

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

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:



26 None

27 **Other Special Clauses:**

28 This bill takes effect on July 1, 2011.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **59-12-102**, as last amended by Laws of Utah 2010, Chapters 88, 142, 234, and 263

32 **59-12-102.3**, as enacted by Laws of Utah 2008, Chapter 384

33 **59-12-103**, as last amended by Laws of Utah 2010, Chapter 412

34 **59-12-106**, as last amended by Laws of Utah 2008, Chapters 382 and 384

35 **59-12-128**, as last amended by Laws of Utah 2009, Chapter 212

36 **59-12-211**, as last amended by Laws of Utah 2010, Chapters 142, 234, and 263



37
38 *Be it enacted by the Legislature of the state of Utah:*

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

40 **59-12-102. Definitions.**

41 As used in this chapter:

42 (1) "800 service" means a telecommunications service that:

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

44 (b) is typically marketed:

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

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

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

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

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

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

51 Federal Communications Commission.

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

53 (i) a subscriber purchases;

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

55 the subscriber's:

56 (A) prerecorded announcement; or

- 57 (B) live service; and
- 58 (iii) is typically marketed:
- 59 (A) under the name 900 service; or
- 60 (B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal
- 61 Communications Commission.
- 62 (b) "900 service" does not include a charge for:
- 63 (i) a collection service a seller of a telecommunications service provides to a
- 64 subscriber; or
- 65 (ii) the following a subscriber sells to the subscriber's customer:
- 66 (A) a product; or
- 67 (B) a service.
- 68 (3) (a) "Admission or user fees" includes season passes.
- 69 (b) "Admission or user fees" does not include annual membership dues to private
- 70 organizations.
- 71 (4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on
- 72 November 12, 2002, including amendments made to the Streamlined Sales and Use Tax
- 73 Agreement after November 12, 2002.
- 74 (5) "Agreement combined tax rate" means the sum of the tax rates:
- 75 (a) listed under Subsection (6); and
- 76 (b) that are imposed within a local taxing jurisdiction.
- 77 (6) "Agreement sales and use tax" means a tax imposed under:
- 78 (a) Subsection 59-12-103(2)(a)(i)(A);
- 79 (b) Subsection 59-12-103(2)(b)(i);
- 80 (c) Subsection 59-12-103(2)(c)(i);
- 81 (d) Subsection 59-12-103(2)(d)(i)(A)(I);
- 82 (e) Section 59-12-204;
- 83 (f) Section 59-12-401;
- 84 (g) Section 59-12-402;
- 85 (h) Section 59-12-703;
- 86 (i) Section 59-12-802;
- 87 (j) Section 59-12-804;

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

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

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

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

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

127 (b) "Ancillary service" includes:

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

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

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

- 136 (a) who is not the purchaser or renter of the right to use or operate the amusement
137 device, skill device, or ride device; and
- 138 (b) at the direction of the seller of the right to use the amusement device, skill device,
139 or ride device.

140 (13) "Assisted cleaning or washing of tangible personal property" means cleaning or
141 washing of tangible personal property if the cleaning or washing labor is primarily performed
142 by an individual:

- 143 (a) who is not the purchaser of the cleaning or washing of the tangible personal
144 property; and
- 145 (b) at the direction of the seller of the cleaning or washing of the tangible personal
146 property.

147 (14) "Authorized carrier" means:

- 148 (a) in the case of vehicles operated over public highways, the holder of credentials
149 indicating that the vehicle is or will be operated pursuant to both the International Registration

150 Plan and the International Fuel Tax Agreement;

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

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

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

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

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

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

160 (B) animal waste;

161 (C) methane produced:

162 (I) at landfills; or

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

164 (D) aquatic plants; and

165 (E) agricultural products.

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

167 (i) black liquor;

168 (ii) treated woods; or

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

170 (A) at landfills; or

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

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

174 (i) distinct and identifiable; and

175 (ii) sold for one nonitemized price.

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

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

178 the basis of the selection by the purchaser of the items of tangible personal property included in
179 the transaction;

180 (ii) the sale of real property;

- 181 (iii) the sale of services to real property;
- 182 (iv) the retail sale of tangible personal property and a service if:
 - 183 (A) the tangible personal property:
 - 184 (I) is essential to the use of the service; and
 - 185 (II) is provided exclusively in connection with the service; and
 - 186 (B) the service is the true object of the transaction;
- 187 (v) the retail sale of two services if:
 - 188 (A) one service is provided that is essential to the use or receipt of a second service;
 - 189 (B) the first service is provided exclusively in connection with the second service; and
 - 190 (C) the second service is the true object of the transaction;
- 191 (vi) a transaction that includes tangible personal property or a product subject to
192 taxation under this chapter and tangible personal property or a product that is not subject to
193 taxation under this chapter if the:
 - 194 (A) seller's purchase price of the tangible personal property or product subject to
195 taxation under this chapter is de minimis; or
 - 196 (B) seller's sales price of the tangible personal property or product subject to taxation
197 under this chapter is de minimis; and
- 198 (vii) the retail sale of tangible personal property that is not subject to taxation under
199 this chapter and tangible personal property that is subject to taxation under this chapter if:
 - 200 (A) that retail sale includes:
 - 201 (I) food and food ingredients;
 - 202 (II) a drug;
 - 203 (III) durable medical equipment;
 - 204 (IV) mobility enhancing equipment;
 - 205 (V) an over-the-counter drug;
 - 206 (VI) a prosthetic device; or
 - 207 (VII) a medical supply; and
 - 208 (B) subject to Subsection (16)(f):
 - 209 (I) the seller's purchase price of the tangible personal property subject to taxation under
210 this chapter is 50% or less of the seller's total purchase price of that retail sale; or
 - 211 (II) the seller's sales price of the tangible personal property subject to taxation under

212 this chapter is 50% or less of the seller's total sales price of that retail sale.

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

215 (A) packaging that:

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

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

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

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

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

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

232 (A) a binding sales document; or

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

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

236 (A) a bill of sale;

237 (B) a contract;

238 (C) an invoice;

239 (D) a lease agreement;

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

241 (F) a price list;

242 (G) a rate card;

243 (H) a receipt; or

244 (I) a service agreement.

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

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

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

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

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

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

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

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

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

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

268 (i) on a transaction; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

297 (23) "Component part" includes:

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

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

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

303 (d) feed, seeds, and seedlings.

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

- 305 (a) (i) in digital form; or
306 (ii) in a form similar to digital form; and
307 (b) manipulates that information for a result based on a sequence of instructions.
308 (25) "Computer software" means a set of coded instructions designed to cause:
309 (a) a computer to perform a task; or
310 (b) automatic data processing equipment to perform a task.
311 (26) (a) "Conference bridging service" means an ancillary service that links two or
312 more participants of an audio conference call or video conference call.
313 (b) "Conference bridging service" [~~includes~~] may include providing a telephone
314 number as part of the ancillary service described in Subsection (26)(a).
315 (c) "Conference bridging service" does not include a telecommunications service used
316 to reach the ancillary service described in Subsection (26)(a).
317 (27) "Construction materials" means any tangible personal property that will be
318 converted into real property.
319 (28) "Delivered electronically" means delivered to a purchaser by means other than
320 tangible storage media.
321 (29) (a) "Delivery charge" means a charge:
322 (i) by a seller of:
323 (A) tangible personal property;
324 (B) a product transferred electronically; or
325 (C) services; and
326 (ii) for preparation and delivery of the tangible personal property, product transferred
327 electronically, or services described in Subsection (29)(a)(i) to a location designated by the
328 purchaser.
329 (b) "Delivery charge" includes a charge for the following:
330 (i) transportation;
331 (ii) shipping;
332 (iii) postage;
333 (iv) handling;
334 (v) crating; or
335 (vi) packing.

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

338 (31) "Dietary supplement" means a product, other than tobacco, that:

339 (a) is intended to supplement the diet;

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

341 (i) a vitamin;

342 (ii) a mineral;

343 (iii) an herb or other botanical;

344 (iv) an amino acid;

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

347 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
348 described in Subsections (31)(b)(i) through (v);

349 (c) (i) except as provided in Subsection (31)(c)(ii), is intended for ingestion in:

350 (A) tablet form;

351 (B) capsule form;

352 (C) powder form;

353 (D) softgel form;

354 (E) gelcap form; or

355 (F) liquid form; or

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

358 (A) as conventional food; and

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

360 (I) a meal; or

361 (II) the diet; and

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

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

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

365 (32) (a) "Direct mail" means printed material delivered or distributed by United States
366 mail or other delivery service:

- 367 (i) to:
- 368 (A) a mass audience; or
- 369 (B) addressees on a mailing list provided:
- 370 (I) by a purchaser of the mailing list; or
- 371 (II) at the discretion of the purchaser of the mailing list; and
- 372 (ii) if the cost of the printed material is not billed directly to the recipients.
- 373 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
- 374 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 375 (c) "Direct mail" does not include multiple items of printed material delivered to a
- 376 single address.
- 377 (33) "Directory assistance" means an ancillary service of providing:
- 378 (a) address information; or
- 379 (b) telephone number information.
- 380 (34) (a) "Disposable home medical equipment or supplies" means medical equipment
- 381 or supplies that:
- 382 (i) cannot withstand repeated use; and
- 383 (ii) are purchased by, for, or on behalf of a person other than:
- 384 (A) a health care facility as defined in Section 26-21-2;
- 385 (B) a health care provider as defined in Section 78B-3-403;
- 386 (C) an office of a health care provider described in Subsection (34)(a)(ii)(B); or
- 387 (D) a person similar to a person described in Subsections (34)(a)(ii)(A) through (C).
- 388 (b) "Disposable home medical equipment or supplies" does not include:
- 389 (i) a drug;
- 390 (ii) durable medical equipment;
- 391 (iii) a hearing aid;
- 392 (iv) a hearing aid accessory;
- 393 (v) mobility enhancing equipment; or
- 394 (vi) tangible personal property used to correct impaired vision, including:
- 395 (A) eyeglasses; or
- 396 (B) contact lenses.
- 397 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

398 commission may by rule define what constitutes medical equipment or supplies.

399 (35) (a) "Drug" means a compound, substance, or preparation, or a component of a
400 compound, substance, or preparation that is:

401 (i) recognized in:

402 (A) the official United States Pharmacopoeia;

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

404 (C) the official National Formulary; or

405 (D) a supplement to a publication listed in Subsections (35)(a)(i)(A) through (C);

406 (ii) intended for use in the:

407 (A) diagnosis of disease;

408 (B) cure of disease;

409 (C) mitigation of disease;

410 (D) treatment of disease; or

411 (E) prevention of disease; or

412 (iii) intended to affect:

413 (A) the structure of the body; or

414 (B) any function of the body.

415 (b) "Drug" does not include:

416 (i) food and food ingredients;

417 (ii) a dietary supplement;

418 (iii) an alcoholic beverage; or

419 (iv) a prosthetic device.

420 (36) (a) Except as provided in Subsection (36)(c), "durable medical equipment" means
421 equipment that:

422 (i) can withstand repeated use;

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

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

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

426 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
427 equipment described in Subsection (36)(a).

428 (c) Notwithstanding Subsection (36)(a), "durable medical equipment" does not include

429 mobility enhancing equipment.

430 (37) "Electronic" means:

431 (a) relating to technology; and

432 (b) having:

433 (i) electrical capabilities;

434 (ii) digital capabilities;

435 (iii) magnetic capabilities;

436 (iv) wireless capabilities;

437 (v) optical capabilities;

438 (vi) electromagnetic capabilities; or

439 (vii) capabilities similar to Subsections (37)(b)(i) through (vi).

440 (38) "Employee" is as defined in Section 59-10-401.

441 (39) "Fixed guideway" means a public transit facility that uses and occupies:

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

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

444 (40) "Fixed wing turbine powered aircraft" means an aircraft that:

445 (a) is powered by turbine engines;

446 (b) operates on jet fuel; and

447 (c) has wings that are permanently attached to the fuselage of the aircraft.

448 (41) "Fixed wireless service" means a telecommunications service that provides radio

449 communication between fixed points.

450 (42) (a) "Food and food ingredients" means substances:

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

452 (A) liquid form;

453 (B) concentrated form;

454 (C) solid form;

455 (D) frozen form;

456 (E) dried form; or

457 (F) dehydrated form; and

458 (ii) that are:

459 (A) sold for:

- 460 (I) ingestion by humans; or
- 461 (II) chewing by humans; and
- 462 (B) consumed for the substance's:
- 463 (I) taste; or
- 464 (II) nutritional value.
- 465 (b) "Food and food ingredients" includes an item described in Subsection (78)(b)(iii).
- 466 (c) "Food and food ingredients" does not include:
- 467 (i) an alcoholic beverage;
- 468 (ii) tobacco; or
- 469 (iii) prepared food.
- 470 (43) (a) "Fundraising sales" means sales:
- 471 (i) (A) made by a school; or
- 472 (B) made by a school student;
- 473 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 474 materials, or provide transportation; and
- 475 (iii) that are part of an officially sanctioned school activity.
- 476 (b) For purposes of Subsection (43)(a)(iii), "officially sanctioned school activity"
- 477 means a school activity:
- 478 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 479 district governing the authorization and supervision of fundraising activities;
- 480 (ii) that does not directly or indirectly compensate an individual teacher or other
- 481 educational personnel by direct payment, commissions, or payment in kind; and
- 482 (iii) the net or gross revenues from which are deposited in a dedicated account
- 483 controlled by the school or school district.
- 484 (44) "Geothermal energy" means energy contained in heat that continuously flows
- 485 outward from the earth that is used as the sole source of energy to produce electricity.
- 486 (45) "Governing board of the agreement" means the governing board of the agreement
- 487 that is:
- 488 (a) authorized to administer the agreement; and
- 489 (b) established in accordance with the agreement.
- 490 (46) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:

- 491 (i) the executive branch of the state, including all departments, institutions, boards,
492 divisions, bureaus, offices, commissions, and committees;
- 493 (ii) the judicial branch of the state, including the courts, the Judicial Council, the
494 Office of the Court Administrator, and similar administrative units in the judicial branch;
- 495 (iii) the legislative branch of the state, including the House of Representatives, the
496 Senate, the Legislative Printing Office, the Office of Legislative Research and General
497 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal
498 Analyst;
- 499 (iv) the National Guard;
- 500 (v) an independent entity as defined in Section 63E-1-102; or
- 501 (vi) a political subdivision as defined in Section 17B-1-102.
- 502 (b) "Governmental entity" does not include the state systems of public and higher
503 education, including:
- 504 (i) a college campus of the Utah College of Applied Technology;
- 505 (ii) a school;
- 506 (iii) the State Board of Education;
- 507 (iv) the State Board of Regents; or
- 508 (v) a state institution of higher education as defined in Section 53B-3-102.
- 509 (47) "Hydroelectric energy" means water used as the sole source of energy to produce
510 electricity.
- 511 (48) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
512 other fuels:
- 513 (a) in mining or extraction of minerals;
- 514 (b) in agricultural operations to produce an agricultural product up to the time of
515 harvest or placing the agricultural product into a storage facility, including:
- 516 (i) commercial greenhouses;
- 517 (ii) irrigation pumps;
- 518 (iii) farm machinery;
- 519 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
520 registered under Title 41, Chapter 1a, Part 2, Registration; and
- 521 (v) other farming activities;

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

525 (d) by a scrap recycler if:

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

529 (A) iron;

530 (B) steel;

531 (C) nonferrous metal;

532 (D) paper;

533 (E) glass;

534 (F) plastic;

535 (G) textile; or

536 (H) rubber; and

537 (ii) the new products under Subsection (48)(d)(i) would otherwise be made with
538 nonrecycled materials; or

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

541 (49) (a) Except as provided in Subsection (49)(b), "installation charge" means a charge
542 for installing:

543 (i) tangible personal property; or

544 (ii) a product transferred electronically.

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

546 (i) repairs or renovations of:

547 [(†)] (A) tangible personal property; or

548 [(†)] (B) a product transferred electronically[:]; or

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

550 (A) to other tangible personal property; and

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

552 (50) (a) "Lease" or "rental" means a transfer of possession or control of tangible

553 personal property or a product transferred electronically for:
554 (i) (A) a fixed term; or
555 (B) an indeterminate term; and
556 (ii) consideration.
557 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
558 amount of consideration may be increased or decreased by reference to the amount realized
559 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
560 Code.
561 (c) "Lease" or "rental" does not include:
562 (i) a transfer of possession or control of property under a security agreement or
563 deferred payment plan that requires the transfer of title upon completion of the required
564 payments;
565 (ii) a transfer of possession or control of property under an agreement that requires the
566 transfer of title:
567 (A) upon completion of required payments; and
568 (B) if the payment of an option price does not exceed the greater of:
569 (I) \$100; or
570 (II) 1% of the total required payments; or
571 (iii) providing tangible personal property along with an operator for a fixed period of
572 time or an indeterminate period of time if the operator is necessary for equipment to perform as
573 designed.
574 (d) For purposes of Subsection (50)(c)(iii), an operator is necessary for equipment to
575 perform as designed if the operator's duties exceed the:
576 (i) set-up of tangible personal property;
577 (ii) maintenance of tangible personal property; or
578 (iii) inspection of tangible personal property.
579 (51) "Load and leave" means delivery to a purchaser by use of a tangible storage media
580 if the tangible storage media is not physically transferred to the purchaser.
581 (52) "Local taxing jurisdiction" means a:
582 (a) county that is authorized to impose an agreement sales and use tax;
583 (b) city that is authorized to impose an agreement sales and use tax; or

- 584 (c) town that is authorized to impose an agreement sales and use tax.
- 585 (53) "Manufactured home" is as defined in Section 58-56-3.
- 586 (54) For purposes of Section 59-12-104, "manufacturing facility" means:
- 587 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
- 588 Industrial Classification Manual of the federal Executive Office of the President, Office of
- 589 Management and Budget;
- 590 (b) a scrap recycler if:
- 591 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 592 one or more of the following items into prepared grades of processed materials for use in new
- 593 products:
- 594 (A) iron;
- 595 (B) steel;
- 596 (C) nonferrous metal;
- 597 (D) paper;
- 598 (E) glass;
- 599 (F) plastic;
- 600 (G) textile; or
- 601 (H) rubber; and
- 602 (ii) the new products under Subsection (54)(b)(i) would otherwise be made with
- 603 nonrecycled materials; or
- 604 (c) a cogeneration facility as defined in Section 54-2-1.
- 605 (55) "Member of the immediate family of the producer" means a person who is related
- 606 to a producer described in Subsection 59-12-104(20)(a) as a:
- 607 (a) child or stepchild, regardless of whether the child or stepchild is:
- 608 (i) an adopted child or adopted stepchild; or
- 609 (ii) a foster child or foster stepchild;
- 610 (b) grandchild or stepgrandchild;
- 611 (c) grandparent or stepgrandparent;
- 612 (d) nephew or stepnephew;
- 613 (e) niece or stepniece;
- 614 (f) parent or stepparent;

615 (g) sibling or stepsibling;

616 (h) spouse;

617 (i) person who is the spouse of a person described in Subsections (55)(a) through (g);

618 or

619 (j) person similar to a person described in Subsections (55)(a) through (i) as

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

621 Administrative Rulemaking Act.

622 (56) "Mobile home" is as defined in Section 58-56-3.

623 (57) "Mobile telecommunications service" is as defined in the Mobile

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

625 (58) (a) "Mobile wireless service" means a telecommunications service, regardless of
626 the technology used, if:

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

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

629 (iii) the origination point described in Subsection (58)(a)(i) and the termination point
630 described in Subsection (58)(a)(ii) are not fixed.

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

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

635 (59) (a) Except as provided in Subsection (59)(c), "mobility enhancing equipment"
636 means equipment that is:

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

639 (ii) appropriate for use in a:

640 (A) home; or

641 (B) motor vehicle; and

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

643 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
644 the equipment described in Subsection (59)(a).

645 (c) Notwithstanding Subsection (59)(a), "mobility enhancing equipment" does not

646 include:

- 647 (i) a motor vehicle;
- 648 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
649 vehicle manufacturer;
- 650 (iii) durable medical equipment; or
- 651 (iv) a prosthetic device.

652 (60) "Model 1 seller" means a seller registered under the agreement that has selected a
653 certified service provider as the seller's agent to perform all of the seller's sales and use tax
654 functions for agreement sales and use taxes other than the seller's obligation under Section
655 59-12-124 to remit a tax on the seller's own purchases.

656 (61) "Model 2 seller" means a seller registered under the agreement that:

- 657 (a) except as provided in Subsection (61)(b), has selected a certified automated system
658 to perform the seller's sales tax functions for agreement sales and use taxes; and
- 659 (b) notwithstanding Subsection (61)(a), retains responsibility for remitting all of the
660 sales tax:

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

663 (62) (a) Subject to Subsection (62)(b), "model 3 seller" means a seller registered under
664 the agreement that has:

- 665 (i) sales in at least five states that are members of the agreement;
- 666 (ii) total annual sales revenues of at least \$500,000,000;
- 667 (iii) a proprietary system that calculates the amount of tax:
 - 668 (A) for an agreement sales and use tax; and
 - 669 (B) due to each local taxing jurisdiction; and
- 670 (iv) entered into a performance agreement with the governing board of the agreement.
- 671 (b) For purposes of Subsection (62)(a), "model 3 seller" includes an affiliated group of
672 sellers using the same proprietary system.

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

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

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

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

679 (67) (a) "Other fuels" means products that burn independently to produce heat or
680 energy.

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

683 (68) (a) "Paging service" means a telecommunications service that provides
684 transmission of a coded radio signal for the purpose of activating a specific pager.

685 (b) For purposes of Subsection (68)(a), the transmission of a coded radio signal
686 includes a transmission by message or sound.

687 (69) "Pawnbroker" is as defined in Section 13-32a-102.

688 (70) "Pawn transaction" is as defined in Section 13-32a-102.

689 (71) (a) "Permanently attached to real property" means that for tangible personal
690 property attached to real property:

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

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

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

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

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

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

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

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

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

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

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

707 (iii) property attached to oil, gas, or water pipelines, except for the property listed in

708 Subsection (71)(c)(iii) or (iv).

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

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

712 (A) convenience;

713 (B) stability; or

714 (C) for an obvious temporary purpose;

715 (ii) the detachment of tangible personal property from real property except for the
716 detachment described in Subsection (71)(b)(ii);

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

721 (A) a computer;

722 (B) a telephone;

723 (C) a television; or

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

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

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

732 (73) "Place of primary use":

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

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

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

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

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

740 (74) (a) "Postpaid calling service" means a telecommunications service a person
741 obtains by making a payment on a call-by-call basis:

742 (i) through the use of a:

743 (A) bank card;

744 (B) credit card;

745 (C) debit card; or

746 (D) travel card; or

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

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

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

754 (76) "Prepaid calling service" means a telecommunications service:

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

757 (b) that:

758 (i) is paid for in advance; and

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

760 (A) access number; or

761 (B) authorization code;

762 (c) that is dialed:

763 (i) manually; or

764 (ii) electronically; and

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

766 (i) by a known amount; and

767 (ii) with use.

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

769 (a) that provides the right to utilize:

- 770 (i) mobile wireless service; and
- 771 (ii) other service that is not a telecommunications service, including:
 - 772 (A) the download of a product transferred electronically;
 - 773 (B) a content service; or
 - 774 (C) an ancillary service;
- 775 (b) that:
 - 776 (i) is paid for in advance; and
 - 777 (ii) enables the origination of a call using an:
 - 778 (A) access number; or
 - 779 (B) authorization code;
 - 780 (c) that is dialed:
 - 781 (i) manually; or
 - 782 (ii) electronically; and
 - 783 (d) sold in predetermined units or dollars that decline:
 - 784 (i) by a known amount; and
 - 785 (ii) with use.
- 786 (78) (a) "Prepared food" means:
 - 787 (i) food:
 - 788 (A) sold in a heated state; or
 - 789 (B) heated by a seller;
 - 790 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
 - 791 item; or
 - 792 (iii) except as provided in Subsection (78)(c), food sold with an eating utensil provided
 - 793 by the seller, including a:
 - 794 (A) plate;
 - 795 (B) knife;
 - 796 (C) fork;
 - 797 (D) spoon;
 - 798 (E) glass;
 - 799 (F) cup;
 - 800 (G) napkin; or

- 801 (H) straw.
- 802 (b) "Prepared food" does not include:
- 803 (i) food that a seller only:
- 804 (A) cuts;
- 805 (B) repackages; or
- 806 (C) pasteurizes; or
- 807 (ii) (A) the following:
- 808 (I) raw egg;
- 809 (II) raw fish;
- 810 (III) raw meat;
- 811 (IV) raw poultry; or
- 812 (V) a food containing an item described in Subsections (78)(b)(ii)(A)(I) through (IV);
- 813 and
- 814 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 815 Food and Drug Administration's Food Code that a consumer cook the items described in
- 816 Subsection (78)(b)(ii)(A) to prevent food borne illness; or
- 817 (iii) the following if sold without eating utensils provided by the seller:
- 818 (A) food and food ingredients sold by a seller if the seller's proper primary
- 819 classification under the 2002 North American Industry Classification System of the federal
- 820 Executive Office of the President, Office of Management and Budget, is manufacturing in
- 821 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
- 822 Manufacturing;
- 823 (B) food and food ingredients sold in an unheated state:
- 824 (I) by weight or volume; and
- 825 (II) as a single item; or
- 826 (C) a bakery item, including:
- 827 (I) a bagel;
- 828 (II) a bar;
- 829 (III) a biscuit;
- 830 (IV) bread;
- 831 (V) a bun;

- 832 (VI) a cake;
- 833 (VII) a cookie;
- 834 (VIII) a croissant;
- 835 (IX) a danish;
- 836 (X) a donut;
- 837 (XI) a muffin;
- 838 (XII) a pastry;
- 839 (XIII) a pie;
- 840 (XIV) a roll;
- 841 (XV) a tart;
- 842 (XVI) a torte; or
- 843 (XVII) a tortilla.

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

- 846 (i) a container; or
- 847 (ii) packaging.

848 (79) "Prescription" means an order, formula, or recipe that is issued:

- 849 (a) (i) orally;
- 850 (ii) in writing;
- 851 (iii) electronically; or
- 852 (iv) by any other manner of transmission; and

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

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

- 856 (i) by the author or other creator of the computer software; and
- 857 (ii) to the specifications of a specific purchaser.

858 (b) "Prewritten computer software" includes:

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

- 861 (A) by the author or other creator of the computer software; and
- 862 (B) to the specifications of a specific purchaser;

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

866 (iii) notwithstanding Subsection (80)(a) and except as provided in Subsection (80)(c),
867 prewritten computer software or a prewritten portion of prewritten computer software:

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

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

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

874 (i) reasonable; and

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

877 (81) (a) "Private communication service" means a telecommunications service:

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

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

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

884 (i) an extension line;

885 (ii) a station;

886 (iii) switching capacity; or

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

889 (82) (a) Except as provided in Subsection (82)(b), "product transferred electronically"
890 means a product transferred electronically that would be subject to a tax under this chapter if
891 that product was transferred in a manner other than electronically.

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

893 (i) an ancillary service;

- 894 (ii) computer software; or
895 (iii) a telecommunications service.
896 [~~82~~] (83) (a) "Prosthetic device" means a device that is worn on or in the body to:
897 (i) artificially replace a missing portion of the body;
898 (ii) prevent or correct a physical deformity or physical malfunction; or
899 (iii) support a weak or deformed portion of the body.
900 (b) "Prosthetic device" includes:
901 (i) parts used in the repairs or renovation of a prosthetic device;
902 (ii) replacement parts for a prosthetic device;
903 (iii) a dental prosthesis; or
904 (iv) a hearing aid.
905 (c) "Prosthetic device" does not include:
906 (i) corrective eyeglasses; or
907 (ii) contact lenses.
908 [~~83~~] (84) (a) "Protective equipment" means an item:
909 (i) for human wear; and
910 (ii) that is:
911 (A) designed as protection:
912 (I) to the wearer against injury or disease; or
913 (II) against damage or injury of other persons or property; and
914 (B) not suitable for general use.
915 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
916 commission shall make rules:
917 (i) listing the items that constitute "protective equipment"; and
918 (ii) that are consistent with the list of items that constitute "protective equipment"
919 under the agreement.
920 [~~84~~] (85) (a) For purposes of Subsection 59-12-104(41), "publication" means any
921 written or printed matter, other than a photocopy:
922 (i) regardless of:
923 (A) characteristics;
924 (B) copyright;

- 925 (C) form;
- 926 (D) format;
- 927 (E) method of reproduction; or
- 928 (F) source; and
- 929 (ii) made available in printed or electronic format.
- 930 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 931 commission may by rule define the term "photocopy."
- 932 ~~[(85)]~~ (86) (a) "Purchase price" and "sales price" mean the total amount of
- 933 consideration:
- 934 (i) valued in money; and
- 935 (ii) for which tangible personal property, a product transferred electronically, or
- 936 services are:
- 937 (A) sold;
- 938 (B) leased; or
- 939 (C) rented.
- 940 (b) "Purchase price" and "sales price" include:
- 941 (i) the seller's cost of the tangible personal property, a product transferred
- 942 electronically, or services sold;
- 943 (ii) expenses of the seller, including:
- 944 (A) the cost of materials used;
- 945 (B) a labor cost;
- 946 (C) a service cost;
- 947 (D) interest;
- 948 (E) a loss;
- 949 (F) the cost of transportation to the seller; or
- 950 (G) a tax imposed on the seller;
- 951 (iii) a charge by the seller for any service necessary to complete the sale; or
- 952 (iv) consideration a seller receives from a person other than the purchaser if:
- 953 (A) (I) the seller actually receives consideration from a person other than the purchaser;
- 954 and
- 955 (II) the consideration described in Subsection ~~[(85)]~~ (86)(b)(iv)(A)(I) is directly related

956 to a price reduction or discount on the sale;

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

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

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

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

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

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

972 (Aa) invoice the purchaser receives; or

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

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

975 (i) a discount:

976 (A) in a form including:

977 (I) cash;

978 (II) term; or

979 (III) coupon;

980 (B) that is allowed by a seller;

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

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

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

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

- 987 (I) a carrying charge;
- 988 (II) a financing charge; or
- 989 (III) an interest charge;
- 990 (B) a delivery charge;
- 991 (C) an installation charge;
- 992 (D) a manufacturer rebate on a motor vehicle; or
- 993 (E) a tax or fee legally imposed directly on the consumer.
- 994 [~~(86)~~] (87) "Purchaser" means a person to whom:
- 995 (a) a sale of tangible personal property is made;
- 996 (b) a product is transferred electronically; or
- 997 (c) a service is furnished.
- 998 [~~(87)~~] (88) "Regularly rented" means:
- 999 (a) rented to a guest for value three or more times during a calendar year; or
- 1000 (b) advertised or held out to the public as a place that is regularly rented to guests for
- 1001 value.
- 1002 [~~(88)~~] (89) "Renewable energy" means:
- 1003 (a) biomass energy;
- 1004 (b) hydroelectric energy;
- 1005 (c) geothermal energy;
- 1006 (d) solar energy; or
- 1007 (e) wind energy.
- 1008 [~~(89)~~] (90) (a) "Renewable energy production facility" means a facility that:
- 1009 (i) uses renewable energy to produce electricity; and
- 1010 (ii) has a production capacity of 20 kilowatts or greater.
- 1011 (b) A facility is a renewable energy production facility regardless of whether the
- 1012 facility is:
- 1013 (i) connected to an electric grid; or
- 1014 (ii) located on the premises of an electricity consumer.
- 1015 [~~(90)~~] (91) "Rental" is as defined in Subsection (50).
- 1016 [~~(91)~~ "Repairs"] (92) (a) Except as provided in Subsection (92)(b), "repairs or
- 1017 renovations of tangible personal property" means:

1018 [~~(a)~~] (i) a repair or renovation of tangible personal property that is not permanently
1019 attached to real property; or

1020 [~~(b)~~] (ii) attaching tangible personal property or a product [~~that is~~] transferred
1021 electronically to other tangible personal property if:

1022 (A) the other tangible personal property to which the tangible personal property or
1023 product [~~that is~~] transferred electronically is attached is not permanently attached to real
1024 property[-]; and

1025 (B) the attachment of tangible personal property or a product transferred electronically
1026 to other tangible personal property is made in conjunction with a repair or replacement of
1027 tangible personal property or a product transferred electronically.

1028 (b) "Repairs or renovations of tangible personal property" does not include attaching
1029 prewritten computer software to other tangible personal property if the other tangible personal
1030 property to which the prewritten computer software is attached is not permanently attached to
1031 real property.

1032 [~~(92)~~] (93) "Research and development" means the process of inquiry or
1033 experimentation aimed at the discovery of facts, devices, technologies, or applications and the
1034 process of preparing those devices, technologies, or applications for marketing.

1035 [~~(93)~~] (94) (a) "Residential telecommunications services" means a telecommunications
1036 service or an ancillary service that is provided to an individual for personal use:

1037 (i) at a residential address; or

1038 (ii) at an institution, including a nursing home or a school, if the telecommunications
1039 service or ancillary service is provided to and paid for by the individual residing at the
1040 institution rather than the institution.

1041 (b) For purposes of Subsection [~~(93)~~] (94)(a)(i), a residential address includes an:

1042 (i) apartment; or

1043 (ii) other individual dwelling unit.

1044 [~~(94)~~] (95) "Residential use" means the use in or around a home, apartment building,
1045 sleeping quarters, and similar facilities or accommodations.

1046 [~~(95)~~] (96) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose
1047 other than:

1048 (a) resale;

1049 (b) sublease; or

1050 (c) subrent.

1051 ~~[(96)]~~ (97) (a) "Retailer" means any person engaged in a regularly organized business
1052 in tangible personal property or any other taxable transaction under Subsection 59-12-103(1),
1053 and who is selling to the user or consumer and not for resale.

1054 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
1055 engaged in the business of selling to users or consumers within the state.

1056 ~~[(97)]~~ (98) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
1057 otherwise, in any manner, of tangible personal property or any other taxable transaction under
1058 Subsection 59-12-103(1), for consideration.

1059 (b) "Sale" includes:

1060 (i) installment and credit sales;

1061 (ii) any closed transaction constituting a sale;

1062 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
1063 chapter;

1064 (iv) any transaction if the possession of property is transferred but the seller retains the
1065 title as security for the payment of the price; and

1066 (v) any transaction under which right to possession, operation, or use of any article of
1067 tangible personal property is granted under a lease or contract and the transfer of possession
1068 would be taxable if an outright sale were made.

1069 ~~[(98)]~~ (99) "Sale at retail" is as defined in Subsection ~~[(95)]~~ (96).

1070 ~~[(99)]~~ (100) "Sale-leaseback transaction" means a transaction by which title to tangible
1071 personal property or a product transferred electronically that is subject to a tax under this
1072 chapter is transferred:

1073 (a) by a purchaser-lessee;

1074 (b) to a lessor;

1075 (c) for consideration; and

1076 (d) if:

1077 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
1078 of the tangible personal property or product transferred electronically;

1079 (ii) the sale of the tangible personal property or product transferred electronically to the

1080 lessor is intended as a form of financing:

1081 (A) for the tangible personal property or product transferred electronically; and

1082 (B) to the purchaser-lessee; and

1083 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee

1084 is required to:

1085 (A) capitalize the tangible personal property or product transferred electronically for

1086 financial reporting purposes; and

1087 (B) account for the lease payments as payments made under a financing arrangement.

1088 [~~(100)~~] (101) "Sales price" is as defined in Subsection [~~(85)~~] (86).

1089 [~~(101)~~] (102) (a) "Sales relating to schools" means the following sales by, amounts

1090 paid to, or amounts charged by a school:

1091 (i) sales that are directly related to the school's educational functions or activities

1092 including:

1093 (A) the sale of:

1094 (I) textbooks;

1095 (II) textbook fees;

1096 (III) laboratory fees;

1097 (IV) laboratory supplies; or

1098 (V) safety equipment;

1099 (B) the sale of a uniform, protective equipment, or sports or recreational equipment

1100 that:

1101 (I) a student is specifically required to wear as a condition of participation in a

1102 school-related event or school-related activity; and

1103 (II) is not readily adaptable to general or continued usage to the extent that it takes the

1104 place of ordinary clothing;

1105 (C) sales of the following if the net or gross revenues generated by the sales are

1106 deposited into a school district fund or school fund dedicated to school meals:

1107 (I) food and food ingredients; or

1108 (II) prepared food; or

1109 (D) transportation charges for official school activities; or

1110 (ii) amounts paid to or amounts charged by a school for admission to a school-related

- 1111 event or school-related activity.
- 1112 (b) "Sales relating to schools" does not include:
- 1113 (i) bookstore sales of items that are not educational materials or supplies;
- 1114 (ii) except as provided in Subsection [~~(101)~~] (102)(a)(i)(B):
- 1115 (A) clothing;
- 1116 (B) clothing accessories or equipment;
- 1117 (C) protective equipment; or
- 1118 (D) sports or recreational equipment; or
- 1119 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 1120 event or school-related activity if the amounts paid or charged are passed through to a person:
- 1121 (A) other than a:
- 1122 (I) school;
- 1123 (II) nonprofit organization authorized by a school board or a governing body of a
- 1124 private school to organize and direct a competitive secondary school activity; or
- 1125 (III) nonprofit association authorized by a school board or a governing body of a
- 1126 private school to organize and direct a competitive secondary school activity; and
- 1127 (B) that is required to collect sales and use taxes under this chapter.
- 1128 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1129 commission may make rules defining the term "passed through."
- 1130 [~~(102)~~] (103) For purposes of this section and Section 59-12-104, "school":
- 1131 (a) means:
- 1132 (i) an elementary school or a secondary school that:
- 1133 (A) is a:
- 1134 (I) public school; or
- 1135 (II) private school; and
- 1136 (B) provides instruction for one or more grades kindergarten through 12; or
- 1137 (ii) a public school district; and
- 1138 (b) includes the Electronic High School as defined in Section 53A-15-1002.
- 1139 [~~(103)~~] (104) "Seller" means a person that makes a sale, lease, or rental of:
- 1140 (a) tangible personal property;
- 1141 (b) a product transferred electronically; or

- 1142 (c) a service.
- 1143 [~~(104)~~] (105) (a) "Semiconductor fabricating, processing, research, or development
- 1144 materials" means tangible personal property or a product transferred electronically if the
- 1145 tangible personal property or product transferred electronically is:
 - 1146 (i) used primarily in the process of:
 - 1147 (A) (I) manufacturing a semiconductor;
 - 1148 (II) fabricating a semiconductor; or
 - 1149 (III) research or development of a:
 - 1150 (Aa) semiconductor; or
 - 1151 (Bb) semiconductor manufacturing process; or
 - 1152 (B) maintaining an environment suitable for a semiconductor; or
 - 1153 (ii) consumed primarily in the process of:
 - 1154 (A) (I) manufacturing a semiconductor;
 - 1155 (II) fabricating a semiconductor; or
 - 1156 (III) research or development of a:
 - 1157 (Aa) semiconductor; or
 - 1158 (Bb) semiconductor manufacturing process; or
 - 1159 (B) maintaining an environment suitable for a semiconductor.
- 1160 (b) "Semiconductor fabricating, processing, research, or development materials"
- 1161 includes:
 - 1162 (i) parts used in the repairs or renovations of tangible personal property or a product
 - 1163 transferred electronically described in Subsection [~~(104)~~] (105)(a); or
 - 1164 (ii) a chemical, catalyst, or other material used to:
 - 1165 (A) produce or induce in a semiconductor a:
 - 1166 (I) chemical change; or
 - 1167 (II) physical change;
 - 1168 (B) remove impurities from a semiconductor; or
 - 1169 (C) improve the marketable condition of a semiconductor.
- 1170 [~~(105)~~] (106) "Senior citizen center" means a facility having the primary purpose of
- 1171 providing services to the aged as defined in Section 62A-3-101.
- 1172 [~~(106)~~] (107) "Simplified electronic return" means the electronic return:

- 1173 (a) described in Section 318(C) of the agreement; and
1174 (b) approved by the governing board of the agreement.
- 1175 [~~(107)~~] (108) "Solar energy" means the sun used as the sole source of energy for
1176 producing electricity.
- 1177 [~~(108)~~] (109) (a) "Sports or recreational equipment" means an item:
1178 (i) designed for human use; and
1179 (ii) that is:
1180 (A) worn in conjunction with:
1181 (I) an athletic activity; or
1182 (II) a recreational activity; and
1183 (B) not suitable for general use.
- 1184 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1185 commission shall make rules:
1186 (i) listing the items that constitute "sports or recreational equipment"; and
1187 (ii) that are consistent with the list of items that constitute "sports or recreational
1188 equipment" under the agreement.
- 1189 [~~(109)~~] (110) "State" means the state of Utah, its departments, and agencies.
- 1190 [~~(110)~~] (111) "Storage" means any keeping or retention of tangible personal property or
1191 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose
1192 except sale in the regular course of business.
- 1193 [~~(111)~~] (112) (a) Except as provided in Subsection [~~(111)~~] (112)(d) or (e), "tangible
1194 personal property" means personal property that:
1195 (i) may be:
1196 (A) seen;
1197 (B) weighed;
1198 (C) measured;
1199 (D) felt; or
1200 (E) touched; or
1201 (ii) is in any manner perceptible to the senses.
- 1202 (b) "Tangible personal property" includes:
1203 (i) electricity;

- 1204 (ii) water;
- 1205 (iii) gas;
- 1206 (iv) steam; or
- 1207 (v) prewritten computer software, regardless of the manner in which the prewritten
- 1208 computer software is transferred.
- 1209 (c) "Tangible personal property" includes the following, regardless of whether the item
- 1210 is attached to real property:
- 1211 (i) a dishwasher;
- 1212 (ii) a dryer;
- 1213 (iii) a freezer;
- 1214 (iv) a microwave;
- 1215 (v) a refrigerator;
- 1216 (vi) a stove;
- 1217 (vii) a washer; or
- 1218 (viii) an item similar to Subsections [~~(111)~~] (112)(c)(i) through (vii) as determined by
- 1219 the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 1220 Rulemaking Act.
- 1221 (d) "Tangible personal property" does not include a product that is transferred
- 1222 electronically.
- 1223 (e) "Tangible personal property" does not include the following if attached to real
- 1224 property, regardless of whether the attachment to real property is only through a line that
- 1225 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
- 1226 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 1227 Rulemaking Act:
- 1228 (i) a hot water heater;
- 1229 (ii) a water filtration system; or
- 1230 (iii) a water softener system.
- 1231 [~~(112)~~] (113) "Tar sands" means impregnated sands that yield mixtures of liquid
- 1232 hydrocarbon and require further processing other than mechanical blending before becoming
- 1233 finished petroleum products.
- 1234 [~~(113)~~] (114) (a) "Telecommunications enabling or facilitating equipment, machinery,

1235 or software" means an item listed in Subsection [~~(113)~~] (114)(b) if that item is purchased or
1236 leased primarily to enable or facilitate one or more of the following to function:

- 1237 (i) telecommunications switching or routing equipment, machinery, or software; or
- 1238 (ii) telecommunications transmission equipment, machinery, or software.

1239 (b) The following apply to Subsection [~~(113)~~] (114)(a):

- 1240 (i) a pole;
- 1241 (ii) software;
- 1242 (iii) a supplementary power supply;
- 1243 (iv) temperature or environmental equipment or machinery;
- 1244 (v) test equipment;
- 1245 (vi) a tower; or
- 1246 (vii) equipment, machinery, or software that functions similarly to an item listed in
- 1247 Subsections [~~(113)~~] (114)(b)(i) through (vi) as determined by the commission by rule made in
- 1248 accordance with Subsection [~~(113)~~] (114)(c).

1249 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1250 commission may by rule define what constitutes equipment, machinery, or software that
1251 functions similarly to an item listed in Subsections [~~(113)~~] (114)(b)(i) through (vi).

1252 [~~(114)~~] (115) "Telecommunications equipment, machinery, or software required for
1253 911 service" means equipment, machinery, or software that is required to comply with 47
1254 C.F.R. Sec. 20.18.

1255 [~~(115)~~] (116) "Telecommunications maintenance or repair equipment, machinery, or
1256 software" means equipment, machinery, or software purchased or leased primarily to maintain
1257 or repair one or more of the following, regardless of whether the equipment, machinery, or
1258 software is purchased or leased as a spare part or as an upgrade or modification to one or more
1259 of the following:

- 1260 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 1261 (b) telecommunications switching or routing equipment, machinery, or software; or
- 1262 (c) telecommunications transmission equipment, machinery, or software.

1263 [~~(116)~~] (117) (a) "Telecommunications service" means the electronic conveyance,
1264 routing, or transmission of audio, data, video, voice, or any other information or signal to a
1265 point, or among or between points.

- 1266 (b) "Telecommunications service" includes:
- 1267 (i) an electronic conveyance, routing, or transmission with respect to which a computer
- 1268 processing application is used to act:
- 1269 (A) on the code, form, or protocol of the content;
- 1270 (B) for the purpose of electronic conveyance, routing, or transmission; and
- 1271 (C) regardless of whether the service:
- 1272 (I) is referred to as voice over Internet protocol service; or
- 1273 (II) is classified by the Federal Communications Commission as enhanced or value
- 1274 added;
- 1275 (ii) an 800 service;
- 1276 (iii) a 900 service;
- 1277 (iv) a fixed wireless service;
- 1278 (v) a mobile wireless service;
- 1279 (vi) a postpaid calling service;
- 1280 (vii) a prepaid calling service;
- 1281 (viii) a prepaid wireless calling service; or
- 1282 (ix) a private communications service.
- 1283 (c) "Telecommunications service" does not include:
- 1284 (i) advertising, including directory advertising;
- 1285 (ii) an ancillary service;
- 1286 (iii) a billing and collection service provided to a third party;
- 1287 (iv) a data processing and information service if:
- 1288 (A) the data processing and information service allows data to be:
- 1289 (I) (Aa) acquired;
- 1290 (Bb) generated;
- 1291 (Cc) processed;
- 1292 (Dd) retrieved; or
- 1293 (Ee) stored; and
- 1294 (II) delivered by an electronic transmission to a purchaser; and
- 1295 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 1296 or information;

- 1297 (v) installation or maintenance of the following on a customer's premises:
- 1298 (A) equipment; or
- 1299 (B) wiring;
- 1300 (vi) Internet access service;
- 1301 (vii) a paging service;
- 1302 (viii) a product transferred electronically, including:
- 1303 (A) music;
- 1304 (B) reading material;
- 1305 (C) a ring tone;
- 1306 (D) software; or
- 1307 (E) video;
- 1308 (ix) a radio and television audio and video programming service:
- 1309 (A) regardless of the medium; and
- 1310 (B) including:
- 1311 (I) furnishing conveyance, routing, or transmission of a television audio and video
- 1312 programming service by a programming service provider;
- 1313 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
- 1314 (III) audio and video programming services delivered by a commercial mobile radio
- 1315 service provider as defined in 47 C.F.R. Sec. 20.3;
- 1316 (x) a value-added nonvoice data service; or
- 1317 (xi) tangible personal property.
- 1318 ~~[(117)]~~ (118) (a) "Telecommunications service provider" means a person that:
- 1319 (i) owns, controls, operates, or manages a telecommunications service; and
- 1320 (ii) engages in an activity described in Subsection ~~[(117)]~~ (118)(a)(i) for the shared use
- 1321 with or resale to any person of the telecommunications service.
- 1322 (b) A person described in Subsection ~~[(117)]~~ (118)(a) is a telecommunications service
- 1323 provider whether or not the Public Service Commission of Utah regulates:
- 1324 (i) that person; or
- 1325 (ii) the telecommunications service that the person owns, controls, operates, or
- 1326 manages.
- 1327 ~~[(118)]~~ (119) (a) "Telecommunications switching or routing equipment, machinery, or

1328 software" means an item listed in Subsection [~~(118)~~] (119)(b) if that item is purchased or
1329 leased primarily for switching or routing:

- 1330 (i) an ancillary service;
- 1331 (ii) data communications;
- 1332 (iii) voice communications; or
- 1333 (iv) telecommunications service.

1334 (b) The following apply to Subsection [~~(118)~~] (119)(a):

- 1335 (i) a bridge;
- 1336 (ii) a computer;
- 1337 (iii) a cross connect;
- 1338 (iv) a modem;
- 1339 (v) a multiplexer;
- 1340 (vi) plug in circuitry;
- 1341 (vii) a router;
- 1342 (viii) software;
- 1343 (ix) a switch; or

1344 (x) equipment, machinery, or software that functions similarly to an item listed in
1345 Subsections [~~(118)~~] (119)(b)(i) through (ix) as determined by the commission by rule made in
1346 accordance with Subsection [~~(118)~~] (119)(c).

1347 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1348 commission may by rule define what constitutes equipment, machinery, or software that
1349 functions similarly to an item listed in Subsections [~~(118)~~] (119)(b)(i) through (ix).

1350 [~~(119)~~] (120) (a) "Telecommunications transmission equipment, machinery, or
1351 software" means an item listed in Subsection [~~(119)~~] (120)(b) if that item is purchased or
1352 leased primarily for sending, receiving, or transporting:

- 1353 (i) an ancillary service;
- 1354 (ii) data communications;
- 1355 (iii) voice communications; or
- 1356 (iv) telecommunications service.

1357 (b) The following apply to Subsection [~~(119)~~] (120)(a):

- 1358 (i) an amplifier;

- 1359 (ii) a cable;
- 1360 (iii) a closure;
- 1361 (iv) a conduit;
- 1362 (v) a controller;
- 1363 (vi) a duplexer;
- 1364 (vii) a filter;
- 1365 (viii) an input device;
- 1366 (ix) an input/output device;
- 1367 (x) an insulator;
- 1368 (xi) microwave machinery or equipment;
- 1369 (xii) an oscillator;
- 1370 (xiii) an output device;
- 1371 (xiv) a pedestal;
- 1372 (xv) a power converter;
- 1373 (xvi) a power supply;
- 1374 (xvii) a radio channel;
- 1375 (xviii) a radio receiver;
- 1376 (xix) a radio transmitter;
- 1377 (xx) a repeater;
- 1378 (xxi) software;
- 1379 (xxii) a terminal;
- 1380 (xxiii) a timing unit;
- 1381 (xxiv) a transformer;
- 1382 (xxv) a wire; or
- 1383 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
- 1384 Subsections [~~(119)~~] (120)(b)(i) through (xxv) as determined by the commission by rule made in
- 1385 accordance with Subsection [~~(119)~~] (120)(c).
- 1386 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1387 commission may by rule define what constitutes equipment, machinery, or software that
- 1388 functions similarly to an item listed in Subsections [~~(119)~~] (120)(b)(i) through (xxv).
- 1389 [~~(120)~~] (121) "Tobacco" means:

- 1390 (a) a cigarette;
- 1391 (b) a cigar;
- 1392 (c) chewing tobacco;
- 1393 (d) pipe tobacco; or
- 1394 (e) any other item that contains tobacco.
- 1395 ~~[(121)]~~ (122) "Unassisted amusement device" means an amusement device, skill
- 1396 device, or ride device that is started and stopped by the purchaser or renter of the right to use or
- 1397 operate the amusement device, skill device, or ride device.
- 1398 ~~[(122)]~~ (123) (a) "Use" means the exercise of any right or power over tangible personal
- 1399 property, a product transferred electronically, or a service under Subsection 59-12-103(1),
- 1400 incident to the ownership or the leasing of that tangible personal property, product transferred
- 1401 electronically, or service.
- 1402 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal
- 1403 property, a product transferred electronically, or a service in the regular course of business and
- 1404 held for resale.
- 1405 ~~[(123)]~~ (124) "Value-added nonvoice data service" means a service:
- 1406 (a) that otherwise meets the definition of a telecommunications service except that a
- 1407 computer processing application is used to act primarily for a purpose other than conveyance,
- 1408 routing, or transmission; and
- 1409 (b) with respect to which a computer processing application is used to act on data or
- 1410 information:
- 1411 (i) code;
- 1412 (ii) content;
- 1413 (iii) form; or
- 1414 (iv) protocol.
- 1415 ~~[(124)]~~ (125) (a) Subject to Subsection ~~[(124)]~~ (125)(b), "vehicle" means the following
- 1416 that are required to be titled, registered, or titled and registered:
- 1417 (i) an aircraft as defined in Section 72-10-102;
- 1418 (ii) a vehicle as defined in Section 41-1a-102;
- 1419 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1420 (iv) a vessel as defined in Section 41-1a-102.

- 1421 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:
- 1422 (i) a vehicle described in Subsection [~~(124)~~] (125)(a); or
- 1423 (ii) (A) a locomotive;
- 1424 (B) a freight car;
- 1425 (C) railroad work equipment; or
- 1426 (D) other railroad rolling stock.
- 1427 [~~(125)~~] (126) "Vehicle dealer" means a person engaged in the business of buying,
- 1428 selling, or exchanging a vehicle as defined in Subsection [~~(124)~~] (125).
- 1429 [~~(126)~~] (127) (a) "Vertical service" means an ancillary service that:
- 1430 (i) is offered in connection with one or more telecommunications services; and
- 1431 (ii) offers an advanced calling feature that allows a customer to:
- 1432 (A) identify a caller; and
- 1433 (B) manage multiple calls and call connections.
- 1434 (b) "Vertical service" includes an ancillary service that allows a customer to manage a
- 1435 conference bridging service.
- 1436 [~~(127)~~] (128) (a) "Voice mail service" means an ancillary service that enables a
- 1437 customer to receive, send, or store a recorded message.
- 1438 (b) "Voice mail service" does not include a vertical service that a customer is required
- 1439 to have in order to utilize a voice mail service.
- 1440 [~~(128)~~] (129) (a) Except as provided in Subsection [~~(128)~~] (129)(b), "waste energy
- 1441 facility" means a facility that generates electricity:
- 1442 (i) using as the primary source of energy waste materials that would be placed in a
- 1443 landfill or refuse pit if it were not used to generate electricity, including:
- 1444 (A) tires;
- 1445 (B) waste coal; or
- 1446 (C) oil shale; and
- 1447 (ii) in amounts greater than actually required for the operation of the facility.
- 1448 (b) "Waste energy facility" does not include a facility that incinerates:
- 1449 (i) municipal solid waste;
- 1450 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or
- 1451 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1452 ~~[(+29)]~~ (130) "Watercraft" means a vessel as defined in Section 73-18-2.

1453 ~~[(+30)]~~ (131) "Wind energy" means wind used as the sole source of energy to produce
1454 electricity.

1455 ~~[(+31)]~~ (132) "ZIP Code" means a Zoning Improvement Plan Code assigned to a
1456 geographic location by the United States Postal Service.

1457 Section 2. Section **59-12-102.3** is amended to read:

1458 **59-12-102.3. Authority to enter into agreement -- Delegates.**

1459 (1) The commission may apply to the governing board for the state to become a party
1460 to the agreement.

1461 (2) If the state becomes a party to the agreement, the commission may:

1462 (a) establish standards for certification of a:

1463 (i) certified automated system; and

1464 (ii) certified service provider;

1465 (b) act jointly with other states that are parties to the agreement to establish
1466 performance standards for multistate sellers; and

1467 (c) take other actions reasonably required to implement provisions of the agreement:

1468 (i) if those actions are not in conflict with statute; and

1469 (ii) subject to Subsection (1)(c)(i), including:

1470 (A) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
1471 adopting administrative rules; and

1472 (B) in furtherance of the agreement, jointly procuring goods or services with other
1473 states that are parties to the agreement.

1474 (3) Subject to Subsection (4), delegates shall be appointed to the governing board of
1475 the agreement to:

1476 (a) assist in implementing the provisions of the agreement; and

1477 (b) address other matters as determined by the governing board.

1478 (4) Delegates shall be appointed as follows:

1479 ~~[(a) one delegate shall be a member of the House of Representatives appointed by the
1480 speaker of the House of Representatives;]~~

1481 ~~[(b) one delegate shall be a member of the Senate appointed by the president of the
1482 Senate; and]~~

1483 (a) two delegates shall be legislators appointed by mutual consent of the speaker of the
1484 House of Representatives and the president of the Senate; and

1485 [~~(c)~~] (b) two delegates shall be appointed by the governor, at least one of whom shall
1486 be from the commission.

1487 Section 3. Section **59-12-103** is amended to read:

1488 **59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use**
1489 **tax revenues.**

1490 (1) A tax is imposed on the purchaser as provided in this part for amounts paid or
1491 charged for the following transactions:

1492 (a) retail sales of tangible personal property made within the state;

1493 (b) amounts paid for:

1494 (i) telecommunications service, other than mobile telecommunications service, that
1495 originates and terminates within the boundaries of this state;

1496 (ii) mobile telecommunications service that originates and terminates within the
1497 boundaries of one state only to the extent permitted by the Mobile Telecommunications
1498 Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or

1499 (iii) an ancillary service associated with a:

1500 (A) telecommunications service described in Subsection (1)(b)(i); or

1501 (B) mobile telecommunications service described in Subsection (1)(b)(ii);

1502 (c) sales of the following for commercial use:

1503 (i) gas;

1504 (ii) electricity;

1505 (iii) heat;

1506 (iv) coal;

1507 (v) fuel oil; or

1508 (vi) other fuels;

1509 (d) sales of the following for residential use:

1510 (i) gas;

1511 (ii) electricity;

1512 (iii) heat;

1513 (iv) coal;

- 1514 (v) fuel oil; or
- 1515 (vi) other fuels;
- 1516 (e) sales of prepared food;
- 1517 (f) except as provided in Section 59-12-104, amounts paid or charged as admission or
- 1518 user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,
- 1519 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,
- 1520 fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit
- 1521 television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf
- 1522 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,
- 1523 tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises,
- 1524 horseback rides, sports activities, or any other amusement, entertainment, recreation,
- 1525 exhibition, cultural, or athletic activity;
- 1526 (g) amounts paid or charged for services for repairs or renovations of tangible personal
- 1527 property, unless Section 59-12-104 provides for an exemption from sales and use tax for:
- 1528 (i) the tangible personal property; and
- 1529 (ii) parts used in the repairs or renovations of the tangible personal property described
- 1530 in Subsection (1)(g)(i), whether or not any parts are actually used in the repairs or renovations
- 1531 of that tangible personal property;
- 1532 (h) except as provided in Subsection 59-12-104(7), amounts paid or charged for
- 1533 assisted cleaning or washing of tangible personal property;
- 1534 (i) amounts paid or charged for tourist home, hotel, motel, or trailer court
- 1535 accommodations and services that are regularly rented for less than 30 consecutive days;
- 1536 (j) amounts paid or charged for laundry or dry cleaning services;
- 1537 (k) amounts paid or charged for leases or rentals of tangible personal property if within
- 1538 this state the tangible personal property is:
- 1539 (i) stored;
- 1540 (ii) used; or
- 1541 (iii) otherwise consumed;
- 1542 (l) amounts paid or charged for tangible personal property if within this state the
- 1543 tangible personal property is:
- 1544 (i) stored;

- 1545 (ii) used; or
- 1546 (iii) consumed; and
- 1547 (m) amounts paid or charged for a sale:
- 1548 (i) (A) of a product [~~that:~~] transferred electronically; or
- 1549 [~~(f) is transferred electronically; and]~~
- 1550 [~~(H) would be subject to a tax under this chapter if the product was transferred in a~~
- 1551 ~~manner other than electronically; or]~~
- 1552 (B) of a repair or renovation of a product [~~that:~~] transferred electronically; and
- 1553 [~~(f) is transferred electronically; and]~~
- 1554 [~~(H) would be subject to a tax under this chapter if the product was transferred in a~~
- 1555 ~~manner other than electronically; and]~~
- 1556 (ii) regardless of whether the sale provides:
- 1557 (A) a right of permanent use of the product; or
- 1558 (B) a right to use the product that is less than a permanent use, including a right:
- 1559 (I) for a definite or specified length of time; and
- 1560 (II) that terminates upon the occurrence of a condition.
- 1561 (2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax
- 1562 is imposed on a transaction described in Subsection (1) equal to the sum of:
- 1563 (i) a state tax imposed on the transaction at a tax rate equal to the sum of:
- 1564 (A) 4.70%; and
- 1565 (B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales
- 1566 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211
- 1567 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional
- 1568 State Sales and Use Tax Act; and
- 1569 (II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales
- 1570 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211
- 1571 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state
- 1572 imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and
- 1573 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
- 1574 transaction under this chapter other than this part.
- 1575 (b) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed

1576 on a transaction described in Subsection (1)(d) equal to the sum of:

1577 (i) a state tax imposed on the transaction at a tax rate of 2%; and

1578 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
1579 transaction under this chapter other than this part.

1580 (c) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed
1581 on amounts paid or charged for food and food ingredients equal to the sum of:

1582 (i) a state tax imposed on the amounts paid or charged for food and food ingredients at
1583 a tax rate of 1.75%; and

1584 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
1585 amounts paid or charged for food and food ingredients under this chapter other than this part.

1586 (d) (i) For a bundled transaction that is attributable to food and food ingredients and
1587 tangible personal property other than food and food ingredients, a state tax and a local tax is
1588 imposed on the entire bundled transaction equal to the sum of:

1589 (A) a state tax imposed on the entire bundled transaction equal to the sum of:

1590 (I) the tax rate described in Subsection (2)(a)(i)(A); and

1591 (II) (Aa) the tax rate the state imposes in accordance with Part 18, Additional State
1592 Sales and Use Tax Act, if the location of the transaction as determined under Sections
1593 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18,
1594 Additional State Sales and Use Tax Act; and

1595 (Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State
1596 Sales and Use Tax Act, if the location of the transaction as determined under Sections
1597 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which
1598 the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

1599 (B) a local tax imposed on the entire bundled transaction at the sum of the tax rates
1600 described in Subsection (2)(a)(ii).

1601 (ii) Subject to Subsection (2)(d)(iii), for a bundled transaction other than a bundled
1602 transaction described in Subsection (2)(d)(i):

1603 (A) if the sales price of the bundled transaction is attributable to tangible personal
1604 property, a product, or a service that is subject to taxation under this chapter and tangible
1605 personal property, a product, or service that is not subject to taxation under this chapter, the
1606 entire bundled transaction is subject to taxation under this chapter unless:

1607 (I) the seller is able to identify by reasonable and verifiable standards the tangible
1608 personal property, product, or service that is not subject to taxation under this chapter from the
1609 books and records the seller keeps in the seller's regular course of business; or

1610 (II) state or federal law provides otherwise; or

1611 (B) if the sales price of a bundled transaction is attributable to two or more items of
1612 tangible personal property, products, or services that are subject to taxation under this chapter
1613 at different rates, the entire bundled transaction is subject to taxation under this chapter at the
1614 higher tax rate unless:

1615 (I) the seller is able to identify by reasonable and verifiable standards the tangible
1616 personal property, product, or service that is subject to taxation under this chapter at the lower
1617 tax rate from the books and records the seller keeps in the seller's regular course of business; or

1618 (II) state or federal law provides otherwise.

1619 (iii) For purposes of Subsection (2)(d)(ii), books and records that a seller keeps in the
1620 seller's regular course of business includes books and records the seller keeps in the regular
1621 course of business for nontax purposes.

1622 (e) Subject to Subsections (2)(f) and (g), a tax rate repeal or tax rate change for a tax
1623 rate imposed under the following shall take effect on the first day of a calendar quarter:

1624 (i) Subsection (2)(a)(i)(A);

1625 (ii) Subsection (2)(b)(i);

1626 (iii) Subsection (2)(c)(i); or

1627 (iv) Subsection (2)(d)(i)(A)(I).

1628 (f) (i) A tax rate increase shall take effect on the first day of the first billing period that
1629 begins after the effective date of the tax rate increase if the billing period for the transaction
1630 begins before the effective date of a tax rate increase imposed under:

1631 (A) Subsection (2)(a)(i)(A);

1632 (B) Subsection (2)(b)(i);

1633 (C) Subsection (2)(c)(i); or

1634 (D) Subsection (2)(d)(i)(A)(I).

1635 (ii) The repeal of a tax or a tax rate decrease shall take effect on the first day of the last
1636 billing period that began before the effective date of the repeal of the tax or the tax rate
1637 decrease if the billing period for the transaction begins before the effective date of the repeal of

1638 the tax or the tax rate decrease imposed under:

1639 (A) Subsection (2)(a)(i)(A);

1640 (B) Subsection (2)(b)(i);

1641 (C) Subsection (2)(c)(i); or

1642 (D) Subsection (2)(d)(i)(A)(I).

1643 (g) (i) For a tax rate described in Subsection (2)(g)(ii), if a tax due on a catalogue sale
1644 is computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal
1645 or change in a tax rate takes effect:

1646 (A) on the first day of a calendar quarter; and

1647 (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.

1648 (ii) Subsection (2)(g)(i) applies to the tax rates described in the following:

1649 (A) Subsection (2)(a)(i)(A);

1650 (B) Subsection (2)(b)(i);

1651 (C) Subsection (2)(c)(i); or

1652 (D) Subsection (2)(d)(i)(A)(I).

1653 (iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
1654 the commission may by rule define the term "catalogue sale."

1655 (3) (a) The following state taxes shall be deposited into the General Fund:

1656 (i) the tax imposed by Subsection (2)(a)(i)(A);

1657 (ii) the tax imposed by Subsection (2)(b)(i);

1658 (iii) the tax imposed by Subsection (2)(c)(i); or

1659 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

1660 (b) The following local taxes shall be distributed to a county, city, or town as provided
1661 in this chapter:

1662 (i) the tax imposed by Subsection (2)(a)(ii);

1663 (ii) the tax imposed by Subsection (2)(b)(ii);

1664 (iii) the tax imposed by Subsection (2)(c)(ii); and

1665 (iv) the tax imposed by Subsection (2)(d)(i)(B).

1666 (4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
1667 2003, the lesser of the following amounts shall be used as provided in Subsections (4)(b)
1668 through (g):

1669 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

1670 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and

1671 (B) for the fiscal year; or

1672 (ii) \$17,500,000.

1673 (b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount

1674 described in Subsection (4)(a) shall be transferred each year as dedicated credits to the

1675 Department of Natural Resources to:

1676 (A) implement the measures described in Subsections 79-2-303(3)(a) through (d) to

1677 protect sensitive plant and animal species; or

1678 (B) award grants, up to the amount authorized by the Legislature in an appropriations

1679 act, to political subdivisions of the state to implement the measures described in Subsections

1680 79-2-303(3)(a) through (d) to protect sensitive plant and animal species.

1681 (ii) Money transferred to the Department of Natural Resources under Subsection

1682 (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other

1683 person to list or attempt to have listed a species as threatened or endangered under the

1684 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

1685 (iii) At the end of each fiscal year:

1686 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources

1687 Conservation and Development Fund created in Section 73-10-24;

1688 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan

1689 Program Subaccount created in Section 73-10c-5; and

1690 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan

1691 Program Subaccount created in Section 73-10c-5.

1692 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in

1693 Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund

1694 created in Section 4-18-6.

1695 (d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described

1696 in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water

1697 Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of

1698 water rights.

1699 (ii) At the end of each fiscal year:

- 1700 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
1701 Conservation and Development Fund created in Section 73-10-24;
- 1702 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
1703 Program Subaccount created in Section 73-10c-5; and
- 1704 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
1705 Program Subaccount created in Section 73-10c-5.
- 1706 (e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described
1707 in Subsection (4)(a) shall be deposited in the Water Resources Conservation and Development
1708 Fund created in Section 73-10-24 for use by the Division of Water Resources.
- 1709 (ii) In addition to the uses allowed of the Water Resources Conservation and
1710 Development Fund under Section 73-10-24, the Water Resources Conservation and
1711 Development Fund may also be used to:
- 1712 (A) conduct hydrologic and geotechnical investigations by the Division of Water
1713 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of
1714 quantifying surface and ground water resources and describing the hydrologic systems of an
1715 area in sufficient detail so as to enable local and state resource managers to plan for and
1716 accommodate growth in water use without jeopardizing the resource;
- 1717 (B) fund state required dam safety improvements; and
- 1718 (C) protect the state's interest in interstate water compact allocations, including the
1719 hiring of technical and legal staff.
- 1720 (f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
1721 in Subsection (4)(a) shall be deposited in the Utah Wastewater Loan Program Subaccount
1722 created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.
- 1723 (g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
1724 in Subsection (4)(a) shall be deposited in the Drinking Water Loan Program Subaccount
1725 created in Section 73-10c-5 for use by the Division of Drinking Water to:
- 1726 (i) provide for the installation and repair of collection, treatment, storage, and
1727 distribution facilities for any public water system, as defined in Section 19-4-102;
- 1728 (ii) develop underground sources of water, including springs and wells; and
1729 (iii) develop surface water sources.
- 1730 (5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,

1731 2006, the difference between the following amounts shall be expended as provided in this
1732 Subsection (5), if that difference is greater than \$1:

1733 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the
1734 fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

1735 (ii) \$17,500,000.

1736 (b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:

1737 (A) transferred each fiscal year to the Department of Natural Resources as dedicated
1738 credits; and

1739 (B) expended by the Department of Natural Resources for watershed rehabilitation or
1740 restoration.

1741 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described
1742 in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund
1743 created in Section 73-10-24.

1744 (c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the
1745 remaining difference described in Subsection (5)(a) shall be:

1746 (A) transferred each fiscal year to the Division of Water Resources as dedicated
1747 credits; and

1748 (B) expended by the Division of Water Resources for cloud-seeding projects
1749 authorized by Title 73, Chapter 15, Modification of Weather.

1750 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described
1751 in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund
1752 created in Section 73-10-24.

1753 (d) After making the transfers required by Subsections (5)(b) and (c), 94% of the
1754 remaining difference described in Subsection (5)(a) shall be deposited into the Water
1755 Resources Conservation and Development Fund created in Section 73-10-24 for use by the
1756 Division of Water Resources for:

1757 (i) preconstruction costs:

1758 (A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter
1759 26, Bear River Development Act; and

1760 (B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project
1761 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

1762 (ii) the cost of employing a civil engineer to oversee any project authorized by Title 73,
1763 Chapter 26, Bear River Development Act;

1764 (iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project
1765 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

1766 (iv) other uses authorized under Sections 73-10-24, 73-10-25.1, 73-10-30, and
1767 Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

1768 (e) Any unexpended monies described in Subsection (5)(d) that remain in the Water
1769 Resources Conservation and Development Fund at the end of the fiscal year are nonlapsing.

1770 (f) After making the transfers required by Subsections (5)(b) and (c) and subject to
1771 Subsection (5)(g), 6% of the remaining difference described in Subsection (5)(a) shall be
1772 transferred each year as dedicated credits to the Division of Water Rights to cover the costs
1773 incurred for employing additional technical staff for the administration of water rights.

1774 (g) At the end of each fiscal year, any unexpended dedicated credits described in
1775 Subsection (5)(f) over \$150,000 lapse to the Water Resources Conservation and Development
1776 Fund created in Section 73-10-24.

1777 (6) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
1778 2003, and for taxes listed under Subsection (3)(a), the amount of revenue generated by a 1/16%
1779 tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited in
1780 the Transportation Fund created by Section 72-2-102.

1781 (7) (a) Notwithstanding Subsection (3)(a) and until Subsection (7)(b) applies,
1782 beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial
1783 Highway Fund Restricted Account created in Section 72-2-118 a portion of the taxes listed
1784 under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate on the taxable
1785 transactions under Subsection (1).

1786 (b) Notwithstanding Subsection (3)(a), when the highway general obligation bonds
1787 have been paid off and the highway projects completed that are intended to be paid from
1788 revenues deposited in the Centennial Highway Fund Restricted Account as determined by the
1789 Executive Appropriations Committee under Subsection 72-2-118(6)(d), the Division of
1790 Finance shall deposit into the Transportation Investment Fund of 2005 created by Section
1791 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated
1792 by a 1/64% tax rate on the taxable transactions under Subsection (1).

1793 (8) (a) Notwithstanding Subsection (3)(a) and in addition to the amount deposited in
1794 Subsection (7)(a), for the 2010-11 fiscal year only, the Division of Finance shall deposit into
1795 the Centennial Highway Fund Restricted Account created by Section 72-2-118 a portion of the
1796 taxes listed under Subsection (3)(a) equal to 1.93% of the revenues collected from the
1797 following taxes, which represents a portion of the approximately 17% of sales and use tax
1798 revenues generated annually by the sales and use tax on vehicles and vehicle-related products:

- 1799 (i) the tax imposed by Subsection (2)(a)(i)(A);
- 1800 (ii) the tax imposed by Subsection (2)(b)(i);
- 1801 (iii) the tax imposed by Subsection (2)(c)(i); and
- 1802 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

1803 (b) Notwithstanding Subsection (3)(a), in addition to the amount deposited in
1804 Subsection (7)(a), and until Subsection (8)(c) applies, for a fiscal year beginning on or after
1805 July 1, 2011, the Division of Finance shall deposit into the Centennial Highway Fund
1806 Restricted Account created by Section 72-2-118 a portion of the taxes listed under Subsection
1807 (3)(a) equal to 8.3% of the revenues collected from the following taxes, which represents a
1808 portion of the approximately 17% of sales and use tax revenues generated annually by the sales
1809 and use tax on vehicles and vehicle-related products:

- 1810 (i) the tax imposed by Subsection (2)(a)(i)(A);
- 1811 (ii) the tax imposed by Subsection (2)(b)(i);
- 1812 (iii) the tax imposed by Subsection (2)(c)(i); and
- 1813 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

1814 (c) Notwithstanding Subsection (3)(a) and in addition to the amounts deposited under
1815 Subsection (7)(b), when the highway general obligation bonds have been paid off and the
1816 highway projects completed that are intended to be paid from revenues deposited in the
1817 Centennial Highway Fund Restricted Account as determined by the Executive Appropriations
1818 Committee under Subsection 72-2-118(6)(d), the Division of Finance shall deposit into the
1819 Transportation Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes
1820 listed under Subsection (3)(a) equal to 8.3% of the revenues collected from the following taxes,
1821 which represents a portion of the approximately 17% of sales and use tax revenues generated
1822 annually by the sales and use tax on vehicles and vehicle-related products:

- 1823 (i) the tax imposed by Subsection (2)(a)(i)(A);

- 1824 (ii) the tax imposed by Subsection (2)(b)(i);
- 1825 (iii) the tax imposed by Subsection (2)(c)(i); and
- 1826 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

1827 (9) (a) Notwithstanding Subsection (3)(a) and for the fiscal year 2008-09 only, the
1828 Division of Finance shall deposit \$55,000,000 of the revenues generated by the taxes listed
1829 under Subsection (3)(a) into the Critical Highway Needs Fund created by Section 72-2-125.

1830 (b) Notwithstanding Subsection (3)(a) and until Subsection (9)(c) applies, for a fiscal
1831 year beginning on or after July 1, 2009, the Division of Finance shall annually deposit
1832 \$90,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the
1833 Critical Highway Needs Fund created by Section 72-2-125.

1834 (c) Notwithstanding Subsection (3)(a) and in addition to any amounts deposited under
1835 Subsections (7) and (8), when the general obligation bonds authorized by Section 63B-16-101
1836 have been paid off and the highway projects completed that are included in the prioritized
1837 project list under Subsection 72-2-125(4) as determined in accordance with Subsection
1838 72-2-125(6), the Division of Finance shall annually deposit \$90,000,000 of the revenues
1839 generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund
1840 of 2005 created by Section 72-2-124.

1841 (10) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year
1842 2009-10, \$533,750 shall be deposited into the Qualified Emergency Food Agencies Fund
1843 created by Section 9-4-1409 and expended as provided in Section 9-4-1409.

1844 (11) (a) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection
1845 (11)(a)(ii), and until Subsection (11)(b) applies, beginning on January 1, 2009, the Division of
1846 Finance shall deposit into the Critical Highway Needs Fund created by Section 72-2-125 the
1847 amount of tax revenue generated by a .025% tax rate on the transactions described in
1848 Subsection (1).

1849 (ii) For purposes of Subsection (11)(a)(i), the Division of Finance may not deposit into
1850 the Critical Highway Needs Fund any tax revenue generated by amounts paid or charged for
1851 food and food ingredients, except for tax revenue generated by a bundled transaction
1852 attributable to food and food ingredients and tangible personal property other than food and
1853 food ingredients described in Subsection (2)(e).

1854 (b) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection (11)(b)(ii),

1855 and in addition to any amounts deposited under Subsections (7), (9), and (10), when the general
1856 obligation bonds authorized by Section 63B-16-101 have been paid off and the highway
1857 projects completed that are included in the prioritized project list under Subsection 72-2-125(4)
1858 as determined in accordance with Subsection 72-2-125(6), the Division of Finance shall
1859 deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the
1860 amount of tax revenue generated by a .025% tax rate on the transactions described in
1861 Subsection (1).

1862 (ii) For purposes of Subsection (11)(b)(i), the Division of Finance may not deposit into
1863 the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or
1864 charged for food and food ingredients, except for tax revenue generated by a bundled
1865 transaction attributable to food and food ingredients and tangible personal property other than
1866 food and food ingredients described in Subsection (2)(e).

1867 (12) (a) Notwithstanding Subsection (3)(a), and except as provided in Subsection
1868 (12)(b), beginning on January 1, 2009, the Division of Finance shall deposit into the
1869 Transportation Fund created by Section 72-2-102 the amount of tax revenue generated by a
1870 .025% tax rate on the transactions described in Subsection (1) to be expended to address
1871 chokepoints in construction management.

1872 (b) For purposes of Subsection (12)(a), the Division of Finance may not deposit into
1873 the Transportation Fund any tax revenue generated by amounts paid or charged for food and
1874 food ingredients, except for tax revenue generated by a bundled transaction attributable to food
1875 and food ingredients and tangible personal property other than food and food ingredients
1876 described in Subsection (2)(e).

1877 Section 4. Section **59-12-106** is amended to read:

1878 **59-12-106. Definitions -- Sales and use tax license requirements -- Penalty --**
1879 **Application process and requirements -- No fee -- Bonds -- Presumption of taxability --**
1880 **Exemption certificates -- Exemption certificate license number to accompany contract**
1881 **bids.**

1882 (1) As used in this section:

1883 (a) "applicant" means a person that:

1884 (i) is required by this section to obtain a license; and

1885 (ii) submits an application:

1886 (A) to the commission; and
1887 (B) for a license under this section;
1888 (b) "application" means an application for a license under this section;
1889 (c) "fiduciary of the applicant" means a person that:
1890 (i) is required to collect, truthfully account for, and pay over a tax under this chapter
1891 for an applicant; and
1892 (ii) (A) is a corporate officer of the applicant described in Subsection (1)(c)(i);
1893 (B) is a director of the applicant described in Subsection (1)(c)(i);
1894 (C) is an employee of the applicant described in Subsection (1)(c)(i);
1895 (D) is a partner of the applicant described in Subsection (1)(c)(i);
1896 (E) is a trustee of the applicant described in Subsection (1)(c)(i); or
1897 (F) has a relationship to the applicant described in Subsection (1)(c)(i) that is similar to
1898 a relationship described in Subsections (1)(c)(ii)(A) through (E) as determined by the
1899 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1900 Rulemaking Act;
1901 (d) "fiduciary of the licensee" means a person that:
1902 (i) is required to collect, truthfully account for, and pay over a tax under this chapter
1903 for a licensee; and
1904 (ii) (A) is a corporate officer of the licensee described in Subsection (1)(d)(i);
1905 (B) is a director of the licensee described in Subsection (1)(d)(i);
1906 (C) is an employee of the licensee described in Subsection (1)(d)(i);
1907 (D) is a partner of the licensee described in Subsection (1)(d)(i);
1908 (E) is a trustee of the licensee described in Subsection (1)(d)(i); or
1909 (F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to
1910 a relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the
1911 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1912 Rulemaking Act;
1913 (e) "license" means a license under this section; and
1914 (f) "licensee" means a person that is licensed under this section by the commission.
1915 (2) (a) It is unlawful for any person required to collect a tax under this chapter to
1916 engage in business within the state without first having obtained a license to do so.

- 1917 (b) The license described in Subsection (2)(a):
- 1918 (i) shall be granted and issued by the commission;
- 1919 (ii) is not assignable;
- 1920 (iii) is valid only for the person in whose name the license is issued;
- 1921 (iv) is valid until:
- 1922 (A) the person described in Subsection (2)(b)(iii):
- 1923 (I) ceases to do business; or
- 1924 (II) changes that person's business address; or
- 1925 (B) the license is revoked by the commission; and
- 1926 (v) subject to Subsection (2)(d), shall be granted by the commission only upon an
- 1927 application that:
- 1928 (A) states the name and address of the applicant; and
- 1929 (B) provides other information the commission may require.
- 1930 (c) At the time an applicant makes an application under Subsection (2)(b)(v), the
- 1931 commission shall notify the applicant of the responsibilities and liability of a business owner
- 1932 successor under Section 59-12-112.
- 1933 (d) The commission shall review an application and determine whether the applicant:
- 1934 (i) meets the requirements of this section to be issued a license; and
- 1935 (ii) is required to post a bond with the commission in accordance with Subsections
- 1936 (2)(e) and (f) before the applicant may be issued a license.
- 1937 (e) (i) An applicant shall post a bond with the commission before the commission may
- 1938 issue the applicant a license if:
- 1939 (A) a license under this section was revoked for a delinquency under this chapter for:
- 1940 (I) the applicant;
- 1941 (II) a fiduciary of the applicant; or
- 1942 (III) a person for which the applicant or the fiduciary of the applicant is required to
- 1943 collect, truthfully account for, and pay over a tax under this chapter; or
- 1944 (B) there is a delinquency in paying a tax under this chapter for:
- 1945 (I) the applicant;
- 1946 (II) a fiduciary of the applicant; or
- 1947 (III) a person for which the applicant or the fiduciary of the applicant is required to

1948 collect, truthfully account for, and pay over a tax under this chapter.

1949 (ii) If the commission determines it is necessary to ensure compliance with this
1950 chapter, the commission may require a licensee to:

1951 (A) for a licensee that has not posted a bond under this section with the commission,
1952 post a bond with the commission in accordance with Subsection (2)(f); or

1953 (B) for a licensee that has posted a bond under this section with the commission,
1954 increase the amount of the bond posted with the commission.

1955 (f) (i) A bond required by Subsection (2)(e) shall be:

1956 (A) executed by:

1957 (I) for an applicant, the applicant as principal, with a corporate surety; or

1958 (II) for a licensee, the licensee as principal, with a corporate surety; and

1959 (B) payable to the commission conditioned upon the faithful performance of all of the
1960 requirements of this chapter including:

1961 (I) the payment of any tax under this chapter;

1962 (II) the payment of any:

1963 (Aa) penalty as provided in Section 59-1-401; or

1964 (Bb) interest as provided in Section 59-1-402; or

1965 (III) any other obligation of the:

1966 (Aa) applicant under this chapter; or

1967 (Bb) licensee under this chapter.

1968 (ii) Except as provided in Subsection (2)(f)(iv), the commission shall calculate the
1969 amount of a bond required by Subsection (2)(e) on the basis of:

1970 (A) commission estimates of:

1971 (I) an applicant's tax liability under this chapter; or

1972 (II) a licensee's tax liability under this chapter; and

1973 (B) any amount of a delinquency described in Subsection (2)(f)(iii).

1974 (iii) Except as provided in Subsection (2)(f)(iv), for purposes of Subsection
1975 (2)(f)(ii)(B):

1976 (A) for an applicant, the amount of the delinquency is the sum of:

1977 (I) the amount of any delinquency that served as a basis for revoking the license under
1978 this section of:

- 1979 (Aa) the applicant;
- 1980 (Bb) a fiduciary of the applicant; or
- 1981 (Cc) a person for which the applicant or the fiduciary of the applicant is required to
- 1982 collect, truthfully account for, and pay over a tax under this chapter; or
- 1983 (II) the amount of tax that any of the following owe under this chapter:
- 1984 (Aa) the applicant;
- 1985 (Bb) a fiduciary of the applicant; and
- 1986 (Cc) a person for which the applicant or the fiduciary of the applicant is required to
- 1987 collect, truthfully account for, and pay over a tax under this chapter; or
- 1988 (B) for a licensee, the amount of the delinquency is the sum of:
- 1989 (I) the amount of any delinquency that served as a basis for revoking the license under
- 1990 this section of:
- 1991 (Aa) the licensee;
- 1992 (Bb) a fiduciary of the licensee; or
- 1993 (Cc) a person for which the licensee or the fiduciary of the licensee is required to
- 1994 collect, truthfully account for, and pay over a tax under this chapter; or
- 1995 (II) the amount of tax that any of the following owe under this chapter:
- 1996 (Aa) the licensee;
- 1997 (Bb) a fiduciary of the licensee; and
- 1998 (Cc) a person for which the licensee or the fiduciary of the licensee is required to
- 1999 collect, truthfully account for, and pay over a tax under this chapter.
- 2000 (iv) Notwithstanding Subsection (2)(f)(ii) or (2)(f)(iii), a bond required by Subsection
- 2001 (2)(e) may not:
- 2002 (A) be less than \$25,000; or
- 2003 (B) exceed \$500,000.
- 2004 (g) If business is transacted at two or more separate places by one person, a separate
- 2005 license for each place of business is required.
- 2006 (h) (i) The commission shall, on a reasonable notice and after a hearing, revoke the
- 2007 license of any licensee violating any provisions of this chapter.
- 2008 (ii) A license may not be issued to a licensee described in Subsection (2)(h)(i) until the
- 2009 licensee has complied with the requirements of this chapter, including:

2010 (A) paying any:
2011 (I) tax due under this chapter;
2012 (II) penalty as provided in Section 59-1-401; or
2013 (III) interest as provided in Section 59-1-402; and
2014 (B) posting a bond in accordance with Subsections (2)(e) and (f).
2015 (i) Any person required to collect a tax under this chapter within this state without
2016 having secured a license to do so is guilty of a criminal violation as provided in Section
2017 59-1-401.
2018 (j) A license:
2019 (i) is not required for any person engaged exclusively in the business of selling
2020 commodities that are exempt from taxation under this chapter; and
2021 (ii) shall be issued to the person by the commission without a license fee.
2022 (3) (a) For the purpose of the proper administration of this chapter and to prevent
2023 evasion of the tax and the duty to collect the tax, it shall be presumed that tangible personal
2024 property or any other taxable transaction under Subsection 59-12-103(1) sold by any person for
2025 delivery in this state is sold for storage, use, or other consumption in this state unless the
2026 person selling the property, item, or service has taken from the purchaser an exemption
2027 certificate:
2028 (i) bearing the name and address of the purchaser; and
2029 (ii) providing that the property, item, or service was exempted under Section
2030 59-12-104.
2031 (b) An exemption certificate described in Subsection (3)(a):
2032 (i) shall contain information as prescribed by the commission; and
2033 (ii) if a paper exemption certificate is used, shall be signed by the purchaser.
2034 (c) (i) Subject to Subsection (3)(c)(ii), a seller or certified service provider is not liable
2035 to collect a tax under this chapter if the seller or certified service provider obtains within 90
2036 days after a transaction is complete:
2037 (A) an exemption certificate containing the information required by Subsections (3)(a)
2038 and (b); or
2039 (B) the information required by Subsections (3)(a) and (b).
2040 (ii) A seller or certified service provider that does not obtain the exemption certificate

2041 or information described in Subsection (3)(c)(i) with respect to a transaction [~~may, within~~] is
 2042 allowed 120 days after the commission requests the seller or certified service provider to
 2043 substantiate the exemption to:

2044 (A) establish that the transaction is not subject to taxation under this chapter by a
 2045 means other than providing an exemption certificate containing the information required by
 2046 Subsections (3)(a) and (b); or

2047 (B) subject to Subsection (3)(c)(iii), obtain an exemption certificate containing the
 2048 information required by Subsections (3)(a) and (b), taken in good faith.

2049 (iii) For purposes of Subsection (3)(c)(ii)(B), an exemption certificate is taken in good
 2050 faith if the exemption certificate claims an exemption that:

2051 (A) was allowed by statute on the date of the transaction in the jurisdiction of the
 2052 location of the transaction;

2053 (B) could be applicable to that transaction; and

2054 (C) is reasonable for the purchaser's type of business.

2055 (d) Except as provided in Subsection (3)(e), a seller or certified service provider that
 2056 takes an exemption certificate from a purchaser in accordance with this Subsection (3) with
 2057 respect to a transaction is not liable to collect a tax under this chapter[~~-(i)~~] on that transaction[~~;~~
 2058 ~~and~~].

2059 [~~(ii) if the commission or a court of competent jurisdiction subsequently determines~~
 2060 ~~that the purchaser improperly claimed the exemption.~~]

2061 (e) Subsection (3)(d) does not apply to a seller or certified service provider [~~that:~~] if the
 2062 commission establishes through an audit that the seller or certified service provider:

2063 [~~(i) fraudulently fails to collect a tax under this chapter;~~]

2064 [~~(ii) solicits a purchaser to participate in improperly claiming an exemption from a tax~~
 2065 ~~under this chapter; or]~~

2066 [~~(iii) accepts an exemption certificate for an exemption that is allowed on the basis of~~
 2067 ~~the entity claiming the exemption if:]~~

2068 [~~(A) the purchaser receives the tangible personal property, product, or service that is~~
 2069 ~~the subject of the exemption certificate at a location operated by the seller; and]~~

2070 [~~(B) the exemption certificate states that the tangible personal property, product, or~~
 2071 ~~service is not exempt from taxation under this chapter.]~~

2072 (i) knew or had reason to know at the time the purchaser provided the seller or certified
2073 service provider the information described in Subsection (3)(a) or (b) that the information
2074 related to the exemption claimed was materially false; or

2075 (ii) otherwise knowingly participated in activity intended to purposefully evade the tax
2076 due on the transaction.

2077 (f) (i) Subject to Subsection (3)(f)(ii) and except as provided in Subsection (3)(f)(iii), if
2078 there is a recurring business relationship between a seller or certified service provider and a
2079 purchaser, the commission may not require the seller or certified service provider to:

2080 (A) renew an exemption certificate;

2081 (B) update an exemption certificate; or

2082 (C) update a data element of an exemption certificate.

2083 (ii) For purposes of Subsection (3)(f)(i), a recurring business relationship exists if no
2084 more than a 12-month period elapses between transactions between a seller or certified service
2085 provider and a purchaser.

2086 (iii) If there is a recurring business relationship between a seller or certified service
2087 provider and a purchaser, the commission shall require an exemption certificate the seller or
2088 certified service provider takes from the purchaser to meet the requirements of Subsections
2089 (3)(a) and (b).

2090 (4) A person filing a contract bid with the state or a political subdivision of the state for
2091 the sale of tangible personal property or any other taxable transaction under Subsection
2092 59-12-103(1) shall include with the bid the number of the license issued to that person under
2093 Subsection (2).

2094 Section 5. Section **59-12-128** is amended to read:

2095 **59-12-128. Amnesty.**

2096 (1) As used in this section, "amnesty" means that a seller is not required to pay the
2097 following amounts that the seller would otherwise be required to pay:

2098 (a) a tax, fee, or charge under:

2099 (i) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

2100 (ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

2101 (iii) Section 19-6-714;

2102 (iv) Section 19-6-805;

2103 (v) Section 69-2-5;
2104 (vi) Section 69-2-5.5;
2105 (vii) Section 69-2-5.6; or
2106 (viii) this chapter;
2107 (b) a penalty on a tax, fee, or charge described in Subsection (1)(a); or
2108 (c) interest on a tax, fee, or charge described in Subsection (1)(a).
2109 (2) ~~[The]~~ (a) Except as provided in Subsections (2)(b) and (3) and subject to
2110 Subsections (4) and (5), the commission shall grant a seller amnesty ~~[under this section]~~ if the
2111 seller:
2112 ~~[(a) was not licensed under Section 59-12-106 at any time during the 12-month period~~
2113 ~~prior to the effective date of the state's participation in the agreement;]~~
2114 ~~[(b)]~~ (i) obtains a license under Section 59-12-106 ~~[within a 12-month period after the~~
2115 ~~effective date of the state's participation in the agreement]; and~~
2116 ~~[(c)]~~ (ii) is registered under the agreement.
2117 (b) The commission is not required to grant a seller amnesty under this section
2118 beginning 12 months after the date the state becomes a full member under the agreement.
2119 (3) A seller may not receive amnesty under this section for a tax, fee, or charge:
2120 (a) the seller collects;
2121 (b) the seller remits to the commission;
2122 (c) that the seller is required to remit to the commission on the seller's purchase; or
2123 (d) arising from a transaction that occurs within a time period that is under audit by the
2124 commission if:
2125 (i) the seller receives notice of the commencement of the audit prior to obtaining a
2126 license under Section 59-12-106; and
2127 (ii) (A) the audit described in Subsection (3)(d)(i) is not complete; or
2128 (B) the seller has not exhausted all administrative and judicial remedies in connection
2129 with the audit described in Subsection (3)(d)(i).
2130 (4) (a) Except as provided in Subsection (4)(b), amnesty the commission grants to a
2131 seller under this section:
2132 (i) applies to the time period during which the seller is not licensed under Section
2133 59-12-106; and

2134 (ii) remains in effect if, for a period of three years, the seller:

2135 (A) remains registered under the agreement;

2136 (B) collects a tax, fee, or charge on a transaction subject to a tax, fee, or charge

2137 described in Subsection (1)(a); and

2138 (C) remits to the commission the taxes, fees, and charges the seller collects in

2139 accordance with Subsection (4)(a)(ii)(B).

2140 (b) The commission may not grant a seller amnesty under this section if, with respect

2141 to a tax, fee, or charge for which the seller would otherwise be granted amnesty under this

2142 section, the seller commits:

2143 (i) fraud; or

2144 (ii) an intentional misrepresentation of a material fact.

2145 (5) (a) If a seller does not meet a requirement of Subsection (4)(a)(ii), the commission

2146 shall require the seller to pay the amounts described in Subsection (1) that the seller would

2147 have otherwise been required to pay.

2148 (b) Notwithstanding Section 59-1-1410, for purposes of requiring a seller to pay an

2149 amount in accordance with Subsection (5)(a), the time period for the commission to make an

2150 assessment under Section 59-1-1410 is extended for a time period beginning on the date the

2151 seller does not meet a requirement of Subsection (4)(a)(ii) and ends three years after that date.

2152 Section 6. Section **59-12-211** is amended to read:

2153 **59-12-211. Definitions -- Location of certain transactions -- Reports to**

2154 **commission -- Direct payment provision for a seller making certain purchases --**

2155 **Exceptions.**

2156 (1) As used in this section:

2157 (a) (i) "Receipt" and "receive" mean:

2158 (A) taking possession of tangible personal property;

2159 (B) making first use of a service; or

2160 (C) for a product transferred electronically, the earlier of:

2161 (I) taking possession of the product transferred electronically; or

2162 (II) making first use of the product transferred electronically.

2163 (ii) "Receipt" and "receive" do not include possession by a shipping company on behalf

2164 of a purchaser.

- 2165 (b) "Transportation equipment" means:
- 2166 (i) a locomotive or rail car that is used to carry a person or property in interstate
2167 commerce;
- 2168 (ii) a truck or truck-tractor:
- 2169 (A) with a gross vehicle weight rating of 10,001 pounds or more;
- 2170 (B) registered under Section 41-1a-301; and
- 2171 (C) operated under the authority of a carrier authorized and certificated:
- 2172 (I) by the United States Department of Transportation or another federal authority; and
- 2173 (II) to engage in carrying a person or property in interstate commerce;
- 2174 (iii) a trailer, semitrailer, or passenger bus that is:
- 2175 (A) registered under Section 41-1a-301; and
- 2176 (B) operated under the authority of a carrier authorized and certificated:
- 2177 (I) by the United States Department of Transportation or another federal authority; and
- 2178 (II) to engage in carrying a person or property in interstate commerce;
- 2179 (iv) an aircraft that is operated by an air carrier authorized and certificated:
- 2180 (A) by the United States Department of Transportation or another federal or foreign
2181 authority; and
- 2182 (B) to engage in carrying a person or property in interstate commerce; or
- 2183 (v) a container designed for use on, or a component part attached or secured on, an
2184 item of equipment listed in Subsections (1)(b)(i) through (iv).
- 2185 (2) Except as provided in Subsections (8) and [~~(13)~~] (14), if tangible personal property,
2186 a product transferred electronically, or a service that is subject to taxation under this chapter is
2187 received by a purchaser at a business location of a seller, the location of the transaction is the
2188 business location of the seller.
- 2189 (3) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
2190 and [~~(13)~~] (14), if tangible personal property, a product transferred electronically, or a service
2191 that is subject to taxation under this chapter is not received by a purchaser at a business
2192 location of a seller, the location of the transaction is the location where the purchaser takes
2193 receipt of the tangible personal property or service.
- 2194 (4) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
2195 and [~~(13)~~] (14), if Subsection (2) or (3) does not apply, the location of the transaction is the

2196 location indicated by an address for or other information on the purchaser if:

2197 (a) the address or other information is available from the seller's business records; and

2198 (b) use of the address or other information from the seller's records does not constitute
2199 bad faith.

2200 (5) (a) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9),
2201 (11), and [~~(13)~~] (14), if Subsection (2), (3), or (4) does not apply, the location of the transaction
2202 is the location indicated by an address for the purchaser if:

2203 (i) the address is obtained during the consummation of the transaction; and

2204 (ii) use of the address described in Subsection (5)(a)(i) does not constitute bad faith.

2205 (b) An address used under Subsection (5)(a) includes the address of a purchaser's
2206 payment instrument if no other address is available.

2207 (6) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11),
2208 and [~~(13)~~] (14), if Subsection (2), (3), (4), or (5) does not apply or if a seller does not have
2209 sufficient information to apply Subsection (2), (3), (4), or (5), the location of the transaction is
2210 the location:

2211 (a) indicated by the address from which:

2212 (i) except as provided in Subsection (6)(a)(ii), for tangible personal property that is
2213 subject to taxation under this chapter, the tangible personal property is shipped;

2214 (ii) for computer software delivered electronically or for a product transferred
2215 electronically that is subject to taxation under this chapter, the computer software or product
2216 transferred electronically is first available for transmission by the seller; or

2217 (iii) for a service that is subject to taxation under this chapter, the service is provided;

2218 or

2219 (b) as determined by the seller with respect to a prepaid wireless calling service:

2220 (i) provided in Subsection (6)(a)(iii); or

2221 (ii) associated with the mobile telephone number.

2222 (7) (a) For purposes of this Subsection (7), "shared ZIP Code" means a nine-digit ZIP
2223 Code that is located within two or more local taxing jurisdictions.

2224 (b) If the location of a transaction determined under Subsections (3) through (6) is in a
2225 shared ZIP Code, the location of the transaction is:

2226 (i) if there is only one local taxing jurisdiction that imposes the lowest agreement

2227 combined tax rate for the shared ZIP Code, the local taxing jurisdiction that imposes the lowest
2228 agreement combined tax rate; or

2229 (ii) if two or more local taxing jurisdictions impose the lowest agreement combined tax
2230 rate for the shared ZIP Code, the local taxing jurisdiction that:

2231 (A) imposes the lowest agreement combined tax rate for the shared ZIP Code; and

2232 (B) has located within the local taxing jurisdiction the largest number of street
2233 addresses within the shared ZIP Code.

2234 (c) Notwithstanding any provision under this chapter authorizing or requiring the
2235 imposition of a sales and use tax, for purposes of Subsection (7)(b), a seller shall collect a sales
2236 and use tax imposed under this chapter at the lowest agreement combined tax rate imposed
2237 within the local taxing jurisdiction in which the transaction is located under Subsection (7)(b).

2238 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2239 commission may make rules:

2240 (i) providing for the circumstances under which a seller has exercised due diligence in
2241 determining the nine-digit ZIP Code for an address; or

2242 (ii) notwithstanding Subsection (7)(b), for determining the local taxing jurisdiction
2243 within which a transaction is located if a seller is unable to determine the local taxing
2244 jurisdiction within which the transaction is located under Subsection (7)(b).

2245 (8) The location of a transaction made with a direct payment permit described in
2246 Section 59-12-107.1 is the location where receipt of the tangible personal property, product, or
2247 service by the purchaser occurs.

2248 (9) The location of a purchase of direct mail is the location determined in accordance
2249 with Section 59-12-123.

2250 (10) (a) Except as provided in Subsection (10)(b), the location of a transaction
2251 determined under Subsections (3) through (6), (8), or (9), is the local taxing jurisdiction within
2252 which:

2253 (i) the nine-digit ZIP Code assigned to the location determined under Subsections (3)
2254 through (6), (8), or (9) is located; or

2255 (ii) the five-digit ZIP Code assigned to the location determined under Subsections (3)
2256 through (6), (8), or (9) is located if:

2257 (A) a nine-digit ZIP Code is not available for the location determined under

2258 Subsections (3) through (6), (8), or (9); or

2259 (B) after exercising due diligence, a seller or certified service provider is unable to
2260 determine a nine-digit ZIP Code for the location determined under Subsections (3) through (6),
2261 (8), or (9).

2262 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2263 commission may make rules for determining the local taxing jurisdiction within which a
2264 transaction is located if a seller or certified service provider is unable to determine the local
2265 taxing jurisdiction within which the transaction is located under Subsection (10)(a).

2266 (11) (a) As used in this Subsection (11), "florist delivery transaction" means a
2267 transaction commenced by a florist that transmits an order:

2268 (i) by:

2269 (A) telegraph;

2270 (B) telephone; or

2271 (C) a means of communication similar to Subsection (11)(a)(i)(A) or (B); and

2272 (ii) for delivery to another place:

2273 (A) in this state; or

2274 (B) outside this state.

2275 (b) Notwithstanding Subsections (3) through (6), beginning on January 1, 2009, and
2276 ending on December 31, 2009, the location of a florist delivery transaction is the business
2277 location of the florist that commences the florist delivery transaction.

2278 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2279 commission may by rule:

2280 (i) define:

2281 (A) "business location"; and

2282 (B) "florist";

2283 (ii) define what constitutes a means of communication similar to Subsection
2284 (11)(a)(i)(A) or (B); and

2285 (iii) provide procedures for determining when a transaction is commenced.

2286 (12) (a) Notwithstanding any other provision of this section and except as provided in
2287 Subsection (12)(b), if a purchaser uses computer software and there is not a transfer of a copy
2288 of that software to the purchaser, the location of the transaction is determined in accordance

2289 with Subsections (4) and (5).

2290 (b) If a purchaser uses computer software described in Subsection (12)(a) at more than
2291 one location, the location of the transaction shall be determined in accordance with rules made
2292 by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
2293 Act.

2294 [~~12~~] (13) (a) A tax collected under this chapter shall be reported to the commission
2295 on a form that identifies the location of each transaction that occurs during the return filing
2296 period.

2297 (b) The form described in Subsection [~~12~~] (13)(a) shall be filed with the commission
2298 as required under this chapter.

2299 [~~13~~] (14) This section does not apply to:

2300 (a) amounts charged by a seller for:

2301 (i) telecommunications service except for a prepaid calling service or a prepaid
2302 wireless calling service as provided in Subsection (6)(b) or Section 59-12-215; or

2303 (ii) the retail sale or transfer of:

2304 (A) a motor vehicle other than a motor vehicle that is transportation equipment;

2305 (B) an aircraft other than an aircraft that is transportation equipment;

2306 (C) a watercraft;

2307 (D) a modular home;

2308 (E) a manufactured home; or

2309 (F) a mobile home; or

2310 (iii) except as provided in Section 59-12-214, the lease or rental of tangible personal
2311 property other than tangible personal property that is transportation equipment;

2312 (b) a tax a person pays in accordance with Subsection 59-12-107(1)(d); or

2313 (c) a retail sale of tangible personal property or a product transferred electronically if:

2314 (i) the seller receives the order for the tangible personal property or product transferred
2315 electronically in this state;

2316 (ii) receipt of the tangible personal property or product transferred electronically by the
2317 purchaser or the purchaser's donee occurs in this state;

2318 (iii) the location where receipt of the tangible personal property or product transferred
2319 electronically by the purchaser occurs is determined in accordance with Subsections (3)

2320 through (5); and

2321 (iv) at the time the seller receives the order, the record keeping system that the seller
2322 uses to calculate the proper amount of tax imposed under this chapter captures the location
2323 where the order is received.

2324 Section 7. **Effective date.**

2325 This bill takes effect on July 1, 2011.