) the other tangible personal property to which the tangible personal property or  
1040 product ~~[that is]~~ transferred electronically is attached is not permanently attached to real  
1041 property[-]; and

1042 (B) the attachment of tangible personal property or a product transferred electronically  
1043 to other tangible personal property is made in conjunction with a repair or replacement of  
1044 tangible personal property or a product transferred electronically.

1045 (b) "Repairs or renovations of tangible personal property" does not include attaching  
1046 prewritten computer software to other tangible personal property if the other tangible personal  
1047 property to which the prewritten computer software is attached is not permanently attached to  
1048 real property.

1049            [~~(92)~~] (95) "Research and development" means the process of inquiry or  
1050 experimentation aimed at the discovery of facts, devices, technologies, or applications and the  
1051 process of preparing those devices, technologies, or applications for marketing.

1052            [~~(93)~~] (96) (a) "Residential telecommunications services" means a telecommunications  
1053 service or an ancillary service that is provided to an individual for personal use:

1054            (i) at a residential address; or

1055            (ii) at an institution, including a nursing home or a school, if the telecommunications  
1056 service or ancillary service is provided to and paid for by the individual residing at the  
1057 institution rather than the institution.

1058            (b) For purposes of Subsection [~~(93)~~] (96)(a)(i), a residential address includes an:

1059            (i) apartment; or

1060            (ii) other individual dwelling unit.

1061            [~~(94)~~] (97) "Residential use" means the use in or around a home, apartment building,  
1062 sleeping quarters, and similar facilities or accommodations.

1063            [~~(95)~~] (98) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose  
1064 other than:

1065            (a) resale;

1066            (b) sublease; or

1067            (c) subrent.

1068            [~~(96)~~] (99) (a) "Retailer" means any person engaged in a regularly organized business  
1069 in tangible personal property or any other taxable transaction under Subsection 59-12-103(1),  
1070 and who is selling to the user or consumer and not for resale.

1071            (b) "Retailer" includes commission merchants, auctioneers, and any person regularly  
1072 engaged in the business of selling to users or consumers within the state.

1073            [~~(97)~~] (100) (a) "Sale" means any transfer of title, exchange, or barter, conditional or  
1074 otherwise, in any manner, of tangible personal property or any other taxable transaction under  
1075 Subsection 59-12-103(1), for consideration.

1076            (b) "Sale" includes:

1077            (i) installment and credit sales;

1078            (ii) any closed transaction constituting a sale;

1079            (iii) any sale of electrical energy, gas, services, or entertainment taxable under this

1080 chapter;

1081 (iv) any transaction if the possession of property is transferred but the seller retains the  
1082 title as security for the payment of the price; and

1083 (v) any transaction under which right to possession, operation, or use of any article of  
1084 tangible personal property is granted under a lease or contract and the transfer of possession  
1085 would be taxable if an outright sale were made.

1086 [~~98~~] (101) "Sale at retail" is as defined in Subsection [~~95~~] (98).

1087 [~~99~~] (102) "Sale-leaseback transaction" means a transaction by which title to tangible  
1088 personal property or a product transferred electronically that is subject to a tax under this  
1089 chapter is transferred:

1090 (a) by a purchaser-lessee;

1091 (b) to a lessor;

1092 (c) for consideration; and

1093 (d) if:

1094 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase  
1095 of the tangible personal property or product transferred electronically;

1096 (ii) the sale of the tangible personal property or product transferred electronically to the  
1097 lessor is intended as a form of financing:

1098 (A) for the tangible personal property or product transferred electronically; and

1099 (B) to the purchaser-lessee; and

1100 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee  
1101 is required to:

1102 (A) capitalize the tangible personal property or product transferred electronically for  
1103 financial reporting purposes; and

1104 (B) account for the lease payments as payments made under a financing arrangement.

1105 [~~100~~] (103) "Sales price" is as defined in Subsection [~~85~~] (88).

1106 [~~101~~] (104) (a) "Sales relating to schools" means the following sales by, amounts  
1107 paid to, or amounts charged by a school:

1108 (i) sales that are directly related to the school's educational functions or activities  
1109 including:

1110 (A) the sale of:

- 1111 (I) textbooks;
- 1112 (II) textbook fees;
- 1113 (III) laboratory fees;
- 1114 (IV) laboratory supplies; or
- 1115 (V) safety equipment;
- 1116 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
- 1117 that:
- 1118 (I) a student is specifically required to wear as a condition of participation in a
- 1119 school-related event or school-related activity; and
- 1120 (II) is not readily adaptable to general or continued usage to the extent that it takes the
- 1121 place of ordinary clothing;
- 1122 (C) sales of the following if the net or gross revenues generated by the sales are
- 1123 deposited into a school district fund or school fund dedicated to school meals:
- 1124 (I) food and food ingredients; or
- 1125 (II) prepared food; or
- 1126 (D) transportation charges for official school activities; or
- 1127 (ii) amounts paid to or amounts charged by a school for admission to a school-related
- 1128 event or school-related activity.
- 1129 (b) "Sales relating to schools" does not include:
- 1130 (i) bookstore sales of items that are not educational materials or supplies;
- 1131 (ii) except as provided in Subsection [~~(101)~~] (104)(a)(i)(B):
- 1132 (A) clothing;
- 1133 (B) clothing accessories or equipment;
- 1134 (C) protective equipment; or
- 1135 (D) sports or recreational equipment; or
- 1136 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 1137 event or school-related activity if the amounts paid or charged are passed through to a person:
- 1138 (A) other than a:
- 1139 (I) school;
- 1140 (II) nonprofit organization authorized by a school board or a governing body of a
- 1141 private school to organize and direct a competitive secondary school activity; or

1142 (III) nonprofit association authorized by a school board or a governing body of a  
1143 private school to organize and direct a competitive secondary school activity; and

1144 (B) that is required to collect sales and use taxes under this chapter.

1145 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1146 commission may make rules defining the term "passed through."

1147 [~~(102)~~] (105) For purposes of this section and Section 59-12-104, "school":

1148 (a) means:

1149 (i) an elementary school or a secondary school that:

1150 (A) is a:

1151 (I) public school; or

1152 (II) private school; and

1153 (B) provides instruction for one or more grades kindergarten through 12; or

1154 (ii) a public school district; and

1155 (b) includes the Electronic High School as defined in Section 53A-15-1002.

1156 [~~(103)~~] (106) "Seller" means a person that makes a sale, lease, or rental of:

1157 (a) tangible personal property;

1158 (b) a product transferred electronically; or

1159 (c) a service.

1160 [~~(104)~~] (107) (a) "Semiconductor fabricating, processing, research, or development  
1161 materials" means tangible personal property or a product transferred electronically if the  
1162 tangible personal property or product transferred electronically is:

1163 (i) used primarily in the process of:

1164 (A) (I) manufacturing a semiconductor;

1165 (II) fabricating a semiconductor; or

1166 (III) research or development of a:

1167 (Aa) semiconductor; or

1168 (Bb) semiconductor manufacturing process; or

1169 (B) maintaining an environment suitable for a semiconductor; or

1170 (ii) consumed primarily in the process of:

1171 (A) (I) manufacturing a semiconductor;

1172 (II) fabricating a semiconductor; or

- 1173 (III) research or development of a:
- 1174 (Aa) semiconductor; or
- 1175 (Bb) semiconductor manufacturing process; or
- 1176 (B) maintaining an environment suitable for a semiconductor.
- 1177 (b) "Semiconductor fabricating, processing, research, or development materials"
- 1178 includes:
- 1179 (i) parts used in the repairs or renovations of tangible personal property or a product
- 1180 transferred electronically described in Subsection [~~(104)~~] (107)(a); or
- 1181 (ii) a chemical, catalyst, or other material used to:
- 1182 (A) produce or induce in a semiconductor a:
- 1183 (I) chemical change; or
- 1184 (II) physical change;
- 1185 (B) remove impurities from a semiconductor; or
- 1186 (C) improve the marketable condition of a semiconductor.
- 1187 [~~(105)~~] (108) "Senior citizen center" means a facility having the primary purpose of
- 1188 providing services to the aged as defined in Section 62A-3-101.
- 1189 [~~(106)~~] (109) "Simplified electronic return" means the electronic return:
- 1190 (a) described in Section 318(C) of the agreement; and
- 1191 (b) approved by the governing board of the agreement.
- 1192 [~~(107)~~] (110) "Solar energy" means the sun used as the sole source of energy for
- 1193 producing electricity.
- 1194 [~~(108)~~] (111) (a) "Sports or recreational equipment" means an item:
- 1195 (i) designed for human use; and
- 1196 (ii) that is:
- 1197 (A) worn in conjunction with:
- 1198 (I) an athletic activity; or
- 1199 (II) a recreational activity; and
- 1200 (B) not suitable for general use.
- 1201 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1202 commission shall make rules:
- 1203 (i) listing the items that constitute "sports or recreational equipment"; and

1204 (ii) that are consistent with the list of items that constitute "sports or recreational  
1205 equipment" under the agreement.

1206 [~~(109)~~] (112) "State" means the state of Utah, its departments, and agencies.

1207 [~~(110)~~] (113) "Storage" means any keeping or retention of tangible personal property or  
1208 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose  
1209 except sale in the regular course of business.

1210 [~~(111)~~] (114) (a) Except as provided in Subsection [~~(111)~~] (114)(d) or (e), "tangible  
1211 personal property" means personal property that:

1212 (i) may be:

1213 (A) seen;

1214 (B) weighed;

1215 (C) measured;

1216 (D) felt; or

1217 (E) touched; or

1218 (ii) is in any manner perceptible to the senses.

1219 (b) "Tangible personal property" includes:

1220 (i) electricity;

1221 (ii) water;

1222 (iii) gas;

1223 (iv) steam; or

1224 (v) prewritten computer software, regardless of the manner in which the prewritten  
1225 computer software is transferred.

1226 (c) "Tangible personal property" includes the following, regardless of whether the item  
1227 is attached to real property:

1228 (i) a dishwasher;

1229 (ii) a dryer;

1230 (iii) a freezer;

1231 (iv) a microwave;

1232 (v) a refrigerator;

1233 (vi) a stove;

1234 (vii) a washer; or



1235 (viii) an item similar to Subsections [~~(114)~~] (114)(c)(i) through (vii) as determined by  
1236 the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
1237 Rulemaking Act.

1238 (d) "Tangible personal property" does not include a product that is transferred  
1239 electronically.

1240 (e) "Tangible personal property" does not include the following if attached to real  
1241 property, regardless of whether the attachment to real property is only through a line that  
1242 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the  
1243 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
1244 Rulemaking Act:

1245 (i) a hot water heater;

1246 (ii) a water filtration system; or

1247 (iii) a water softener system.

1248 [~~(112)~~] (115) "Tar sands" means impregnated sands that yield mixtures of liquid  
1249 hydrocarbon and require further processing other than mechanical blending before becoming  
1250 finished petroleum products.

1251 [~~(113)~~] (116) (a) "Telecommunications enabling or facilitating equipment, machinery,  
1252 or software" means an item listed in Subsection [~~(113)~~] (116)(b) if that item is purchased or  
1253 leased primarily to enable or facilitate one or more of the following to function:

1254 (i) telecommunications switching or routing equipment, machinery, or software; or

1255 (ii) telecommunications transmission equipment, machinery, or software.

1256 (b) The following apply to Subsection [~~(113)~~] (116)(a):

1257 (i) a pole;

1258 (ii) software;

1259 (iii) a supplementary power supply;

1260 (iv) temperature or environmental equipment or machinery;

1261 (v) test equipment;

1262 (vi) a tower; or

1263 (vii) equipment, machinery, or software that functions similarly to an item listed in  
1264 Subsections [~~(113)~~] (116)(b)(i) through (vi) as determined by the commission by rule made in  
1265 accordance with Subsection [~~(113)~~] (116)(c).

1266 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1267 commission may by rule define what constitutes equipment, machinery, or software that  
1268 functions similarly to an item listed in Subsections [~~(113)~~] (116)(b)(i) through (vi).

1269 [~~(114)~~] (117) "Telecommunications equipment, machinery, or software required for  
1270 911 service" means equipment, machinery, or software that is required to comply with 47  
1271 C.F.R. Sec. 20.18.

1272 [~~(115)~~] (118) "Telecommunications maintenance or repair equipment, machinery, or  
1273 software" means equipment, machinery, or software purchased or leased primarily to maintain  
1274 or repair one or more of the following, regardless of whether the equipment, machinery, or  
1275 software is purchased or leased as a spare part or as an upgrade or modification to one or more  
1276 of the following:

- 1277 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 1278 (b) telecommunications switching or routing equipment, machinery, or software; or
- 1279 (c) telecommunications transmission equipment, machinery, or software.

1280 [~~(116)~~] (119) (a) "Telecommunications service" means the electronic conveyance,  
1281 routing, or transmission of audio, data, video, voice, or any other information or signal to a  
1282 point, or among or between points.

1283 (b) "Telecommunications service" includes:

1284 (i) an electronic conveyance, routing, or transmission with respect to which a computer  
1285 processing application is used to act:

1286 (A) on the code, form, or protocol of the content;

1287 (B) for the purpose of electronic conveyance, routing, or transmission; and

1288 (C) regardless of whether the service:

1289 (I) is referred to as voice over Internet protocol service; or

1290 (II) is classified by the Federal Communications Commission as enhanced or value  
1291 added;

1292 (ii) an 800 service;

1293 (iii) a 900 service;

1294 (iv) a fixed wireless service;

1295 (v) a mobile wireless service;

1296 (vi) a postpaid calling service;

- 1297 (vii) a prepaid calling service;
- 1298 (viii) a prepaid wireless calling service; or
- 1299 (ix) a private communications service.
- 1300 (c) "Telecommunications service" does not include:
- 1301 (i) advertising, including directory advertising;
- 1302 (ii) an ancillary service;
- 1303 (iii) a billing and collection service provided to a third party;
- 1304 (iv) a data processing and information service if:
- 1305 (A) the data processing and information service allows data to be:
- 1306 (I) (Aa) acquired;
- 1307 (Bb) generated;
- 1308 (Cc) processed;
- 1309 (Dd) retrieved; or
- 1310 (Ee) stored; and
- 1311 (II) delivered by an electronic transmission to a purchaser; and
- 1312 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 1313 or information;
- 1314 (v) installation or maintenance of the following on a customer's premises:
- 1315 (A) equipment; or
- 1316 (B) wiring;
- 1317 (vi) Internet access service;
- 1318 (vii) a paging service;
- 1319 (viii) a product transferred electronically, including:
- 1320 (A) music;
- 1321 (B) reading material;
- 1322 (C) a ring tone;
- 1323 (D) software; or
- 1324 (E) video;
- 1325 (ix) a radio and television audio and video programming service:
- 1326 (A) regardless of the medium; and
- 1327 (B) including:

- 1328 (I) furnishing conveyance, routing, or transmission of a television audio and video  
1329 programming service by a programming service provider;
- 1330 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
- 1331 (III) audio and video programming services delivered by a commercial mobile radio  
1332 service provider as defined in 47 C.F.R. Sec. 20.3;
- 1333 (x) a value-added nonvoice data service; or
- 1334 (xi) tangible personal property.
- 1335 [~~(117)~~] (120) (a) "Telecommunications service provider" means a person that:
- 1336 (i) owns, controls, operates, or manages a telecommunications service; and
- 1337 (ii) engages in an activity described in Subsection [~~(117)~~] (120)(a)(i) for the shared use  
1338 with or resale to any person of the telecommunications service.
- 1339 (b) A person described in Subsection [~~(117)~~] (120)(a) is a telecommunications service  
1340 provider whether or not the Public Service Commission of Utah regulates:
- 1341 (i) that person; or
- 1342 (ii) the telecommunications service that the person owns, controls, operates, or  
1343 manages.
- 1344 [~~(118)~~] (121) (a) "Telecommunications switching or routing equipment, machinery, or  
1345 software" means an item listed in Subsection [~~(118)~~] (121)(b) if that item is purchased or  
1346 leased primarily for switching or routing:
- 1347 (i) an ancillary service;
- 1348 (ii) data communications;
- 1349 (iii) voice communications; or
- 1350 (iv) telecommunications service.
- 1351 (b) The following apply to Subsection [~~(118)~~] (121)(a):
- 1352 (i) a bridge;
- 1353 (ii) a computer;
- 1354 (iii) a cross connect;
- 1355 (iv) a modem;
- 1356 (v) a multiplexer;
- 1357 (vi) plug in circuitry;
- 1358 (vii) a router;

1359 (viii) software;  
1360 (ix) a switch; or  
1361 (x) equipment, machinery, or software that functions similarly to an item listed in  
1362 Subsections [~~(118)~~] (121)(b)(i) through (ix) as determined by the commission by rule made in  
1363 accordance with Subsection [~~(118)~~] (121)(c).

1364 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1365 commission may by rule define what constitutes equipment, machinery, or software that  
1366 functions similarly to an item listed in Subsections [~~(118)~~] (121)(b)(i) through (ix).

1367 [~~(119)~~] (122) (a) "Telecommunications transmission equipment, machinery, or  
1368 software" means an item listed in Subsection [~~(119)~~] (122)(b) if that item is purchased or  
1369 leased primarily for sending, receiving, or transporting:

- 1370 (i) an ancillary service;
- 1371 (ii) data communications;
- 1372 (iii) voice communications; or
- 1373 (iv) telecommunications service.

1374 (b) The following apply to Subsection [~~(119)~~] (122)(a):

- 1375 (i) an amplifier;
- 1376 (ii) a cable;
- 1377 (iii) a closure;
- 1378 (iv) a conduit;
- 1379 (v) a controller;
- 1380 (vi) a duplexer;
- 1381 (vii) a filter;
- 1382 (viii) an input device;
- 1383 (ix) an input/output device;
- 1384 (x) an insulator;
- 1385 (xi) microwave machinery or equipment;
- 1386 (xii) an oscillator;
- 1387 (xiii) an output device;
- 1388 (xiv) a pedestal;
- 1389 (xv) a power converter;

- 1390 (xvi) a power supply;
- 1391 (xvii) a radio channel;
- 1392 (xviii) a radio receiver;
- 1393 (xix) a radio transmitter;
- 1394 (xx) a repeater;
- 1395 (xxi) software;
- 1396 (xxii) a terminal;
- 1397 (xxiii) a timing unit;
- 1398 (xxiv) a transformer;
- 1399 (xxv) a wire; or

1400 (xxvi) equipment, machinery, or software that functions similarly to an item listed in  
1401 Subsections [~~(119)~~] (122)(b)(i) through (xxv) as determined by the commission by rule made in  
1402 accordance with Subsection [~~(119)~~] (122)(c).

1403 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1404 commission may by rule define what constitutes equipment, machinery, or software that  
1405 functions similarly to an item listed in Subsections [~~(119)~~] (122)(b)(i) through (xxv).

1406 [~~(120)~~] (123) "Tobacco" means:

- 1407 (a) a cigarette;
- 1408 (b) a cigar;
- 1409 (c) chewing tobacco;
- 1410 (d) pipe tobacco; or
- 1411 (e) any other item that contains tobacco.

1412 [~~(121)~~] (124) "Unassisted amusement device" means an amusement device, skill  
1413 device, or ride device that is started and stopped by the purchaser or renter of the right to use or  
1414 operate the amusement device, skill device, or ride device.

1415 [~~(122)~~] (125) (a) "Use" means the exercise of any right or power over tangible personal  
1416 property, a product transferred electronically, or a service under Subsection 59-12-103(1),  
1417 incident to the ownership or the leasing of that tangible personal property, product transferred  
1418 electronically, or service.

1419 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal  
1420 property, a product transferred electronically, or a service in the regular course of business and

1421 held for resale.

1422 ~~[(123)]~~ (126) "Value-added nonvoice data service" means a service:

1423 (a) that otherwise meets the definition of a telecommunications service except that a  
1424 computer processing application is used to act primarily for a purpose other than conveyance,  
1425 routing, or transmission; and

1426 (b) with respect to which a computer processing application is used to act on data or  
1427 information:

1428 (i) code;

1429 (ii) content;

1430 (iii) form; or

1431 (iv) protocol.

1432 ~~[(124)]~~ (127) (a) Subject to Subsection ~~[(124)]~~ (127)(b), "vehicle" means the following  
1433 that are required to be titled, registered, or titled and registered:

1434 (i) an aircraft as defined in Section 72-10-102;

1435 (ii) a vehicle as defined in Section 41-1a-102;

1436 (iii) an off-highway vehicle as defined in Section 41-22-2; or

1437 (iv) a vessel as defined in Section 41-1a-102.

1438 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

1439 (i) a vehicle described in Subsection ~~[(124)]~~ (127)(a); or

1440 (ii) (A) a locomotive;

1441 (B) a freight car;

1442 (C) railroad work equipment; or

1443 (D) other railroad rolling stock.

1444 ~~[(125)]~~ (128) "Vehicle dealer" means a person engaged in the business of buying,  
1445 selling, or exchanging a vehicle as defined in Subsection ~~[(124)]~~ (127).

1446 ~~[(126)]~~ (129) (a) "Vertical service" means an ancillary service that:

1447 (i) is offered in connection with one or more telecommunications services; and

1448 (ii) offers an advanced calling feature that allows a customer to:

1449 (A) identify a caller; and

1450 (B) manage multiple calls and call connections.

1451 (b) "Vertical service" includes an ancillary service that allows a customer to manage a

1452 conference bridging service.

1453 ~~[(127)]~~ (130) (a) "Voice mail service" means an ancillary service that enables a  
1454 customer to receive, send, or store a recorded message.

1455 (b) "Voice mail service" does not include a vertical service that a customer is required  
1456 to have in order to utilize a voice mail service.

1457 ~~[(128)]~~ (131) (a) Except as provided in Subsection ~~[(128)]~~ (131)(b), "waste energy  
1458 facility" means a facility that generates electricity:

1459 (i) using as the primary source of energy waste materials that would be placed in a  
1460 landfill or refuse pit if it were not used to generate electricity, including:

1461 (A) tires;

1462 (B) waste coal; or

1463 (C) oil shale; and

1464 (ii) in amounts greater than actually required for the operation of the facility.

1465 (b) "Waste energy facility" does not include a facility that incinerates:

1466 (i) municipal solid waste;

1467 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or

1468 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1469 ~~[(129)]~~ (132) "Watercraft" means a vessel as defined in Section 73-18-2.

1470 ~~[(130)]~~ (133) "Wind energy" means wind used as the sole source of energy to produce  
1471 electricity.

1472 ~~[(131)]~~ (134) "ZIP Code" means a Zoning Improvement Plan Code assigned to a  
1473 geographic location by the United States Postal Service.

1474 Section 2. Section **59-12-102.3** is amended to read:

1475 **59-12-102.3. Authority to enter into agreement -- Delegates.**

1476 (1) The commission may apply to the governing board for the state to become a party  
1477 to the agreement.

1478 (2) If the state becomes a party to the agreement, the commission may:

1479 (a) establish standards for certification of a:

1480 (i) certified automated system; and

1481 (ii) certified service provider;

1482 (b) act jointly with other states that are parties to the agreement to establish



1483 performance standards for multistate sellers; and

1484 (c) take other actions reasonably required to implement provisions of the agreement:

1485 (i) if those actions are not in conflict with statute; and

1486 (ii) subject to Subsection (1)(c)(i), including:

1487 (A) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
1488 adopting administrative rules; and

1489 (B) in furtherance of the agreement, jointly procuring goods or services with other  
1490 states that are parties to the agreement.

1491 (3) Subject to Subsection (4), delegates shall be appointed to the governing board of  
1492 the agreement to:

1493 (a) assist in implementing the provisions of the agreement; and

1494 (b) address other matters as determined by the governing board.

1495 (4) Delegates shall be appointed as follows:

1496 [~~(a) one delegate shall be a member of the House of Representatives appointed by the  
1497 speaker of the House of Representatives;~~]

1498 [~~(b) one delegate shall be a member of the Senate appointed by the president of the  
1499 Senate; and]~~

1500 (a) two delegates shall be legislators appointed by mutual consent of the speaker of the  
1501 House of Representatives and the president of the Senate; and

1502 [~~(c)~~] (b) two delegates shall be appointed by the governor, at least one of whom shall  
1503 be from the commission.

1504 Section 3. Section **59-12-103** is amended to read:

1505 **59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use  
1506 tax revenues.**

1507 (1) A tax is imposed on the purchaser as provided in this part for amounts paid or  
1508 charged for the following transactions:

1509 (a) retail sales of tangible personal property made within the state;

1510 (b) amounts paid for:

1511 (i) telecommunications service, other than mobile telecommunications service, that  
1512 originates and terminates within the boundaries of this state;

1513 (ii) mobile telecommunications service that originates and terminates within the

1514 boundaries of one state only to the extent permitted by the Mobile Telecommunications  
1515 Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or  
1516 (iii) an ancillary service associated with a:  
1517 (A) telecommunications service described in Subsection (1)(b)(i); or  
1518 (B) mobile telecommunications service described in Subsection (1)(b)(ii);  
1519 (c) sales of the following for commercial use:  
1520 (i) gas;  
1521 (ii) electricity;  
1522 (iii) heat;  
1523 (iv) coal;  
1524 (v) fuel oil; or  
1525 (vi) other fuels;  
1526 (d) sales of the following for residential use:  
1527 (i) gas;  
1528 (ii) electricity;  
1529 (iii) heat;  
1530 (iv) coal;  
1531 (v) fuel oil; or  
1532 (vi) other fuels;  
1533 (e) sales of prepared food;  
1534 (f) except as provided in Section 59-12-104, amounts paid or charged as admission or  
1535 user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,  
1536 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,  
1537 fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit  
1538 television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf  
1539 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,  
1540 tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises,  
1541 horseback rides, sports activities, or any other amusement, entertainment, recreation,  
1542 exhibition, cultural, or athletic activity;  
1543 (g) amounts paid or charged for services for repairs or renovations of tangible personal  
1544 property, unless Section 59-12-104 provides for an exemption from sales and use tax for:

- 1545 (i) the tangible personal property; and
- 1546 (ii) parts used in the repairs or renovations of the tangible personal property described
- 1547 in Subsection (1)(g)(i), whether or not any parts are actually used in the repairs or renovations
- 1548 of that tangible personal property;
- 1549 (h) except as provided in Subsection 59-12-104(7), amounts paid or charged for
- 1550 assisted cleaning or washing of tangible personal property;
- 1551 (i) amounts paid or charged for tourist home, hotel, motel, or trailer court
- 1552 accommodations and services that are regularly rented for less than 30 consecutive days;
- 1553 (j) amounts paid or charged for laundry or dry cleaning services;
- 1554 (k) amounts paid or charged for leases or rentals of tangible personal property if within
- 1555 this state the tangible personal property is:
- 1556 (i) stored;
- 1557 (ii) used; or
- 1558 (iii) otherwise consumed;
- 1559 (l) amounts paid or charged for tangible personal property if within this state the
- 1560 tangible personal property is:
- 1561 (i) stored;
- 1562 (ii) used; or
- 1563 (iii) consumed; and
- 1564 (m) amounts paid or charged for a sale:
- 1565 (i) (A) of a product [~~that:~~] transferred electronically; or
- 1566 [~~(F) is transferred electronically; and]~~
- 1567 [~~(H) would be subject to a tax under this chapter if the product was transferred in a~~
- 1568 ~~manner other than electronically; or]~~
- 1569 (B) of a repair or renovation of a product [~~that:~~] transferred electronically; and
- 1570 [~~(F) is transferred electronically; and]~~
- 1571 [~~(H) would be subject to a tax under this chapter if the product was transferred in a~~
- 1572 ~~manner other than electronically; and]~~
- 1573 (ii) regardless of whether the sale provides:
- 1574 (A) a right of permanent use of the product; or
- 1575 (B) a right to use the product that is less than a permanent use, including a right:

- 1576 (I) for a definite or specified length of time; and
- 1577 (II) that terminates upon the occurrence of a condition.
- 1578 (2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax
- 1579 is imposed on a transaction described in Subsection (1) equal to the sum of:
- 1580 (i) a state tax imposed on the transaction at a tax rate equal to the sum of:
- 1581 (A) 4.70%; and
- 1582 (B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales
- 1583 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211
- 1584 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional
- 1585 State Sales and Use Tax Act; and
- 1586 (II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales
- 1587 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211
- 1588 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state
- 1589 imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and
- 1590 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
- 1591 transaction under this chapter other than this part.
- 1592 (b) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed
- 1593 on a transaction described in Subsection (1)(d) equal to the sum of:
- 1594 (i) a state tax imposed on the transaction at a tax rate of 2%; and
- 1595 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
- 1596 transaction under this chapter other than this part.
- 1597 (c) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed
- 1598 on amounts paid or charged for food and food ingredients equal to the sum of:
- 1599 (i) a state tax imposed on the amounts paid or charged for food and food ingredients at
- 1600 a tax rate of 1.75%; and
- 1601 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
- 1602 amounts paid or charged for food and food ingredients under this chapter other than this part.
- 1603 (d) (i) For a bundled transaction that is attributable to food and food ingredients and
- 1604 tangible personal property other than food and food ingredients, a state tax and a local tax is
- 1605 imposed on the entire bundled transaction equal to the sum of:
- 1606 (A) a state tax imposed on the entire bundled transaction equal to the sum of:

1607 (I) the tax rate described in Subsection (2)(a)(i)(A); and  
1608 (II) (Aa) the tax rate the state imposes in accordance with Part 18, Additional State  
1609 Sales and Use Tax Act, if the location of the transaction as determined under Sections  
1610 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18,  
1611 Additional State Sales and Use Tax Act; and  
1612 (Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State  
1613 Sales and Use Tax Act, if the location of the transaction as determined under Sections  
1614 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which  
1615 the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and  
1616 (B) a local tax imposed on the entire bundled transaction at the sum of the tax rates  
1617 described in Subsection (2)(a)(ii).  
1618 (ii) If an optional computer software maintenance contract is a bundled transaction that  
1619 consists of taxable and nontaxable products that are not separately itemized on the invoice or  
1620 similar billing document, the purchase of the optional computer software maintenance contract  
1621 is 40% taxable under this chapter and 60% nontaxable under this chapter.  
1622 [~~(ii)~~] (iii) Subject to Subsection (2)(d)[~~(iii)~~](iv), for a bundled transaction other than a  
1623 bundled transaction described in Subsection (2)(d)(i) or (ii):  
1624 (A) if the sales price of the bundled transaction is attributable to tangible personal  
1625 property, a product, or a service that is subject to taxation under this chapter and tangible  
1626 personal property, a product, or service that is not subject to taxation under this chapter, the  
1627 entire bundled transaction is subject to taxation under this chapter unless:  
1628 (I) the seller is able to identify by reasonable and verifiable standards the tangible  
1629 personal property, product, or service that is not subject to taxation under this chapter from the  
1630 books and records the seller keeps in the seller's regular course of business; or  
1631 (II) state or federal law provides otherwise; or  
1632 (B) if the sales price of a bundled transaction is attributable to two or more items of  
1633 tangible personal property, products, or services that are subject to taxation under this chapter  
1634 at different rates, the entire bundled transaction is subject to taxation under this chapter at the  
1635 higher tax rate unless:  
1636 (I) the seller is able to identify by reasonable and verifiable standards the tangible  
1637 personal property, product, or service that is subject to taxation under this chapter at the lower

1638 tax rate from the books and records the seller keeps in the seller's regular course of business; or  
1639 (II) state or federal law provides otherwise.

1640 [~~(iii)~~] (iv) For purposes of Subsection (2)(d)[~~(iii)~~](iii), books and records that a seller  
1641 keeps in the seller's regular course of business includes books and records the seller keeps in  
1642 the regular course of business for nontax purposes.

1643 (e) Subject to Subsections (2)(f) and (g), a tax rate repeal or tax rate change for a tax  
1644 rate imposed under the following shall take effect on the first day of a calendar quarter:

- 1645 (i) Subsection (2)(a)(i)(A);
- 1646 (ii) Subsection (2)(b)(i);
- 1647 (iii) Subsection (2)(c)(i); or
- 1648 (iv) Subsection (2)(d)(i)(A)(I).

1649 (f) (i) A tax rate increase shall take effect on the first day of the first billing period that  
1650 begins after the effective date of the tax rate increase if the billing period for the transaction  
1651 begins before the effective date of a tax rate increase imposed under:

- 1652 (A) Subsection (2)(a)(i)(A);
- 1653 (B) Subsection (2)(b)(i);
- 1654 (C) Subsection (2)(c)(i); or
- 1655 (D) Subsection (2)(d)(i)(A)(I).

1656 (ii) The repeal of a tax or a tax rate decrease shall take effect on the first day of the last  
1657 billing period that began before the effective date of the repeal of the tax or the tax rate  
1658 decrease if the billing period for the transaction begins before the effective date of the repeal of  
1659 the tax or the tax rate decrease imposed under:

- 1660 (A) Subsection (2)(a)(i)(A);
- 1661 (B) Subsection (2)(b)(i);
- 1662 (C) Subsection (2)(c)(i); or
- 1663 (D) Subsection (2)(d)(i)(A)(I).

1664 (g) (i) For a tax rate described in Subsection (2)(g)(ii), if a tax due on a catalogue sale  
1665 is computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal  
1666 or change in a tax rate takes effect:

- 1667 (A) on the first day of a calendar quarter; and
- 1668 (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.

- 1669 (ii) Subsection (2)(g)(i) applies to the tax rates described in the following:
- 1670 (A) Subsection (2)(a)(i)(A);
- 1671 (B) Subsection (2)(b)(i);
- 1672 (C) Subsection (2)(c)(i); or
- 1673 (D) Subsection (2)(d)(i)(A)(I).
- 1674 (iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
- 1675 the commission may by rule define the term "catalogue sale."
- 1676 (3) (a) The following state taxes shall be deposited into the General Fund:
- 1677 (i) the tax imposed by Subsection (2)(a)(i)(A);
- 1678 (ii) the tax imposed by Subsection (2)(b)(i);
- 1679 (iii) the tax imposed by Subsection (2)(c)(i); or
- 1680 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).
- 1681 (b) The following local taxes shall be distributed to a county, city, or town as provided
- 1682 in this chapter:
- 1683 (i) the tax imposed by Subsection (2)(a)(ii);
- 1684 (ii) the tax imposed by Subsection (2)(b)(ii);
- 1685 (iii) the tax imposed by Subsection (2)(c)(ii); and
- 1686 (iv) the tax imposed by Subsection (2)(d)(i)(B).
- 1687 (4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
- 1688 2003, the lesser of the following amounts shall be used as provided in Subsections (4)(b)
- 1689 through (g):
- 1690 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:
- 1691 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and
- 1692 (B) for the fiscal year; or
- 1693 (ii) \$17,500,000.
- 1694 (b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount
- 1695 described in Subsection (4)(a) shall be transferred each year as dedicated credits to the
- 1696 Department of Natural Resources to:
- 1697 (A) implement the measures described in Subsections 79-2-303(3)(a) through (d) to
- 1698 protect sensitive plant and animal species; or
- 1699 (B) award grants, up to the amount authorized by the Legislature in an appropriations

1700 act, to political subdivisions of the state to implement the measures described in Subsections  
1701 79-2-303(3)(a) through (d) to protect sensitive plant and animal species.

1702 (ii) Money transferred to the Department of Natural Resources under Subsection  
1703 (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other  
1704 person to list or attempt to have listed a species as threatened or endangered under the  
1705 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

1706 (iii) At the end of each fiscal year:

1707 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources  
1708 Conservation and Development Fund created in Section 73-10-24;

1709 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan  
1710 Program Subaccount created in Section 73-10c-5; and

1711 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan  
1712 Program Subaccount created in Section 73-10c-5.

1713 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in  
1714 Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund  
1715 created in Section 4-18-6.

1716 (d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described  
1717 in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water  
1718 Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of  
1719 water rights.

1720 (ii) At the end of each fiscal year:

1721 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources  
1722 Conservation and Development Fund created in Section 73-10-24;

1723 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan  
1724 Program Subaccount created in Section 73-10c-5; and

1725 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan  
1726 Program Subaccount created in Section 73-10c-5.

1727 (e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described  
1728 in Subsection (4)(a) shall be deposited in the Water Resources Conservation and Development  
1729 Fund created in Section 73-10-24 for use by the Division of Water Resources.

1730 (ii) In addition to the uses allowed of the Water Resources Conservation and



1731 Development Fund under Section 73-10-24, the Water Resources Conservation and  
1732 Development Fund may also be used to:

1733 (A) conduct hydrologic and geotechnical investigations by the Division of Water  
1734 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of  
1735 quantifying surface and ground water resources and describing the hydrologic systems of an  
1736 area in sufficient detail so as to enable local and state resource managers to plan for and  
1737 accommodate growth in water use without jeopardizing the resource;

1738 (B) fund state required dam safety improvements; and

1739 (C) protect the state's interest in interstate water compact allocations, including the  
1740 hiring of technical and legal staff.

1741 (f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described  
1742 in Subsection (4)(a) shall be deposited in the Utah Wastewater Loan Program Subaccount  
1743 created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

1744 (g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described  
1745 in Subsection (4)(a) shall be deposited in the Drinking Water Loan Program Subaccount  
1746 created in Section 73-10c-5 for use by the Division of Drinking Water to:

1747 (i) provide for the installation and repair of collection, treatment, storage, and  
1748 distribution facilities for any public water system, as defined in Section 19-4-102;

1749 (ii) develop underground sources of water, including springs and wells; and

1750 (iii) develop surface water sources.

1751 (5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,  
1752 2006, the difference between the following amounts shall be expended as provided in this  
1753 Subsection (5), if that difference is greater than \$1:

1754 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the  
1755 fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

1756 (ii) \$17,500,000.

1757 (b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:

1758 (A) transferred each fiscal year to the Department of Natural Resources as dedicated  
1759 credits; and

1760 (B) expended by the Department of Natural Resources for watershed rehabilitation or  
1761 restoration.

1762 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described  
1763 in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund  
1764 created in Section 73-10-24.

1765 (c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the  
1766 remaining difference described in Subsection (5)(a) shall be:

1767 (A) transferred each fiscal year to the Division of Water Resources as dedicated  
1768 credits; and

1769 (B) expended by the Division of Water Resources for cloud-seeding projects  
1770 authorized by Title 73, Chapter 15, Modification of Weather.

1771 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described  
1772 in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund  
1773 created in Section 73-10-24.

1774 (d) After making the transfers required by Subsections (5)(b) and (c), 94% of the  
1775 remaining difference described in Subsection (5)(a) shall be deposited into the Water  
1776 Resources Conservation and Development Fund created in Section 73-10-24 for use by the  
1777 Division of Water Resources for:

1778 (i) preconstruction costs:

1779 (A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter  
1780 26, Bear River Development Act; and

1781 (B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project  
1782 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

1783 (ii) the cost of employing a civil engineer to oversee any project authorized by Title 73,  
1784 Chapter 26, Bear River Development Act;

1785 (iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project  
1786 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

1787 (iv) other uses authorized under Sections 73-10-24, 73-10-25.1, 73-10-30, and  
1788 Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

1789 (e) Any unexpended monies described in Subsection (5)(d) that remain in the Water  
1790 Resources Conservation and Development Fund at the end of the fiscal year are nonlapsing.

1791 (f) After making the transfers required by Subsections (5)(b) and (c) and subject to  
1792 Subsection (5)(g), 6% of the remaining difference described in Subsection (5)(a) shall be

1793 transferred each year as dedicated credits to the Division of Water Rights to cover the costs  
1794 incurred for employing additional technical staff for the administration of water rights.

1795 (g) At the end of each fiscal year, any unexpended dedicated credits described in  
1796 Subsection (5)(f) over \$150,000 lapse to the Water Resources Conservation and Development  
1797 Fund created in Section 73-10-24.

1798 (6) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,  
1799 2003, and for taxes listed under Subsection (3)(a), the amount of revenue generated by a 1/16%  
1800 tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited in  
1801 the Transportation Fund created by Section 72-2-102.

1802 (7) (a) Notwithstanding Subsection (3)(a) and until Subsection (7)(b) applies,  
1803 beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial  
1804 Highway Fund Restricted Account created in Section 72-2-118 a portion of the taxes listed  
1805 under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate on the taxable  
1806 transactions under Subsection (1).

1807 (b) Notwithstanding Subsection (3)(a), when the highway general obligation bonds  
1808 have been paid off and the highway projects completed that are intended to be paid from  
1809 revenues deposited in the Centennial Highway Fund Restricted Account as determined by the  
1810 Executive Appropriations Committee under Subsection 72-2-118(6)(d), the Division of  
1811 Finance shall deposit into the Transportation Investment Fund of 2005 created by Section  
1812 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated  
1813 by a 1/64% tax rate on the taxable transactions under Subsection (1).

1814 (8) (a) Notwithstanding Subsection (3)(a) and in addition to the amount deposited in  
1815 Subsection (7)(a), for the 2010-11 fiscal year only, the Division of Finance shall deposit into  
1816 the Centennial Highway Fund Restricted Account created by Section 72-2-118 a portion of the  
1817 taxes listed under Subsection (3)(a) equal to 1.93% of the revenues collected from the  
1818 following taxes, which represents a portion of the approximately 17% of sales and use tax  
1819 revenues generated annually by the sales and use tax on vehicles and vehicle-related products:

- 1820 (i) the tax imposed by Subsection (2)(a)(i)(A);
- 1821 (ii) the tax imposed by Subsection (2)(b)(i);
- 1822 (iii) the tax imposed by Subsection (2)(c)(i); and
- 1823 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

1824 (b) Notwithstanding Subsection (3)(a), in addition to the amount deposited in  
1825 Subsection (7)(a), and until Subsection (8)(c) applies, for a fiscal year beginning on or after  
1826 July 1, 2011, the Division of Finance shall deposit into the Centennial Highway Fund  
1827 Restricted Account created by Section 72-2-118 a portion of the taxes listed under Subsection  
1828 (3)(a) equal to 8.3% of the revenues collected from the following taxes, which represents a  
1829 portion of the approximately 17% of sales and use tax revenues generated annually by the sales  
1830 and use tax on vehicles and vehicle-related products:

- 1831 (i) the tax imposed by Subsection (2)(a)(i)(A);
- 1832 (ii) the tax imposed by Subsection (2)(b)(i);
- 1833 (iii) the tax imposed by Subsection (2)(c)(i); and
- 1834 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

1835 (c) Notwithstanding Subsection (3)(a) and in addition to the amounts deposited under  
1836 Subsection (7)(b), when the highway general obligation bonds have been paid off and the  
1837 highway projects completed that are intended to be paid from revenues deposited in the  
1838 Centennial Highway Fund Restricted Account as determined by the Executive Appropriations  
1839 Committee under Subsection 72-2-118(6)(d), the Division of Finance shall deposit into the  
1840 Transportation Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes  
1841 listed under Subsection (3)(a) equal to 8.3% of the revenues collected from the following taxes,  
1842 which represents a portion of the approximately 17% of sales and use tax revenues generated  
1843 annually by the sales and use tax on vehicles and vehicle-related products:

- 1844 (i) the tax imposed by Subsection (2)(a)(i)(A);
- 1845 (ii) the tax imposed by Subsection (2)(b)(i);
- 1846 (iii) the tax imposed by Subsection (2)(c)(i); and
- 1847 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

1848 (9) (a) Notwithstanding Subsection (3)(a) and for the fiscal year 2008-09 only, the  
1849 Division of Finance shall deposit \$55,000,000 of the revenues generated by the taxes listed  
1850 under Subsection (3)(a) into the Critical Highway Needs Fund created by Section 72-2-125.

1851 (b) Notwithstanding Subsection (3)(a) and until Subsection (9)(c) applies, for a fiscal  
1852 year beginning on or after July 1, 2009, the Division of Finance shall annually deposit  
1853 \$90,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the  
1854 Critical Highway Needs Fund created by Section 72-2-125.

1855 (c) Notwithstanding Subsection (3)(a) and in addition to any amounts deposited under  
1856 Subsections (7) and (8), when the general obligation bonds authorized by Section 63B-16-101  
1857 have been paid off and the highway projects completed that are included in the prioritized  
1858 project list under Subsection 72-2-125(4) as determined in accordance with Subsection  
1859 72-2-125(6), the Division of Finance shall annually deposit \$90,000,000 of the revenues  
1860 generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund  
1861 of 2005 created by Section 72-2-124.

1862 (10) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year  
1863 2009-10, \$533,750 shall be deposited into the Qualified Emergency Food Agencies Fund  
1864 created by Section 9-4-1409 and expended as provided in Section 9-4-1409.

1865 (11) (a) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection  
1866 (11)(a)(ii), and until Subsection (11)(b) applies, beginning on January 1, 2009, the Division of  
1867 Finance shall deposit into the Critical Highway Needs Fund created by Section 72-2-125 the  
1868 amount of tax revenue generated by a .025% tax rate on the transactions described in  
1869 Subsection (1).

1870 (ii) For purposes of Subsection (11)(a)(i), the Division of Finance may not deposit into  
1871 the Critical Highway Needs Fund any tax revenue generated by amounts paid or charged for  
1872 food and food ingredients, except for tax revenue generated by a bundled transaction  
1873 attributable to food and food ingredients and tangible personal property other than food and  
1874 food ingredients described in Subsection (2)(e).

1875 (b) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection (11)(b)(ii),  
1876 and in addition to any amounts deposited under Subsections (7), (9), and (10), when the general  
1877 obligation bonds authorized by Section 63B-16-101 have been paid off and the highway  
1878 projects completed that are included in the prioritized project list under Subsection 72-2-125(4)  
1879 as determined in accordance with Subsection 72-2-125(6), the Division of Finance shall  
1880 deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the  
1881 amount of tax revenue generated by a .025% tax rate on the transactions described in  
1882 Subsection (1).

1883 (ii) For purposes of Subsection (11)(b)(i), the Division of Finance may not deposit into  
1884 the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or  
1885 charged for food and food ingredients, except for tax revenue generated by a bundled

1886 transaction attributable to food and food ingredients and tangible personal property other than  
1887 food and food ingredients described in Subsection (2)(e).

1888 (12) (a) Notwithstanding Subsection (3)(a), and except as provided in Subsection  
1889 (12)(b), beginning on January 1, 2009, the Division of Finance shall deposit into the  
1890 Transportation Fund created by Section 72-2-102 the amount of tax revenue generated by a  
1891 .025% tax rate on the transactions described in Subsection (1) to be expended to address  
1892 chokepoints in construction management.

1893 (b) For purposes of Subsection (12)(a), the Division of Finance may not deposit into  
1894 the Transportation Fund any tax revenue generated by amounts paid or charged for food and  
1895 food ingredients, except for tax revenue generated by a bundled transaction attributable to food  
1896 and food ingredients and tangible personal property other than food and food ingredients  
1897 described in Subsection (2)(e).

1898 Section 4. Section **59-12-106** is amended to read:

1899 **59-12-106. Definitions -- Sales and use tax license requirements -- Penalty --**  
1900 **Application process and requirements -- No fee -- Bonds -- Presumption of taxability --**  
1901 **Exemption certificates -- Exemption certificate license number to accompany contract**  
1902 **bids.**

1903 (1) As used in this section:

1904 (a) "applicant" means a person that:

1905 (i) is required by this section to obtain a license; and

1906 (ii) submits an application:

1907 (A) to the commission; and

1908 (B) for a license under this section;

1909 (b) "application" means an application for a license under this section;

1910 (c) "fiduciary of the applicant" means a person that:

1911 (i) is required to collect, truthfully account for, and pay over a tax under this chapter  
1912 for an applicant; and

1913 (ii) (A) is a corporate officer of the applicant described in Subsection (1)(c)(i);

1914 (B) is a director of the applicant described in Subsection (1)(c)(i);

1915 (C) is an employee of the applicant described in Subsection (1)(c)(i);

1916 (D) is a partner of the applicant described in Subsection (1)(c)(i);

- 1917 (E) is a trustee of the applicant described in Subsection (1)(c)(i); or  
1918 (F) has a relationship to the applicant described in Subsection (1)(c)(i) that is similar to  
1919 a relationship described in Subsections (1)(c)(ii)(A) through (E) as determined by the  
1920 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
1921 Rulemaking Act;
- 1922 (d) "fiduciary of the licensee" means a person that:  
1923 (i) is required to collect, truthfully account for, and pay over a tax under this chapter  
1924 for a licensee; and  
1925 (ii) (A) is a corporate officer of the licensee described in Subsection (1)(d)(i);  
1926 (B) is a director of the licensee described in Subsection (1)(d)(i);  
1927 (C) is an employee of the licensee described in Subsection (1)(d)(i);  
1928 (D) is a partner of the licensee described in Subsection (1)(d)(i);  
1929 (E) is a trustee of the licensee described in Subsection (1)(d)(i); or  
1930 (F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to  
1931 a relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the  
1932 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
1933 Rulemaking Act;
- 1934 (e) "license" means a license under this section; and  
1935 (f) "licensee" means a person that is licensed under this section by the commission.  
1936 (2) (a) It is unlawful for any person required to collect a tax under this chapter to  
1937 engage in business within the state without first having obtained a license to do so.  
1938 (b) The license described in Subsection (2)(a):  
1939 (i) shall be granted and issued by the commission;  
1940 (ii) is not assignable;  
1941 (iii) is valid only for the person in whose name the license is issued;  
1942 (iv) is valid until:  
1943 (A) the person described in Subsection (2)(b)(iii):  
1944 (I) ceases to do business; or  
1945 (II) changes that person's business address; or  
1946 (B) the license is revoked by the commission; and  
1947 (v) subject to Subsection (2)(d), shall be granted by the commission only upon an

1948 application that:

1949 (A) states the name and address of the applicant; and

1950 (B) provides other information the commission may require.

1951 (c) At the time an applicant makes an application under Subsection (2)(b)(v), the

1952 commission shall notify the applicant of the responsibilities and liability of a business owner

1953 successor under Section 59-12-112.

1954 (d) The commission shall review an application and determine whether the applicant:

1955 (i) meets the requirements of this section to be issued a license; and

1956 (ii) is required to post a bond with the commission in accordance with Subsections

1957 (2)(e) and (f) before the applicant may be issued a license.

1958 (e) (i) An applicant shall post a bond with the commission before the commission may

1959 issue the applicant a license if:

1960 (A) a license under this section was revoked for a delinquency under this chapter for:

1961 (I) the applicant;

1962 (II) a fiduciary of the applicant; or

1963 (III) a person for which the applicant or the fiduciary of the applicant is required to

1964 collect, truthfully account for, and pay over a tax under this chapter; or

1965 (B) there is a delinquency in paying a tax under this chapter for:

1966 (I) the applicant;

1967 (II) a fiduciary of the applicant; or

1968 (III) a person for which the applicant or the fiduciary of the applicant is required to

1969 collect, truthfully account for, and pay over a tax under this chapter.

1970 (ii) If the commission determines it is necessary to ensure compliance with this

1971 chapter, the commission may require a licensee to:

1972 (A) for a licensee that has not posted a bond under this section with the commission,

1973 post a bond with the commission in accordance with Subsection (2)(f); or

1974 (B) for a licensee that has posted a bond under this section with the commission,

1975 increase the amount of the bond posted with the commission.

1976 (f) (i) A bond required by Subsection (2)(e) shall be:

1977 (A) executed by:

1978 (I) for an applicant, the applicant as principal, with a corporate surety; or



- 1979 (II) for a licensee, the licensee as principal, with a corporate surety; and
- 1980 (B) payable to the commission conditioned upon the faithful performance of all of the
- 1981 requirements of this chapter including:
  - 1982 (I) the payment of any tax under this chapter;
  - 1983 (II) the payment of any:
    - 1984 (Aa) penalty as provided in Section 59-1-401; or
    - 1985 (Bb) interest as provided in Section 59-1-402; or
  - 1986 (III) any other obligation of the:
    - 1987 (Aa) applicant under this chapter; or
    - 1988 (Bb) licensee under this chapter.
- 1989 (ii) Except as provided in Subsection (2)(f)(iv), the commission shall calculate the
- 1990 amount of a bond required by Subsection (2)(e) on the basis of:
  - 1991 (A) commission estimates of:
    - 1992 (I) an applicant's tax liability under this chapter; or
    - 1993 (II) a licensee's tax liability under this chapter; and
    - 1994 (B) any amount of a delinquency described in Subsection (2)(f)(iii).
  - 1995 (iii) Except as provided in Subsection (2)(f)(iv), for purposes of Subsection
  - 1996 (2)(f)(ii)(B):
    - 1997 (A) for an applicant, the amount of the delinquency is the sum of:
      - 1998 (I) the amount of any delinquency that served as a basis for revoking the license under
      - 1999 this section of:
        - 2000 (Aa) the applicant;
        - 2001 (Bb) a fiduciary of the applicant; or
        - 2002 (Cc) a person for which the applicant or the fiduciary of the applicant is required to
        - 2003 collect, truthfully account for, and pay over a tax under this chapter; or
        - 2004 (II) the amount of tax that any of the following owe under this chapter:
          - 2005 (Aa) the applicant;
          - 2006 (Bb) a fiduciary of the applicant; and
          - 2007 (Cc) a person for which the applicant or the fiduciary of the applicant is required to
          - 2008 collect, truthfully account for, and pay over a tax under this chapter; or
          - 2009 (B) for a licensee, the amount of the delinquency is the sum of:

2010 (I) the amount of any delinquency that served as a basis for revoking the license under  
2011 this section of:

2012 (Aa) the licensee;

2013 (Bb) a fiduciary of the licensee; or

2014 (Cc) a person for which the licensee or the fiduciary of the licensee is required to  
2015 collect, truthfully account for, and pay over a tax under this chapter; or

2016 (II) the amount of tax that any of the following owe under this chapter:

2017 (Aa) the licensee;

2018 (Bb) a fiduciary of the licensee; and

2019 (Cc) a person for which the licensee or the fiduciary of the licensee is required to  
2020 collect, truthfully account for, and pay over a tax under this chapter.

2021 (iv) Notwithstanding Subsection (2)(f)(ii) or (2)(f)(iii), a bond required by Subsection  
2022 (2)(e) may not:

2023 (A) be less than \$25,000; or

2024 (B) exceed \$500,000.

2025 (g) If business is transacted at two or more separate places by one person, a separate  
2026 license for each place of business is required.

2027 (h) (i) The commission shall, on a reasonable notice and after a hearing, revoke the  
2028 license of any licensee violating any provisions of this chapter.

2029 (ii) A license may not be issued to a licensee described in Subsection (2)(h)(i) until the  
2030 licensee has complied with the requirements of this chapter, including:

2031 (A) paying any:

2032 (I) tax due under this chapter;

2033 (II) penalty as provided in Section 59-1-401; or

2034 (III) interest as provided in Section 59-1-402; and

2035 (B) posting a bond in accordance with Subsections (2)(e) and (f).

2036 (i) Any person required to collect a tax under this chapter within this state without  
2037 having secured a license to do so is guilty of a criminal violation as provided in Section  
2038 59-1-401.

2039 (j) A license:

2040 (i) is not required for any person engaged exclusively in the business of selling

2041 commodities that are exempt from taxation under this chapter; and  
2042 (ii) shall be issued to the person by the commission without a license fee.  
2043 (3) (a) For the purpose of the proper administration of this chapter and to prevent  
2044 evasion of the tax and the duty to collect the tax, it shall be presumed that tangible personal  
2045 property or any other taxable transaction under Subsection 59-12-103(1) sold by any person for  
2046 delivery in this state is sold for storage, use, or other consumption in this state unless the  
2047 person selling the property, item, or service has taken from the purchaser an exemption  
2048 certificate:  
2049 (i) bearing the name and address of the purchaser; and  
2050 (ii) providing that the property, item, or service was exempted under Section  
2051 59-12-104.  
2052 (b) An exemption certificate described in Subsection (3)(a):  
2053 (i) shall contain information as prescribed by the commission; and  
2054 (ii) if a paper exemption certificate is used, shall be signed by the purchaser.  
2055 (c) (i) Subject to Subsection (3)(c)(ii), a seller or certified service provider is not liable  
2056 to collect a tax under this chapter if the seller or certified service provider obtains within 90  
2057 days after a transaction is complete:  
2058 (A) an exemption certificate containing the information required by Subsections (3)(a)  
2059 and (b); or  
2060 (B) the information required by Subsections (3)(a) and (b).  
2061 (ii) A seller or certified service provider that does not obtain the exemption certificate  
2062 or information described in Subsection (3)(c)(i) with respect to a transaction [~~may, within~~] is  
2063 allowed 120 days after the commission requests the seller or certified service provider to  
2064 substantiate the exemption to:  
2065 (A) establish that the transaction is not subject to taxation under this chapter by a  
2066 means other than providing an exemption certificate containing the information required by  
2067 Subsections (3)(a) and (b); or  
2068 (B) subject to Subsection (3)(c)(iii), obtain an exemption certificate containing the  
2069 information required by Subsections (3)(a) and (b), taken in good faith.  
2070 (iii) For purposes of Subsection (3)(c)(ii)(B), an exemption certificate is taken in good  
2071 faith if the exemption certificate claims an exemption that:

2072           (A) was allowed by statute on the date of the transaction in the jurisdiction of the  
2073 location of the transaction;  
2074           (B) could be applicable to that transaction; and  
2075           (C) is reasonable for the purchaser's type of business.  
2076           (d) Except as provided in Subsection (3)(e), a seller or certified service provider that  
2077 takes an exemption certificate from a purchaser in accordance with this Subsection (3) with  
2078 respect to a transaction is not liable to collect a tax under this chapter[~~-(i)~~] on that transaction[~~;~~  
2079 ~~and~~].  
2080           ~~[(ii) if the commission or a court of competent jurisdiction subsequently determines~~  
2081 ~~that the purchaser improperly claimed the exemption.]~~  
2082           (e) Subsection (3)(d) does not apply to a seller or certified service provider [~~that:~~] if the  
2083 commission establishes through an audit that the seller or certified service provider:  
2084           ~~[(i) fraudulently fails to collect a tax under this chapter;]~~  
2085           ~~[(ii) solicits a purchaser to participate in improperly claiming an exemption from a tax~~  
2086 ~~under this chapter; or]~~  
2087           ~~[(iii) accepts an exemption certificate for an exemption that is allowed on the basis of~~  
2088 ~~the entity claiming the exemption if:]~~  
2089           ~~[(A) the purchaser receives the tangible personal property, product, or service that is~~  
2090 ~~the subject of the exemption certificate at a location operated by the seller; and]~~  
2091           ~~[(B) the exemption certificate states that the tangible personal property, product, or~~  
2092 ~~service is not exempt from taxation under this chapter.]~~  
2093           (i) knew or had reason to know at the time the purchaser provided the seller or certified  
2094 service provider the information described in Subsection (3)(a) or (b) that the information  
2095 related to the exemption claimed was materially false; or  
2096           (ii) otherwise knowingly participated in activity intended to purposefully evade the tax  
2097 due on the transaction.  
2098           (f) (i) Subject to Subsection (3)(f)(ii) and except as provided in Subsection (3)(f)(iii), if  
2099 there is a recurring business relationship between a seller or certified service provider and a  
2100 purchaser, the commission may not require the seller or certified service provider to:  
2101           (A) renew an exemption certificate;  
2102           (B) update an exemption certificate; or

2103 (C) update a data element of an exemption certificate.

2104 (ii) For purposes of Subsection (3)(f)(i), a recurring business relationship exists if no  
2105 more than a 12-month period elapses between transactions between a seller or certified service  
2106 provider and a purchaser.

2107 (iii) If there is a recurring business relationship between a seller or certified service  
2108 provider and a purchaser, the commission shall require an exemption certificate the seller or  
2109 certified service provider takes from the purchaser to meet the requirements of Subsections  
2110 (3)(a) and (b).

2111 (4) A person filing a contract bid with the state or a political subdivision of the state for  
2112 the sale of tangible personal property or any other taxable transaction under Subsection  
2113 59-12-103(1) shall include with the bid the number of the license issued to that person under  
2114 Subsection (2).

2115 Section 5. Section **59-12-128** is amended to read:

2116 **59-12-128. Amnesty.**

2117 (1) As used in this section, "amnesty" means that a seller is not required to pay the  
2118 following amounts that the seller would otherwise be required to pay:

2119 (a) a tax, fee, or charge under:

2120 (i) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

2121 (ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

2122 (iii) Section 19-6-714;

2123 (iv) Section 19-6-805;

2124 (v) Section 69-2-5;

2125 (vi) Section 69-2-5.5;

2126 (vii) Section 69-2-5.6; or

2127 (viii) this chapter;

2128 (b) a penalty on a tax, fee, or charge described in Subsection (1)(a); or

2129 (c) interest on a tax, fee, or charge described in Subsection (1)(a).

2130 (2) ~~[The]~~ (a) Except as provided in Subsections (2)(b) and (3) and subject to

2131 Subsections (4) and (5), the commission shall grant a seller amnesty [~~under this section~~] if the  
2132 seller:

2133 ~~[(a) was not licensed under Section 59-12-106 at any time during the 12-month period~~

2134 ~~prior to the effective date of the state's participation in the agreement;]~~  
2135       ~~[(b)]~~ (i) obtains a license under Section 59-12-106 ~~[within a 12-month period after the~~  
2136 ~~effective date of the state's participation in the agreement]; and~~  
2137       ~~[(c)]~~ (ii) is registered under the agreement.  
2138       (b) The commission is not required to grant a seller amnesty under this section  
2139 beginning 12 months after the date the state becomes a full member under the agreement.  
2140       (3) A seller may not receive amnesty under this section for a tax, fee, or charge:  
2141       (a) the seller collects;  
2142       (b) the seller remits to the commission;  
2143       (c) that the seller is required to remit to the commission on the seller's purchase; or  
2144       (d) arising from a transaction that occurs within a time period that is under audit by the  
2145 commission if:  
2146       (i) the seller receives notice of the commencement of the audit prior to obtaining a  
2147 license under Section 59-12-106; and  
2148       (ii) (A) the audit described in Subsection (3)(d)(i) is not complete; or  
2149       (B) the seller has not exhausted all administrative and judicial remedies in connection  
2150 with the audit described in Subsection (3)(d)(i).  
2151       (4) (a) Except as provided in Subsection (4)(b), amnesty the commission grants to a  
2152 seller under this section:  
2153       (i) applies to the time period during which the seller is not licensed under Section  
2154 59-12-106; and  
2155       (ii) remains in effect if, for a period of three years, the seller:  
2156       (A) remains registered under the agreement;  
2157       (B) collects a tax, fee, or charge on a transaction subject to a tax, fee, or charge  
2158 described in Subsection (1)(a); and  
2159       (C) remits to the commission the taxes, fees, and charges the seller collects in  
2160 accordance with Subsection (4)(a)(ii)(B).  
2161       (b) The commission may not grant a seller amnesty under this section if, with respect  
2162 to a tax, fee, or charge for which the seller would otherwise be granted amnesty under this  
2163 section, the seller commits:  
2164       (i) fraud; or

2165 (ii) an intentional misrepresentation of a material fact.

2166 (5) (a) If a seller does not meet a requirement of Subsection (4)(a)(ii), the commission  
2167 shall require the seller to pay the amounts described in Subsection (1) that the seller would  
2168 have otherwise been required to pay.

2169 (b) Notwithstanding Section 59-1-1410, for purposes of requiring a seller to pay an  
2170 amount in accordance with Subsection (5)(a), the time period for the commission to make an  
2171 assessment under Section 59-1-1410 is extended for a time period beginning on the date the  
2172 seller does not meet a requirement of Subsection (4)(a)(ii) and ends three years after that date.

2173 Section 6. Section **59-12-211** is amended to read:

2174 **59-12-211. Definitions -- Location of certain transactions -- Reports to**  
2175 **commission -- Direct payment provision for a seller making certain purchases --**  
2176 **Exceptions.**

2177 (1) As used in this section:

2178 (a) (i) "Receipt" and "receive" mean:

2179 (A) taking possession of tangible personal property;

2180 (B) making first use of a service; or

2181 (C) for a product transferred electronically, the earlier of:

2182 (I) taking possession of the product transferred electronically; or

2183 (II) making first use of the product transferred electronically.

2184 (ii) "Receipt" and "receive" do not include possession by a shipping company on behalf  
2185 of a purchaser.

2186 (b) "Transportation equipment" means:

2187 (i) a locomotive or rail car that is used to carry a person or property in interstate  
2188 commerce;

2189 (ii) a truck or truck-tractor:

2190 (A) with a gross vehicle weight rating of 10,001 pounds or more;

2191 (B) registered under Section 41-1a-301; and

2192 (C) operated under the authority of a carrier authorized and certificated:

2193 (I) by the United States Department of Transportation or another federal authority; and

2194 (II) to engage in carrying a person or property in interstate commerce;

2195 (iii) a trailer, semitrailer, or passenger bus that is:

- 2196 (A) registered under Section 41-1a-301; and
- 2197 (B) operated under the authority of a carrier authorized and certificated:
- 2198 (I) by the United States Department of Transportation or another federal authority; and
- 2199 (II) to engage in carrying a person or property in interstate commerce;
- 2200 (iv) an aircraft that is operated by an air carrier authorized and certificated:
- 2201 (A) by the United States Department of Transportation or another federal or foreign
- 2202 authority; and
- 2203 (B) to engage in carrying a person or property in interstate commerce; or
- 2204 (v) a container designed for use on, or a component part attached or secured on, an
- 2205 item of equipment listed in Subsections (1)(b)(i) through (iv).
- 2206 (2) Except as provided in Subsections (8) and [~~(13)~~] (14), if tangible personal property,
- 2207 a product transferred electronically, or a service that is subject to taxation under this chapter is
- 2208 received by a purchaser at a business location of a seller, the location of the transaction is the
- 2209 business location of the seller.
- 2210 (3) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
- 2211 and [~~(13)~~] (14), if tangible personal property, a product transferred electronically, or a service
- 2212 that is subject to taxation under this chapter is not received by a purchaser at a business
- 2213 location of a seller, the location of the transaction is the location where the purchaser takes
- 2214 receipt of the tangible personal property or service.
- 2215 (4) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
- 2216 and [~~(13)~~] (14), if Subsection (2) or (3) does not apply, the location of the transaction is the
- 2217 location indicated by an address for or other information on the purchaser if:
- 2218 (a) the address or other information is available from the seller's business records; and
- 2219 (b) use of the address or other information from the seller's records does not constitute
- 2220 bad faith.
- 2221 (5) (a) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9),
- 2222 (11), and [~~(13)~~] (14), if Subsection (2), (3), or (4) does not apply, the location of the transaction
- 2223 is the location indicated by an address for the purchaser if:
- 2224 (i) the address is obtained during the consummation of the transaction; and
- 2225 (ii) use of the address described in Subsection (5)(a)(i) does not constitute bad faith.
- 2226 (b) An address used under Subsection (5)(a) includes the address of a purchaser's



2227 payment instrument if no other address is available.

2228 (6) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),  
2229 and ~~[(13)]~~ (14), if Subsection (2), (3), (4), or (5) does not apply or if a seller does not have  
2230 sufficient information to apply Subsection (2), (3), (4), or (5), the location of the transaction is  
2231 the location:

2232 (a) indicated by the address from which:

2233 (i) except as provided in Subsection (6)(a)(ii), for tangible personal property that is  
2234 subject to taxation under this chapter, the tangible personal property is shipped;

2235 (ii) for computer software delivered electronically or for a product transferred  
2236 electronically that is subject to taxation under this chapter, the computer software or product  
2237 transferred electronically is first available for transmission by the seller; or

2238 (iii) for a service that is subject to taxation under this chapter, the service is provided;

2239 or

2240 (b) as determined by the seller with respect to a prepaid wireless calling service:

2241 (i) provided in Subsection (6)(a)(iii); or

2242 (ii) associated with the mobile telephone number.

2243 (7) (a) For purposes of this Subsection (7), "shared ZIP Code" means a nine-digit ZIP  
2244 Code that is located within two or more local taxing jurisdictions.

2245 (b) If the location of a transaction determined under Subsections (3) through (6) is in a  
2246 shared ZIP Code, the location of the transaction is:

2247 (i) if there is only one local taxing jurisdiction that imposes the lowest agreement  
2248 combined tax rate for the shared ZIP Code, the local taxing jurisdiction that imposes the lowest  
2249 agreement combined tax rate; or

2250 (ii) if two or more local taxing jurisdictions impose the lowest agreement combined tax  
2251 rate for the shared ZIP Code, the local taxing jurisdiction that:

2252 (A) imposes the lowest agreement combined tax rate for the shared ZIP Code; and

2253 (B) has located within the local taxing jurisdiction the largest number of street  
2254 addresses within the shared ZIP Code.

2255 (c) Notwithstanding any provision under this chapter authorizing or requiring the  
2256 imposition of a sales and use tax, for purposes of Subsection (7)(b), a seller shall collect a sales  
2257 and use tax imposed under this chapter at the lowest agreement combined tax rate imposed

2258 within the local taxing jurisdiction in which the transaction is located under Subsection (7)(b).

2259 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
2260 commission may make rules:

2261 (i) providing for the circumstances under which a seller has exercised due diligence in  
2262 determining the nine-digit ZIP Code for an address; or

2263 (ii) notwithstanding Subsection (7)(b), for determining the local taxing jurisdiction  
2264 within which a transaction is located if a seller is unable to determine the local taxing  
2265 jurisdiction within which the transaction is located under Subsection (7)(b).

2266 (8) The location of a transaction made with a direct payment permit described in  
2267 Section 59-12-107.1 is the location where receipt of the tangible personal property, product, or  
2268 service by the purchaser occurs.

2269 (9) The location of a purchase of direct mail is the location determined in accordance  
2270 with Section 59-12-123.

2271 (10) (a) Except as provided in Subsection (10)(b), the location of a transaction  
2272 determined under Subsections (3) through (6), (8), or (9), is the local taxing jurisdiction within  
2273 which:

2274 (i) the nine-digit ZIP Code assigned to the location determined under Subsections (3)  
2275 through (6), (8), or (9) is located; or

2276 (ii) the five-digit ZIP Code assigned to the location determined under Subsections (3)  
2277 through (6), (8), or (9) is located if:

2278 (A) a nine-digit ZIP Code is not available for the location determined under  
2279 Subsections (3) through (6), (8), or (9); or

2280 (B) after exercising due diligence, a seller or certified service provider is unable to  
2281 determine a nine-digit ZIP Code for the location determined under Subsections (3) through (6),  
2282 (8), or (9).

2283 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
2284 commission may make rules for determining the local taxing jurisdiction within which a  
2285 transaction is located if a seller or certified service provider is unable to determine the local  
2286 taxing jurisdiction within which the transaction is located under Subsection (10)(a).

2287 (11) (a) As used in this Subsection (11), "florist delivery transaction" means a  
2288 transaction commenced by a florist that transmits an order:

2289 (i) by:  
2290 (A) telegraph;  
2291 (B) telephone; or  
2292 (C) a means of communication similar to Subsection (11)(a)(i)(A) or (B); and  
2293 (ii) for delivery to another place:  
2294 (A) in this state; or  
2295 (B) outside this state.  
2296 (b) Notwithstanding Subsections (3) through (6), beginning on January 1, 2009, and  
2297 ending on December 31, 2009, the location of a florist delivery transaction is the business  
2298 location of the florist that commences the florist delivery transaction.  
2299 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
2300 commission may by rule:  
2301 (i) define:  
2302 (A) "business location"; and  
2303 (B) "florist";  
2304 (ii) define what constitutes a means of communication similar to Subsection  
2305 (11)(a)(i)(A) or (B); and  
2306 (iii) provide procedures for determining when a transaction is commenced.  
2307 (12) (a) Notwithstanding any other provision of this section and except as provided in  
2308 Subsection (12)(b), if a purchaser uses computer software and there is not a transfer of a copy  
2309 of that software to the purchaser, the location of the transaction is determined in accordance  
2310 with Subsections (4) and (5).  
2311 (b) If a purchaser uses computer software described in Subsection (12)(a) at more than  
2312 one location, the location of the transaction shall be determined in accordance with rules made  
2313 by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking  
2314 Act.  
2315 [~~12~~] (13) (a) A tax collected under this chapter shall be reported to the commission  
2316 on a form that identifies the location of each transaction that occurs during the return filing  
2317 period.  
2318 (b) The form described in Subsection [~~12~~] (13)(a) shall be filed with the commission  
2319 as required under this chapter.

2320            [~~(13)~~] (14) This section does not apply to:

2321            (a) amounts charged by a seller for:

2322            (i) telecommunications service except for a prepaid calling service or a prepaid

2323 wireless calling service as provided in Subsection (6)(b) or Section 59-12-215; or

2324            (ii) the retail sale or transfer of:

2325            (A) a motor vehicle other than a motor vehicle that is transportation equipment;

2326            (B) an aircraft other than an aircraft that is transportation equipment;

2327            (C) a watercraft;

2328            (D) a modular home;

2329            (E) a manufactured home; or

2330            (F) a mobile home; or

2331            (iii) except as provided in Section 59-12-214, the lease or rental of tangible personal

2332 property other than tangible personal property that is transportation equipment;

2333            (b) a tax a person pays in accordance with Subsection 59-12-107(1)(d); or

2334            (c) a retail sale of tangible personal property or a product transferred electronically if:

2335            (i) the seller receives the order for the tangible personal property or product transferred

2336 electronically in this state;

2337            (ii) receipt of the tangible personal property or product transferred electronically by the

2338 purchaser or the purchaser's donee occurs in this state;

2339            (iii) the location where receipt of the tangible personal property or product transferred

2340 electronically by the purchaser occurs is determined in accordance with Subsections (3)

2341 through (5); and

2342            (iv) at the time the seller receives the order, the record keeping system that the seller

2343 uses to calculate the proper amount of tax imposed under this chapter captures the location

2344 where the order is received.

2345            Section 7. **Effective date.**

2346            This bill takes effect on July 1, 2011.