



28 **59-12-102**, as last amended by Laws of Utah 2010, Chapters 88, 142, 234, and 263

29 **59-12-103**, as last amended by Laws of Utah 2010, Chapter 412

30 **59-12-106**, as last amended by Laws of Utah 2008, Chapters 382 and 384

31 **59-12-128**, as last amended by Laws of Utah 2009, Chapter 212



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

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

35 **59-12-102. Definitions.**

36 As used in this chapter:

37 (1) "800 service" means a telecommunications service that:

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

39 (b) is typically marketed:

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

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

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

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

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

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

46 Federal Communications Commission.

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

48 (i) a subscriber purchases;

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

50 the subscriber's:

51 (A) prerecorded announcement; or

52 (B) live service; and

53 (iii) is typically marketed:

54 (A) under the name 900 service; or

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

56 Communications Commission.

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

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

- 59 subscriber; or
- 60 (ii) the following a subscriber sells to the subscriber's customer:
- 61 (A) a product; or
- 62 (B) a service.
- 63 (3) (a) "Admission or user fees" includes season passes.
- 64 (b) "Admission or user fees" does not include annual membership dues to private
- 65 organizations.
- 66 (4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on
- 67 November 12, 2002, including amendments made to the Streamlined Sales and Use Tax
- 68 Agreement after November 12, 2002.
- 69 (5) "Agreement combined tax rate" means the sum of the tax rates:
- 70 (a) listed under Subsection (6); and
- 71 (b) that are imposed within a local taxing jurisdiction.
- 72 (6) "Agreement sales and use tax" means a tax imposed under:
- 73 (a) Subsection 59-12-103(2)(a)(i)(A);
- 74 (b) Subsection 59-12-103(2)(b)(i);
- 75 (c) Subsection 59-12-103(2)(c)(i);
- 76 (d) Subsection 59-12-103(2)(d)(i)(A)(I);
- 77 (e) Section 59-12-204;
- 78 (f) Section 59-12-401;
- 79 (g) Section 59-12-402;
- 80 (h) Section 59-12-703;
- 81 (i) Section 59-12-802;
- 82 (j) Section 59-12-804;
- 83 (k) Section 59-12-1102;
- 84 (l) Section 59-12-1302;
- 85 (m) Section 59-12-1402;
- 86 (n) Section 59-12-1802;
- 87 (o) Section 59-12-2003;
- 88 (p) Section 59-12-2103;
- 89 (q) Section 59-12-2213;

- 90 (r) Section 59-12-2214;
- 91 (s) Section 59-12-2215;
- 92 (t) Section 59-12-2216;
- 93 (u) Section 59-12-2217; or
- 94 (v) Section 59-12-2218.
- 95 (7) "Aircraft" is as defined in Section 72-10-102.
- 96 (8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:
  - 97 (a) except for an airline as defined in Section 59-2-102 or an affiliated group as defined
  - 98 in Subsection 59-12-107(1)(f) of an airline; and
  - 99 (b) that has the workers, expertise, and facilities to perform the following, regardless of
  - 100 whether the business entity performs the following in this state:
    - 101 (i) check, diagnose, overhaul, and repair:
      - 102 (A) an onboard system of a fixed wing turbine powered aircraft; and
      - 103 (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;
    - 104 (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft
    - 105 engine;
    - 106 (iii) perform at least the following maintenance on a fixed wing turbine powered
    - 107 aircraft:
      - 108 (A) an inspection;
      - 109 (B) a repair, including a structural repair or modification;
      - 110 (C) changing landing gear; and
      - 111 (D) addressing issues related to an aging fixed wing turbine powered aircraft;
    - 112 (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and
    - 113 completely apply new paint to the fixed wing turbine powered aircraft; and
    - 114 (v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that
    - 115 results in a change in the fixed wing turbine powered aircraft's certification requirements by the
    - 116 authority that certifies the fixed wing turbine powered aircraft.
  - 117 (9) "Alcoholic beverage" means a beverage that:
    - 118 (a) is suitable for human consumption; and
    - 119 (b) contains .5% or more alcohol by volume.
  - 120 (10) (a) "Ancillary service" means a service associated with, or incidental to, the

121 provision of telecommunications service.

122 (b) "Ancillary service" includes:

123 (i) a conference bridging service;

124 (ii) a detailed communications billing service;

125 (iii) directory assistance;

126 (iv) a vertical service; or

127 (v) a voice mail service.

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

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

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

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

135 (13) "Assisted cleaning or washing of tangible personal property" means cleaning or  
136 washing of tangible personal property if the cleaning or washing labor is primarily performed  
137 by an individual:

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

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

142 (14) "Authorized carrier" means:

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

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

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

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

- 152 (i) material from a plant or tree; or  
153 (ii) other organic matter that is available on a renewable basis, including:  
154 (A) slash and brush from forests and woodlands;  
155 (B) animal waste;  
156 (C) methane produced:  
157 (I) at landfills; or  
158 (II) as a byproduct of the treatment of wastewater residuals;  
159 (D) aquatic plants; and  
160 (E) agricultural products.
- 161 (b) "Biomass energy" does not include:  
162 (i) black liquor;  
163 (ii) treated woods; or  
164 (iii) biomass from municipal solid waste other than methane produced:  
165 (A) at landfills; or  
166 (B) as a byproduct of the treatment of wastewater residuals.
- 167 (16) (a) "Bundled transaction" means the sale of two or more items of tangible personal  
168 property, products, or services if the tangible personal property, products, or services are:  
169 (i) distinct and identifiable; and  
170 (ii) sold for one nonitemized price.
- 171 (b) "Bundled transaction" does not include:  
172 (i) the sale of tangible personal property if the sales price varies, or is negotiable, on  
173 the basis of the selection by the purchaser of the items of tangible personal property included in  
174 the transaction;  
175 (ii) the sale of real property;  
176 (iii) the sale of services to real property;  
177 (iv) the retail sale of tangible personal property and a service if:  
178 (A) the tangible personal property:  
179 (I) is essential to the use of the service; and  
180 (II) is provided exclusively in connection with the service; and  
181 (B) the service is the true object of the transaction;  
182 (v) the retail sale of two services if:

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

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

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

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

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

227 (A) a binding sales document; or

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

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

231 (A) a bill of sale;

232 (B) a contract;

233 (C) an invoice;

234 (D) a lease agreement;

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

236 (F) a price list;

237 (G) a rate card;

238 (H) a receipt; or

239 (I) a service agreement.

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

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

244 (B) the seller's sales price of the tangible personal property or product is 10% or less of



245 the seller's total sales price of the bundled transaction.

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

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

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

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

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

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

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

263 (i) on a transaction; and

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

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

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

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

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

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

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

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

276 commission shall make rules:

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

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

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

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

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

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

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

292 (23) "Component part" includes:

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

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

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

298 (d) feed, seeds, and seedlings.

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

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

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

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

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

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

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

306 (26) (a) "Conference bridging service" means an ancillary service that links two or

307 more participants of an audio conference call or video conference call.

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

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

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

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

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

317 (i) by a seller of:

318 (A) tangible personal property;

319 (B) a product transferred electronically; or

320 (C) services; and

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

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

325 (i) transportation;

326 (ii) shipping;

327 (iii) postage;

328 (iv) handling;

329 (v) crating; or

330 (vi) packing.

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

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

334 (a) is intended to supplement the diet;

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

336 (i) a vitamin;

337 (ii) a mineral;

- 338 (iii) an herb or other botanical;
- 339 (iv) an amino acid;
- 340 (v) a dietary substance for use by humans to supplement the diet by increasing the total
- 341 dietary intake; or
- 342 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
- 343 described in Subsections (31)(b)(i) through (v);
- 344 (c) (i) except as provided in Subsection (31)(c)(ii), is intended for ingestion in:
- 345 (A) tablet form;
- 346 (B) capsule form;
- 347 (C) powder form;
- 348 (D) softgel form;
- 349 (E) gelcap form; or
- 350 (F) liquid form; or
- 351 (ii) notwithstanding Subsection (31)(c)(i), if the product is not intended for ingestion in
- 352 a form described in Subsections (31)(c)(i)(A) through (F), is not represented:
- 353 (A) as conventional food; and
- 354 (B) for use as a sole item of:
- 355 (I) a meal; or
- 356 (II) the diet; and
- 357 (d) is required to be labeled as a dietary supplement:
- 358 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 359 (ii) as required by 21 C.F.R. Sec. 101.36.
- 360 (32) (a) "Direct mail" means printed material delivered or distributed by United States
- 361 mail or other delivery service:
- 362 (i) to:
- 363 (A) a mass audience; or
- 364 (B) addressees on a mailing list provided:
- 365 (I) by a purchaser of the mailing list; or
- 366 (II) at the discretion of the purchaser of the mailing list; and
- 367 (ii) if the cost of the printed material is not billed directly to the recipients.
- 368 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a

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

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

372 (33) "Directory assistance" means an ancillary service of providing:

373 (a) address information; or

374 (b) telephone number information.

375 (34) (a) "Disposable home medical equipment or supplies" means medical equipment  
376 or supplies that:

377 (i) cannot withstand repeated use; and

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

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

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

381 (C) an office of a health care provider described in Subsection (34)(a)(ii)(B); or

382 (D) a person similar to a person described in Subsections (34)(a)(ii)(A) through (C).

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

384 (i) a drug;

385 (ii) durable medical equipment;

386 (iii) a hearing aid;

387 (iv) a hearing aid accessory;

388 (v) mobility enhancing equipment; or

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

390 (A) eyeglasses; or

391 (B) contact lenses.

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

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

396 (i) recognized in:

397 (A) the official United States Pharmacopoeia;

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

399 (C) the official National Formulary; or

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

401 (ii) intended for use in the:

402 (A) diagnosis of disease;

403 (B) cure of disease;

404 (C) mitigation of disease;

405 (D) treatment of disease; or

406 (E) prevention of disease; or

407 (iii) intended to affect:

408 (A) the structure of the body; or

409 (B) any function of the body.

410 (b) "Drug" does not include:

411 (i) food and food ingredients;

412 (ii) a dietary supplement;

413 (iii) an alcoholic beverage; or

414 (iv) a prosthetic device.

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

417 (i) can withstand repeated use;

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

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

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

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

423 (c) Notwithstanding Subsection (36)(a), "durable medical equipment" does not include  
424 mobility enhancing equipment.

425 (37) "Electronic" means:

426 (a) relating to technology; and

427 (b) having:

428 (i) electrical capabilities;

429 (ii) digital capabilities;

430 (iii) magnetic capabilities;

- 431 (iv) wireless capabilities;
- 432 (v) optical capabilities;
- 433 (vi) electromagnetic capabilities; or
- 434 (vii) capabilities similar to Subsections (37)(b)(i) through (vi).
- 435 (38) "Employee" is as defined in Section 59-10-401.
- 436 (39) "Fixed guideway" means a public transit facility that uses and occupies:
- 437 (a) rail for the use of public transit; or
- 438 (b) a separate right-of-way for the use of public transit.
- 439 (40) "Fixed wing turbine powered aircraft" means an aircraft that:
- 440 (a) is powered by turbine engines;
- 441 (b) operates on jet fuel; and
- 442 (c) has wings that are permanently attached to the fuselage of the aircraft.
- 443 (41) "Fixed wireless service" means a telecommunications service that provides radio
- 444 communication between fixed points.
- 445 (42) (a) "Food and food ingredients" means substances:
- 446 (i) regardless of whether the substances are in:
- 447 (A) liquid form;
- 448 (B) concentrated form;
- 449 (C) solid form;
- 450 (D) frozen form;
- 451 (E) dried form; or
- 452 (F) dehydrated form; and
- 453 (ii) that are:
- 454 (A) sold for:
- 455 (I) ingestion by humans; or
- 456 (II) chewing by humans; and
- 457 (B) consumed for the substance's:
- 458 (I) taste; or
- 459 (II) nutritional value.
- 460 (b) "Food and food ingredients" includes an item described in Subsection (78)(b)(iii).
- 461 (c) "Food and food ingredients" does not include:

462 (i) an alcoholic beverage;

463 (ii) tobacco; or

464 (iii) prepared food.

465 (43) (a) "Fundraising sales" means sales:

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

467 (B) made by a school student;

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

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

471 (b) For purposes of Subsection (43)(a)(iii), "officially sanctioned school activity"  
472 means a school activity:

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

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

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

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

481 (45) "Governing board of the agreement" means the governing board of the agreement  
482 that is:

483 (a) authorized to administer the agreement; and

484 (b) established in accordance with the agreement.

485 (46) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:

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

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

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



493 Analyst;

494 (iv) the National Guard;

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

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

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

498 education, including:

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

500 (ii) a school;

501 (iii) the State Board of Education;

502 (iv) the State Board of Regents; or

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

504 (47) "Hydroelectric energy" means water used as the sole source of energy to produce

505 electricity.

506 (48) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or

507 other fuels:

508 (a) in mining or extraction of minerals;

509 (b) in agricultural operations to produce an agricultural product up to the time of

510 harvest or placing the agricultural product into a storage facility, including:

511 (i) commercial greenhouses;

512 (ii) irrigation pumps;

513 (iii) farm machinery;

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

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

516 (v) other farming activities;

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

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

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

520 (d) by a scrap recycler if:

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

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

523 products:

- 524 (A) iron;
- 525 (B) steel;
- 526 (C) nonferrous metal;
- 527 (D) paper;
- 528 (E) glass;
- 529 (F) plastic;
- 530 (G) textile; or
- 531 (H) rubber; and
- 532 (ii) the new products under Subsection (48)(d)(i) would otherwise be made with
- 533 nonrecycled materials; or
- 534 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a
- 535 cogeneration facility as defined in Section 54-2-1.
- 536 (49) (a) Except as provided in Subsection (49)(b), "installation charge" means a charge
- 537 for installing:
- 538 (i) tangible personal property; or
- 539 (ii) a product transferred electronically.
- 540 (b) "Installation charge" does not include a charge for:
- 541 (i) repairs or renovations of:
- 542 [(†) (A) tangible personal property; or
- 543 [(†) (B) a product transferred electronically[:]; or
- 544 (ii) attaching tangible personal property or a product transferred electronically:
- 545 (A) to other tangible personal property; and
- 546 (B) as part of a manufacturing or fabrication process.
- 547 (50) (a) "Lease" or "rental" means a transfer of possession or control of tangible
- 548 personal property or a product transferred electronically for:
- 549 (i) (A) a fixed term; or
- 550 (B) an indeterminate term; and
- 551 (ii) consideration.
- 552 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
- 553 amount of consideration may be increased or decreased by reference to the amount realized
- 554 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue

555 Code.

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

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

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

562 (A) upon completion of required payments; and

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

564 (I) \$100; or

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

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

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

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

572 (ii) maintenance of tangible personal property; or

573 (iii) inspection of tangible personal property.

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

576 (52) "Local taxing jurisdiction" means a:

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

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

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

580 (53) "Manufactured home" is as defined in Section 58-56-3.

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

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

583 Industrial Classification Manual of the federal Executive Office of the President, Office of  
584 Management and Budget;

585 (b) a scrap recycler if:

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

- 589 (A) iron;
- 590 (B) steel;
- 591 (C) nonferrous metal;
- 592 (D) paper;
- 593 (E) glass;
- 594 (F) plastic;
- 595 (G) textile; or
- 596 (H) rubber; and

597 (ii) the new products under Subsection (54)(b)(i) would otherwise be made with  
598 nonrecycled materials; or

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

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

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

- 603 (i) an adopted child or adopted stepchild; or
- 604 (ii) a foster child or foster stepchild;
- 605 (b) grandchild or stepgrandchild;
- 606 (c) grandparent or stepgrandparent;
- 607 (d) nephew or stepnephew;
- 608 (e) niece or stepniece;
- 609 (f) parent or stepparent;
- 610 (g) sibling or stepsibling;
- 611 (h) spouse;

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

613 or

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

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

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

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

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

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

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

624 (iii) the origination point described in Subsection (58)(a)(i) and the termination point

625 described in Subsection (58)(a)(ii) are not fixed.

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

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

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

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

634 (ii) appropriate for use in a:

635 (A) home; or

636 (B) motor vehicle; and

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

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

640 (c) Notwithstanding Subsection (59)(a), "mobility enhancing equipment" does not  
641 include:

642 (i) a motor vehicle;

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

645 (iii) durable medical equipment; or

646 (iv) a prosthetic device.

647 (60) "Model 1 seller" means a seller registered under the agreement that has selected a

648 certified service provider as the seller's agent to perform all of the seller's sales and use tax  
649 functions for agreement sales and use taxes other than the seller's obligation under Section  
650 59-12-124 to remit a tax on the seller's own purchases.

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

652 (a) except as provided in Subsection (61)(b), has selected a certified automated system  
653 to perform the seller's sales tax functions for agreement sales and use taxes; and

654 (b) notwithstanding Subsection (61)(a), retains responsibility for remitting all of the  
655 sales tax:

656 (i) collected by the seller; and

657 (ii) to the appropriate local taxing jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

678 (68) (a) "Paging service" means a telecommunications service that provides

679 transmission of a coded radio signal for the purpose of activating a specific pager.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

702 (iii) property attached to oil, gas, or water pipelines, except for the property listed in  
703 Subsection (71)(c)(iii) or (iv).

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

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

707 (A) convenience;

708 (B) stability; or

709 (C) for an obvious temporary purpose;

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

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

716 (A) a computer;

717 (B) a telephone;

718 (C) a television; or

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

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

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

727 (73) "Place of primary use":

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

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

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

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

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

737 (i) through the use of a:

738 (A) bank card;

739 (B) credit card;

740 (C) debit card; or



741 (D) travel card; or  
742 (ii) by a charge made to a telephone number that is not associated with the origination  
743 or termination of the telecommunications service.

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

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

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

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

752 (b) that:

753 (i) is paid for in advance; and

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

755 (A) access number; or

756 (B) authorization code;

757 (c) that is dialed:

758 (i) manually; or

759 (ii) electronically; and

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

761 (i) by a known amount; and

762 (ii) with use.

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

764 (a) that provides the right to utilize:

765 (i) mobile wireless service; and

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

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

768 (B) a content service; or

769 (C) an ancillary service;

770 (b) that:

771 (i) is paid for in advance; and

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

- 803 (I) raw egg;
- 804 (II) raw fish;
- 805 (III) raw meat;
- 806 (IV) raw poultry; or
- 807 (V) a food containing an item described in Subsections (78)(b)(ii)(A)(I) through (IV);
- 808 and
- 809 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 810 Food and Drug Administration's Food Code that a consumer cook the items described in
- 811 Subsection (78)(b)(ii)(A) to prevent food borne illness; or
- 812 (iii) the following if sold without eating utensils provided by the seller:
- 813 (A) food and food ingredients sold by a seller if the seller's proper primary
- 814 classification under the 2002 North American Industry Classification System of the federal
- 815 Executive Office of the President, Office of Management and Budget, is manufacturing in
- 816 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
- 817 Manufacturing;
- 818 (B) food and food ingredients sold in an unheated state:
- 819 (I) by weight or volume; and
- 820 (II) as a single item; or
- 821 (C) a bakery item, including:
- 822 (I) a bagel;
- 823 (II) a bar;
- 824 (III) a biscuit;
- 825 (IV) bread;
- 826 (V) a bun;
- 827 (VI) a cake;
- 828 (VII) a cookie;
- 829 (VIII) a croissant;
- 830 (IX) a danish;
- 831 (X) a donut;
- 832 (XI) a muffin;
- 833 (XII) a pastry;

834 (XIII) a pie;  
835 (XIV) a roll;  
836 (XV) a tart;  
837 (XVI) a torte; or  
838 (XVII) a tortilla.  
839 (c) Notwithstanding Subsection (78)(a)(iii), an eating utensil provided by the seller  
840 does not include the following used to transport the food:  
841 (i) a container; or  
842 (ii) packaging.  
843 (79) "Prescription" means an order, formula, or recipe that is issued:  
844 (a) (i) orally;  
845 (ii) in writing;  
846 (iii) electronically; or  
847 (iv) by any other manner of transmission; and  
848 (b) by a licensed practitioner authorized by the laws of a state.  
849 (80) (a) Except as provided in Subsection (80)(b)(ii) or (iii), "prewritten computer  
850 software" means computer software that is not designed and developed:  
851 (i) by the author or other creator of the computer software; and  
852 (ii) to the specifications of a specific purchaser.  
853 (b) "Prewritten computer software" includes:  
854 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer  
855 software is not designed and developed:  
856 (A) by the author or other creator of the computer software; and  
857 (B) to the specifications of a specific purchaser;  
858 (ii) notwithstanding Subsection (80)(a), computer software designed and developed by  
859 the author or other creator of the computer software to the specifications of a specific purchaser  
860 if the computer software is sold to a person other than the purchaser; or  
861 (iii) notwithstanding Subsection (80)(a) and except as provided in Subsection (80)(c),  
862 prewritten computer software or a prewritten portion of prewritten computer software:  
863 (A) that is modified or enhanced to any degree; and  
864 (B) if the modification or enhancement described in Subsection (80)(b)(iii)(A) is

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

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

869 (i) reasonable; and

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

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

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

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

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

879 (i) an extension line;

880 (ii) a station;

881 (iii) switching capacity; or

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

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

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

888 (i) an ancillary service;

889 (ii) computer software; or

890 (iii) a telecommunications service.

891 [~~82~~] (83) (a) "Prosthetic device" means a device that is worn on or in the body to:

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

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

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

895 (b) "Prosthetic device" includes:

- 896 (i) parts used in the repairs or renovation of a prosthetic device;
- 897 (ii) replacement parts for a prosthetic device;
- 898 (iii) a dental prosthesis; or
- 899 (iv) a hearing aid.
- 900 (c) "Prosthetic device" does not include:
- 901 (i) corrective eyeglasses; or
- 902 (ii) contact lenses.
- 903 ~~[(83)]~~ (84) (a) "Protective equipment" means an item:
- 904 (i) for human wear; and
- 905 (ii) that is:
- 906 (A) designed as protection:
- 907 (I) to the wearer against injury or disease; or
- 908 (II) against damage or injury of other persons or property; and
- 909 (B) not suitable for general use.
- 910 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 911 commission shall make rules:
- 912 (i) listing the items that constitute "protective equipment"; and
- 913 (ii) that are consistent with the list of items that constitute "protective equipment"
- 914 under the agreement.
- 915 ~~[(84)]~~ (85) (a) For purposes of Subsection 59-12-104(41), "publication" means any
- 916 written or printed matter, other than a photocopy:
- 917 (i) regardless of:
- 918 (A) characteristics;
- 919 (B) copyright;
- 920 (C) form;
- 921 (D) format;
- 922 (E) method of reproduction; or
- 923 (F) source; and
- 924 (ii) made available in printed or electronic format.
- 925 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 926 commission may by rule define the term "photocopy."

927            [~~(85)~~] (86) (a) "Purchase price" and "sales price" mean the total amount of  
928 consideration:  
929            (i) valued in money; and  
930            (ii) for which tangible personal property, a product transferred electronically, or  
931 services are:  
932            (A) sold;  
933            (B) leased; or  
934            (C) rented.  
935            (b) "Purchase price" and "sales price" include:  
936            (i) the seller's cost of the tangible personal property, a product transferred  
937 electronically, or services sold;  
938            (ii) expenses of the seller, including:  
939            (A) the cost of materials used;  
940            (B) a labor cost;  
941            (C) a service cost;  
942            (D) interest;  
943            (E) a loss;  
944            (F) the cost of transportation to the seller; or  
945            (G) a tax imposed on the seller;  
946            (iii) a charge by the seller for any service necessary to complete the sale; or  
947            (iv) consideration a seller receives from a person other than the purchaser if:  
948            (A) (I) the seller actually receives consideration from a person other than the purchaser;  
949 and  
950            (II) the consideration described in Subsection [~~(85)~~] (86)(b)(iv)(A)(I) is directly related  
951 to a price reduction or discount on the sale;  
952            (B) the seller has an obligation to pass the price reduction or discount through to the  
953 purchaser;  
954            (C) the amount of the consideration attributable to the sale is fixed and determinable by  
955 the seller at the time of the sale to the purchaser; and  
956            (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the  
957 seller to claim a price reduction or discount; and

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

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

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

967 (Aa) invoice the purchaser receives; or

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

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

970 (i) a discount:

971 (A) in a form including:

972 (I) cash;

973 (II) term; or

974 (III) coupon;

975 (B) that is allowed by a seller;

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

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

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

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

982 (I) a carrying charge;

983 (II) a financing charge; or

984 (III) an interest charge;

985 (B) a delivery charge;

986 (C) an installation charge;

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

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



989 [~~(86)~~] (87) "Purchaser" means a person to whom:

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

991 (b) a product is transferred electronically; or

992 (c) a service is furnished.

993 [~~(87)~~] (88) "Regularly rented" means:

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

995 (b) advertised or held out to the public as a place that is regularly rented to guests for  
996 value.

997 [~~(88)~~] (89) "Renewable energy" means:

998 (a) biomass energy;

999 (b) hydroelectric energy;

1000 (c) geothermal energy;

1001 (d) solar energy; or

1002 (e) wind energy.

1003 [~~(89)~~] (90) (a) "Renewable energy production facility" means a facility that:

1004 (i) uses renewable energy to produce electricity; and

1005 (ii) has a production capacity of 20 kilowatts or greater.

1006 (b) A facility is a renewable energy production facility regardless of whether the  
1007 facility is:

1008 (i) connected to an electric grid; or

1009 (ii) located on the premises of an electricity consumer.

1010 [~~(90)~~] (91) "Rental" is as defined in Subsection (50).

1011 [~~(91)~~] (92) "Repairs or renovations of tangible personal property" means:

1012 (a) a repair or renovation of tangible personal property that is not permanently attached  
1013 to real property; or

1014 (b) attaching tangible personal property or a product [~~that is~~] transferred electronically  
1015 to other tangible personal property if:

1016 (i) the other tangible personal property to which the tangible personal property or  
1017 product [~~that is~~] transferred electronically is attached is not permanently attached to real  
1018 property[-]; and

1019 (ii) the attachment of tangible personal property or a product transferred electronically

1020 to other tangible personal property is made in conjunction with a repair or replacement of  
1021 tangible personal property or a product transferred electronically.

1022 [~~92~~] (93) "Research and development" means the process of inquiry or  
1023 experimentation aimed at the discovery of facts, devices, technologies, or applications and the  
1024 process of preparing those devices, technologies, or applications for marketing.

1025 [~~93~~] (94) (a) "Residential telecommunications services" means a telecommunications  
1026 service or an ancillary service that is provided to an individual for personal use:

1027 (i) at a residential address; or

1028 (ii) at an institution, including a nursing home or a school, if the telecommunications  
1029 service or ancillary service is provided to and paid for by the individual residing at the  
1030 institution rather than the institution.

1031 (b) For purposes of Subsection [~~93~~] (94)(a)(i), a residential address includes an:

1032 (i) apartment; or

1033 (ii) other individual dwelling unit.

1034 [~~94~~] (95) "Residential use" means the use in or around a home, apartment building,  
1035 sleeping quarters, and similar facilities or accommodations.

1036 [~~95~~] (96) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose  
1037 other than:

1038 (a) resale;

1039 (b) sublease; or

1040 (c) subrent.

1041 [~~96~~] (97) (a) "Retailer" means any person engaged in a regularly organized business  
1042 in tangible personal property or any other taxable transaction under Subsection 59-12-103(1),  
1043 and who is selling to the user or consumer and not for resale.

1044 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly  
1045 engaged in the business of selling to users or consumers within the state.

1046 [~~97~~] (98) (a) "Sale" means any transfer of title, exchange, or barter, conditional or  
1047 otherwise, in any manner, of tangible personal property or any other taxable transaction under  
1048 Subsection 59-12-103(1), for consideration.

1049 (b) "Sale" includes:

1050 (i) installment and credit sales;

- 1051 (ii) any closed transaction constituting a sale;
- 1052 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
- 1053 chapter;
- 1054 (iv) any transaction if the possession of property is transferred but the seller retains the
- 1055 title as security for the payment of the price; and
- 1056 (v) any transaction under which right to possession, operation, or use of any article of
- 1057 tangible personal property is granted under a lease or contract and the transfer of possession
- 1058 would be taxable if an outright sale were made.
- 1059 ~~[(98)]~~ (99) "Sale at retail" is as defined in Subsection ~~[(95)]~~ (96).
- 1060 ~~[(99)]~~ (100) "Sale-leaseback transaction" means a transaction by which title to tangible
- 1061 personal property or a product transferred electronically that is subject to a tax under this
- 1062 chapter is transferred:
- 1063 (a) by a purchaser-lessee;
- 1064 (b) to a lessor;
- 1065 (c) for consideration; and
- 1066 (d) if:
- 1067 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
- 1068 of the tangible personal property or product transferred electronically;
- 1069 (ii) the sale of the tangible personal property or product transferred electronically to the
- 1070 lessor is intended as a form of financing:
- 1071 (A) for the tangible personal property or product transferred electronically; and
- 1072 (B) to the purchaser-lessee; and
- 1073 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
- 1074 is required to:
- 1075 (A) capitalize the tangible personal property or product transferred electronically for
- 1076 financial reporting purposes; and
- 1077 (B) account for the lease payments as payments made under a financing arrangement.
- 1078 ~~[(100)]~~ (101) "Sales price" is as defined in Subsection ~~[(85)]~~ (86).
- 1079 ~~[(101)]~~ (102) (a) "Sales relating to schools" means the following sales by, amounts
- 1080 paid to, or amounts charged by a school:
- 1081 (i) sales that are directly related to the school's educational functions or activities

- 1082 including:
- 1083 (A) the sale of:
  - 1084 (I) textbooks;
  - 1085 (II) textbook fees;
  - 1086 (III) laboratory fees;
  - 1087 (IV) laboratory supplies; or
  - 1088 (V) safety equipment;
  - 1089 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
- 1090 that:
- 1091 (I) a student is specifically required to wear as a condition of participation in a
  - 1092 school-related event or school-related activity; and
  - 1093 (II) is not readily adaptable to general or continued usage to the extent that it takes the
  - 1094 place of ordinary clothing;
  - 1095 (C) sales of the following if the net or gross revenues generated by the sales are
  - 1096 deposited into a school district fund or school fund dedicated to school meals:
  - 1097 (I) food and food ingredients; or
  - 1098 (II) prepared food; or
  - 1099 (D) transportation charges for official school activities; or
  - 1100 (ii) amounts paid to or amounts charged by a school for admission to a school-related
  - 1101 event or school-related activity.
  - 1102 (b) "Sales relating to schools" does not include:
  - 1103 (i) bookstore sales of items that are not educational materials or supplies;
  - 1104 (ii) except as provided in Subsection [~~(101)~~] (102)(a)(i)(B):
  - 1105 (A) clothing;
  - 1106 (B) clothing accessories or equipment;
  - 1107 (C) protective equipment; or
  - 1108 (D) sports or recreational equipment; or
  - 1109 (iii) amounts paid to or amounts charged by a school for admission to a school-related
  - 1110 event or school-related activity if the amounts paid or charged are passed through to a person:
  - 1111 (A) other than a:
  - 1112 (I) school;

- 1113 (II) nonprofit organization authorized by a school board or a governing body of a  
1114 private school to organize and direct a competitive secondary school activity; or
- 1115 (III) nonprofit association authorized by a school board or a governing body of a  
1116 private school to organize and direct a competitive secondary school activity; and
- 1117 (B) that is required to collect sales and use taxes under this chapter.
- 1118 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1119 commission may make rules defining the term "passed through."
- 1120 [~~(102)~~] (103) For purposes of this section and Section 59-12-104, "school":
- 1121 (a) means:
- 1122 (i) an elementary school or a secondary school that:
- 1123 (A) is a:
- 1124 (I) public school; or
- 1125 (II) private school; and
- 1126 (B) provides instruction for one or more grades kindergarten through 12; or
- 1127 (ii) a public school district; and
- 1128 (b) includes the Electronic High School as defined in Section 53A-15-1002.
- 1129 [~~(103)~~] (104) "Seller" means a person that makes a sale, lease, or rental of:
- 1130 (a) tangible personal property;
- 1131 (b) a product transferred electronically; or
- 1132 (c) a service.
- 1133 [~~(104)~~] (105) (a) "Semiconductor fabricating, processing, research, or development  
1134 materials" means tangible personal property or a product transferred electronically if the  
1135 tangible personal property or product transferred electronically is:
- 1136 (i) used primarily in the process of:
- 1137 (A) (I) manufacturing a semiconductor;
- 1138 (II) fabricating a semiconductor; or
- 1139 (III) research or development of a:
- 1140 (Aa) semiconductor; or
- 1141 (Bb) semiconductor manufacturing process; or
- 1142 (B) maintaining an environment suitable for a semiconductor; or
- 1143 (ii) consumed primarily in the process of:

- 1144 (A) (I) manufacturing a semiconductor;
- 1145 (II) fabricating a semiconductor; or
- 1146 (III) research or development of a:
- 1147 (Aa) semiconductor; or
- 1148 (Bb) semiconductor manufacturing process; or
- 1149 (B) maintaining an environment suitable for a semiconductor.
- 1150 (b) "Semiconductor fabricating, processing, research, or development materials"
- 1151 includes:
- 1152 (i) parts used in the repairs or renovations of tangible personal property or a product
- 1153 transferred electronically described in Subsection [~~(104)~~] (105)(a); or
- 1154 (ii) a chemical, catalyst, or other material used to:
- 1155 (A) produce or induce in a semiconductor a:
- 1156 (I) chemical change; or
- 1157 (II) physical change;
- 1158 (B) remove impurities from a semiconductor; or
- 1159 (C) improve the marketable condition of a semiconductor.
- 1160 [~~(105)~~] (106) "Senior citizen center" means a facility having the primary purpose of
- 1161 providing services to the aged as defined in Section 62A-3-101.
- 1162 [~~(106)~~] (107) "Simplified electronic return" means the electronic return:
- 1163 (a) described in Section 318(C) of the agreement; and
- 1164 (b) approved by the governing board of the agreement.
- 1165 [~~(107)~~] (108) "Solar energy" means the sun used as the sole source of energy for
- 1166 producing electricity.
- 1167 [~~(108)~~] (109) (a) "Sports or recreational equipment" means an item:
- 1168 (i) designed for human use; and
- 1169 (ii) that is:
- 1170 (A) worn in conjunction with:
- 1171 (I) an athletic activity; or
- 1172 (II) a recreational activity; and
- 1173 (B) not suitable for general use.
- 1174 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1175 commission shall make rules:

1176 (i) listing the items that constitute "sports or recreational equipment"; and

1177 (ii) that are consistent with the list of items that constitute "sports or recreational  
1178 equipment" under the agreement.

1179 [~~(109)~~] (110) "State" means the state of Utah, its departments, and agencies.

1180 [~~(110)~~] (111) "Storage" means any keeping or retention of tangible personal property or  
1181 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose  
1182 except sale in the regular course of business.

1183 [~~(111)~~] (112) (a) Except as provided in Subsection [~~(112)~~] (112)(d) or (e), "tangible  
1184 personal property" means personal property that:

1185 (i) may be:

1186 (A) seen;

1187 (B) weighed;

1188 (C) measured;

1189 (D) felt; or

1190 (E) touched; or

1191 (ii) is in any manner perceptible to the senses.

1192 (b) "Tangible personal property" includes:

1193 (i) electricity;

1194 (ii) water;

1195 (iii) gas;

1196 (iv) steam; or

1197 (v) prewritten computer software, regardless of the manner in which the prewritten  
1198 computer software is transferred.

1199 (c) "Tangible personal property" includes the following, regardless of whether the item  
1200 is attached to real property:

1201 (i) a dishwasher;

1202 (ii) a dryer;

1203 (iii) a freezer;

1204 (iv) a microwave;

1205 (v) a refrigerator;

1206 (vi) a stove;  
1207 (vii) a washer; or  
1208 (viii) an item similar to Subsections [~~(111)~~] (112)(c)(i) through (vii) as determined by  
1209 the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
1210 Rulemaking Act.

1211 (d) "Tangible personal property" does not include a product that is transferred  
1212 electronically.

1213 (e) "Tangible personal property" does not include the following if attached to real  
1214 property, regardless of whether the attachment to real property is only through a line that  
1215 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the  
1216 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
1217 Rulemaking Act:

- 1218 (i) a hot water heater;
- 1219 (ii) a water filtration system; or
- 1220 (iii) a water softener system.

1221 [~~(112)~~] (113) "Tar sands" means impregnated sands that yield mixtures of liquid  
1222 hydrocarbon and require further processing other than mechanical blending before becoming  
1223 finished petroleum products.

1224 [~~(113)~~] (114) (a) "Telecommunications enabling or facilitating equipment, machinery,  
1225 or software" means an item listed in Subsection [~~(113)~~] (114)(b) if that item is purchased or  
1226 leased primarily to enable or facilitate one or more of the following to function:

- 1227 (i) telecommunications switching or routing equipment, machinery, or software; or
- 1228 (ii) telecommunications transmission equipment, machinery, or software.

1229 (b) The following apply to Subsection [~~(113)~~] (114)(a):

- 1230 (i) a pole;
- 1231 (ii) software;
- 1232 (iii) a supplementary power supply;
- 1233 (iv) temperature or environmental equipment or machinery;
- 1234 (v) test equipment;
- 1235 (vi) a tower; or
- 1236 (vii) equipment, machinery, or software that functions similarly to an item listed in



1237 Subsections [~~(H3)~~] (114)(b)(i) through (vi) as determined by the commission by rule made in  
1238 accordance with Subsection [~~(H3)~~] (114)(c).

1239 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1240 commission may by rule define what constitutes equipment, machinery, or software that  
1241 functions similarly to an item listed in Subsections [~~(H3)~~] (114)(b)(i) through (vi).

1242 [~~(H4)~~] (115) "Telecommunications equipment, machinery, or software required for  
1243 911 service" means equipment, machinery, or software that is required to comply with 47  
1244 C.F.R. Sec. 20.18.

1245 [~~(H5)~~] (116) "Telecommunications maintenance or repair equipment, machinery, or  
1246 software" means equipment, machinery, or software purchased or leased primarily to maintain  
1247 or repair one or more of the following, regardless of whether the equipment, machinery, or  
1248 software is purchased or leased as a spare part or as an upgrade or modification to one or more  
1249 of the following:

1250 (a) telecommunications enabling or facilitating equipment, machinery, or software;

1251 (b) telecommunications switching or routing equipment, machinery, or software; or

1252 (c) telecommunications transmission equipment, machinery, or software.

1253 [~~(H6)~~] (117) (a) "Telecommunications service" means the electronic conveyance,  
1254 routing, or transmission of audio, data, video, voice, or any other information or signal to a  
1255 point, or among or between points.

1256 (b) "Telecommunications service" includes:

1257 (i) an electronic conveyance, routing, or transmission with respect to which a computer  
1258 processing application is used to act:

1259 (A) on the code, form, or protocol of the content;

1260 (B) for the purpose of electronic conveyance, routing, or transmission; and

1261 (C) regardless of whether the service:

1262 (I) is referred to as voice over Internet protocol service; or

1263 (II) is classified by the Federal Communications Commission as enhanced or value  
1264 added;

1265 (ii) an 800 service;

1266 (iii) a 900 service;

1267 (iv) a fixed wireless service;

- 1268 (v) a mobile wireless service;
- 1269 (vi) a postpaid calling service;
- 1270 (vii) a prepaid calling service;
- 1271 (viii) a prepaid wireless calling service; or
- 1272 (ix) a private communications service.
- 1273 (c) "Telecommunications service" does not include:
- 1274 (i) advertising, including directory advertising;
- 1275 (ii) an ancillary service;
- 1276 (iii) a billing and collection service provided to a third party;
- 1277 (iv) a data processing and information service if:
- 1278 (A) the data processing and information service allows data to be:
- 1279 (I) (Aa) acquired;
- 1280 (Bb) generated;
- 1281 (Cc) processed;
- 1282 (Dd) retrieved; or
- 1283 (Ee) stored; and
- 1284 (II) delivered by an electronic transmission to a purchaser; and
- 1285 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 1286 or information;
- 1287 (v) installation or maintenance of the following on a customer's premises:
- 1288 (A) equipment; or
- 1289 (B) wiring;
- 1290 (vi) Internet access service;
- 1291 (vii) a paging service;
- 1292 (viii) a product transferred electronically, including:
- 1293 (A) music;
- 1294 (B) reading material;
- 1295 (C) a ring tone;
- 1296 (D) software; or
- 1297 (E) video;
- 1298 (ix) a radio and television audio and video programming service;

- 1299 (A) regardless of the medium; and
- 1300 (B) including:
- 1301 (I) furnishing conveyance, routing, or transmission of a television audio and video
- 1302 programming service by a programming service provider;
- 1303 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
- 1304 (III) audio and video programming services delivered by a commercial mobile radio
- 1305 service provider as defined in 47 C.F.R. Sec. 20.3;
- 1306 (x) a value-added nonvoice data service; or
- 1307 (xi) tangible personal property.
- 1308 [~~(117)~~] (118) (a) "Telecommunications service provider" means a person that:
- 1309 (i) owns, controls, operates, or manages a telecommunications service; and
- 1310 (ii) engages in an activity described in Subsection [~~(117)~~] (118)(a)(i) for the shared use
- 1311 with or resale to any person of the telecommunications service.
- 1312 (b) A person described in Subsection [~~(117)~~] (118)(a) is a telecommunications service
- 1313 provider whether or not the Public Service Commission of Utah regulates:
- 1314 (i) that person; or
- 1315 (ii) the telecommunications service that the person owns, controls, operates, or
- 1316 manages.
- 1317 [~~(118)~~] (119) (a) "Telecommunications switching or routing equipment, machinery, or
- 1318 software" means an item listed in Subsection [~~(118)~~] (119)(b) if that item is purchased or
- 1319 leased primarily for switching or routing:
- 1320 (i) an ancillary service;
- 1321 (ii) data communications;
- 1322 (iii) voice communications; or
- 1323 (iv) telecommunications service.
- 1324 (b) The following apply to Subsection [~~(118)~~] (119)(a):
- 1325 (i) a bridge;
- 1326 (ii) a computer;
- 1327 (iii) a cross connect;
- 1328 (iv) a modem;
- 1329 (v) a multiplexer;

- 1330 (vi) plug in circuitry;
- 1331 (vii) a router;
- 1332 (viii) software;
- 1333 (ix) a switch; or
- 1334 (x) equipment, machinery, or software that functions similarly to an item listed in
- 1335 Subsections [~~(118)~~] (119)(b)(i) through (ix) as determined by the commission by rule made in
- 1336 accordance with Subsection [~~(118)~~] (119)(c).

1337 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1338 commission may by rule define what constitutes equipment, machinery, or software that

1339 functions similarly to an item listed in Subsections [~~(118)~~] (119)(b)(i) through (ix).

1340 [~~(119)~~] (120) (a) "Telecommunications transmission equipment, machinery, or

1341 software" means an item listed in Subsection [~~(119)~~] (120)(b) if that item is purchased or

1342 leased primarily for sending, receiving, or transporting:

- 1343 (i) an ancillary service;
- 1344 (ii) data communications;
- 1345 (iii) voice communications; or
- 1346 (iv) telecommunications service.

1347 (b) The following apply to Subsection [~~(119)~~] (120)(a):

- 1348 (i) an amplifier;
- 1349 (ii) a cable;
- 1350 (iii) a closure;
- 1351 (iv) a conduit;
- 1352 (v) a controller;
- 1353 (vi) a duplexer;
- 1354 (vii) a filter;
- 1355 (viii) an input device;
- 1356 (ix) an input/output device;
- 1357 (x) an insulator;
- 1358 (xi) microwave machinery or equipment;
- 1359 (xii) an oscillator;
- 1360 (xiii) an output device;

- 1361 (xiv) a pedestal;
- 1362 (xv) a power converter;
- 1363 (xvi) a power supply;
- 1364 (xvii) a radio channel;
- 1365 (xviii) a radio receiver;
- 1366 (xix) a radio transmitter;
- 1367 (xx) a repeater;
- 1368 (xxi) software;
- 1369 (xxii) a terminal;
- 1370 (xxiii) a timing unit;
- 1371 (xxiv) a transformer;
- 1372 (xxv) a wire; or
- 1373 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
- 1374 Subsections [~~(119)~~] (120)(b)(i) through (xxv) as determined by the commission by rule made in
- 1375 accordance with Subsection [~~(119)~~] (120)(c).

1376 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1377 commission may by rule define what constitutes equipment, machinery, or software that

1378 functions similarly to an item listed in Subsections [~~(119)~~] (120)(b)(i) through (xxv).

1379 [~~(120)~~] (121) "Tobacco" means:

- 1380 (a) a cigarette;
- 1381 (b) a cigar;
- 1382 (c) chewing tobacco;
- 1383 (d) pipe tobacco; or
- 1384 (e) any other item that contains tobacco.

1385 [~~(121)~~] (122) "Unassisted amusement device" means an amusement device, skill

1386 device, or ride device that is started and stopped by the purchaser or renter of the right to use or

1387 operate the amusement device, skill device, or ride device.

1388 [~~(122)~~] (123) (a) "Use" means the exercise of any right or power over tangible personal

1389 property, a product transferred electronically, or a service under Subsection 59-12-103(1),

1390 incident to the ownership or the leasing of that tangible personal property, product transferred

1391 electronically, or service.

1392 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal  
1393 property, a product transferred electronically, or a service in the regular course of business and  
1394 held for resale.

1395 [~~(123)~~] (124) "Value-added nonvoice data service" means a service:

1396 (a) that otherwise meets the definition of a telecommunications service except that a  
1397 computer processing application is used to act primarily for a purpose other than conveyance,  
1398 routing, or transmission; and

1399 (b) with respect to which a computer processing application is used to act on data or  
1400 information:

- 1401 (i) code;
- 1402 (ii) content;
- 1403 (iii) form; or
- 1404 (iv) protocol.

1405 [~~(124)~~] (125) (a) Subject to Subsection [~~(124)~~] (125)(b), "vehicle" means the following  
1406 that are required to be titled, registered, or titled and registered:

- 1407 (i) an aircraft as defined in Section 72-10-102;
- 1408 (ii) a vehicle as defined in Section 41-1a-102;
- 1409 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1410 (iv) a vessel as defined in Section 41-1a-102.

1411 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

- 1412 (i) a vehicle described in Subsection [~~(124)~~] (125)(a); or
- 1413 (ii) (A) a locomotive;
- 1414 (B) a freight car;
- 1415 (C) railroad work equipment; or
- 1416 (D) other railroad rolling stock.

1417 [~~(125)~~] (126) "Vehicle dealer" means a person engaged in the business of buying,  
1418 selling, or exchanging a vehicle as defined in Subsection [~~(124)~~] (125).

1419 [~~(126)~~] (127) (a) "Vertical service" means an ancillary service that:

- 1420 (i) is offered in connection with one or more telecommunications services; and
- 1421 (ii) offers an advanced calling feature that allows a customer to:
- 1422 (A) identify a caller; and

1423 (B) manage multiple calls and call connections.

1424 (b) "Vertical service" includes an ancillary service that allows a customer to manage a  
1425 conference bridging service.

1426 [~~(127)~~] (128) (a) "Voice mail service" means an ancillary service that enables a  
1427 customer to receive, send, or store a recorded message.

1428 (b) "Voice mail service" does not include a vertical service that a customer is required  
1429 to have in order to utilize a voice mail service.

1430 [~~(128)~~] (129) (a) Except as provided in Subsection [~~(128)~~] (129)(b), "waste energy  
1431 facility" means a facility that generates electricity:

1432 (i) using as the primary source of energy waste materials that would be placed in a  
1433 landfill or refuse pit if it were not used to generate electricity, including:

1434 (A) tires;

1435 (B) waste coal; or

1436 (C) oil shale; and

1437 (ii) in amounts greater than actually required for the operation of the facility.

1438 (b) "Waste energy facility" does not include a facility that incinerates:

1439 (i) municipal solid waste;

1440 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or

1441 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1442 [~~(129)~~] (130) "Watercraft" means a vessel as defined in Section 73-18-2.

1443 [~~(130)~~] (131) "Wind energy" means wind used as the sole source of energy to produce  
1444 electricity.

1445 [~~(131)~~] (132) "ZIP Code" means a Zoning Improvement Plan Code assigned to a  
1446 geographic location by the United States Postal Service.

1447 Section 2. Section **59-12-103** is amended to read:

1448 **59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use**  
1449 **tax revenues.**

1450 (1) A tax is imposed on the purchaser as provided in this part for amounts paid or  
1451 charged for the following transactions:

1452 (a) retail sales of tangible personal property made within the state;

1453 (b) amounts paid for:

1454 (i) telecommunications service, other than mobile telecommunications service, that  
1455 originates and terminates within the boundaries of this state;

1456 (ii) mobile telecommunications service that originates and terminates within the  
1457 boundaries of one state only to the extent permitted by the Mobile Telecommunications  
1458 Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or

1459 (iii) an ancillary service associated with a:

1460 (A) telecommunications service described in Subsection (1)(b)(i); or  
1461 (B) mobile telecommunications service described in Subsection (1)(b)(ii);

1462 (c) sales of the following for commercial use:

1463 (i) gas;  
1464 (ii) electricity;  
1465 (iii) heat;  
1466 (iv) coal;  
1467 (v) fuel oil; or  
1468 (vi) other fuels;

1469 (d) sales of the following for residential use:

1470 (i) gas;  
1471 (ii) electricity;  
1472 (iii) heat;  
1473 (iv) coal;  
1474 (v) fuel oil; or  
1475 (vi) other fuels;

1476 (e) sales of prepared food;

1477 (f) except as provided in Section 59-12-104, amounts paid or charged as admission or  
1478 user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,  
1479 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,  
1480 fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit  
1481 television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf  
1482 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,  
1483 tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises,  
1484 horseback rides, sports activities, or any other amusement, entertainment, recreation,



1485 exhibition, cultural, or athletic activity;

1486 (g) amounts paid or charged for services for repairs or renovations of tangible personal  
1487 property, unless Section 59-12-104 provides for an exemption from sales and use tax for:

1488 (i) the tangible personal property; and

1489 (ii) parts used in the repairs or renovations of the tangible personal property described  
1490 in Subsection (1)(g)(i), whether or not any parts are actually used in the repairs or renovations  
1491 of that tangible personal property;

1492 (h) except as provided in Subsection 59-12-104(7), amounts paid or charged for  
1493 assisted cleaning or washing of tangible personal property;

1494 (i) amounts paid or charged for tourist home, hotel, motel, or trailer court  
1495 accommodations and services that are regularly rented for less than 30 consecutive days;

1496 (j) amounts paid or charged for laundry or dry cleaning services;

1497 (k) amounts paid or charged for leases or rentals of tangible personal property if within  
1498 this state the tangible personal property is:

1499 (i) stored;

1500 (ii) used; or

1501 (iii) otherwise consumed;

1502 (l) amounts paid or charged for tangible personal property if within this state the  
1503 tangible personal property is:

1504 (i) stored;

1505 (ii) used; or

1506 (iii) consumed; and

1507 (m) amounts paid or charged for a sale:

1508 (i) (A) of a product [~~that:~~] transferred electronically; or

1509 [~~(F) is transferred electronically; and]~~

1510 [~~(H) would be subject to a tax under this chapter if the product was transferred in a~~  
1511 ~~manner other than electronically; or]~~

1512 (B) of a repair or renovation of a product [~~that:~~] transferred electronically; and

1513 [~~(F) is transferred electronically; and]~~

1514 [~~(H) would be subject to a tax under this chapter if the product was transferred in a~~  
1515 ~~manner other than electronically; and]~~

- 1516 (ii) regardless of whether the sale provides:
- 1517 (A) a right of permanent use of the product; or
- 1518 (B) a right to use the product that is less than a permanent use, including a right:
- 1519 (I) for a definite or specified length of time; and
- 1520 (II) that terminates upon the occurrence of a condition.
- 1521 (2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax
- 1522 is imposed on a transaction described in Subsection (1) equal to the sum of:
- 1523 (i) a state tax imposed on the transaction at a tax rate equal to the sum of:
- 1524 (A) 4.70%; and
- 1525 (B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales
- 1526 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211
- 1527 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional
- 1528 State Sales and Use Tax Act; and
- 1529 (II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales
- 1530 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211
- 1531 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state
- 1532 imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and
- 1533 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
- 1534 transaction under this chapter other than this part.
- 1535 (b) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed
- 1536 on a transaction described in Subsection (1)(d) equal to the sum of:
- 1537 (i) a state tax imposed on the transaction at a tax rate of 2%; and
- 1538 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
- 1539 transaction under this chapter other than this part.
- 1540 (c) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed
- 1541 on amounts paid or charged for food and food ingredients equal to the sum of:
- 1542 (i) a state tax imposed on the amounts paid or charged for food and food ingredients at
- 1543 a tax rate of 1.75%; and
- 1544 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
- 1545 amounts paid or charged for food and food ingredients under this chapter other than this part.
- 1546 (d) (i) For a bundled transaction that is attributable to food and food ingredients and

1547 tangible personal property other than food and food ingredients, a state tax and a local tax is  
1548 imposed on the entire bundled transaction equal to the sum of:

1549 (A) a state tax imposed on the entire bundled transaction equal to the sum of:

1550 (I) the tax rate described in Subsection (2)(a)(i)(A); and

1551 (II) (Aa) the tax rate the state imposes in accordance with Part 18, Additional State  
1552 Sales and Use Tax Act, if the location of the transaction as determined under Sections  
1553 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18,  
1554 Additional State Sales and Use Tax Act; and

1555 (Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State  
1556 Sales and Use Tax Act, if the location of the transaction as determined under Sections  
1557 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which  
1558 the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

1559 (B) a local tax imposed on the entire bundled transaction at the sum of the tax rates  
1560 described in Subsection (2)(a)(ii).

1561 (ii) Subject to Subsection (2)(d)(iii), for a bundled transaction other than a bundled  
1562 transaction described in Subsection (2)(d)(i):

1563 (A) if the sales price of the bundled transaction is attributable to tangible personal  
1564 property, a product, or a service that is subject to taxation under this chapter and tangible  
1565 personal property, a product, or service that is not subject to taxation under this chapter, the  
1566 entire bundled transaction is subject to taxation under this chapter unless:

1567 (I) the seller is able to identify by reasonable and verifiable standards the tangible  
1568 personal property, product, or service that is not subject to taxation under this chapter from the  
1569 books and records the seller keeps in the seller's regular course of business; or

1570 (II) state or federal law provides otherwise; or

1571 (B) if the sales price of a bundled transaction is attributable to two or more items of  
1572 tangible personal property, products, or services that are subject to taxation under this chapter  
1573 at different rates, the entire bundled transaction is subject to taxation under this chapter at the  
1574 higher tax rate unless:

1575 (I) the seller is able to identify by reasonable and verifiable standards the tangible  
1576 personal property, product, or service that is subject to taxation under this chapter at the lower  
1577 tax rate from the books and records the seller keeps in the seller's regular course of business; or

- 1578 (II) state or federal law provides otherwise.
- 1579 (iii) For purposes of Subsection (2)(d)(ii), books and records that a seller keeps in the  
1580 seller's regular course of business includes books and records the seller keeps in the regular  
1581 course of business for nontax purposes.
- 1582 (e) Subject to Subsections (2)(f) and (g), a tax rate repeal or tax rate change for a tax  
1583 rate imposed under the following shall take effect on the first day of a calendar quarter:
- 1584 (i) Subsection (2)(a)(i)(A);
- 1585 (ii) Subsection (2)(b)(i);
- 1586 (iii) Subsection (2)(c)(i); or
- 1587 (iv) Subsection (2)(d)(i)(A)(I).
- 1588 (f) (i) A tax rate increase shall take effect on the first day of the first billing period that  
1589 begins after the effective date of the tax rate increase if the billing period for the transaction  
1590 begins before the effective date of a tax rate increase imposed under:
- 1591 (A) Subsection (2)(a)(i)(A);
- 1592 (B) Subsection (2)(b)(i);
- 1593 (C) Subsection (2)(c)(i); or
- 1594 (D) Subsection (2)(d)(i)(A)(I).
- 1595 (ii) The repeal of a tax or a tax rate decrease shall take effect on the first day of the last  
1596 billing period that began before the effective date of the repeal of the tax or the tax rate  
1597 decrease if the billing period for the transaction begins before the effective date of the repeal of  
1598 the tax or the tax rate decrease imposed under:
- 1599 (A) Subsection (2)(a)(i)(A);
- 1600 (B) Subsection (2)(b)(i);
- 1601 (C) Subsection (2)(c)(i); or
- 1602 (D) Subsection (2)(d)(i)(A)(I).
- 1603 (g) (i) For a tax rate described in Subsection (2)(g)(ii), if a tax due on a catalogue sale  
1604 is computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal  
1605 or change in a tax rate takes effect:
- 1606 (A) on the first day of a calendar quarter; and
- 1607 (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.
- 1608 (ii) Subsection (2)(g)(i) applies to the tax rates described in the following:

- 1609 (A) Subsection (2)(a)(i)(A);  
1610 (B) Subsection (2)(b)(i);  
1611 (C) Subsection (2)(c)(i); or  
1612 (D) Subsection (2)(d)(i)(A)(I).  
1613 (iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
1614 the commission may by rule define the term "catalogue sale."  
1615 (3) (a) The following state taxes shall be deposited into the General Fund:  
1616 (i) the tax imposed by Subsection (2)(a)(i)(A);  
1617 (ii) the tax imposed by Subsection (2)(b)(i);  
1618 (iii) the tax imposed by Subsection (2)(c)(i); or  
1619 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).  
1620 (b) The following local taxes shall be distributed to a county, city, or town as provided  
1621 in this chapter:  
1622 (i) the tax imposed by Subsection (2)(a)(ii);  
1623 (ii) the tax imposed by Subsection (2)(b)(ii);  
1624 (iii) the tax imposed by Subsection (2)(c)(ii); and  
1625 (iv) the tax imposed by Subsection (2)(d)(i)(B).  
1626 (4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,  
1627 2003, the lesser of the following amounts shall be used as provided in Subsections (4)(b)  
1628 through (g):  
1629 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:  
1630 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and  
1631 (B) for the fiscal year; or  
1632 (ii) \$17,500,000.  
1633 (b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount  
1634 described in Subsection (4)(a) shall be transferred each year as dedicated credits to the  
1635 Department of Natural Resources to:  
1636 (A) implement the measures described in Subsections 79-2-303(3)(a) through (d) to  
1637 protect sensitive plant and animal species; or  
1638 (B) award grants, up to the amount authorized by the Legislature in an appropriations  
1639 act, to political subdivisions of the state to implement the measures described in Subsections

1640 79-2-303(3)(a) through (d) to protect sensitive plant and animal species.

1641 (ii) Money transferred to the Department of Natural Resources under Subsection  
1642 (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other  
1643 person to list or attempt to have listed a species as threatened or endangered under the  
1644 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

1645 (iii) At the end of each fiscal year:

1646 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources  
1647 Conservation and Development Fund created in Section 73-10-24;

1648 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan  
1649 Program Subaccount created in Section 73-10c-5; and

1650 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan  
1651 Program Subaccount created in Section 73-10c-5.

1652 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in  
1653 Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund  
1654 created in Section 4-18-6.

1655 (d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described  
1656 in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water  
1657 Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of  
1658 water rights.

1659 (ii) At the end of each fiscal year:

1660 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources  
1661 Conservation and Development Fund created in Section 73-10-24;

1662 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan  
1663 Program Subaccount created in Section 73-10c-5; and

1664 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan  
1665 Program Subaccount created in Section 73-10c-5.

1666 (e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described  
1667 in Subsection (4)(a) shall be deposited in the Water Resources Conservation and Development  
1668 Fund created in Section 73-10-24 for use by the Division of Water Resources.

1669 (ii) In addition to the uses allowed of the Water Resources Conservation and  
1670 Development Fund under Section 73-10-24, the Water Resources Conservation and

1671 Development Fund may also be used to:

1672 (A) conduct hydrologic and geotechnical investigations by the Division of Water  
1673 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of  
1674 quantifying surface and ground water resources and describing the hydrologic systems of an  
1675 area in sufficient detail so as to enable local and state resource managers to plan for and  
1676 accommodate growth in water use without jeopardizing the resource;

1677 (B) fund state required dam safety improvements; and

1678 (C) protect the state's interest in interstate water compact allocations, including the  
1679 hiring of technical and legal staff.

1680 (f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described  
1681 in Subsection (4)(a) shall be deposited in the Utah Wastewater Loan Program Subaccount  
1682 created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

1683 (g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described  
1684 in Subsection (4)(a) shall be deposited in the Drinking Water Loan Program Subaccount  
1685 created in Section 73-10c-5 for use by the Division of Drinking Water to:

1686 (i) provide for the installation and repair of collection, treatment, storage, and  
1687 distribution facilities for any public water system, as defined in Section 19-4-102;

1688 (ii) develop underground sources of water, including springs and wells; and

1689 (iii) develop surface water sources.

1690 (5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,  
1691 2006, the difference between the following amounts shall be expended as provided in this  
1692 Subsection (5), if that difference is greater than \$1:

1693 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the  
1694 fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

1695 (ii) \$17,500,000.

1696 (b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:

1697 (A) transferred each fiscal year to the Department of Natural Resources as dedicated  
1698 credits; and

1699 (B) expended by the Department of Natural Resources for watershed rehabilitation or  
1700 restoration.

1701 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described

1702 in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund  
1703 created in Section 73-10-24.

1704 (c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the  
1705 remaining difference described in Subsection (5)(a) shall be:

1706 (A) transferred each fiscal year to the Division of Water Resources as dedicated  
1707 credits; and

1708 (B) expended by the Division of Water Resources for cloud-seeding projects  
1709 authorized by Title 73, Chapter 15, Modification of Weather.

1710 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described  
1711 in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund  
1712 created in Section 73-10-24.

1713 (d) After making the transfers required by Subsections (5)(b) and (c), 94% of the  
1714 remaining difference described in Subsection (5)(a) shall be deposited into the Water  
1715 Resources Conservation and Development Fund created in Section 73-10-24 for use by the  
1716 Division of Water Resources for:

1717 (i) preconstruction costs:

1718 (A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter  
1719 26, Bear River Development Act; and

1720 (B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project  
1721 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

1722 (ii) the cost of employing a civil engineer to oversee any project authorized by Title 73,  
1723 Chapter 26, Bear River Development Act;

1724 (iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project  
1725 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

1726 (iv) other uses authorized under Sections 73-10-24, 73-10-25.1, 73-10-30, and  
1727 Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

1728 (e) Any unexpended monies described in Subsection (5)(d) that remain in the Water  
1729 Resources Conservation and Development Fund at the end of the fiscal year are nonlapsing.

1730 (f) After making the transfers required by Subsections (5)(b) and (c) and subject to  
1731 Subsection (5)(g), 6% of the remaining difference described in Subsection (5)(a) shall be  
1732 transferred each year as dedicated credits to the Division of Water Rights to cover the costs



1733 incurred for employing additional technical staff for the administration of water rights.

1734 (g) At the end of each fiscal year, any unexpended dedicated credits described in  
1735 Subsection (5)(f) over \$150,000 lapse to the Water Resources Conservation and Development  
1736 Fund created in Section 73-10-24.

1737 (6) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,  
1738 2003, and for taxes listed under Subsection (3)(a), the amount of revenue generated by a 1/16%  
1739 tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited in  
1740 the Transportation Fund created by Section 72-2-102.

1741 (7) (a) Notwithstanding Subsection (3)(a) and until Subsection (7)(b) applies,  
1742 beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial  
1743 Highway Fund Restricted Account created in Section 72-2-118 a portion of the taxes listed  
1744 under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate on the taxable  
1745 transactions under Subsection (1).

1746 (b) Notwithstanding Subsection (3)(a), when the highway general obligation bonds  
1747 have been paid off and the highway projects completed that are intended to be paid from  
1748 revenues deposited in the Centennial Highway Fund Restricted Account as determined by the  
1749 Executive Appropriations Committee under Subsection 72-2-118(6)(d), the Division of  
1750 Finance shall deposit into the Transportation Investment Fund of 2005 created by Section  
1751 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated  
1752 by a 1/64% tax rate on the taxable transactions under Subsection (1).

1753 (8) (a) Notwithstanding Subsection (3)(a) and in addition to the amount deposited in  
1754 Subsection (7)(a), for the 2010-11 fiscal year only, the Division of Finance shall deposit into  
1755 the Centennial Highway Fund Restricted Account created by Section 72-2-118 a portion of the  
1756 taxes listed under Subsection (3)(a) equal to 1.93% of the revenues collected from the  
1757 following taxes, which represents a portion of the approximately 17% of sales and use tax  
1758 revenues generated annually by the sales and use tax on vehicles and vehicle-related products:

- 1759 (i) the tax imposed by Subsection (2)(a)(i)(A);  
1760 (ii) the tax imposed by Subsection (2)(b)(i);  
1761 (iii) the tax imposed by Subsection (2)(c)(i); and  
1762 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

1763 (b) Notwithstanding Subsection (3)(a), in addition to the amount deposited in

1764 Subsection (7)(a), and until Subsection (8)(c) applies, for a fiscal year beginning on or after  
1765 July 1, 2011, the Division of Finance shall deposit into the Centennial Highway Fund  
1766 Restricted Account created by Section 72-2-118 a portion of the taxes listed under Subsection  
1767 (3)(a) equal to 8.3% of the revenues collected from the following taxes, which represents a  
1768 portion of the approximately 17% of sales and use tax revenues generated annually by the sales  
1769 and use tax on vehicles and vehicle-related products:

1770 (i) the tax imposed by Subsection (2)(a)(i)(A);

1771 (ii) the tax imposed by Subsection (2)(b)(i);

1772 (iii) the tax imposed by Subsection (2)(c)(i); and

1773 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

1774 (c) Notwithstanding Subsection (3)(a) and in addition to the amounts deposited under

1775 Subsection (7)(b), when the highway general obligation bonds have been paid off and the

1776 highway projects completed that are intended to be paid from revenues deposited in the

1777 Centennial Highway Fund Restricted Account as determined by the Executive Appropriations

1778 Committee under Subsection 72-2-118(6)(d), the Division of Finance shall deposit into the

1779 Transportation Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes

1780 listed under Subsection (3)(a) equal to 8.3% of the revenues collected from the following taxes,

1781 which represents a portion of the approximately 17% of sales and use tax revenues generated

1782 annually by the sales and use tax on vehicles and vehicle-related products:

1783 (i) the tax imposed by Subsection (2)(a)(i)(A);

1784 (ii) the tax imposed by Subsection (2)(b)(i);

1785 (iii) the tax imposed by Subsection (2)(c)(i); and

1786 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

1787 (9) (a) Notwithstanding Subsection (3)(a) and for the fiscal year 2008-09 only, the

1788 Division of Finance shall deposit \$55,000,000 of the revenues generated by the taxes listed

1789 under Subsection (3)(a) into the Critical Highway Needs Fund created by Section 72-2-125.

1790 (b) Notwithstanding Subsection (3)(a) and until Subsection (9)(c) applies, for a fiscal

1791 year beginning on or after July 1, 2009, the Division of Finance shall annually deposit

1792 \$90,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the

1793 Critical Highway Needs Fund created by Section 72-2-125.

1794 (c) Notwithstanding Subsection (3)(a) and in addition to any amounts deposited under

1795 Subsections (7) and (8), when the general obligation bonds authorized by Section 63B-16-101  
1796 have been paid off and the highway projects completed that are included in the prioritized  
1797 project list under Subsection 72-2-125(4) as determined in accordance with Subsection  
1798 72-2-125(6), the Division of Finance shall annually deposit \$90,000,000 of the revenues  
1799 generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund  
1800 of 2005 created by Section 72-2-124.

1801 (10) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year  
1802 2009-10, \$533,750 shall be deposited into the Qualified Emergency Food Agencies Fund  
1803 created by Section 9-4-1409 and expended as provided in Section 9-4-1409.

1804 (11) (a) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection  
1805 (11)(a)(ii), and until Subsection (11)(b) applies, beginning on January 1, 2009, the Division of  
1806 Finance shall deposit into the Critical Highway Needs Fund created by Section 72-2-125 the  
1807 amount of tax revenue generated by a .025% tax rate on the transactions described in  
1808 Subsection (1).

1809 (ii) For purposes of Subsection (11)(a)(i), the Division of Finance may not deposit into  
1810 the Critical Highway Needs Fund any tax revenue generated by amounts paid or charged for  
1811 food and food ingredients, except for tax revenue generated by a bundled transaction  
1812 attributable to food and food ingredients and tangible personal property other than food and  
1813 food ingredients described in Subsection (2)(e).

1814 (b) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection (11)(b)(ii),  
1815 and in addition to any amounts deposited under Subsections (7), (9), and (10), when the general  
1816 obligation bonds authorized by Section 63B-16-101 have been paid off and the highway  
1817 projects completed that are included in the prioritized project list under Subsection 72-2-125(4)  
1818 as determined in accordance with Subsection 72-2-125(6), the Division of Finance shall  
1819 deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the  
1820 amount of tax revenue generated by a .025% tax rate on the transactions described in  
1821 Subsection (1).

1822 (ii) For purposes of Subsection (11)(b)(i), the Division of Finance may not deposit into  
1823 the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or  
1824 charged for food and food ingredients, except for tax revenue generated by a bundled  
1825 transaction attributable to food and food ingredients and tangible personal property other than

1826 food and food ingredients described in Subsection (2)(e).

1827 (12) (a) Notwithstanding Subsection (3)(a), and except as provided in Subsection  
1828 (12)(b), beginning on January 1, 2009, the Division of Finance shall deposit into the  
1829 Transportation Fund created by Section 72-2-102 the amount of tax revenue generated by a  
1830 .025% tax rate on the transactions described in Subsection (1) to be expended to address  
1831 chokepoints in construction management.

1832 (b) For purposes of Subsection (12)(a), the Division of Finance may not deposit into  
1833 the Transportation Fund any tax revenue generated by amounts paid or charged for food and  
1834 food ingredients, except for tax revenue generated by a bundled transaction attributable to food  
1835 and food ingredients and tangible personal property other than food and food ingredients  
1836 described in Subsection (2)(e).

1837 Section 3. Section **59-12-106** is amended to read:

1838 **59-12-106. Definitions -- Sales and use tax license requirements -- Penalty --**  
1839 **Application process and requirements -- No fee -- Bonds -- Presumption of taxability --**  
1840 **Exemption certificates -- Exemption certificate license number to accompany contract**  
1841 **bids.**

1842 (1) As used in this section:

1843 (a) "applicant" means a person that:

1844 (i) is required by this section to obtain a license; and

1845 (ii) submits an application:

1846 (A) to the commission; and

1847 (B) for a license under this section;

1848 (b) "application" means an application for a license under this section;

1849 (c) "fiduciary of the applicant" means a person that:

1850 (i) is required to collect, truthfully account for, and pay over a tax under this chapter  
1851 for an applicant; and

1852 (ii) (A) is a corporate officer of the applicant described in Subsection (1)(c)(i);

1853 (B) is a director of the applicant described in Subsection (1)(c)(i);

1854 (C) is an employee of the applicant described in Subsection (1)(c)(i);

1855 (D) is a partner of the applicant described in Subsection (1)(c)(i);

1856 (E) is a trustee of the applicant described in Subsection (1)(c)(i); or

1857 (F) has a relationship to the applicant described in Subsection (1)(c)(i) that is similar to  
1858 a relationship described in Subsections (1)(c)(ii)(A) through (E) as determined by the  
1859 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
1860 Rulemaking Act;

1861 (d) "fiduciary of the licensee" means a person that:

1862 (i) is required to collect, truthfully account for, and pay over a tax under this chapter  
1863 for a licensee; and

1864 (ii) (A) is a corporate officer of the licensee described in Subsection (1)(d)(i);

1865 (B) is a director of the licensee described in Subsection (1)(d)(i);

1866 (C) is an employee of the licensee described in Subsection (1)(d)(i);

1867 (D) is a partner of the licensee described in Subsection (1)(d)(i);

1868 (E) is a trustee of the licensee described in Subsection (1)(d)(i); or

1869 (F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to  
1870 a relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the  
1871 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
1872 Rulemaking Act;

1873 (e) "license" means a license under this section; and

1874 (f) "licensee" means a person that is licensed under this section by the commission.

1875 (2) (a) It is unlawful for any person required to collect a tax under this chapter to  
1876 engage in business within the state without first having obtained a license to do so.

1877 (b) The license described in Subsection (2)(a):

1878 (i) shall be granted and issued by the commission;

1879 (ii) is not assignable;

1880 (iii) is valid only for the person in whose name the license is issued;

1881 (iv) is valid until:

1882 (A) the person described in Subsection (2)(b)(iii):

1883 (I) ceases to do business; or

1884 (II) changes that person's business address; or

1885 (B) the license is revoked by the commission; and

1886 (v) subject to Subsection (2)(d), shall be granted by the commission only upon an  
1887 application that:

- 1888 (A) states the name and address of the applicant; and
- 1889 (B) provides other information the commission may require.
- 1890 (c) At the time an applicant makes an application under Subsection (2)(b)(v), the
- 1891 commission shall notify the applicant of the responsibilities and liability of a business owner
- 1892 successor under Section 59-12-112.
- 1893 (d) The commission shall review an application and determine whether the applicant:
- 1894 (i) meets the requirements of this section to be issued a license; and
- 1895 (ii) is required to post a bond with the commission in accordance with Subsections
- 1896 (2)(e) and (f) before the applicant may be issued a license.
- 1897 (e) (i) An applicant shall post a bond with the commission before the commission may
- 1898 issue the applicant a license if:
- 1899 (A) a license under this section was revoked for a delinquency under this chapter for:
- 1900 (I) the applicant;
- 1901 (II) a fiduciary of the applicant; or
- 1902 (III) a person for which the applicant or the fiduciary of the applicant is required to
- 1903 collect, truthfully account for, and pay over a tax under this chapter; or
- 1904 (B) there is a delinquency in paying a tax under this chapter for:
- 1905 (I) the applicant;
- 1906 (II) a fiduciary of the applicant; or
- 1907 (III) a person for which the applicant or the fiduciary of the applicant is required to
- 1908 collect, truthfully account for, and pay over a tax under this chapter.
- 1909 (ii) If the commission determines it is necessary to ensure compliance with this
- 1910 chapter, the commission may require a licensee to:
- 1911 (A) for a licensee that has not posted a bond under this section with the commission,
- 1912 post a bond with the commission in accordance with Subsection (2)(f); or
- 1913 (B) for a licensee that has posted a bond under this section with the commission,
- 1914 increase the amount of the bond posted with the commission.
- 1915 (f) (i) A bond required by Subsection (2)(e) shall be:
- 1916 (A) executed by:
- 1917 (I) for an applicant, the applicant as principal, with a corporate surety; or
- 1918 (II) for a licensee, the licensee as principal, with a corporate surety; and

- 1919 (B) payable to the commission conditioned upon the faithful performance of all of the  
1920 requirements of this chapter including:
- 1921 (I) the payment of any tax under this chapter;
- 1922 (II) the payment of any:
- 1923 (Aa) penalty as provided in Section 59-1-401; or
- 1924 (Bb) interest as provided in Section 59-1-402; or
- 1925 (III) any other obligation of the:
- 1926 (Aa) applicant under this chapter; or
- 1927 (Bb) licensee under this chapter.
- 1928 (ii) Except as provided in Subsection (2)(f)(iv), the commission shall calculate the  
1929 amount of a bond required by Subsection (2)(e) on the basis of:
- 1930 (A) commission estimates of:
- 1931 (I) an applicant's tax liability under this chapter; or
- 1932 (II) a licensee's tax liability under this chapter; and
- 1933 (B) any amount of a delinquency described in Subsection (2)(f)(iii).
- 1934 (iii) Except as provided in Subsection (2)(f)(iv), for purposes of Subsection  
1935 (2)(f)(ii)(B):
- 1936 (A) for an applicant, the amount of the delinquency is the sum of:
- 1937 (I) the amount of any delinquency that served as a basis for revoking the license under  
1938 this section of:
- 1939 (Aa) the applicant;
- 1940 (Bb) a fiduciary of the applicant; or
- 1941 (Cc) a person for which the applicant or the fiduciary of the applicant is required to  
1942 collect, truthfully account for, and pay over a tax under this chapter; or
- 1943 (II) the amount of tax that any of the following owe under this chapter:
- 1944 (Aa) the applicant;
- 1945 (Bb) a fiduciary of the applicant; and
- 1946 (Cc) a person for which the applicant or the fiduciary of the applicant is required to  
1947 collect, truthfully account for, and pay over a tax under this chapter; or
- 1948 (B) for a licensee, the amount of the delinquency is the sum of:
- 1949 (I) the amount of any delinquency that served as a basis for revoking the license under

1950 this section of:

1951 (Aa) the licensee;

1952 (Bb) a fiduciary of the licensee; or

1953 (Cc) a person for which the licensee or the fiduciary of the licensee is required to

1954 collect, truthfully account for, and pay over a tax under this chapter; or

1955 (II) the amount of tax that any of the following owe under this chapter:

1956 (Aa) the licensee;

1957 (Bb) a fiduciary of the licensee; and

1958 (Cc) a person for which the licensee or the fiduciary of the licensee is required to

1959 collect, truthfully account for, and pay over a tax under this chapter.

1960 (iv) Notwithstanding Subsection (2)(f)(ii) or (2)(f)(iii), a bond required by Subsection

1961 (2)(e) may not:

1962 (A) be less than \$25,000; or

1963 (B) exceed \$500,000.

1964 (g) If business is transacted at two or more separate places by one person, a separate

1965 license for each place of business is required.

1966 (h) (i) The commission shall, on a reasonable notice and after a hearing, revoke the

1967 license of any licensee violating any provisions of this chapter.

1968 (ii) A license may not be issued to a licensee described in Subsection (2)(h)(i) until the

1969 licensee has complied with the requirements of this chapter, including:

1970 (A) paying any:

1971 (I) tax due under this chapter;

1972 (II) penalty as provided in Section 59-1-401; or

1973 (III) interest as provided in Section 59-1-402; and

1974 (B) posting a bond in accordance with Subsections (2)(e) and (f).

1975 (i) Any person required to collect a tax under this chapter within this state without

1976 having secured a license to do so is guilty of a criminal violation as provided in Section

1977 59-1-401.

1978 (j) A license:

1979 (i) is not required for any person engaged exclusively in the business of selling

1980 commodities that are exempt from taxation under this chapter; and



- 1981 (ii) shall be issued to the person by the commission without a license fee.
- 1982 (3) (a) For the purpose of the proper administration of this chapter and to prevent
- 1983 evasion of the tax and the duty to collect the tax, it shall be presumed that tangible personal
- 1984 property or any other taxable transaction under Subsection 59-12-103(1) sold by any person for
- 1985 delivery in this state is sold for storage, use, or other consumption in this state unless the
- 1986 person selling the property, item, or service has taken from the purchaser an exemption
- 1987 certificate:
- 1988 (i) bearing the name and address of the purchaser; and
- 1989 (ii) providing that the property, item, or service was exempted under Section
- 1990 59-12-104.
- 1991 (b) An exemption certificate described in Subsection (3)(a):
- 1992 (i) shall contain information as prescribed by the commission; and
- 1993 (ii) if a paper exemption certificate is used, shall be signed by the purchaser.
- 1994 (c) (i) Subject to Subsection (3)(c)(ii), a seller or certified service provider is not liable
- 1995 to collect a tax under this chapter if the seller or certified service provider obtains within 90
- 1996 days after a transaction is complete:
- 1997 (A) an exemption certificate containing the information required by Subsections (3)(a)
- 1998 and (b); or
- 1999 (B) the information required by Subsections (3)(a) and (b).
- 2000 (ii) A seller or certified service provider that does not obtain the exemption certificate
- 2001 or information described in Subsection (3)(c)(i) with respect to a transaction [~~may, within~~] is
- 2002 allowed 120 days after the commission requests the seller or certified service provider to
- 2003 substantiate the exemption to:
- 2004 (A) establish that the transaction is not subject to taxation under this chapter by a
- 2005 means other than providing an exemption certificate containing the information required by
- 2006 Subsections (3)(a) and (b); or
- 2007 (B) subject to Subsection (3)(c)(iii), obtain an exemption certificate containing the
- 2008 information required by Subsections (3)(a) and (b), taken in good faith.
- 2009 (iii) For purposes of Subsection (3)(c)(ii)(B), an exemption certificate is taken in good
- 2010 faith if the exemption certificate claims an exemption that:
- 2011 (A) was allowed by statute on the date of the transaction in the jurisdiction of the

2012 location of the transaction;

2013 (B) could be applicable to that transaction; and

2014 (C) is reasonable for the purchaser's type of business.

2015 (d) Except as provided in Subsection (3)(e), a seller or certified service provider that  
2016 takes an exemption certificate from a purchaser in accordance with this Subsection (3) with  
2017 respect to a transaction is not liable to collect a tax under this chapter[:(t)] on that transaction[;  
2018 and].

2019 [~~(ii) if the commission or a court of competent jurisdiction subsequently determines~~  
2020 ~~that the purchaser improperly claimed the exemption.~~]

2021 (e) Subsection (3)(d) does not apply to a seller or certified service provider [~~that:~~] if the  
2022 commission establishes through an audit that the seller or certified service provider:

2023 [~~(i) fraudulently fails to collect a tax under this chapter;~~]

2024 [~~(ii) solicits a purchaser to participate in improperly claiming an exemption from a tax~~  
2025 ~~under this chapter; or]~~

2026 [~~(iii) accepts an exemption certificate for an exemption that is allowed on the basis of~~  
2027 ~~the entity claiming the exemption if:]~~

2028 [~~(A) the purchaser receives the tangible personal property, product, or service that is~~  
2029 ~~the subject of the exemption certificate at a location operated by the seller; and]~~

2030 [~~(B) the exemption certificate states that the tangible personal property, product, or~~  
2031 ~~service is not exempt from taxation under this chapter.]~~

2032 (i) knew or had reason to know at the time the purchaser provided the seller or certified  
2033 service provider the information described in Subsection (3)(a) or (b) that the information  
2034 related to the exemption claimed was materially false; or

2035 (ii) otherwise knowingly participated in activity intended to purposefully evade the tax  
2036 due on the transaction.

2037 (f) (i) Subject to Subsection (3)(f)(ii) and except as provided in Subsection (3)(f)(iii), if  
2038 there is a recurring business relationship between a seller or certified service provider and a  
2039 purchaser, the commission may not require the seller or certified service provider to:

2040 (A) renew an exemption certificate;

2041 (B) update an exemption certificate; or

2042 (C) update a data element of an exemption certificate.

2043 (ii) For purposes of Subsection (3)(f)(i), a recurring business relationship exists if no  
 2044 more than a 12-month period elapses between transactions between a seller or certified service  
 2045 provider and a purchaser.

2046 (iii) If there is a recurring business relationship between a seller or certified service  
 2047 provider and a purchaser, the commission shall require an exemption certificate the seller or  
 2048 certified service provider takes from the purchaser to meet the requirements of Subsections  
 2049 (3)(a) and (b).

2050 (4) A person filing a contract bid with the state or a political subdivision of the state for  
 2051 the sale of tangible personal property or any other taxable transaction under Subsection  
 2052 59-12-103(1) shall include with the bid the number of the license issued to that person under  
 2053 Subsection (2).

2054 Section 4. Section **59-12-128** is amended to read:

2055 **59-12-128. Amnesty.**

2056 (1) As used in this section, "amnesty" means that a seller is not required to pay the  
 2057 following amounts that the seller would otherwise be required to pay:

2058 (a) a tax, fee, or charge under:

2059 (i) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

2060 (ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

2061 (iii) Section 19-6-714;

2062 (iv) Section 19-6-805;

2063 (v) Section 69-2-5;

2064 (vi) Section 69-2-5.5;

2065 (vii) Section 69-2-5.6; or

2066 (viii) this chapter;

2067 (b) a penalty on a tax, fee, or charge described in Subsection (1)(a); or

2068 (c) interest on a tax, fee, or charge described in Subsection (1)(a).

2069 (2) ~~[The]~~ (a) Except as provided in Subsections (2) and (3) and subject to Subsections  
 2070 (4) and (5), the commission shall grant a seller amnesty [under this section] if the seller:

2071 ~~[(a) was not licensed under Section 59-12-106 at any time during the 12-month period~~  
 2072 ~~prior to the effective date of the state's participation in the agreement;]~~

2073 ~~[(b)]~~ (i) obtains a license under Section 59-12-106 [within a 12-month period after the

2074 ~~effective date of the state's participation in the agreement]; and~~  
2075       ~~[(e)]~~ (ii) is registered under the agreement.  
2076       (b) The commission is not required to grant a seller amnesty under this section  
2077 beginning 12 months after the date the state becomes a full member under the agreement.  
2078       (3) A seller may not receive amnesty under this section for a tax, fee, or charge:  
2079       (a) the seller collects;  
2080       (b) the seller remits to the commission;  
2081       (c) that the seller is required to remit to the commission on the seller's purchase; or  
2082       (d) arising from a transaction that occurs within a time period that is under audit by the  
2083 commission if:  
2084       (i) the seller receives notice of the commencement of the audit prior to obtaining a  
2085 license under Section 59-12-106; and  
2086       (ii) (A) the audit described in Subsection (3)(d)(i) is not complete; or  
2087       (B) the seller has not exhausted all administrative and judicial remedies in connection  
2088 with the audit described in Subsection (3)(d)(i).  
2089       (4) (a) Except as provided in Subsection (4)(b), amnesty the commission grants to a  
2090 seller under this section:  
2091       (i) applies to the time period during which the seller is not licensed under Section  
2092 59-12-106; and  
2093       (ii) remains in effect if, for a period of three years, the seller:  
2094       (A) remains registered under the agreement;  
2095       (B) collects a tax, fee, or charge on a transaction subject to a tax, fee, or charge  
2096 described in Subsection (1)(a); and  
2097       (C) remits to the commission the taxes, fees, and charges the seller collects in  
2098 accordance with Subsection (4)(a)(ii)(B).  
2099       (b) The commission may not grant a seller amnesty under this section if, with respect  
2100 to a tax, fee, or charge for which the seller would otherwise be granted amnesty under this  
2101 section, the seller commits:  
2102       (i) fraud; or  
2103       (ii) an intentional misrepresentation of a material fact.  
2104       (5) (a) If a seller does not meet a requirement of Subsection (4)(a)(ii), the commission

2105 shall require the seller to pay the amounts described in Subsection (1) that the seller would  
2106 have otherwise been required to pay.

2107 (b) Notwithstanding Section 59-1-1410, for purposes of requiring a seller to pay an  
2108 amount in accordance with Subsection (5)(a), the time period for the commission to make an  
2109 assessment under Section 59-1-1410 is extended for a time period beginning on the date the  
2110 seller does not meet a requirement of Subsection (4)(a)(ii) and ends three years after that date.

2111 Section 5. **Effective date.**

2112 This bill takes effect on July 1, 2011.

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**Legislative Review Note**  
as of 11-17-10 2:34 PM

**Office of Legislative Research and General Counsel**

# FISCAL NOTE

H.B. 35, 2011 General Session

SHORT TITLE: Sales and Use Tax Act Revisions

SPONSOR: Harper, W.

STATE OF UTAH

## STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

## LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

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

## DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.