

## HB0035S02 compared with HB0035S01

~~{deleted text}~~ shows text that was in HB0035S01 but was deleted in HB0035S02.

inserted text shows text that was not in HB0035S01 but was inserted into HB0035S02.

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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~~{ and }~~ 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;

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

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill takes effect on July 1, 2011.

### Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

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

#### **59-12-102. Definitions.**

As used in this chapter:

- (1) "800 service" means a telecommunications service that:
  - (a) allows a caller to dial a toll-free number without incurring a charge for the call; and
  - (b) is typically marketed:
    - (i) under the name 800 toll-free calling;
    - (ii) under the name 855 toll-free calling;
    - (iii) under the name 866 toll-free calling;

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- (iv) under the name 877 toll-free calling;
- (v) under the name 888 toll-free calling; or
- (vi) under a name similar to Subsections (1)(b)(i) through (v) as designated by the

Federal Communications Commission.

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

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

the subscriber's:

- (A) prerecorded announcement; or
- (B) live service; and
- (iii) is typically marketed:
  - (A) under the name 900 service; or
  - (B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal

Communications Commission.

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

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

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

- (A) a product; or
- (B) a service.

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

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

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

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

- (a) listed under Subsection (6); and
- (b) that are imposed within a local taxing jurisdiction.

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

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

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- (b) Subsection 59-12-103(2)(b)(i);
  - (c) Subsection 59-12-103(2)(c)(i);
  - (d) Subsection 59-12-103(2)(d)(i)(A)(I);
  - (e) Section 59-12-204;
  - (f) Section 59-12-401;
  - (g) Section 59-12-402;
  - (h) Section 59-12-703;
  - (i) Section 59-12-802;
  - (j) Section 59-12-804;
  - (k) Section 59-12-1102;
  - (l) Section 59-12-1302;
  - (m) Section 59-12-1402;
  - (n) Section 59-12-1802;
  - (o) Section 59-12-2003;
  - (p) Section 59-12-2103;
  - (q) Section 59-12-2213;
  - (r) Section 59-12-2214;
  - (s) Section 59-12-2215;
  - (t) Section 59-12-2216;
  - (u) Section 59-12-2217; or
  - (v) Section 59-12-2218.
- (7) "Aircraft" is as defined in Section 72-10-102.
- (8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:
- (a) except for an airline as defined in Section 59-2-102 or an affiliated group as defined in Subsection 59-12-107(1)(f) of an airline; and
  - (b) that has the workers, expertise, and facilities to perform the following, regardless of whether the business entity performs the following in this state:
    - (i) check, diagnose, overhaul, and repair:
      - (A) an onboard system of a fixed wing turbine powered aircraft; and
      - (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;
    - (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft

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engine;

(iii) perform at least the following maintenance on a fixed wing turbine powered aircraft:

- (A) an inspection;
  - (B) a repair, including a structural repair or modification;
  - (C) changing landing gear; and
  - (D) addressing issues related to an aging fixed wing turbine powered aircraft;
- (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and

completely apply new paint to the fixed wing turbine powered aircraft; and

(v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that results in a change in the fixed wing turbine powered aircraft's certification requirements by the authority that certifies the fixed wing turbine powered aircraft.

(9) "Alcoholic beverage" means a beverage that:

- (a) is suitable for human consumption; and
- (b) contains .5% or more alcohol by volume.

(10) (a) "Ancillary service" means a service associated with, or incidental to, the provision of telecommunications service.

(b) "Ancillary service" includes:

- (i) a conference bridging service;
- (ii) a detailed communications billing service;
- (iii) directory assistance;
- (iv) a vertical service; or
- (v) a voice mail service.

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

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

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

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

(13) "Assisted cleaning or washing of tangible personal property" means cleaning or

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

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

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

(14) "Authorized carrier" means:

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

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

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

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

(i) material from a plant or tree; or

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

(A) slash and brush from forests and woodlands;

(B) animal waste;

(C) methane produced:

(I) at landfills; or

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

(D) aquatic plants; and

(E) agricultural products.

(b) "Biomass energy" does not include:

(i) black liquor;

(ii) treated woods; or

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

(A) at landfills; or

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

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

- (i) distinct and identifiable; and
- (ii) sold for one nonitemized price.

(b) "Bundled transaction" does not include:

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

- (ii) the sale of real property;
- (iii) the sale of services to real property;
- (iv) the retail sale of tangible personal property and a service if:

(A) the tangible personal property:

- (I) is essential to the use of the service; and
- (II) is provided exclusively in connection with the service; and

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

(v) the retail sale of two services if:

- (A) one service is provided that is essential to the use or receipt of a second service;
- (B) the first service is provided exclusively in connection with the second service; and
- (C) the second service is the true object of the transaction;

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

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

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

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

(A) that retail sale includes:

- (I) food and food ingredients;
- (II) a drug;

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- (III) durable medical equipment;
- (IV) mobility enhancing equipment;
- (V) an over-the-counter drug;
- (VI) a prosthetic device; or
- (VII) a medical supply; and
- (B) subject to Subsection (16)(f):

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

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

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

(A) packaging that:

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

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

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

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

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

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

(A) a binding sales document; or

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

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

- (A) a bill of sale;
- (B) a contract;
- (C) an invoice;
- (D) a lease agreement;
- (E) a periodic notice of rates and services;
- (F) a price list;
- (G) a rate card;
- (H) a receipt; or
- (I) a service agreement.

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

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

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

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

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

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

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

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

(17) "Certified automated system" means software certified by the governing board of

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the agreement that:

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

(i) on a transaction; and

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

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

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

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

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

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

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

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

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

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

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

(21) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels that does not constitute industrial use under Subsection ~~[(48)]~~ [(49)] or residential use under Subsection ~~[(94)]~~ [(95); 97].

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

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

(ii) For purposes of Subsection (22)(b)(i), in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining what

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constitutes a person's place of employment.

(23) "Component part" includes:

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

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

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

(d) feed, seeds, and seedlings.

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

(a) (i) in digital form; or

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

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

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

(a) a computer to perform a task; or

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

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

(a) future updates or upgrades to computer software;

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

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

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

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

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

(27) (28) "Construction materials" means any tangible personal property that will be converted into real property.

(28) (29) "Delivered electronically" means delivered to a purchaser by means other than tangible storage media.

(29) (30) (a) "Delivery charge" means a charge:

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(i) by a seller of:

- (A) tangible personal property;
- (B) a product transferred electronically; or
- (C) services; and

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

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

- (i) transportation;
- (ii) shipping;
- (iii) postage;
- (iv) handling;
- (v) crating; or
- (vi) packing.

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

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

- (a) is intended to supplement the diet;
- (b) contains one or more of the following dietary ingredients:
  - (i) a vitamin;
  - (ii) a mineral;
  - (iii) an herb or other botanical;
  - (iv) an amino acid;
  - (v) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

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

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

- (A) tablet form;
- (B) capsule form;
- (C) powder form;

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(D) softgel form;

(E) gelcap form; or

(F) liquid form; or

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

(A) as conventional food; and

(B) for use as a sole item of:

(I) a meal; or

(II) the diet; and

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

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

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

~~[(32)]~~ [(33)] (a) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service:

(i) to:

(A) a mass audience; or

(B) addressees on a mailing list provided:

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

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

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

(b) "Direct mail" includes tangible personal property supplied directly or indirectly by a purchaser to a seller of direct mail for inclusion in a package containing the printed material.

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

~~[(33)]~~ [(34)] "Directory assistance" means an ancillary service of providing:

(a) address information; or

(b) telephone number information.

~~[(34)]~~ [(35)] (a) "Disposable home medical equipment or supplies" means medical equipment or supplies that:

(i) cannot withstand repeated use; and

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

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

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

(C) an office of a health care provider described in Subsection ~~[(34)]~~ [(35)](a)(ii)(B); or

(D) a person similar to a person described in Subsections ~~[(34)]~~ [(35)](a)(ii)(A) through

(C).

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

(i) a drug;

(ii) durable medical equipment;

(iii) a hearing aid;

(iv) a hearing aid accessory;

(v) mobility enhancing equipment; or

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

(A) eyeglasses; or

(B) contact lenses.

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

~~[(35)]~~ [(36)] (a) "Drug" means a compound, substance, or preparation, or a component of a compound, substance, or preparation that is:

(i) recognized in:

(A) the official United States Pharmacopoeia;

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

(C) the official National Formulary; or

(D) a supplement to a publication listed in Subsections ~~[(35)]~~ [(36)](a)(i)(A) through

(C);

(ii) intended for use in the:

(A) diagnosis of disease;

(B) cure of disease;

(C) mitigation of disease;

(D) treatment of disease; or

(E) prevention of disease; or

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- (iii) intended to affect:
  - (A) the structure of the body; or
  - (B) any function of the body.
- (b) "Drug" does not include:
  - (i) food and food ingredients;
  - (ii) a dietary supplement;
  - (iii) an alcoholic beverage; or
  - (iv) a prosthetic device.

~~[(36)]~~ (37) (a) Except as provided in Subsection ~~[(36)]~~ (37)(c), "durable medical equipment" means equipment that:

- (i) can withstand repeated use;
- (ii) is primarily and customarily used to serve a medical purpose;
- (iii) generally is not useful to a person in the absence of illness or injury; and
- (iv) is not worn in or on the body.

(b) "Durable medical equipment" includes parts used in the repair or replacement of the equipment described in Subsection ~~[(36)]~~ (37)(a).

(c) Notwithstanding Subsection ~~[(36)]~~ (37)(a), "durable medical equipment" does not include mobility enhancing equipment.

~~[(37)]~~ (38) "Electronic" means:

- (a) relating to technology; and
- (b) having:
  - (i) electrical capabilities;
  - (ii) digital capabilities;
  - (iii) magnetic capabilities;
  - (iv) wireless capabilities;
  - (v) optical capabilities;
  - (vi) electromagnetic capabilities; or
  - (vii) capabilities similar to Subsections ~~[(37)]~~ (38)(b)(i) through (vi).

~~[(38)]~~ (39) "Employee" is as defined in Section 59-10-401.

~~[(39)]~~ (40) "Fixed guideway" means a public transit facility that uses and occupies:

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

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

~~[(40)]~~ [(41)] "Fixed wing turbine powered aircraft" means an aircraft that:

- (a) is powered by turbine engines;
- (b) operates on jet fuel; and
- (c) has wings that are permanently attached to the fuselage of the aircraft.

~~[(41)]~~ [(42)] "Fixed wireless service" means a telecommunications service that provides radio communication between fixed points.

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

(i) regardless of whether the substances are in:

- (A) liquid form;
- (B) concentrated form;
- (C) solid form;
- (D) frozen form;
- (E) dried form; or
- (F) dehydrated form; and

(ii) that are:

- (A) sold for:
  - (I) ingestion by humans; or
  - (II) chewing by humans; and
- (B) consumed for the substance's:
  - (I) taste; or
  - (II) nutritional value.

(b) "Food and food ingredients" includes an item described in Subsection ~~[(78)]~~ [(80)](b)(iii).

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

- (i) an alcoholic beverage;
- (ii) tobacco; or
- (iii) prepared food.

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

- (i) (A) made by a school; or
- (B) made by a school student;

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(ii) that are for the purpose of raising funds for the school to purchase equipment, materials, or provide transportation; and

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

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

(i) that is conducted in accordance with a formal policy adopted by the school or school district governing the authorization and supervision of fundraising activities;

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

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

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

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

(a) authorized to administer the agreement; and

(b) established in accordance with the agreement.

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

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

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

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

(iv) the National Guard;

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

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

(b) "Governmental entity" does not include the state systems of public and higher

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education, including:

- (i) a college campus of the Utah College of Applied Technology;
- (ii) a school;
- (iii) the State Board of Education;
- (iv) the State Board of Regents; or
- (v) a state institution of higher education as defined in Section 53B-3-102.

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

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

(a) in mining or extraction of minerals;

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

- (i) commercial greenhouses;
- (ii) irrigation pumps;
- (iii) farm machinery;
- (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not

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

(v) other farming activities;

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

(d) by a scrap recycler if:

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

- (A) iron;
- (B) steel;
- (C) nonferrous metal;
- (D) paper;
- (E) glass;

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(F) plastic;

(G) textile; or

(H) rubber; and

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

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

~~[(49)]~~ [(50)] (a) Except as provided in Subsection ~~[(49)]~~ [(50)](b), "installation charge" means a charge for installing:

(i) tangible personal property; or

(ii) a product transferred electronically.

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

~~(i)~~ repairs or renovations of:

~~[(+)]~~ [(A)] tangible personal property; or

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

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

(A) to other tangible personal property; and

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

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

(i) (A) a fixed term; or

(B) an indeterminate term; and

(ii) consideration.

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

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

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

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

(A) upon completion of required payments; and

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

(I) \$100; or

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

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

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

(i) set-up of tangible personal property;

(ii) maintenance of tangible personal property; or

(iii) inspection of tangible personal property.

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

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

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

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

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

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

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

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

(b) a scrap recycler if:

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

(A) iron;

(B) steel;

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- (C) nonferrous metal;
- (D) paper;
- (E) glass;
- (F) plastic;
- (G) textile; or
- (H) rubber; and

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

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

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

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

- (i) an adopted child or adopted stepchild; or
- (ii) a foster child or foster stepchild;
- (b) grandchild or stepgrandchild;
- (c) grandparent or stepgrandparent;

- (d) nephew or stepnephew;

- (e) niece or stepniece;

- (f) parent or stepparent;

- (g) sibling or stepsibling;

- (h) spouse;

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

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

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

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

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

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(i) the origination point of the conveyance, routing, or transmission is not fixed;  
(ii) the termination point of the conveyance, routing, or transmission is not fixed; or  
(iii) the origination point described in Subsection ~~[(58)]~~ [(59)](a)(i) and the termination point described in Subsection ~~[(58)]~~ [(59)](a)(ii) are not fixed.

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

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

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

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

(ii) appropriate for use in a:

(A) home; or

(B) motor vehicle; and

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

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

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

(i) a motor vehicle;

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

(iii) durable medical equipment; or

(iv) a prosthetic device.

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

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

(a) except as provided in Subsection ~~[(61)]~~ [(62)](b), has selected a certified automated

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system to perform the seller's sales tax functions for agreement sales and use taxes; and

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

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

~~[(62)] (63)~~ (a) Subject to Subsection ~~[(62)] (63)~~(b), "model 3 seller" means a seller registered under the agreement that has:

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

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

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

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

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

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

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

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

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

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

(b) For purposes of Subsection ~~[(68)] (70)~~(a), the transmission of a coded radio signal

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includes a transmission by message or sound.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) property attached to oil, gas, or water pipelines, except for the property listed in Subsection ~~[(71)]~~ [(73)](c)(iii) or (iv).

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

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

(A) convenience;

(B) stability; or

(C) for an obvious temporary purpose;

(ii) the detachment of tangible personal property from real property except for the detachment described in Subsection ~~[(71)]~~ [(73)](b)(ii);

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

(A) a computer;

(B) a telephone;

(C) a television; or

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

(iv) an item listed in Subsection ~~[(111)]~~ [(112)] [(114)](c).

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

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

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

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

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

(b) for mobile telecommunications service, is as defined in the Mobile

Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

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

(i) through the use of a:

(A) bank card;

(B) credit card;

(C) debit card; or

(D) travel card; or

(ii) by a charge made to a telephone number that is not associated with the origination

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or termination of the telecommunications service.

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

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

~~(76)~~(78) "Prepaid calling service" means a telecommunications service:

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

(b) that:

(i) is paid for in advance; and

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

(A) access number; or

(B) authorization code;

(c) that is dialed:

(i) manually; or

(ii) electronically; and

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

(i) by a known amount; and

(ii) with use.

~~(77)~~(79) "Prepaid wireless calling service" means a telecommunications service:

(a) that provides the right to utilize:

(i) mobile wireless service; and

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

(A) the download of a product transferred electronically;

(B) a content service; or

(C) an ancillary service;

(b) that:

(i) is paid for in advance; and

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

(A) access number; or

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- (B) authorization code;
- (c) that is dialed:
  - (i) manually; or
  - (ii) electronically; and
- (d) sold in predetermined units or dollars that decline:
  - (i) by a known amount; and
  - (ii) with use.

~~[(78)]~~ [(80)] (a) "Prepared food" means:

- (i) food:
  - (A) sold in a heated state; or
  - (B) heated by a seller;
  - (ii) two or more food ingredients mixed or combined by the seller for sale as a single item; or
  - (iii) except as provided in Subsection ~~[(78)]~~ [(80)](c), food sold with an eating utensil provided by the seller, including a:

- (A) plate;
- (B) knife;
- (C) fork;
- (D) spoon;
- (E) glass;
- (F) cup;
- (G) napkin; or
- (H) straw.

(b) "Prepared food" does not include:

- (i) food that a seller only:
  - (A) cuts;
  - (B) repackages; or
  - (C) pasteurizes; or
- (ii) (A) the following:
  - (I) raw egg;
  - (II) raw fish;

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- (III) raw meat;
- (IV) raw poultry; or
- (V) a food containing an item described in Subsections ~~[(78)]~~ [(80)](b)(ii)(A)(I) through (IV); and

(B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the Food and Drug Administration's Food Code that a consumer cook the items described in Subsection ~~[(78)]~~ [(80)](b)(ii)(A) to prevent food borne illness; or

- (iii) the following if sold without eating utensils provided by the seller:

(A) food and food ingredients sold by a seller if the seller's proper primary classification under the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, is manufacturing in Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla Manufacturing;

- (B) food and food ingredients sold in an unheated state:

(I) by weight or volume; and

(II) as a single item; or

(C) a bakery item, including:

(I) a bagel;

(II) a bar;

(III) a biscuit;

(IV) bread;

(V) a bun;

(VI) a cake;

(VII) a cookie;

(VIII) a croissant;

(IX) a danish;

(X) a donut;

(XI) a muffin;

(XII) a pastry;

(XIII) a pie;

(XIV) a roll;

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(XV) a tart;

(XVI) a torte; or

(XVII) a tortilla.

(c) Notwithstanding Subsection ~~[(78)](80)~~(a)(iii), an eating utensil provided by the seller does not include the following used to transport the food:

(i) a container; or

(ii) packaging.

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

(a) (i) orally;

(ii) in writing;

(iii) electronically; or

(iv) by any other manner of transmission; and

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

~~[(80)](82)~~ (a) Except as provided in Subsection ~~[(80)](82)~~(b)(ii) or (iii), "prewritten computer software" means computer software that is not designed and developed:

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

(ii) to the specifications of a specific purchaser.

(b) "Prewritten computer software" includes:

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

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

(B) to the specifications of a specific purchaser;

(ii) notwithstanding Subsection ~~[(80)](82)~~(a), computer software designed and developed by the author or other creator of the computer software to the specifications of a specific purchaser if the computer software is sold to a person other than the purchaser; or

(iii) notwithstanding Subsection ~~[(80)](82)~~(a) and except as provided in Subsection ~~[(80)](82)~~(c), prewritten computer software or a prewritten portion of prewritten computer software:

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

(B) if the modification or enhancement described in Subsection ~~[(80)](82)~~(b)(iii)(A) is designed and developed to the specifications of a specific purchaser.

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(c) Notwithstanding Subsection ~~[(80)]~~ [(82)](b)(iii), "prewritten computer software" does not include a modification or enhancement described in Subsection ~~[(80)]~~ [(82)](b)(iii) if the charges for the modification or enhancement are:

- (i) reasonable; and
- (ii) separately stated on the invoice or other statement of price provided to the purchaser.

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

- (i) that entitles a customer to exclusive or priority use of one or more communications channels between or among termination points; and
- (ii) regardless of the manner in which the one or more communications channels are connected.

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

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

~~[(82);84]~~ (a) Except as provided in Subsection ~~[(82);84]~~(b), "product transferred electronically" means a product transferred electronically that would be subject to a tax under this chapter if that product was transferred in a manner other than electronically.

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

- (i) an ancillary service;
- (ii) computer software; or
- (iii) a telecommunications service.

~~[(82)]~~ ~~[(83);85]~~ (a) "Prosthetic device" means a device that is worn on or in the body to:

- (i) artificially replace a missing portion of the body;
  - (ii) prevent or correct a physical deformity or physical malfunction; or
  - (iii) support a weak or deformed portion of the body.
- (b) "Prosthetic device" includes:

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

(c) "Prosthetic device" does not include:

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

~~[(83)]~~ ~~(~~84~~;86)~~ (a) "Protective equipment" means an item:

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

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

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

under the agreement.

~~[(84)]~~ ~~(~~85~~;87)~~ (a) For purposes of Subsection 59-12-104(41), "publication" means any written or printed matter, other than a photocopy:

- (i) regardless of:
  - (A) characteristics;
  - (B) copyright;
  - (C) form;
  - (D) format;
  - (E) method of reproduction; or
  - (F) source; and
- (ii) made available in printed or electronic format.

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

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~~[(85)]~~ ~~(~~186~~~~88~~)~~ (a) "Purchase price" and "sales price" mean the total amount of consideration:

- (i) valued in money; and
- (ii) for which tangible personal property, a product transferred electronically, or

services are:

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

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

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

(ii) expenses of the seller, including:

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

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

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

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

and

(II) the consideration described in Subsection ~~[(85)]~~ ~~(~~186~~~~88~~)~~(b)(iv)(A)(I) is directly related to a price reduction or discount on the sale;

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

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

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

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

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

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

(Aa) invoice the purchaser receives; or

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

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

(i) a discount:

(A) in a form including:

(I) cash;

(II) term; or

(III) coupon;

(B) that is allowed by a seller;

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

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

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

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

(I) a carrying charge;

(II) a financing charge; or

(III) an interest charge;

(B) a delivery charge;

(C) an installation charge;

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

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

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~~[(86)]~~ ~~(~~87~~;89)~~ "Purchaser" means a person to whom:

- (a) a sale of tangible personal property is made;
- (b) a product is transferred electronically; or
- (c) a service is furnished.

~~[(87)]~~ ~~(~~88~~;90)~~ "Regularly rented" means:

- (a) rented to a guest for value three or more times during a calendar year; or
- (b) advertised or held out to the public as a place that is regularly rented to guests for value.

~~[(88)]~~ ~~(~~89~~;91)~~ "Renewable energy" means:

- (a) biomass energy;
- (b) hydroelectric energy;
- (c) geothermal energy;
- (d) solar energy; or
- (e) wind energy.

~~[(89)]~~ ~~(~~90~~;92)~~ (a) "Renewable energy production facility" means a facility that:

- (i) uses renewable energy to produce electricity; and
  - (ii) has a production capacity of 20 kilowatts or greater.
- (b) A facility is a renewable energy production facility regardless of whether the facility is:
- (i) connected to an electric grid; or
  - (ii) located on the premises of an electricity consumer.

~~[(90)]~~ ~~(~~91~~;93)~~ "Rental" is as defined in Subsection ~~[(50)]~~ (51).

~~[(91)]~~ ~~(~~92~~);~~ ~~"Repairs]~~ (94) (a) Except as provided in Subsection (94)(b), "repairs or renovations of tangible personal property" means:

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

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

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

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

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

~~(92)~~ (93;95) "Research and development" means the process of inquiry or experimentation aimed at the discovery of facts, devices, technologies, or applications and the process of preparing those devices, technologies, or applications for marketing.

~~(93)~~ (94;96) (a) "Residential telecommunications services" means a telecommunications service or an ancillary service that is provided to an individual for personal use:

(i) at a residential address; or

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

(b) For purposes of Subsection ~~(93)~~ (94;96)(a)(i), a residential address includes an:

(i) apartment; or

(ii) other individual dwelling unit.

~~(94)~~ (95;97) "Residential use" means the use in or around a home, apartment building, sleeping quarters, and similar facilities or accommodations.

~~(95)~~ (96;98) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other than:

(a) resale;

(b) sublease; or

(c) subrent.

~~(96)~~ (97;99) (a) "Retailer" means any person engaged in a regularly organized business in tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and who is selling to the user or consumer and not for resale.

(b) "Retailer" includes commission merchants, auctioneers, and any person regularly

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engaged in the business of selling to users or consumers within the state.

~~[(97)]~~ ~~(98; 100)~~ (a) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), for consideration.

(b) "Sale" includes:

(i) installment and credit sales;

(ii) any closed transaction constituting a sale;

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

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

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

~~[(98)]~~ ~~(99; 101)~~ "Sale at retail" is as defined in Subsection ~~[(95)]~~ ~~(96; 98)~~.

~~[(99)]~~ ~~(100; 102)~~ "Sale-leaseback transaction" means a transaction by which title to tangible personal property or a product transferred electronically that is subject to a tax under this chapter is transferred:

(a) by a purchaser-lessee;

(b) to a lessor;

(c) for consideration; and

(d) if:

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

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

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

(B) to the purchaser-lessee; and

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

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

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financial reporting purposes; and

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

~~[(100)]~~ ~~(~~101~~;103)~~ "Sales price" is as defined in Subsection ~~[(85)]~~ ~~(~~86~~;88)~~.

~~[(101)]~~ ~~(~~102~~;104)~~ (a) "Sales relating to schools" means the following sales by, amounts paid to, or amounts charged by a school:

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

(A) the sale of:

(I) textbooks;

(II) textbook fees;

(III) laboratory fees;

(IV) laboratory supplies; or

(V) safety equipment;

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

(I) a student is specifically required to wear as a condition of participation in a school-related event or school-related activity; and

(II) is not readily adaptable to general or continued usage to the extent that it takes the place of ordinary clothing;

(C) sales of the following if the net or gross revenues generated by the sales are deposited into a school district fund or school fund dedicated to school meals:

(I) food and food ingredients; or

(II) prepared food; or

(D) transportation charges for official school activities; or

(ii) amounts paid to or amounts charged by a school for admission to a school-related event or school-related activity.

(b) "Sales relating to schools" does not include:

(i) bookstore sales of items that are not educational materials or supplies;

(ii) except as provided in Subsection ~~[(101)]~~ ~~(~~102~~;104)~~(a)(i)(B):

(A) clothing;

(B) clothing accessories or equipment;

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- (C) protective equipment; or
- (D) sports or recreational equipment; or
- (iii) amounts paid to or amounts charged by a school for admission to a school-related event or school-related activity if the amounts paid or charged are passed through to a person:
  - (A) other than a:
    - (I) school;
    - (II) nonprofit organization authorized by a school board or a governing body of a private school to organize and direct a competitive secondary school activity; or
    - (III) nonprofit association authorized by a school board or a governing body of a private school to organize and direct a competitive secondary school activity; and
  - (B) that is required to collect sales and use taxes under this chapter.
  - (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining the term "passed through."

~~[(102)]~~ ~~(103)~~ (105) For purposes of this section and Section 59-12-104, "school":

- (a) means:
  - (i) an elementary school or a secondary school that:
    - (A) is a:
      - (I) public school; or
      - (II) private school; and
    - (B) provides instruction for one or more grades kindergarten through 12; or
  - (ii) a public school district; and
- (b) includes the Electronic High School as defined in Section 53A-15-1002.

~~[(103)]~~ ~~(104)~~ (106) "Seller" means a person that makes a sale, lease, or rental of:

- (a) tangible personal property;
- (b) a product transferred electronically; or
- (c) a service.

~~[(104)]~~ ~~(105)~~ (107) (a) "Semiconductor fabricating, processing, research, or development materials" means tangible personal property or a product transferred electronically if the tangible personal property or product transferred electronically is:

- (i) used primarily in the process of:
  - (A) (I) manufacturing a semiconductor;

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- (II) fabricating a semiconductor; or
- (III) research or development of a:
  - (Aa) semiconductor; or
  - (Bb) semiconductor manufacturing process; or
- (B) maintaining an environment suitable for a semiconductor; or
- (ii) consumed primarily in the process of:
  - (A) (I) manufacturing a semiconductor;
  - (II) fabricating a semiconductor; or
  - (III) research or development of a:
    - (Aa) semiconductor; or
    - (Bb) semiconductor manufacturing process; or
    - (B) maintaining an environment suitable for a semiconductor.
- (b) "Semiconductor fabricating, processing, research, or development materials"

includes:

(i) parts used in the repairs or renovations of tangible personal property or a product transferred electronically described in Subsection ~~[(104)]~~ ~~(~~105~~;107)~~(a); or

- (ii) a chemical, catalyst, or other material used to:
  - (A) produce or induce in a semiconductor a:
    - (I) chemical change; or
    - (II) physical change;
    - (B) remove impurities from a semiconductor; or
    - (C) improve the marketable condition of a semiconductor.

~~[(105)]~~ ~~(~~106~~;108)~~ "Senior citizen center" means a facility having the primary purpose of providing services to the aged as defined in Section 62A-3-101.

~~[(106)]~~ ~~(~~107~~;109)~~ "Simplified electronic return" means the electronic return:

- (a) described in Section 318(C) of the agreement; and
- (b) approved by the governing board of the agreement.

~~[(107)]~~ ~~(~~108~~;110)~~ "Solar energy" means the sun used as the sole source of energy for producing electricity.

~~[(108)]~~ ~~(~~109~~;111)~~ (a) "Sports or recreational equipment" means an item:

- (i) designed for human use; and

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(ii) that is:

(A) worn in conjunction with:

(I) an athletic activity; or

(II) a recreational activity; and

(B) not suitable for general use.

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

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

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

~~[(109)]~~ ~~(~~110~~;112)~~ "State" means the state of Utah, its departments, and agencies.

~~[(110)]~~ ~~(~~111~~;113)~~ "Storage" means any keeping or retention of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except sale in the regular course of business.

~~[(111)]~~ ~~(~~112~~;114)~~ (a) Except as provided in Subsection ~~[(111)]~~ ~~(~~112~~;114)~~(d) or (e), "tangible personal property" means personal property that:

(i) may be:

(A) seen;

(B) weighed;

(C) measured;

(D) felt; or

(E) touched; or

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

(b) "Tangible personal property" includes:

(i) electricity;

(ii) water;

(iii) gas;

(iv) steam; or

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

(c) "Tangible personal property" includes the following, regardless of whether the item

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is attached to real property:

- (i) a dishwasher;
- (ii) a dryer;
- (iii) a freezer;
- (iv) a microwave;
- (v) a refrigerator;
- (vi) a stove;
- (vii) a washer; or

(viii) an item similar to Subsections [~~(111)~~] (~~(112)~~114)(c)(i) through (vii) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

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

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

[~~(112)~~] (~~(113)~~115) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon and require further processing other than mechanical blending before becoming finished petroleum products.

[~~(113)~~] (~~(114)~~116) (a) "Telecommunications enabling or facilitating equipment, machinery, or software" means an item listed in Subsection [~~(113)~~] (~~(114)~~116)(b) if that item is purchased or leased primarily to enable or facilitate one or more of the following to function:

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

(b) The following apply to Subsection [~~(113)~~] (~~(114)~~116)(a):

- (i) a pole;

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- (ii) software;
- (iii) a supplementary power supply;
- (iv) temperature or environmental equipment or machinery;
- (v) test equipment;
- (vi) a tower; or
- (vii) equipment, machinery, or software that functions similarly to an item listed in Subsections [~~(113)~~] (~~(114)~~116)(b)(i) through (vi) as determined by the commission by rule made in accordance with Subsection [~~(113)~~] (~~(114)~~116)(c).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes equipment, machinery, or software that functions similarly to an item listed in Subsections [~~(113)~~] (~~(114)~~116)(b)(i) through (vi).

[~~(114)~~] (~~(115)~~117) "Telecommunications equipment, machinery, or software required for 911 service" means equipment, machinery, or software that is required to comply with 47 C.F.R. Sec. 20.18.

[~~(115)~~] (~~(116)~~118) "Telecommunications maintenance or repair equipment, machinery, or software" means equipment, machinery, or software purchased or leased primarily to maintain or repair one or more of the following, regardless of whether the equipment, machinery, or software is purchased or leased as a spare part or as an upgrade or modification to one or more of the following:

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

[~~(116)~~] (~~(117)~~119) (a) "Telecommunications service" means the electronic conveyance, routing, or transmission of audio, data, video, voice, or any other information or signal to a point, or among or between points.

(b) "Telecommunications service" includes:

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

- (A) on the code, form, or protocol of the content;
- (B) for the purpose of electronic conveyance, routing, or transmission; and
- (C) regardless of whether the service:

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- (I) is referred to as voice over Internet protocol service; or
- (II) is classified by the Federal Communications Commission as enhanced or value added;
- (ii) an 800 service;
- (iii) a 900 service;
- (iv) a fixed wireless service;
- (v) a mobile wireless service;
- (vi) a postpaid calling service;
- (vii) a prepaid calling service;
- (viii) a prepaid wireless calling service; or
- (ix) a private communications service.
- (c) "Telecommunications service" does not include:
  - (i) advertising, including directory advertising;
  - (ii) an ancillary service;
  - (iii) a billing and collection service provided to a third party;
  - (iv) a data processing and information service if:
    - (A) the data processing and information service allows data to be:
      - (I) (Aa) acquired;
      - (Bb) generated;
      - (Cc) processed;
      - (Dd) retrieved; or
      - (Ee) stored; and
    - (II) delivered by an electronic transmission to a purchaser; and
    - (B) the purchaser's primary purpose for the underlying transaction is the processed data or information;
  - (v) installation or maintenance of the following on a customer's premises:
    - (A) equipment; or
    - (B) wiring;
  - (vi) Internet access service;
  - (vii) a paging service;
  - (viii) a product transferred electronically, including:

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- (A) music;
  - (B) reading material;
  - (C) a ring tone;
  - (D) software; or
  - (E) video;
  - (ix) a radio and television audio and video programming service:
    - (A) regardless of the medium; and
    - (B) including:
      - (I) furnishing conveyance, routing, or transmission of a television audio and video programming service by a programming service provider;
      - (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
      - (III) audio and video programming services delivered by a commercial mobile radio service provider as defined in 47 C.F.R. Sec. 20.3;
      - (x) a value-added nonvoice data service; or
      - (xi) tangible personal property.
- ~~[(117)]~~ ~~(~~118~~;120)~~ (a) "Telecommunications service provider" means a person that:
- (i) owns, controls, operates, or manages a telecommunications service; and
  - (ii) engages in an activity described in Subsection ~~[(117)]~~ ~~(~~118~~;120)~~(a)(i) for the shared use with or resale to any person of the telecommunications service.
- (b) A person described in Subsection ~~[(117)]~~ ~~(~~118~~;120)~~(a) is a telecommunications service provider whether or not the Public Service Commission of Utah regulates:
- (i) that person; or
  - (ii) the telecommunications service that the person owns, controls, operates, or manages.
- ~~[(118)]~~ ~~(~~119~~;121)~~ (a) "Telecommunications switching or routing equipment, machinery, or software" means an item listed in Subsection ~~[(118)]~~ ~~(~~119~~;121)~~(b) if that item is purchased or leased primarily for switching or routing:
- (i) an ancillary service;
  - (ii) data communications;
  - (iii) voice communications; or
  - (iv) telecommunications service.

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(b) The following apply to Subsection [(+18)] (~~(+19)~~121)(a):

- (i) a bridge;
- (ii) a computer;
- (iii) a cross connect;
- (iv) a modem;
- (v) a multiplexer;
- (vi) plug in circuitry;
- (vii) a router;
- (viii) software;
- (ix) a switch; or

(x) equipment, machinery, or software that functions similarly to an item listed in Subsections [(+18)] (~~(+19)~~121)(b)(i) through (ix) as determined by the commission by rule made in accordance with Subsection [(+18)] (~~(+19)~~121)(c).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes equipment, machinery, or software that functions similarly to an item listed in Subsections [(+18)] (~~(+19)~~121)(b)(i) through (ix).

[(+19)] (~~(+20)~~122) (a) "Telecommunications transmission equipment, machinery, or software" means an item listed in Subsection [(+19)] (~~(+20)~~122)(b) if that item is purchased or leased primarily for sending, receiving, or transporting:

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

(b) The following apply to Subsection [(+19)] (~~(+20)~~122)(a):

- (i) an amplifier;
- (ii) a cable;
- (iii) a closure;
- (iv) a conduit;
- (v) a controller;
- (vi) a duplexer;
- (vii) a filter;

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- (viii) an input device;
- (ix) an input/output device;
- (x) an insulator;
- (xi) microwave machinery or equipment;
- (xii) an oscillator;
- (xiii) an output device;
- (xiv) a pedestal;
- (xv) a power converter;
- (xvi) a power supply;
- (xvii) a radio channel;
- (xviii) a radio receiver;
- (xix) a radio transmitter;
- (xx) a repeater;
- (xxi) software;
- (xxii) a terminal;
- (xxiii) a timing unit;
- (xxiv) a transformer;
- (xxv) a wire; or

(xxvi) equipment, machinery, or software that functions similarly to an item listed in Subsections [(119)] (~~(120)~~122)(b)(i) through (xxv) as determined by the commission by rule made in accordance with Subsection [(119)] (~~(120)~~122)(c).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes equipment, machinery, or software that functions similarly to an item listed in Subsections [(119)] (~~(120)~~122)(b)(i) through (xxv).

[(120)] (~~(121)~~123) "Tobacco" means:

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

[(121)] (~~(122)~~124) "Unassisted amusement device" means an amusement device, skill

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device, or ride device that is started and stopped by the purchaser or renter of the right to use or operate the amusement device, skill device, or ride device.

~~[(122)]~~ ~~(123)~~ (125) (a) "Use" means the exercise of any right or power over tangible personal property, a product transferred electronically, or a service under Subsection 59-12-103(1), incident to the ownership or the leasing of that tangible personal property, product transferred electronically, or service.

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

~~[(123)]~~ ~~(124)~~ (126) "Value-added nonvoice data service" means a service:

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

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

- (i) code;
- (ii) content;
- (iii) form; or
- (iv) protocol.

~~[(124)]~~ ~~(125)~~ (127) (a) Subject to Subsection ~~[(124)]~~ ~~(125)~~ (127)(b), "vehicle" means the following that are required to be titled, registered, or titled and registered:

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

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

- (i) a vehicle described in Subsection ~~[(124)]~~ ~~(125)~~ (127)(a); or
- (ii) (A) a locomotive;
- (B) a freight car;
- (C) railroad work equipment; or
- (D) other railroad rolling stock.

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~~[(125)]~~ ~~(126;128)~~ "Vehicle dealer" means a person engaged in the business of buying, selling, or exchanging a vehicle as defined in Subsection ~~[(124)]~~ ~~(125;127)~~.

~~[(126)]~~ ~~(127;129)~~ (a) "Vertical service" means an ancillary service that:

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

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

~~[(127)]~~ ~~(128;130)~~ (a) "Voice mail service" means an ancillary service that enables a customer to receive, send, or store a recorded message.

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

~~[(128)]~~ ~~(129;131)~~ (a) Except as provided in Subsection ~~[(128)]~~ ~~(129;131)~~(b), "waste energy facility" means a facility that generates electricity:

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

- (A) tires;
- (B) waste coal; or
- (C) oil shale; and
- (ii) in amounts greater than actually required for the operation of the facility.

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

- (i) municipal solid waste;
- (ii) hospital waste as defined in 40 C.F.R. 60.51c; or
- (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

~~[(129)]~~ ~~(130;132)~~ "Watercraft" means a vessel as defined in Section 73-18-2.

~~[(130)]~~ ~~(131;133)~~ "Wind energy" means wind used as the sole source of energy to produce electricity.

~~[(131)]~~ ~~(132;134)~~ "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic location by the United States Postal Service.

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

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### 59-12-102.3. Authority to enter into agreement -- Delegates.

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

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

(a) establish standards for certification of a:

(i) certified automated system; and

(ii) certified service provider;

(b) act jointly with other states that are parties to the agreement to establish performance standards for multistate sellers; and

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

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

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

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

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

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

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

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

(4) Delegates shall be appointed as follows:

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

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

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

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

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

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

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### tax revenues.

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

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

(b) amounts paid for:

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

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

(iii) an ancillary service associated with a:

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

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

(c) sales of the following for commercial use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(d) sales of the following for residential use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(e) sales of prepared food;

(f) except as provided in Section 59-12-104, amounts paid or charged as admission or user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,

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fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, horseback rides, sports activities, or any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity;

(g) amounts paid or charged for services for repairs or renovations of tangible personal property, unless Section 59-12-104 provides for an exemption from sales and use tax for:

(i) the tangible personal property; and

(ii) parts used in the repairs or renovations of the tangible personal property described in Subsection (1)(g)(i), whether or not any parts are actually used in the repairs or renovations of that tangible personal property;

(h) except as provided in Subsection 59-12-104(7), amounts paid or charged for assisted cleaning or washing of tangible personal property;

(i) amounts paid or charged for tourist home, hotel, motel, or trailer court accommodations and services that are regularly rented for less than 30 consecutive days;

(j) amounts paid or charged for laundry or dry cleaning services;

(k) amounts paid or charged for leases or rentals of tangible personal property if within this state the tangible personal property is:

(i) stored;

(ii) used; or

(iii) otherwise consumed;

(l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:

(i) stored;

(ii) used; or

(iii) consumed; and

(m) amounts paid or charged for a sale:

(i) (A) of a product ~~[that:]~~ transferred electronically; or

~~[(F) is transferred electronically; and]~~

~~[(H) would be subject to a tax under this chapter if the product was transferred in a~~

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~~manner other than electronically; or]~~

(B) of a repair or renovation of a product [~~that:~~] transferred electronically; and

~~[(f) is transferred electronically; and]~~

~~[(H) would be subject to a tax under this chapter if the product was transferred in a manner other than electronically; and]~~

(ii) regardless of whether the sale provides:

(A) a right of permanent use of the product; or

(B) a right to use the product that is less than a permanent use, including a right:

(I) for a definite or specified length of time; and

(II) that terminates upon the occurrence of a condition.

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

(i) a state tax imposed on the transaction at a tax rate equal to the sum of:

(A) 4.70%; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) If an optional computer software maintenance contract is a bundled transaction that consists of taxable and nontaxable products that are not separately itemized on the invoice or similar billing document, the purchase of the optional computer software maintenance contract is 40% taxable under this chapter and 60% nontaxable under this chapter.

~~[(ii)]~~ (iii) Subject to Subsection (2)(d)~~[(iii)]~~(iv), for a bundled transaction other than a bundled transaction described in Subsection (2)(d)(i) or (ii):

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

(I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is not subject to taxation under this chapter from the

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books and records the seller keeps in the seller's regular course of business; or

(II) state or federal law provides otherwise; or

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

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

(II) state or federal law provides otherwise.

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

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

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

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

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

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

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

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

(B) Subsection (2)(b)(i);

(C) Subsection (2)(c)(i); or

(D) Subsection (2)(d)(i)(A)(I).

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

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

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- (B) Subsection (2)(b)(i);
- (C) Subsection (2)(c)(i); or
- (D) Subsection (2)(d)(i)(A)(I).

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

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

(ii) Subsection (2)(g)(i) applies to the tax rates described in the following:

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

(iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

(3) (a) The following state taxes shall be deposited into the General Fund:

- (i) the tax imposed by Subsection (2)(a)(i)(A);
- (ii) the tax imposed by Subsection (2)(b)(i);
- (iii) the tax imposed by Subsection (2)(c)(i); or
- (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

(b) The following local taxes shall be distributed to a county, city, or town as provided in this chapter:

- (i) the tax imposed by Subsection (2)(a)(ii);
- (ii) the tax imposed by Subsection (2)(b)(ii);
- (iii) the tax imposed by Subsection (2)(c)(ii); and
- (iv) the tax imposed by Subsection (2)(d)(i)(B).

(4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2003, the lesser of the following amounts shall be used as provided in Subsections (4)(b) through (g):

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

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(B) for the fiscal year; or

(ii) \$17,500,000.

(b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount described in Subsection (4)(a) shall be transferred each year as dedicated credits to the Department of Natural Resources to:

(A) implement the measures described in Subsections 79-2-303(3)(a) through (d) to protect sensitive plant and animal species; or

(B) award grants, up to the amount authorized by the Legislature in an appropriations act, to political subdivisions of the state to implement the measures described in Subsections 79-2-303(3)(a) through (d) to protect sensitive plant and animal species.

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

(iii) At the end of each fiscal year:

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

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

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

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

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

(ii) At the end of each fiscal year:

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

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

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

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

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

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

(B) fund state required dam safety improvements; and

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

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

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

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

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

(iii) develop surface water sources.

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

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

(ii) \$17,500,000.

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

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

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

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

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

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

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

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

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

(i) preconstruction costs:

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

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

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

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

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

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

(f) After making the transfers required by Subsections (5)(b) and (c) and subject to Subsection (5)(g), 6% of the remaining difference described in Subsection (5)(a) shall be transferred each year as dedicated credits to the Division of Water Rights to cover the costs incurred for employing additional technical staff for the administration of water rights.

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

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

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

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

(8) (a) Notwithstanding Subsection (3)(a) and in addition to the amount deposited in Subsection (7)(a), for the 2010-11 fiscal year only, the Division of Finance shall deposit into

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the Centennial Highway Fund Restricted Account created by Section 72-2-118 a portion of the taxes listed under Subsection (3)(a) equal to 1.93% of the revenues collected from the following taxes, which represents a portion of the approximately 17% of sales and use tax revenues generated annually by the sales and use tax on vehicles and vehicle-related products:

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

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

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

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

- (i) the tax imposed by Subsection (2)(a)(i)(A);
- (ii) the tax imposed by Subsection (2)(b)(i);
- (iii) the tax imposed by Subsection (2)(c)(i); and

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(iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

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

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

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

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

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

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

(b) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection (11)(b)(ii), and in addition to any amounts deposited under Subsections (7), (9), and (10), when the general obligation bonds authorized by Section 63B-16-101 have been paid off and the highway

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projects completed that are included in the prioritized project list under Subsection 72-2-125(4) as determined in accordance with Subsection 72-2-125(6), the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the amount of tax revenue generated by a .025% tax rate on the transactions described in Subsection (1).

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

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

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

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

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

(1) As used in this section:

(a) "applicant" means a person that:

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

(ii) submits an application:

(A) to the commission; and

(B) for a license under this section;

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

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

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

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

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

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

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

(E) is a trustee of the applicant described in Subsection (1)(c)(i); or

(F) has a relationship to the applicant described in Subsection (1)(c)(i) that is similar to a relationship described in Subsections (1)(c)(ii)(A) through (E) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(d) "fiduciary of the licensee" means a person that:

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

(ii) (A) is a corporate officer of the licensee described in Subsection (1)(d)(i);

(B) is a director of the licensee described in Subsection (1)(d)(i);

(C) is an employee of the licensee described in Subsection (1)(d)(i);

(D) is a partner of the licensee described in Subsection (1)(d)(i);

(E) is a trustee of the licensee described in Subsection (1)(d)(i); or

(F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to a relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(e) "license" means a license under this section; and

(f) "licensee" means a person that is licensed under this section by the commission.

(2) (a) It is unlawful for any person required to collect a tax under this chapter to engage in business within the state without first having obtained a license to do so.

(b) The license described in Subsection (2)(a):

(i) shall be granted and issued by the commission;

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- (ii) is not assignable;
- (iii) is valid only for the person in whose name the license is issued;
- (iv) is valid until:
  - (A) the person described in Subsection (2)(b)(iii):
    - (I) ceases to do business; or
    - (II) changes that person's business address; or
  - (B) the license is revoked by the commission; and
- (v) subject to Subsection (2)(d), shall be granted by the commission only upon an

application that:

- (A) states the name and address of the applicant; and
- (B) provides other information the commission may require.
- (c) At the time an applicant makes an application under Subsection (2)(b)(v), the

commission shall notify the applicant of the responsibilities and liability of a business owner successor under Section 59-12-112.

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

- (i) meets the requirements of this section to be issued a license; and
- (ii) is required to post a bond with the commission in accordance with Subsections

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

(e) (i) An applicant shall post a bond with the commission before the commission may issue the applicant a license if:

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

- (I) the applicant;
- (II) a fiduciary of the applicant; or
- (III) a person for which the applicant or the fiduciary of the applicant is required to

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

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

- (I) the applicant;
- (II) a fiduciary of the applicant; or
- (III) a person for which the applicant or the fiduciary of the applicant is required to

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

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

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chapter, the commission may require a licensee to:

(A) for a licensee that has not posted a bond under this section with the commission, post a bond with the commission in accordance with Subsection (2)(f); or

(B) for a licensee that has posted a bond under this section with the commission, increase the amount of the bond posted with the commission.

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

(A) executed by:

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

(II) for a licensee, the licensee as principal, with a corporate surety; and

(B) payable to the commission conditioned upon the faithful performance of all of the requirements of this chapter including:

(I) the payment of any tax under this chapter;

(II) the payment of any:

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

(Bb) interest as provided in Section 59-1-402; or

(III) any other obligation of the:

(Aa) applicant under this chapter; or

(Bb) licensee under this chapter.

(ii) Except as provided in Subsection (2)(f)(iv), the commission shall calculate the amount of a bond required by Subsection (2)(e) on the basis of:

(A) commission estimates of:

(I) an applicant's tax liability under this chapter; or

(II) a licensee's tax liability under this chapter; and

(B) any amount of a delinquency described in Subsection (2)(f)(iii).

(iii) Except as provided in Subsection (2)(f)(iv), for purposes of Subsection (2)(f)(ii)(B):

(A) for an applicant, the amount of the delinquency is the sum of:

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

(Aa) the applicant;

(Bb) a fiduciary of the applicant; or

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

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

(Aa) the applicant;

(Bb) a fiduciary of the applicant; and

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

(B) for a licensee, the amount of the delinquency is the sum of:

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

(Aa) the licensee;

(Bb) a fiduciary of the licensee; or

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

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

(Aa) the licensee;

(Bb) a fiduciary of the licensee; and

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

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

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

(B) exceed \$500,000.

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

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

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

(A) paying any:

(I) tax due under this chapter;

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

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

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

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

(j) A license:

(i) is not required for any person engaged exclusively in the business of selling commodities that are exempt from taxation under this chapter; and

(ii) shall be issued to the person by the commission without a license fee.

(3) (a) For the purpose of the proper administration of this chapter and to prevent evasion of the tax and the duty to collect the tax, it shall be presumed that tangible personal property or any other taxable transaction under Subsection 59-12-103(1) sold by any person for delivery in this state is sold for storage, use, or other consumption in this state unless the person selling the property, item, or service has taken from the purchaser an exemption certificate:

(i) bearing the name and address of the purchaser; and

(ii) providing that the property, item, or service was exempted under Section 59-12-104.

(b) An exemption certificate described in Subsection (3)(a):

(i) shall contain information as prescribed by the commission; and

(ii) if a paper exemption certificate is used, shall be signed by the purchaser.

(c) (i) Subject to Subsection (3)(c)(ii), a seller or certified service provider is not liable to collect a tax under this chapter if the seller or certified service provider obtains within 90 days after a transaction is complete:

(A) an exemption certificate containing the information required by Subsections (3)(a) and (b); or

(B) the information required by Subsections (3)(a) and (b).

(ii) A seller or certified service provider that does not obtain the exemption certificate or information described in Subsection (3)(c)(i) with respect to a transaction [~~may, within~~ is allowed] 120 days after the commission requests the seller or certified service provider to

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substantiate the exemption to:

(A) establish that the transaction is not subject to taxation under this chapter by a means other than providing an exemption certificate containing the information required by Subsections (3)(a) and (b); or

(B) subject to Subsection (3)(c)(iii), obtain an exemption certificate containing the information required by Subsections (3)(a) and (b), taken in good faith.

(iii) For purposes of Subsection (3)(c)(ii)(B), an exemption certificate is taken in good faith if the exemption certificate claims an exemption that:

(A) was allowed by statute on the date of the transaction in the jurisdiction of the location of the transaction;

(B) could be applicable to that transaction; and

(C) is reasonable for the purchaser's type of business.

(d) Except as provided in Subsection (3)(e), a seller or certified service provider that takes an exemption certificate from a purchaser in accordance with this Subsection (3) with respect to a transaction is not liable to collect a tax under this chapter[~~-(t)~~] on that transaction[~~;~~ and].

~~[(ii) if the commission or a court of competent jurisdiction subsequently determines that the purchaser improperly claimed the exemption.]~~

(e) Subsection (3)(d) does not apply to a seller or certified service provider [~~that:~~] if the commission establishes through an audit that the seller or certified service provider:

~~[(i) fraudulently fails to collect a tax under this chapter;]~~

~~[(ii) solicits a purchaser to participate in improperly claiming an exemption from a tax under this chapter; or]~~

~~[(iii) accepts an exemption certificate for an exemption that is allowed on the basis of the entity claiming the exemption if:]~~

~~[(A) the purchaser receives the tangible personal property, product, or service that is the subject of the exemption certificate at a location operated by the seller; and]~~

~~[(B) the exemption certificate states that the tangible personal property, product, or service is not exempt from taxation under this chapter.]~~

(i) knew or had reason to know at the time the purchaser provided the seller or certified service provider the information described in Subsection (3)(a) or (b) that the information

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related to the exemption claimed was materially false; or

(ii) otherwise knowingly participated in activity intended to purposefully evade the tax due on the transaction.

(f) (i) Subject to Subsection (3)(f)(ii) and except as provided in Subsection (3)(f)(iii), if there is a recurring business relationship between a seller or certified service provider and a purchaser, the commission may not require the seller or certified service provider to:

(A) renew an exemption certificate;

(B) update an exemption certificate; or

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

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

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

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

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

### **59-12-128. Amnesty.**

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

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

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

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

(iii) Section 19-6-714;

(iv) Section 19-6-805;

(v) Section 69-2-5;

(vi) Section 69-2-5.5;

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- (vii) Section 69-2-5.6; or
- (viii) this chapter;
- (b) a penalty on a tax, fee, or charge described in Subsection (1)(a); or
- (c) interest on a tax, fee, or charge described in Subsection (1)(a).

(2) ~~[The]~~ (a) Except as provided in Subsections (2)(b) and (3) and subject to Subsections (4) and (5), the commission shall grant a seller amnesty [under this section] if the seller:

~~[(a) was not licensed under Section 59-12-106 at any time during the 12-month period prior to the effective date of the state's participation in the agreement;]~~

~~[(b)]~~ (i) obtains a license under Section 59-12-106 [within a 12-month period after the effective date of the state's participation in the agreement]; and

~~[(c)]~~ (ii) is registered under the agreement.

(b) The commission is not required to grant a seller amnesty under this section beginning 12 months after the date the state becomes a full member under the agreement.

(3) A seller may not receive amnesty under this section for a tax, fee, or charge:

- (a) the seller collects;
- (b) the seller remits to the commission;
- (c) that the seller is required to remit to the commission on the seller's purchase; or
- (d) arising from a transaction that occurs within a time period that is under audit by the

commission if:

(i) the seller receives notice of the commencement of the audit prior to obtaining a license under Section 59-12-106; and

(ii) (A) the audit described in Subsection (3)(d)(i) is not complete; or

(B) the seller has not exhausted all administrative and judicial remedies in connection with the audit described in Subsection (3)(d)(i).

(4) (a) Except as provided in Subsection (4)(b), amnesty the commission grants to a seller under this section:

(i) applies to the time period during which the seller is not licensed under Section 59-12-106; and

(ii) remains in effect if, for a period of three years, the seller:

(A) remains registered under the agreement;

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(B) collects a tax, fee, or charge on a transaction subject to a tax, fee, or charge described in Subsection (1)(a); and

(C) remits to the commission the taxes, fees, and charges the seller collects in accordance with Subsection (4)(a)(ii)(B).

(b) The commission may not grant a seller amnesty under this section if, with respect to a tax, fee, or charge for which the seller would otherwise be granted amnesty under this section, the seller commits:

(i) fraud; or

(ii) an intentional misrepresentation of a material fact.

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

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

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

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

(1) As used in this section:

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

(A) taking possession of tangible personal property;

(B) making first use of a service; or

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

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

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

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

(b) "Transportation equipment" means:

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

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commerce:

(ii) a truck or truck-tractor:

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

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

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

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

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

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

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

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

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

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

(iv) an aircraft that is operated by an air carrier authorized and certificated:

(A) by the United States Department of Transportation or another federal or foreign

authority; and

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

(v) a container designed for use on, or a component part attached or secured on, an item of equipment listed in Subsections (1)(b)(i) through (iv).

(2) Except as provided in Subsections (8) and ~~[(13)]~~ (14), if tangible personal property, a product transferred electronically, or a service that is subject to taxation under this chapter is received by a purchaser at a business location of a seller, the location of the transaction is the business location of the seller.

(3) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11), and ~~[(13)]~~ (14), if tangible personal property, a product transferred electronically, or a service that is subject to taxation under this chapter is not received by a purchaser at a business location of a seller, the location of the transaction is the location where the purchaser takes receipt of the tangible personal property or service.

(4) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11), and ~~[(13)]~~ (14), if Subsection (2) or (3) does not apply, the location of the transaction is the location indicated by an address for or other information on the purchaser if:

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

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

(5) (a) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11), and ~~[(13)]~~ (14), if Subsection (2), (3), or (4) does not apply, the location of the transaction is the location indicated by an address for the purchaser if:

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

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

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

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

(a) indicated by the address from which:

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

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

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

or

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

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

(ii) associated with the mobile telephone number.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) after exercising due diligence, a seller or certified service provider is unable to

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determine a nine-digit ZIP Code for the location determined under Subsections (3) through (6), (8), or (9).

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

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

(i) by:

(A) telegraph;

(B) telephone; or

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

(ii) for delivery to another place:

(A) in this state; or

(B) outside this state.

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

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

(i) define:

(A) "business location"; and

(B) "florist";

(ii) define what constitutes a means of communication similar to Subsection (11)(a)(i)(A) or (B); and

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

(12) (a) Notwithstanding any other provision of this section and except as provided in Subsection (12)(b), if a purchaser uses computer software and there is not a transfer of a copy of that software to the purchaser, the location of the transaction is determined in accordance with Subsections (4) and (5).

(b) If a purchaser uses computer software described in Subsection (12)(a) at more than

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one location, the location of the transaction shall be determined in accordance with rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

(b) The form described in Subsection [(12)] (13)(a) shall be filed with the commission as required under this chapter.

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

(a) amounts charged by a seller for:

(i) telecommunications service except for a prepaid calling service or a prepaid wireless calling service as provided in Subsection (6)(b) or Section 59-12-215; or

(ii) the retail sale or transfer of:

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

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

(C) a watercraft;

(D) a modular home;

(E) a manufactured home; or

(F) a mobile home; or

(iii) except as provided in Section 59-12-214, the lease or rental of tangible personal property other than tangible personal property that is transportation equipment;

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

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

(i) the seller receives the order for the tangible personal property or product transferred electronically in this state;

(ii) receipt of the tangible personal property or product transferred electronically by the purchaser or the purchaser's donee occurs in this state;

(iii) the location where receipt of the tangible personal property or product transferred electronically by the purchaser occurs is determined in accordance with Subsections (3) through (5); and

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

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uses to calculate the proper amount of tax imposed under this chapter captures the location where the order is received.

Section ~~6~~7. **Effective date.**

This bill takes effect on July 1, 2011.