

MODIFICATIONS TO SALES AND USE TAX

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: David Clark

LONG TITLE

General Description:

This bill amends the Revenue and Taxation title to address the taxation of food and food ingredients and make related adjustments to revenue allocations.

Highlighted Provisions:

This bill:

- ▶ increases the state sales and use tax rate on food and food ingredients to the general state sales and use tax rate;
- ▶ adjusts sales and use allocations to the Centennial Highway Fund Restricted Account;
- ▶ provides that food and food ingredients are taxable for purposes of certain local option sales and use taxes; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

AMENDS:

10-1-405, as last amended by Laws of Utah 2009, Chapter 212

11-41-102, as last amended by Laws of Utah 2008, Chapters 286 and 384



- 28 **59-1-401**, as last amended by Laws of Utah 2010, Chapter 233
- 29 **59-12-102**, as last amended by Laws of Utah 2010, Chapters 88, 142, 234, and 263
- 30 **59-12-103**, as last amended by Laws of Utah 2010, Chapter 412
- 31 **59-12-104.2**, as last amended by Laws of Utah 2009, Chapter 203
- 32 **59-12-108**, as last amended by Laws of Utah 2008, Chapters 286, 382, and 384
- 33 **59-12-401**, as last amended by Laws of Utah 2010, Chapter 9
- 34 **59-12-402**, as last amended by Laws of Utah 2010, Chapter 9
- 35 **59-12-703**, as last amended by Laws of Utah 2008, Chapters 382 and 384
- 36 **59-12-802**, as last amended by Laws of Utah 2008, Chapter 384
- 37 **59-12-804**, as last amended by Laws of Utah 2008, Chapter 384
- 38 **59-12-1302**, as last amended by Laws of Utah 2008, Chapters 382 and 384
- 39 **59-12-1402**, as last amended by Laws of Utah 2008, Chapters 382 and 384
- 40 **59-12-2003**, as last amended by Laws of Utah 2010, Chapter 263
- 41 **59-12-2103**, as enacted by Laws of Utah 2008, Chapter 323
- 42 **59-12-2204**, as enacted by Laws of Utah 2010, Chapter 263

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

45 Section 1. Section **10-1-405** is amended to read:

46 **10-1-405. Collection of taxes by commission -- Uniform interlocal agreement --**
 47 **Rulemaking authority -- Charge for services.**

48 (1) Subject to the other provisions of this section, the commission shall collect,
 49 enforce, and administer any municipal telecommunications license tax imposed under this part
 50 pursuant to:

51 (a) the same procedures used in the administration, collection, and enforcement of the
 52 state sales and use tax under:

53 (i) Title 59, Chapter 1, General Taxation Policies; and

54 (ii) Title 59, Chapter 12, Part 1, Tax Collection:

55 (A) except for:

56 (I) Subsection 59-12-103(2)(~~g~~)(f);

57 (II) Section 59-12-104;

58 (III) Section 59-12-104.1;

59 (IV) Section 59-12-104.2;
60 (V) Section 59-12-104.3;
61 (VI) Section 59-12-107.1; and
62 (VII) Section 59-12-123; and
63 (B) except that for purposes of Section 59-1-1410, the term "person" may include a
64 customer from whom a municipal telecommunications license tax is recovered in accordance
65 with Subsection 10-1-403(2); and
66 (b) a uniform interlocal agreement:
67 (i) between:
68 (A) the municipality that imposes the municipal telecommunications license tax; and
69 (B) the commission;
70 (ii) that is executed under Title 11, Chapter 13, Interlocal Cooperation Act;
71 (iii) that complies with Subsection (2)(a); and
72 (iv) that is developed by rule in accordance with Subsection (2)(b).
73 (2) (a) The uniform interlocal agreement described in Subsection (1) shall provide that
74 the commission shall:
75 (i) transmit money collected under this part:
76 (A) monthly; and
77 (B) by electronic funds transfer by the commission to the municipality;
78 (ii) conduct audits of the municipal telecommunications license tax;
79 (iii) charge the municipality for the commission's services under this section in an
80 amount:
81 (A) sufficient to reimburse the commission for the cost to the commission in rendering
82 the services; and
83 (B) that may not exceed an amount equal to 1.5% of the municipal telecommunications
84 license tax imposed by the ordinance of the municipality; and
85 (iv) collect, enforce, and administer the municipal telecommunications license tax
86 authorized under this part pursuant to the same procedures used in the administration,
87 collection, and enforcement of the state sales and use tax as provided in Subsection (1)(a).
88 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
89 commission shall develop a uniform interlocal agreement that meets the requirements of this

90 section.

91 (3) The administrative fee charged under Subsection (2)(a) shall be:

92 (a) deposited in the Sales and Use Tax Administrative Fees Account; and

93 (b) used for administration of municipal telecommunications license taxes under this

94 part.

95 (4) If, on July 1, 2007, a municipality has in effect an ordinance that levies a municipal
96 telecommunications license tax under this part at a rate that exceeds 3.5%:

97 (a) except as provided in Subsection (4)(b), beginning on July 1, 2007, the commission
98 shall collect the municipal telecommunications license tax:

99 (i) within the municipality;

100 (ii) at a rate of 3.5%; and

101 (iii) from a telecommunications provider required to pay the municipal

102 telecommunications license tax on or after July 1, 2007; and

103 (b) the commission shall collect a municipal telecommunications license tax within the
104 municipality at the rate imposed by the municipality if:

105 (i) after July 1, 2007, the municipality has in effect an ordinance that levies a municipal
106 telecommunications license tax under this part at a rate of up to 3.5%;

107 (ii) the municipality meets the requirements of Subsection 10-1-403(3)(b) in changing
108 the rate of the municipal telecommunications license tax; and

109 (iii) a telecommunications provider is required to pay the municipal
110 telecommunications license tax on or after the day on which the ordinance described in
111 Subsection (4)(b)(ii) takes effect.

112 Section 2. Section **11-41-102** is amended to read:

113 **11-41-102. Definitions.**

114 As used in this chapter:

115 (1) "Agreement" means an oral or written agreement between a:

116 (a) (i) county; or

117 (ii) municipality; and

118 (b) person.

119 (2) "Municipality" means a:

120 (a) city; or

- 121 (b) town.
- 122 (3) "Payment" includes:
- 123 (a) a payment;
- 124 (b) a rebate;
- 125 (c) a refund; or
- 126 (d) an amount similar to Subsections (3)(a) through (c).
- 127 (4) "Regional retail business" means a:
- 128 (a) retail business that occupies a floor area of more than 80,000 square feet;
- 129 (b) dealer as defined in Section 41-1a-102;
- 130 (c) retail shopping facility that has at least two anchor tenants if the total number of
- 131 anchor tenants in the shopping facility occupy a total floor area of more than 150,000 square
- 132 feet; or
- 133 (d) grocery store that occupies a floor area of more than 30,000 square feet.
- 134 (5) (a) "Sales and use tax" means a tax:
- 135 (i) imposed on transactions within a:
- 136 (A) county; or
- 137 (B) municipality; and
- 138 (ii) except as provided in Subsection (5)(b), authorized under Title 59, Chapter 12,
- 139 Sales and Use Tax Act.
- 140 (b) Notwithstanding Subsection (5)(a)(ii), "sales and use tax" does not include a tax
- 141 authorized under:
- 142 (i) Subsection 59-12-103(2)(a)(i);
- 143 (ii) Subsection 59-12-103(2)(b)(i);
- 144 [~~(iii) Subsection 59-12-103(2)(c)(i);~~]
- 145 [~~(iv) Subsection 59-12-103(2)(d)(i)(A);~~]
- 146 [~~(v)~~] (iii) Section 59-12-301;
- 147 [~~(vi)~~] (iv) Section 59-12-352;
- 148 [~~(vii)~~] (v) Section 59-12-353;
- 149 [~~(viii)~~] (vi) Section 59-12-603; or
- 150 [~~(ix)~~] (vii) Section 59-12-1201.
- 151 (6) (a) "Sales and use tax incentive payment" means a payment of revenues:

- 152 (i) to a person;
- 153 (ii) by a:
 - 154 (A) county; or
 - 155 (B) municipality;
- 156 (iii) to induce the person to locate or relocate a regional retail business within the:
 - 157 (A) county; or
 - 158 (B) municipality; and
- 159 (iv) that are derived from a sales and use tax.

160 (b) "Sales and use tax incentive payment" does not include funding for public
161 infrastructure.

162 Section 3. Section **59-1-401** is amended to read:

163 **59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute**
164 **of limitations -- Commission authority to waive, reduce, or compromise penalty or**
165 **interest.**

166 (1) As used in this section:

167 (a) "Activated tax, fee, or charge" means a tax, fee, or charge with respect to which the
168 commission:

169 (i) has implemented the commission's GenTax system; and

170 (ii) at least 30 days before implementing the commission's GenTax system as described
171 in Subsection (1)(a)(i), has provided notice in a conspicuous place on the commission's website
172 stating:

173 (A) the date the commission will implement the GenTax system with respect to the tax,
174 fee, or charge; and

175 (B) that, at the time the commission implements the GenTax system with respect to the
176 tax, fee, or charge:

177 (I) a person that files a return after the due date as described in Subsection (2)(a) is
178 subject to the penalty described in Subsection (2)(c)(ii); and

179 (II) a person that fails to pay the tax, fee, or charge as described in Subsection (3)(a) is
180 subject to the penalty described in Subsection (3)(b)(ii).

181 (b) "Activation date for a tax, fee, or charge" means with respect to a tax, fee, or
182 charge, the later of:

- 183 (i) the date on which the commission implements the commission's GenTax system
- 184 with respect to the tax, fee, or charge; or
- 185 (ii) 30 days after the date the commission provides the notice described in Subsection
- 186 (1)(a)(ii) with respect to the tax, fee, or charge.
- 187 (c) (i) Except as provided in Subsection (1)(c)(ii), "tax, fee, or charge" means:
- 188 (A) a tax, fee, or charge the commission administers under:
- 189 (I) this title;
- 190 (II) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 191 (III) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 192 (IV) Section 19-6-410.5;
- 193 (V) Section 19-6-714;
- 194 (VI) Section 19-6-805;
- 195 (VII) Section 34A-2-202;
- 196 (VIII) Section 40-6-14;
- 197 (IX) Section 69-2-5;
- 198 (X) Section 69-2-5.5; or
- 199 (XI) Section 69-2-5.6; or
- 200 (B) another amount that by statute is subject to a penalty imposed under this section.
- 201 (ii) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:
- 202 (A) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;
- 203 (B) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
- 204 (C) Chapter 2, Property Tax Act, except for Section 59-2-1309;
- 205 (D) Chapter 3, Tax Equivalent Property Act; or
- 206 (E) Chapter 4, Privilege Tax.
- 207 (d) "Unactivated tax, fee, or charge" means a tax, fee, or charge except for an activated
- 208 tax, fee, or charge.
- 209 (2) (a) The due date for filing a return is:
- 210 (i) if the person filing the return is not allowed by law an extension of time for filing
- 211 the return, the day on which the return is due as provided by law; or
- 212 (ii) if the person filing the return is allowed by law an extension of time for filing the
- 213 return, the earlier of:

- 214 (A) the date the person files the return; or
- 215 (B) the last day of that extension of time as allowed by law.
- 216 (b) A penalty in the amount described in Subsection (2)(c) is imposed if a person files a
- 217 return after the due date described in Subsection (2)(a).
- 218 (c) For purposes of Subsection (2)(b), the penalty is an amount equal to the greater of:
- 219 (i) if the return described in Subsection (2)(b) is filed with respect to an unactivated
- 220 tax, fee, or charge:
 - 221 (A) \$20; or
 - 222 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or
- 223 (ii) if the return described in Subsection (2)(b) is filed with respect to an activated tax,
- 224 fee, or charge, beginning on the activation date for the tax, fee, or charge:
 - 225 (A) \$20; or
 - 226 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the return is
 - 227 filed no later than five days after the due date described in Subsection (2)(a);
 - 228 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the return is filed
 - 229 more than five days after the due date but no later than 15 days after the due date described in
 - 230 Subsection (2)(a); or
 - 231 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the return is
 - 232 filed more than 15 days after the due date described in Subsection (2)(a).
- 233 (d) This Subsection (2) does not apply to:
 - 234 (i) an amended return; or
 - 235 (ii) a return with no tax due.
- 236 (3) (a) A person is subject to a penalty for failure to pay a tax, fee, or charge if:
- 237 (i) the person files a return on or before the due date for filing a return described in
- 238 Subsection (2)(a), but fails to pay the tax, fee, or charge due on the return on or before that due
- 239 date;
- 240 (ii) the person:
 - 241 (A) is subject to a penalty under Subsection (2)(b); and
 - 242 (B) fails to pay the tax, fee, or charge due on a return within a 90-day period after the
 - 243 due date for filing a return described in Subsection (2)(a);
 - 244 (iii) (A) the person is subject to a penalty under Subsection (2)(b); and

245 (B) the commission estimates an amount of tax due for that person in accordance with
246 Subsection 59-1-1406(2);
247 (iv) the person:
248 (A) is mailed a notice of deficiency; and
249 (B) within a 30-day period after the day on which the notice of deficiency described in
250 Subsection (3)(a)(iv)(A) is mailed:
251 (I) does not file a petition for redetermination or a request for agency action; and
252 (II) fails to pay the tax, fee, or charge due on a return;
253 (v) (A) the commission:
254 (I) issues an order constituting final agency action resulting from a timely filed petition
255 for redetermination or a timely filed request for agency action; or
256 (II) is considered to have denied a request for reconsideration under Subsection
257 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed
258 request for agency action; and
259 (B) the person fails to pay the tax, fee, or charge due on a return within a 30-day period
260 after the date the commission:
261 (I) issues the order constituting final agency action described in Subsection
262 (3)(a)(v)(A)(I); or
263 (II) is considered to have denied the request for reconsideration described in
264 Subsection (3)(a)(v)(A)(II); or
265 (vi) the person fails to pay the tax, fee, or charge within a 30-day period after the date
266 of a final judicial decision resulting from a timely filed petition for judicial review.
267 (b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:
268 (i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with
269 respect to an unactivated tax, fee, or charge:
270 (A) \$20; or
271 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or
272 (ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with
273 respect to an activated tax, fee, or charge, beginning on the activation date:
274 (A) \$20; or
275 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the activated

276 tax, fee, or charge due on the return is paid no later than five days after the due date for filing a
277 return described in Subsection (2)(a);

278 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the activated tax,
279 fee, or charge due on the return is paid more than five days after the due date for filing a return
280 described in Subsection (2)(a) but no later than 15 days after that due date; or

281 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the activated
282 tax, fee, or charge due on the return is paid more than 15 days after the due date for filing a
283 return described in Subsection (2)(a).

284 (4) (a) Beginning January 1, 1995, in the case of any underpayment of estimated tax or
285 quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104, there
286 shall be added a penalty in an amount determined by applying the interest rate provided under
287 Section 59-1-402 plus four percentage points to the amount of the underpayment for the period
288 of the underpayment.

289 (b) (i) For purposes of Subsection (4)(a), the amount of the underpayment shall be the
290 excess of the required installment over the amount, if any, of the installment paid on or before
291 the due date for the installment.

292 (ii) The period of the underpayment shall run from the due date for the installment to
293 whichever of the following dates is the earlier:

294 (A) the original due date of the tax return, without extensions, for the taxable year; or

295 (B) with respect to any portion of the underpayment, the date on which that portion is
296 paid.

297 (iii) For purposes of this Subsection (4), a payment of estimated tax shall be credited
298 against unpaid required installments in the order in which the installments are required to be
299 paid.

300 (5) (a) Notwithstanding Subsection (2) and except as provided in Subsection (6), a
301 person allowed by law an extension of time for filing a corporate franchise or income tax return
302 under Chapter 7, Corporate Franchise and Income Taxes, or an individual income tax return
303 under Chapter 10, Individual Income Tax Act, is subject to a penalty in the amount described in
304 Subsection (5)(b) if, on or before the day on which the return is due as provided by law, not
305 including the extension of time, the person fails to pay:

306 (i) for a person filing a corporate franchise or income tax return under Chapter 7,

307 Corporate Franchise and Income Taxes, the payment required by Subsection 59-7-507(1)(b); or

308 (ii) for a person filing an individual income tax return under Chapter 10, Individual

309 Income Tax Act, the payment required by Subsection 59-10-516(2).

310 (b) For purposes of Subsection (5)(a), the penalty per month during the period of the

311 extension of time for filing the return is an amount equal to 2% of the tax due on the return,

312 unpaid as of the day on which the return is due as provided by law.

313 (6) If a person does not file a return within an extension of time allowed by Section

314 59-7-505 or 59-10-516, the person:

315 (a) is not subject to a penalty in the amount described in Subsection (5)(b); and

316 (b) is subject to a penalty in an amount equal to the sum of:

317 (i) a late file penalty in an amount equal to the greater of:

318 (A) \$20; or

319 (B) 10% of the tax due on the return, unpaid as of the day on which the return is due as

320 provided by law, not including the extension of time; and

321 (ii) a late pay penalty in an amount equal to the greater of:

322 (A) \$20; or

323 (B) 10% of the unpaid tax due on the return, unpaid as of the day on which the return is

324 due as provided by law, not including the extension of time.

325 (7) (a) Additional penalties for an underpayment of a tax, fee, or charge are as provided

326 in this Subsection (7)(a).

327 (i) Except as provided in Subsection (7)(c), if any portion of an underpayment of a tax,

328 fee, or charge is due to negligence, the penalty is 10% of the portion of the underpayment that

329 is due to negligence.

330 (ii) Except as provided in Subsection (7)(d), if any portion of an underpayment of a

331 tax, fee, or charge is due to intentional disregard of law or rule, the penalty is 15% of the entire

332 underpayment.

333 (iii) If any portion of an underpayment is due to an intent to evade a tax, fee, or charge,

334 the penalty is the greater of \$500 per period or 50% of the entire underpayment.

335 (iv) If any portion of an underpayment is due to fraud with intent to evade a tax, fee, or

336 charge, the penalty is the greater of \$500 per period or 100% of the entire underpayment.

337 (b) If the commission determines that a person is liable for a penalty imposed under

338 Subsection (7)(a)(ii), (iii), or (iv), the commission shall notify the person of the proposed
339 penalty.

340 (i) The notice of proposed penalty shall:

341 (A) set forth the basis of the assessment; and

342 (B) be mailed by certified mail, postage prepaid, to the person's last-known address.

343 (ii) Upon receipt of the notice of proposed penalty, the person against whom the
344 penalty is proposed may:

345 (A) pay the amount of the proposed penalty at the place and time stated in the notice;

346 or

347 (B) proceed in accordance with the review procedures of Subsection (7)(b)(iii).

348 (iii) A person against whom a penalty is proposed in accordance with this Subsection
349 (7) may contest the proposed penalty by filing a petition for an adjudicative proceeding with
350 the commission.

351 (iv) (A) If the commission determines that a person is liable for a penalty under this
352 Subsection (7), the commission shall assess the penalty and give notice and demand for
353 payment.

354 (B) The commission shall mail the notice and demand for payment described in
355 Subsection (7)(b)(iv)(A):

356 (I) to the person's last-known address; and

357 (II) in accordance with Section 59-1-1404.

358 (c) A seller that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not
359 subject to the penalty under Subsection (7)(a)(i) if on or after July 1, 2001:

360 (i) a court of competent jurisdiction issues a final unappealable judgment or order
361 determining that:

362 (A) the seller meets one or more of the criteria described in Subsection
363 59-12-107(1)(a); and

364 (B) the commission or a county, city, or town may require the seller to collect a tax
365 under Subsections 59-12-103(2)(a) through ~~(c)~~ (c); or

366 (ii) the commission issues a final unappealable administrative order determining that:

367 (A) the seller meets one or more of the criteria described in Subsection
368 59-12-107(1)(a); and

369 (B) the commission or a county, city, or town may require the seller to collect a tax
370 under Subsections 59-12-103(2)(a) through ~~(c)~~ (c).

371 (d) A seller that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not
372 subject to the penalty under Subsection (7)(a)(ii) if:

373 (i) (A) a court of competent jurisdiction issues a final unappealable judgment or order
374 determining that:

375 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a);
376 and

377 (II) the commission or a county, city, or town may require the seller to collect a tax
378 under Subsections 59-12-103(2)(a) through ~~(c)~~ (c); or

379 (B) the commission issues a final unappealable administrative order determining that:

380 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a);
381 and

382 (II) the commission or a county, city, or town may require the seller to collect a tax
383 under Subsections 59-12-103(2)(a) through ~~(c)~~ (c); and

384 (ii) the seller's intentional disregard of law or rule is warranted by existing law or by a
385 nonfrivolous argument for the extension, modification, or reversal of existing law or the
386 establishment of new law.

387 (8) The penalty for failure to file an information return, information report, or a
388 complete supporting schedule is \$50 for each information return, information report, or
389 supporting schedule up to a maximum of \$1,000.

390 (9) If a person, in furtherance of a frivolous position, has a prima facie intent to delay
391 or impede administration of a law relating to a tax, fee, or charge and files a purported return
392 that fails to contain information from which the correctness of reported tax, fee, or charge
393 liability can be determined or that clearly indicates that the tax, fee, or charge liability shown is
394 substantially incorrect, the penalty is \$500.

395 (10) (a) A seller that fails to remit a tax, fee, or charge monthly as required by
396 Subsection 59-12-108(1)(a):

397 (i) is subject to a penalty described in Subsection (2); and

398 (ii) may not retain the percentage of sales and use taxes that would otherwise be
399 allowable under Subsection 59-12-108(2).

400 (b) A seller that fails to remit a tax, fee, or charge by electronic funds transfer as
401 required by Subsection 59-12-108(1)(a)(ii)(B):

402 (i) is subject to a penalty described in Subsection (2); and

403 (ii) may not retain the percentage of sales and use taxes that would otherwise be
404 allowable under Subsection 59-12-108(2).

405 (11) (a) A person is subject to the penalty provided in Subsection (11)(c) if that person:

406 (i) commits an act described in Subsection (11)(b) with respect to one or more of the
407 following documents:

408 (A) a return;

409 (B) an affidavit;

410 (C) a claim; or

411 (D) a document similar to Subsections (11)(a)(i)(A) through (C);

412 (ii) knows or has reason to believe that the document described in Subsection (11)(a)(i)
413 will be used in connection with any material matter administered by the commission; and

414 (iii) knows that the document described in Subsection (11)(a)(i), if used in connection
415 with any material matter administered by the commission, would result in an understatement of
416 another person's liability for a tax, fee, or charge.

417 (b) The following acts apply to Subsection (11)(a)(i):

418 (i) preparing any portion of a document described in Subsection (11)(a)(i);

419 (ii) presenting any portion of a document described in Subsection (11)(a)(i);

420 (iii) procuring any portion of a document described in Subsection (11)(a)(i);

421 (iv) advising in the preparation or presentation of any portion of a document described
422 in Subsection (11)(a)(i);

423 (v) aiding in the preparation or presentation of any portion of a document described in
424 Subsection (11)(a)(i);

425 (vi) assisting in the preparation or presentation of any portion of a document described
426 in Subsection (11)(a)(i); or

427 (vii) counseling in the preparation or presentation of any portion of a document
428 described in Subsection (11)(a)(i).

429 (c) For purposes of Subsection (11)(a), the penalty:

430 (i) shall be imposed by the commission;

431 (ii) is \$500 for each document described in Subsection (11)(a)(i) with respect to which
432 the person described in Subsection (11)(a) meets the requirements of Subsection (11)(a); and

433 (iii) is in addition to any other penalty provided by law.

434 (d) The commission may seek a court order to enjoin a person from engaging in
435 conduct that is subject to a penalty under this Subsection (11).

436 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
437 commission may make rules prescribing the documents that are similar to Subsections
438 (11)(a)(i)(A) through (C).

439 (12) (a) As provided in Section 76-8-1101, criminal offenses and penalties are as
440 provided in Subsections (12)(b) through (e).

441 (b) (i) A person who is required by this title or any laws the commission administers or
442 regulates to register with or obtain a license or permit from the commission, who operates
443 without having registered or secured a license or permit, or who operates when the registration,
444 license, or permit is expired or not current, is guilty of a class B misdemeanor.

445 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(b)(i), the
446 penalty may not:

447 (A) be less than \$500; or

448 (B) exceed \$1,000.

449 (c) (i) A person who, with intent to evade a tax, fee, or charge or requirement of this
450 title or any lawful requirement of the commission, fails to make, render, sign, or verify a return
451 or to supply information within the time required by law, or who makes, renders, signs, or
452 verifies a false or fraudulent return or statement, or who supplies false or fraudulent
453 information, is guilty of a third degree felony.

454 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(c)(i), the
455 penalty may not:

456 (A) be less than \$1,000; or

457 (B) exceed \$5,000.

458 (d) (i) A person who intentionally or willfully attempts to evade or defeat a tax, fee, or
459 charge or the payment of a tax, fee, or charge is, in addition to other penalties provided by law,
460 guilty of a second degree felony.

461 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(d)(i), the

462 penalty may not:

463 (A) be less than \$1,500; or

464 (B) exceed \$25,000.

465 (e) (i) A person is guilty of a second degree felony if that person commits an act:

466 (A) described in Subsection (12)(e)(ii) with respect to one or more of the following
467 documents:

468 (I) a return;

469 (II) an affidavit;

470 (III) a claim; or

471 (IV) a document similar to Subsections (12)(e)(i)(A)(I) through (III); and

472 (B) subject to Subsection (12)(e)(iii), with knowledge that ~~the~~ a document described
473 in Subsection (12)(e)(i)(A):

474 (I) is false or fraudulent as to any material matter; and

475 (II) could be used in connection with any material matter administered by the
476 commission.

477 (ii) The following acts apply to Subsection (12)(e)(i):

478 (A) preparing any portion of a document described in Subsection (12)(e)(i)(A);

479 (B) presenting any portion of a document described in Subsection (12)(e)(i)(A);

480 (C) procuring any portion of a document described in Subsection (12)(e)(i)(A);

481 (D) advising in the preparation or presentation of any portion of a document described
482 in Subsection (12)(e)(i)(A);

483 (E) aiding in the preparation or presentation of any portion of a document described in
484 Subsection (12)(e)(i)(A);

485 (F) assisting in the preparation or presentation of any portion of a document described
486 in Subsection (12)(e)(i)(A); or

487 (G) counseling in the preparation or presentation of any portion of a document
488 described in Subsection (12)(e)(i)(A).

489 (iii) This Subsection (12)(e) applies:

490 (A) regardless of whether the person for which the document described in Subsection
491 (12)(e)(i)(A) is prepared or presented:

492 (I) knew of the falsity of the document described in Subsection (12)(e)(i)(A); or

493 (II) consented to the falsity of [~~the~~] a document described in Subsection (12)(e)(i)(A);

494 and

495 (B) in addition to any other penalty provided by law.

496 (iv) Notwithstanding Section 76-3-301, for purposes of this Subsection (12)(e), the

497 penalty may not:

498 (A) be less than \$1,500; or

499 (B) exceed \$25,000.

500 (v) The commission may seek a court order to enjoin a person from engaging in

501 conduct that is subject to a penalty under this Subsection (12)(e).

502 (vi) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

503 the commission may make rules prescribing the documents that are similar to Subsections

504 (12)(e)(i)(A)(I) through (III).

505 (f) The statute of limitations for prosecution for a violation of this Subsection (12) is

506 the later of six years:

507 (i) from the date the tax should have been remitted; or

508 (ii) after the day on which the person commits the criminal offense.

509 (13) Upon making a record of its actions, and upon reasonable cause shown, the

510 commission may waive, reduce, or compromise any of the penalties or interest imposed under

511 this part.

512 Section 4. Section **59-12-102** is amended to read:

513 **59-12-102. Definitions.**

514 As used in this chapter:

515 (1) "800 service" means a telecommunications service that:

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

517 (b) is typically marketed:

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

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

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

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

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

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

524 Federal Communications Commission.

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

526 (i) a subscriber purchases;

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

528 the subscriber's:

529 (A) prerecorded announcement; or

530 (B) live service; and

531 (iii) is typically marketed:

532 (A) under the name 900 service; or

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

534 Communications Commission.

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

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

537 subscriber; or

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

539 (A) a product; or

540 (B) a service.

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

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

543 organizations.

544 (4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on

545 November 12, 2002, including amendments made to the Streamlined Sales and Use Tax

546 Agreement after November 12, 2002.

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

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

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

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

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

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

553 [~~(c) Subsection 59-12-103(2)(c)(i);~~]

554 [~~(d) Subsection 59-12-103(2)(d)(i)(A)(I);~~]

555 [~~(e)~~] (c) Section 59-12-204;
556 [~~(f)~~] (d) Section 59-12-401;
557 [~~(g)~~] (e) Section 59-12-402;
558 [~~(h)~~] (f) Section 59-12-703;
559 [~~(i)~~] (g) Section 59-12-802;
560 [~~(j)~~] (h) Section 59-12-804;
561 [~~(k)~~] (i) Section 59-12-1102;
562 [~~(l)~~] (j) Section 59-12-1302;
563 [~~(m)~~] (k) Section 59-12-1402;
564 [~~(n)~~] (l) Section 59-12-1802;
565 [~~(o)~~] (m) Section 59-12-2003;
566 [~~(p)~~] (n) Section 59-12-2103;
567 [~~(q)~~] (o) Section 59-12-2213;
568 [~~(r)~~] (p) Section 59-12-2214;
569 [~~(s)~~] (q) Section 59-12-2215;
570 [~~(t)~~] (r) Section 59-12-2216;
571 [~~(u)~~] (s) Section 59-12-2217; or
572 [~~(v)~~] (t) Section 59-12-2218.

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

574 (8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:

575 (a) except for an airline as defined in Section 59-2-102 or an affiliated group as defined
576 in Subsection 59-12-107(1)(f) of an airline; and

577 (b) that has the workers, expertise, and facilities to perform the following, regardless of
578 whether the business entity performs the following in this state:

579 (i) check, diagnose, overhaul, and repair:

580 (A) an onboard system of a fixed wing turbine powered aircraft; and

581 (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;

582 (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft
583 engine;

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

- 586 (A) an inspection;
- 587 (B) a repair, including a structural repair or modification;
- 588 (C) changing landing gear; and
- 589 (D) addressing issues related to an aging fixed wing turbine powered aircraft;
- 590 (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and
- 591 completely apply new paint to the fixed wing turbine powered aircraft; and
- 592 (v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that
- 593 results in a change in the fixed wing turbine powered aircraft's certification requirements by the
- 594 authority that certifies the fixed wing turbine powered aircraft.
- 595 (9) "Alcoholic beverage" means a beverage that:
- 596 (a) is suitable for human consumption; and
- 597 (b) contains .5% or more alcohol by volume.
- 598 (10) (a) "Ancillary service" means a service associated with, or incidental to, the
- 599 provision of telecommunications service.
- 600 (b) "Ancillary service" includes:
- 601 (i) a conference bridging service;
- 602 (ii) a detailed communications billing service;
- 603 (iii) directory assistance;
- 604 (iv) a vertical service; or
- 605 (v) a voice mail service.
- 606 (11) "Area agency on aging" is as defined in Section 62A-3-101.
- 607 (12) "Assisted amusement device" means an amusement device, skill device, or ride
- 608 device that is started and stopped by an individual:
- 609 (a) who is not the purchaser or renter of the right to use or operate the amusement
- 610 device, skill device, or ride device; and
- 611 (b) at the direction of the seller of the right to use the amusement device, skill device,
- 612 or ride device.
- 613 (13) "Assisted cleaning or washing of tangible personal property" means cleaning or
- 614 washing of tangible personal property if the cleaning or washing labor is primarily performed
- 615 by an individual:
- 616 (a) who is not the purchaser of the cleaning or washing of the tangible personal

617 property; and

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

620 (14) "Authorized carrier" means:

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

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

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

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

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

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

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

633 (B) animal waste;

634 (C) methane produced:

635 (I) at landfills; or

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

637 (D) aquatic plants; and

638 (E) agricultural products.

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

640 (i) black liquor;

641 (ii) treated woods; or

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

643 (A) at landfills; or

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

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

647 (i) distinct and identifiable; and

- 648 (ii) sold for one nonitemized price.
- 649 (b) "Bundled transaction" does not include:
 - 650 (i) the sale of tangible personal property if the sales price varies, or is negotiable, on
 - 651 the basis of the selection by the purchaser of the items of tangible personal property included in
 - 652 the transaction;
 - 653 (ii) the sale of real property;
 - 654 (iii) the sale of services to real property;
 - 655 (iv) the retail sale of tangible personal property and a service if:
 - 656 (A) the tangible personal property:
 - 657 (I) is essential to the use of the service; and
 - 658 (II) is provided exclusively in connection with the service; and
 - 659 (B) the service is the true object of the transaction;
 - 660 (v) the retail sale of two services if:
 - 661 (A) one service is provided that is essential to the use or receipt of a second service;
 - 662 (B) the first service is provided exclusively in connection with the second service; and
 - 663 (C) the second service is the true object of the transaction;
 - 664 (vi) a transaction that includes tangible personal property or a product subject to
 - 665 taxation under this chapter and tangible personal property or a product that is not subject to
 - 666 taxation under this chapter if the:
 - 667 (A) seller's purchase price of the tangible personal property or product subject to
 - 668 taxation under this chapter is de minimis; or
 - 669 (B) seller's sales price of the tangible personal property or product subject to taxation
 - 670 under this chapter is de minimis; and
 - 671 (vii) the retail sale of tangible personal property that is not subject to taxation under
 - 672 this chapter and tangible personal property that is subject to taxation under this chapter if:
 - 673 (A) that retail sale includes:
 - 674 (I) food and food ingredients;
 - 675 (II) a drug;
 - 676 (III) durable medical equipment;
 - 677 (IV) mobility enhancing equipment;
 - 678 (V) an over-the-counter drug;

679 (VI) a prosthetic device; or
680 (VII) a medical supply; and
681 (B) subject to Subsection (16)(f):
682 (I) the seller's purchase price of the tangible personal property subject to taxation under
683 this chapter is 50% or less of the seller's total purchase price of that retail sale; or
684 (II) the seller's sales price of the tangible personal property subject to taxation under
685 this chapter is 50% or less of the seller's total sales price of that retail sale.
686 (c) (i) For purposes of Subsection (16)(a)(i), tangible personal property, a product, or a
687 service that is distinct and identifiable does not include:
688 (A) packaging that:
689 (I) accompanies the sale of the tangible personal property, product, or service; and
690 (II) is incidental or immaterial to the sale of the tangible personal property, product, or
691 service;
692 (B) tangible personal property, a product, or a service provided free of charge with the
693 purchase of another item of tangible personal property, a product, or a service; or
694 (C) an item of tangible personal property, a product, or a service included in the
695 definition of "purchase price."
696 (ii) For purposes of Subsection (16)(c)(i)(B), an item of tangible personal property, a
697 product, or a service is provided free of charge with the purchase of another item of tangible
698 personal property, a product, or a service if the sales price of the purchased item of tangible
699 personal property, product, or service does not vary depending on the inclusion of the tangible
700 personal property, product, or service provided free of charge.
701 (d) (i) For purposes of Subsection (16)(a)(ii), property sold for one nonitemized price
702 does not include a price that is separately identified by tangible personal property, product, or
703 service on the following, regardless of whether the following is in paper format or electronic
704 format:
705 (A) a binding sales document; or
706 (B) another supporting sales-related document that is available to a purchaser.
707 (ii) For purposes of Subsection (16)(d)(i), a binding sales document or another
708 supporting sales-related document that is available to a purchaser includes:
709 (A) a bill of sale;

- 710 (B) a contract;
- 711 (C) an invoice;
- 712 (D) a lease agreement;
- 713 (E) a periodic notice of rates and services;
- 714 (F) a price list;
- 715 (G) a rate card;
- 716 (H) a receipt; or
- 717 (I) a service agreement.

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

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

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

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

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

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

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

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

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

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

741 (i) on a transaction; and
742 (ii) in the states that are members of the agreement;
743 (b) determines the amount of agreement sales and use tax to remit to a state that is a
744 member of the agreement; and

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

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

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

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

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

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

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

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

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

759 (21) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
760 fuels that does not constitute industrial use under Subsection (48) or residential use under
761 Subsection (94).

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

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

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

770 (23) "Component part" includes:

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

772 (b) baling ties and twine used in the baling of hay and straw;
773 (c) fuel used for providing temperature control of orchards and commercial
774 greenhouses doing a majority of their business in wholesale sales, and for providing power for
775 off-highway type farm machinery; and

776 (d) feed, seeds, and seedlings.

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

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

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

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

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

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

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

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

786 (b) "Conference bridging service" includes providing a telephone number as part of the
787 ancillary service described in Subsection (26)(a).

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

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

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

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

795 (i) by a seller of:

796 (A) tangible personal property;

797 (B) a product transferred electronically; or

798 (C) services; and

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

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

- 803 (i) transportation;
- 804 (ii) shipping;
- 805 (iii) postage;
- 806 (iv) handling;
- 807 (v) crating; or
- 808 (vi) packing.

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

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

812 (a) is intended to supplement the diet;

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

814 (i) a vitamin;

815 (ii) a mineral;

816 (iii) an herb or other botanical;

817 (iv) an amino acid;

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

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

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

823 (A) tablet form;

824 (B) capsule form;

825 (C) powder form;

826 (D) softgel form;

827 (E) gelcap form; or

828 (F) liquid form; or

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

831 (A) as conventional food; and

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

833 (I) a meal; or

- 834 (II) the diet; and
- 835 (d) is required to be labeled as a dietary supplement:
- 836 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 837 (ii) as required by 21 C.F.R. Sec. 101.36.
- 838 (32) (a) "Direct mail" means printed material delivered or distributed by United States
- 839 mail or other delivery service:
- 840 (i) to:
- 841 (A) a mass audience; or
- 842 (B) addressees on a mailing list provided:
- 843 (I) by a purchaser of the mailing list; or
- 844 (II) at the discretion of the purchaser of the mailing list; and
- 845 (ii) if the cost of the printed material is not billed directly to the recipients.
- 846 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
- 847 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 848 (c) "Direct mail" does not include multiple items of printed material delivered to a
- 849 single address.
- 850 (33) "Directory assistance" means an ancillary service of providing:
- 851 (a) address information; or
- 852 (b) telephone number information.
- 853 (34) (a) "Disposable home medical equipment or supplies" means medical equipment
- 854 or supplies that:
- 855 (i) cannot withstand repeated use; and
- 856 (ii) are purchased by, for, or on behalf of a person other than:
- 857 (A) a health care facility as defined in Section 26-21-2;
- 858 (B) a health care provider as defined in Section 78B-3-403;
- 859 (C) an office of a health care provider described in Subsection (34)(a)(ii)(B); or
- 860 (D) a person similar to a person described in Subsections (34)(a)(ii)(A) through (C).
- 861 (b) "Disposable home medical equipment or supplies" does not include:
- 862 (i) a drug;
- 863 (ii) durable medical equipment;
- 864 (iii) a hearing aid;

- 865 (iv) a hearing aid accessory;
- 866 (v) mobility enhancing equipment; or
- 867 (vi) tangible personal property used to correct impaired vision, including:
- 868 (A) eyeglasses; or
- 869 (B) contact lenses.
- 870 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 871 commission may by rule define what constitutes medical equipment or supplies.
- 872 (35) (a) "Drug" means a compound, substance, or preparation, or a component of a
- 873 compound, substance, or preparation that is:
- 874 (i) recognized in:
- 875 (A) the official United States Pharmacopoeia;
- 876 (B) the official Homeopathic Pharmacopoeia of the United States;
- 877 (C) the official National Formulary; or
- 878 (D) a supplement to a publication listed in Subsections (35)(a)(i)(A) through (C);
- 879 (ii) intended for use in the:
- 880 (A) diagnosis of disease;
- 881 (B) cure of disease;
- 882 (C) mitigation of disease;
- 883 (D) treatment of disease; or
- 884 (E) prevention of disease; or
- 885 (iii) intended to affect:
- 886 (A) the structure of the body; or
- 887 (B) any function of the body.
- 888 (b) "Drug" does not include:
- 889 (i) food and food ingredients;
- 890 (ii) a dietary supplement;
- 891 (iii) an alcoholic beverage; or
- 892 (iv) a prosthetic device.
- 893 (36) (a) Except as provided in Subsection (36)(c), "durable medical equipment" means
- 894 equipment that:
- 895 (i) can withstand repeated use;

- 896 (ii) is primarily and customarily used to serve a medical purpose;
- 897 (iii) generally is not useful to a person in the absence of illness or injury; and
- 898 (iv) is not worn in or on the body.
- 899 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 900 equipment described in Subsection (36)(a).
- 901 (c) Notwithstanding Subsection (36)(a), "durable medical equipment" does not include
- 902 mobility enhancing equipment.
- 903 (37) "Electronic" means:
- 904 (a) relating to technology; and
- 905 (b) having:
- 906 (i) electrical capabilities;
- 907 (ii) digital capabilities;
- 908 (iii) magnetic capabilities;
- 909 (iv) wireless capabilities;
- 910 (v) optical capabilities;
- 911 (vi) electromagnetic capabilities; or
- 912 (vii) capabilities similar to Subsections (37)(b)(i) through (vi).
- 913 (38) "Employee" is as defined in Section 59-10-401.
- 914 (39) "Fixed guideway" means a public transit facility that uses and occupies:
- 915 (a) rail for the use of public transit; or
- 916 (b) a separate right-of-way for the use of public transit.
- 917 (40) "Fixed wing turbine powered aircraft" means an aircraft that:
- 918 (a) is powered by turbine engines;
- 919 (b) operates on jet fuel; and
- 920 (c) has wings that are permanently attached to the fuselage of the aircraft.
- 921 (41) "Fixed wireless service" means a telecommunications service that provides radio
- 922 communication between fixed points.
- 923 (42) (a) "Food and food ingredients" means substances:
- 924 (i) regardless of whether the substances are in:
- 925 (A) liquid form;
- 926 (B) concentrated form;

- 927 (C) solid form;
- 928 (D) frozen form;
- 929 (E) dried form; or
- 930 (F) dehydrated form; and
- 931 (ii) that are:
- 932 (A) sold for:
- 933 (I) ingestion by humans; or
- 934 (II) chewing by humans; and
- 935 (B) consumed for the substance's:
- 936 (I) taste; or
- 937 (II) nutritional value.
- 938 (b) "Food and food ingredients" includes an item described in Subsection (78)(b)(iii).
- 939 (c) "Food and food ingredients" does not include:
- 940 (i) an alcoholic beverage;
- 941 (ii) tobacco; or
- 942 (iii) prepared food.
- 943 (43) (a) "Fundraising sales" means sales:
- 944 (i) (A) made by a school; or
- 945 (B) made by a school student;
- 946 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 947 materials, or provide transportation; and
- 948 (iii) that are part of an officially sanctioned school activity.
- 949 (b) For purposes of Subsection (43)(a)(iii), "officially sanctioned school activity"
- 950 means a school activity:
- 951 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 952 district governing the authorization and supervision of fundraising activities;
- 953 (ii) that does not directly or indirectly compensate an individual teacher or other
- 954 educational personnel by direct payment, commissions, or payment in kind; and
- 955 (iii) the net or gross revenues from which are deposited in a dedicated account
- 956 controlled by the school or school district.
- 957 (44) "Geothermal energy" means energy contained in heat that continuously flows

958 outward from the earth that is used as the sole source of energy to produce electricity.

959 (45) "Governing board of the agreement" means the governing board of the agreement
960 that is:

961 (a) authorized to administer the agreement; and

962 (b) established in accordance with the agreement.

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

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

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

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

972 (iv) the National Guard;

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

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

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

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

978 (ii) a school;

979 (iii) the State Board of Education;

980 (iv) the State Board of Regents; or

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

982 (47) "Hydroelectric energy" means water used as the sole source of energy to produce
983 electricity.

984 (48) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
985 other fuels:

986 (a) in mining or extraction of minerals;

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

- 989 (i) commercial greenhouses;
- 990 (ii) irrigation pumps;
- 991 (iii) farm machinery;
- 992 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
- 993 registered under Title 41, Chapter 1a, Part 2, Registration; and
- 994 (v) other farming activities;
- 995 (c) in manufacturing tangible personal property at an establishment described in SIC
- 996 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
- 997 Executive Office of the President, Office of Management and Budget;
- 998 (d) by a scrap recycler if:
- 999 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 1000 one or more of the following items into prepared grades of processed materials for use in new
- 1001 products:
- 1002 (A) iron;
- 1003 (B) steel;
- 1004 (C) nonferrous metal;
- 1005 (D) paper;
- 1006 (E) glass;
- 1007 (F) plastic;
- 1008 (G) textile; or
- 1009 (H) rubber; and
- 1010 (ii) the new products under Subsection (48)(d)(i) would otherwise be made with
- 1011 nonrecycled materials; or
- 1012 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a
- 1013 cogeneration facility as defined in Section 54-2-1.
- 1014 (49) (a) Except as provided in Subsection (49)(b), "installation charge" means a charge
- 1015 for installing:
- 1016 (i) tangible personal property; or
- 1017 (ii) a product transferred electronically.
- 1018 (b) "Installation charge" does not include a charge for repairs or renovations of:
- 1019 (i) tangible personal property; or

1020 (ii) a product transferred electronically.

1021 (50) (a) "Lease" or "rental" means a transfer of possession or control of tangible
1022 personal property or a product transferred electronically for:

1023 (i) (A) a fixed term; or
1024 (B) an indeterminate term; and
1025 (ii) consideration.

1026 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
1027 amount of consideration may be increased or decreased by reference to the amount realized
1028 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
1029 Code.

1030 (c) "Lease" or "rental" does not include:

1031 (i) a transfer of possession or control of property under a security agreement or
1032 deferred payment plan that requires the transfer of title upon completion of the required
1033 payments;

1034 (ii) a transfer of possession or control of property under an agreement that requires the
1035 transfer of title:

1036 (A) upon completion of required payments; and
1037 (B) if the payment of an option price does not exceed the greater of:
1038 (I) \$100; or
1039 (II) 1% of the total required payments; or

1040 (iii) providing tangible personal property along with an operator for a fixed period of
1041 time or an indeterminate period of time if the operator is necessary for equipment to perform as
1042 designed.

1043 (d) For purposes of Subsection (50)(c)(iii), an operator is necessary for equipment to
1044 perform as designed if the operator's duties exceed the:

1045 (i) set-up of tangible personal property;
1046 (ii) maintenance of tangible personal property; or
1047 (iii) inspection of tangible personal property.

1048 (51) "Load and leave" means delivery to a purchaser by use of a tangible storage media
1049 if the tangible storage media is not physically transferred to the purchaser.

1050 (52) "Local taxing jurisdiction" means a:

- 1051 (a) county that is authorized to impose an agreement sales and use tax;
- 1052 (b) city that is authorized to impose an agreement sales and use tax; or
- 1053 (c) town that is authorized to impose an agreement sales and use tax.
- 1054 (53) "Manufactured home" is as defined in Section 58-56-3.
- 1055 (54) For purposes of Section 59-12-104, "manufacturing facility" means:
- 1056 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
- 1057 Industrial Classification Manual of the federal Executive Office of the President, Office of
- 1058 Management and Budget;
- 1059 (b) a scrap recycler if:
- 1060 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 1061 one or more of the following items into prepared grades of processed materials for use in new
- 1062 products:
- 1063 (A) iron;
- 1064 (B) steel;
- 1065 (C) nonferrous metal;
- 1066 (D) paper;
- 1067 (E) glass;
- 1068 (F) plastic;
- 1069 (G) textile; or
- 1070 (H) rubber; and
- 1071 (ii) the new products under Subsection (54)(b)(i) would otherwise be made with
- 1072 nonrecycled materials; or
- 1073 (c) a cogeneration facility as defined in Section 54-2-1.
- 1074 (55) "Member of the immediate family of the producer" means a person who is related
- 1075 to a producer described in Subsection 59-12-104(20)(a) as a:
- 1076 (a) child or stepchild, regardless of whether the child or stepchild is:
- 1077 (i) an adopted child or adopted stepchild; or
- 1078 (ii) a foster child or foster stepchild;
- 1079 (b) grandchild or stepgrandchild;
- 1080 (c) grandparent or stepgrandparent;
- 1081 (d) nephew or stepnephew;

- 1082 (e) niece or stepniece;
- 1083 (f) parent or stepparent;
- 1084 (g) sibling or stepsibling;
- 1085 (h) spouse;
- 1086 (i) person who is the spouse of a person described in Subsections (55)(a) through (g);

1087 or

- 1088 (j) person similar to a person described in Subsections (55)(a) through (i) as
- 1089 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
- 1090 Administrative Rulemaking Act.

1091 (56) "Mobile home" is as defined in Section 58-56-3.

1092 (57) "Mobile telecommunications service" is as defined in the Mobile
1093 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

1094 (58) (a) "Mobile wireless service" means a telecommunications service, regardless of
1095 the technology used, if:

- 1096 (i) the origination point of the conveyance, routing, or transmission is not fixed;
- 1097 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or
- 1098 (iii) the origination point described in Subsection (58)(a)(i) and the termination point
1099 described in Subsection (58)(a)(ii) are not fixed.

1100 (b) "Mobile wireless service" includes a telecommunications service that is provided
1101 by a commercial mobile radio service provider.

1102 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1103 commission may by rule define "commercial mobile radio service provider."

1104 (59) (a) Except as provided in Subsection (59)(c), "mobility enhancing equipment"
1105 means equipment that is:

- 1106 (i) primarily and customarily used to provide or increase the ability to move from one
1107 place to another;
- 1108 (ii) appropriate for use in a:
 - 1109 (A) home; or
 - 1110 (B) motor vehicle; and
- 1111 (iii) not generally used by persons with normal mobility.

1112 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of

1113 the equipment described in Subsection (59)(a).

1114 (c) Notwithstanding Subsection (59)(a), "mobility enhancing equipment" does not
1115 include:

1116 (i) a motor vehicle;

1117 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
1118 vehicle manufacturer;

1119 (iii) durable medical equipment; or

1120 (iv) a prosthetic device.

1121 (60) "Model 1 seller" means a seller registered under the agreement that has selected a
1122 certified service provider as the seller's agent to perform all of the seller's sales and use tax
1123 functions for agreement sales and use taxes other than the seller's obligation under Section
1124 59-12-124 to remit a tax on the seller's own purchases.

1125 (61) "Model 2 seller" means a seller registered under the agreement that:

1126 (a) except as provided in Subsection (61)(b), has selected a certified automated system
1127 to perform the seller's sales tax functions for agreement sales and use taxes; and

1128 (b) notwithstanding Subsection (61)(a), retains responsibility for remitting all of the
1129 sales tax:

1130 (i) collected by the seller; and

1131 (ii) to the appropriate local taxing jurisdiction.

1132 (62) (a) Subject to Subsection (62)(b), "model 3 seller" means a seller registered under
1133 the agreement that has:

1134 (i) sales in at least five states that are members of the agreement;

1135 (ii) total annual sales revenues of at least \$500,000,000;

1136 (iii) a proprietary system that calculates the amount of tax:

1137 (A) for an agreement sales and use tax; and

1138 (B) due to each local taxing jurisdiction; and

1139 (iv) entered into a performance agreement with the governing board of the agreement.

1140 (b) For purposes of Subsection (62)(a), "model 3 seller" includes an affiliated group of
1141 sellers using the same proprietary system.

1142 (63) "Model 4 seller" means a seller that is registered under the agreement and is not a
1143 model 1 seller, model 2 seller, or model 3 seller.

- 1144 (64) "Modular home" means a modular unit as defined in Section 58-56-3.
- 1145 (65) "Motor vehicle" is as defined in Section 41-1a-102.
- 1146 (66) "Oil shale" means a group of fine black to dark brown shales containing
- 1147 bituminous material that yields petroleum upon distillation.
- 1148 (67) (a) "Other fuels" means products that burn independently to produce heat or
- 1149 energy.
- 1150 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible
- 1151 personal property.
- 1152 (68) (a) "Paging service" means a telecommunications service that provides
- 1153 transmission of a coded radio signal for the purpose of activating a specific pager.
- 1154 (b) For purposes of Subsection (68)(a), the transmission of a coded radio signal
- 1155 includes a transmission by message or sound.
- 1156 (69) "Pawnbroker" is as defined in Section 13-32a-102.
- 1157 (70) "Pawn transaction" is as defined in Section 13-32a-102.
- 1158 (71) (a) "Permanently attached to real property" means that for tangible personal
- 1159 property attached to real property:
- 1160 (i) the attachment of the tangible personal property to the real property:
- 1161 (A) is essential to the use of the tangible personal property; and
- 1162 (B) suggests that the tangible personal property will remain attached to the real
- 1163 property in the same place over the useful life of the tangible personal property; or
- 1164 (ii) if the tangible personal property is detached from the real property, the detachment
- 1165 would:
- 1166 (A) cause substantial damage to the tangible personal property; or
- 1167 (B) require substantial alteration or repair of the real property to which the tangible
- 1168 personal property is attached.
- 1169 (b) "Permanently attached to real property" includes:
- 1170 (i) the attachment of an accessory to the tangible personal property if the accessory is:
- 1171 (A) essential to the operation of the tangible personal property; and
- 1172 (B) attached only to facilitate the operation of the tangible personal property;
- 1173 (ii) a temporary detachment of tangible personal property from real property for a
- 1174 repair or renovation if the repair or renovation is performed where the tangible personal

1175 property and real property are located; or
1176 (iii) property attached to oil, gas, or water pipelines, except for the property listed in
1177 Subsection (71)(c)(iii) or (iv).
1178 (c) "Permanently attached to real property" does not include:
1179 (i) the attachment of portable or movable tangible personal property to real property if
1180 that portable or movable tangible personal property is attached to real property only for:
1181 (A) convenience;
1182 (B) stability; or
1183 (C) for an obvious temporary purpose;
1184 (ii) the detachment of tangible personal property from real property except for the
1185 detachment described in Subsection (71)(b)(ii);
1186 (iii) an attachment of the following tangible personal property to real property if the
1187 attachment to real property is only through a line that supplies water, electricity, gas,
1188 telecommunications, cable, or supplies a similar item as determined by the commission by rule
1189 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
1190 (A) a computer;
1191 (B) a telephone;
1192 (C) a television; or
1193 (D) tangible personal property similar to Subsections (71)(c)(iii)(A) through (C) as
1194 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
1195 Administrative Rulemaking Act; or
1196 (iv) an item listed in Subsection (111)(c).
1197 (72) "Person" includes any individual, firm, partnership, joint venture, association,
1198 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
1199 municipality, district, or other local governmental entity of the state, or any group or
1200 combination acting as a unit.
1201 (73) "Place of primary use":
1202 (a) for telecommunications service other than mobile telecommunications service,
1203 means the street address representative of where the customer's use of the telecommunications
1204 service primarily occurs, which shall be:
1205 (i) the residential street address of the customer; or

- 1206 (ii) the primary business street address of the customer; or
- 1207 (b) for mobile telecommunications service, is as defined in the Mobile
- 1208 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
- 1209 (74) (a) "Postpaid calling service" means a telecommunications service a person
- 1210 obtains by making a payment on a call-by-call basis:
- 1211 (i) through the use of a:
- 1212 (A) bank card;
- 1213 (B) credit card;
- 1214 (C) debit card; or
- 1215 (D) travel card; or
- 1216 (ii) by a charge made to a telephone number that is not associated with the origination
- 1217 or termination of the telecommunications service.
- 1218 (b) "Postpaid calling service" includes a service, except for a prepaid wireless calling
- 1219 service, that would be a prepaid wireless calling service if the service were exclusively a
- 1220 telecommunications service.
- 1221 (75) "Postproduction" means an activity related to the finishing or duplication of a
- 1222 medium described in Subsection 59-12-104(54)(a).
- 1223 (76) "Prepaid calling service" means a telecommunications service:
- 1224 (a) that allows a purchaser access to telecommunications service that is exclusively
- 1225 telecommunications service;
- 1226 (b) that:
- 1227 (i) is paid for in advance; and
- 1228 (ii) enables the origination of a call using an:
- 1229 (A) access number; or
- 1230 (B) authorization code;
- 1231 (c) that is dialed:
- 1232 (i) manually; or
- 1233 (ii) electronically; and
- 1234 (d) sold in predetermined units or dollars that decline:
- 1235 (i) by a known amount; and
- 1236 (ii) with use.

- 1237 (77) "Prepaid wireless calling service" means a telecommunications service:
- 1238 (a) that provides the right to utilize:
- 1239 (i) mobile wireless service; and
- 1240 (ii) other service that is not a telecommunications service, including:
- 1241 (A) the download of a product transferred electronically;
- 1242 (B) a content service; or
- 1243 (C) an ancillary service;
- 1244 (b) that:
- 1245 (i) is paid for in advance; and
- 1246 (ii) enables the origination of a call using an:
- 1247 (A) access number; or
- 1248 (B) authorization code;
- 1249 (c) that is dialed:
- 1250 (i) manually; or
- 1251 (ii) electronically; and
- 1252 (d) sold in predetermined units or dollars that decline:
- 1253 (i) by a known amount; and
- 1254 (ii) with use.
- 1255 (78) (a) "Prepared food" means:
- 1256 (i) food:
- 1257 (A) sold in a heated state; or
- 1258 (B) heated by a seller;
- 1259 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 1260 item; or
- 1261 (iii) except as provided in Subsection (78)(c), food sold with an eating utensil provided
- 1262 by the seller, including a:
- 1263 (A) plate;
- 1264 (B) knife;
- 1265 (C) fork;
- 1266 (D) spoon;
- 1267 (E) glass;

- 1268 (F) cup;
- 1269 (G) napkin; or
- 1270 (H) straw.
- 1271 (b) "Prepared food" does not include:
- 1272 (i) food that a seller only:
- 1273 (A) cuts;
- 1274 (B) repackages; or
- 1275 (C) pasteurizes; or
- 1276 (ii) (A) the following:
- 1277 (I) raw egg;
- 1278 (II) raw fish;
- 1279 (III) raw meat;
- 1280 (IV) raw poultry; or
- 1281 (V) a food containing an item described in Subsections (78)(b)(ii)(A)(I) through (IV);
- 1282 and
- 1283 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 1284 Food and Drug Administration's Food Code that a consumer cook the items described in
- 1285 Subsection (78)(b)(ii)(A) to prevent food borne illness; or
- 1286 (iii) the following if sold without eating utensils provided by the seller:
- 1287 (A) food and food ingredients sold by a seller if the seller's proper primary
- 1288 classification under the 2002 North American Industry Classification System of the federal
- 1289 Executive Office of the President, Office of Management and Budget, is manufacturing in
- 1290 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
- 1291 Manufacturing;
- 1292 (B) food and food ingredients sold in an unheated state:
- 1293 (I) by weight or volume; and
- 1294 (II) as a single item; or
- 1295 (C) a bakery item, including:
- 1296 (I) a bagel;
- 1297 (II) a bar;
- 1298 (III) a biscuit;

- 1299 (IV) bread;
- 1300 (V) a bun;
- 1301 (VI) a cake;
- 1302 (VII) a cookie;
- 1303 (VIII) a croissant;
- 1304 (IX) a danish;
- 1305 (X) a donut;
- 1306 (XI) a muffin;
- 1307 (XII) a pastry;
- 1308 (XIII) a pie;
- 1309 (XIV) a roll;
- 1310 (XV) a tart;
- 1311 (XVI) a torte; or
- 1312 (XVII) a tortilla.

1313 (c) Notwithstanding Subsection (78)(a)(iii), an eating utensil provided by the seller
1314 does not include the following used to transport the food:

- 1315 (i) a container; or
- 1316 (ii) packaging.

1317 (79) "Prescription" means an order, formula, or recipe that is issued:

- 1318 (a) (i) orally;
- 1319 (ii) in writing;
- 1320 (iii) electronically; or
- 1321 (iv) by any other manner of transmission; and
- 1322 (b) by a licensed practitioner authorized by the laws of a state.

1323 (80) (a) Except as provided in Subsection (80)(b)(ii) or (iii), "prewritten computer
1324 software" means computer software that is not designed and developed:

- 1325 (i) by the author or other creator of the computer software; and
- 1326 (ii) to the specifications of a specific purchaser.

1327 (b) "Prewritten computer software" includes:

- 1328 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
1329 software is not designed and developed:

- 1330 (A) by the author or other creator of the computer software; and
- 1331 (B) to the specifications of a specific purchaser;
- 1332 (ii) notwithstanding Subsection (80)(a), computer software designed and developed by
- 1333 the author or other creator of the computer software to the specifications of a specific purchaser
- 1334 if the computer software is sold to a person other than the purchaser; or
- 1335 (iii) notwithstanding Subsection (80)(a) and except as provided in Subsection (80)(c),
- 1336 prewritten computer software or a prewritten portion of prewritten computer software:
- 1337 (A) that is modified or enhanced to any degree; and
- 1338 (B) if the modification or enhancement described in Subsection (80)(b)(iii)(A) is
- 1339 designed and developed to the specifications of a specific purchaser.
- 1340 (c) Notwithstanding Subsection (80)(b)(iii), "prewritten computer software" does not
- 1341 include a modification or enhancement described in Subsection (80)(b)(iii) if the charges for
- 1342 the modification or enhancement are:
- 1343 (i) reasonable; and
- 1344 (ii) separately stated on the invoice or other statement of price provided to the
- 1345 purchaser.
- 1346 (81) (a) "Private communication service" means a telecommunications service:
- 1347 (i) that entitles a customer to exclusive or priority use of one or more communications
- 1348 channels between or among termination points; and
- 1349 (ii) regardless of the manner in which the one or more communications channels are
- 1350 connected.
- 1351 (b) "Private communications service" includes the following provided in connection
- 1352 with the use of one or more communications channels:
- 1353 (i) an extension line;
- 1354 (ii) a station;
- 1355 (iii) switching capacity; or
- 1356 (iv) another associated service that is provided in connection with the use of one or
- 1357 more communications channels as defined in Section 59-12-215.
- 1358 (82) (a) "Prosthetic device" means a device that is worn on or in the body to:
- 1359 (i) artificially replace a missing portion of the body;
- 1360 (ii) prevent or correct a physical deformity or physical malfunction; or

- 1361 (iii) support a weak or deformed portion of the body.
- 1362 (b) "Prosthetic device" includes:
- 1363 (i) parts used in the repairs or renovation of a prosthetic device;
- 1364 (ii) replacement parts for a prosthetic device;
- 1365 (iii) a dental prosthesis; or
- 1366 (iv) a hearing aid.
- 1367 (c) "Prosthetic device" does not include:
- 1368 (i) corrective eyeglasses; or
- 1369 (ii) contact lenses.
- 1370 (83) (a) "Protective equipment" means an item:
- 1371 (i) for human wear; and
- 1372 (ii) that is:
- 1373 (A) designed as protection:
- 1374 (I) to the wearer against injury or disease; or
- 1375 (II) against damage or injury of other persons or property; and
- 1376 (B) not suitable for general use.
- 1377 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1378 commission shall make rules:
- 1379 (i) listing the items that constitute "protective equipment"; and
- 1380 (ii) that are consistent with the list of items that constitute "protective equipment"
- 1381 under the agreement.
- 1382 (84) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or
- 1383 printed matter, other than a photocopy:
- 1384 (i) regardless of:
- 1385 (A) characteristics;
- 1386 (B) copyright;
- 1387 (C) form;
- 1388 (D) format;
- 1389 (E) method of reproduction; or
- 1390 (F) source; and
- 1391 (ii) made available in printed or electronic format.

1392 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1393 commission may by rule define the term "photocopy."

1394 (85) (a) "Purchase price" and "sales price" mean the total amount of consideration:

1395 (i) valued in money; and

1396 (ii) for which tangible personal property, a product transferred electronically, or
1397 services are:

1398 (A) sold;

1399 (B) leased; or

1400 (C) rented.

1401 (b) "Purchase price" and "sales price" include:

1402 (i) the seller's cost of the tangible personal property, a product transferred
1403 electronically, or services sold;

1404 (ii) expenses of the seller, including:

1405 (A) the cost of materials used;

1406 (B) a labor cost;

1407 (C) a service cost;

1408 (D) interest;

1409 (E) a loss;

1410 (F) the cost of transportation to the seller; or

1411 (G) a tax imposed on the seller;

1412 (iii) a charge by the seller for any service necessary to complete the sale; or

1413 (iv) consideration a seller receives from a person other than the purchaser if:

1414 (A) (I) the seller actually receives consideration from a person other than the purchaser;

1415 and

1416 (II) the consideration described in Subsection (85)(b)(iv)(A)(I) is directly related to a
1417 price reduction or discount on the sale;

1418 (B) the seller has an obligation to pass the price reduction or discount through to the
1419 purchaser;

1420 (C) the amount of the consideration attributable to the sale is fixed and determinable by
1421 the seller at the time of the sale to the purchaser; and

1422 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the

1423 seller to claim a price reduction or discount; and
1424 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,
1425 coupon, or other documentation with the understanding that the person other than the seller
1426 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;
1427 (II) the purchaser identifies that purchaser to the seller as a member of a group or
1428 organization allowed a price reduction or discount, except that a preferred customer card that is
1429 available to any patron of a seller does not constitute membership in a group or organization
1430 allowed a price reduction or discount; or
1431 (III) the price reduction or discount is identified as a third party price reduction or
1432 discount on the:
1433 (Aa) invoice the purchaser receives; or
1434 (Bb) certificate, coupon, or other documentation the purchaser presents.
1435 (c) "Purchase price" and "sales price" do not include:
1436 (i) a discount:
1437 (A) in a form including:
1438 (I) cash;
1439 (II) term; or
1440 (III) coupon;
1441 (B) that is allowed by a seller;
1442 (C) taken by a purchaser on a sale; and
1443 (D) that is not reimbursed by a third party; or
1444 (ii) the following if separately stated on an invoice, bill of sale, or similar document
1445 provided to the purchaser:
1446 (A) the following from credit extended on the sale of tangible personal property or
1447 services:
1448 (I) a carrying charge;
1449 (II) a financing charge; or
1450 (III) an interest charge;
1451 (B) a delivery charge;
1452 (C) an installation charge;
1453 (D) a manufacturer rebate on a motor vehicle; or

- 1454 (E) a tax or fee legally imposed directly on the consumer.
- 1455 (86) "Purchaser" means a person to whom:
- 1456 (a) a sale of tangible personal property is made;
- 1457 (b) a product is transferred electronically; or
- 1458 (c) a service is furnished.
- 1459 (87) "Regularly rented" means:
- 1460 (a) rented to a guest for value three or more times during a calendar year; or
- 1461 (b) advertised or held out to the public as a place that is regularly rented to guests for
- 1462 value.
- 1463 (88) "Renewable energy" means:
- 1464 (a) biomass energy;
- 1465 (b) hydroelectric energy;
- 1466 (c) geothermal energy;
- 1467 (d) solar energy; or
- 1468 (e) wind energy.
- 1469 (89) (a) "Renewable energy production facility" means a facility that:
- 1470 (i) uses renewable energy to produce electricity; and
- 1471 (ii) has a production capacity of 20 kilowatts or greater.
- 1472 (b) A facility is a renewable energy production facility regardless of whether the
- 1473 facility is:
- 1474 (i) connected to an electric grid; or
- 1475 (ii) located on the premises of an electricity consumer.
- 1476 (90) "Rental" is as defined in Subsection (50).
- 1477 (91) "Repairs or renovations of tangible personal property" means:
- 1478 (a) a repair or renovation of tangible personal property that is not permanently attached
- 1479 to real property; or
- 1480 (b) attaching tangible personal property or a product that is transferred electronically to
- 1481 other tangible personal property if the other tangible personal property to which the tangible
- 1482 personal property or product that is transferred electronically is attached is not permanently
- 1483 attached to real property.
- 1484 (92) "Research and development" means the process of inquiry or experimentation

1485 aimed at the discovery of facts, devices, technologies, or applications and the process of
1486 preparing those devices, technologies, or applications for marketing.

1487 (93) (a) "Residential telecommunications services" means a telecommunications
1488 service or an ancillary service that is provided to an individual for personal use:

1489 (i) at a residential address; or

1490 (ii) at an institution, including a nursing home or a school, if the telecommunications
1491 service or ancillary service is provided to and paid for by the individual residing at the
1492 institution rather than the institution.

1493 (b) For purposes of Subsection (93)(a), a residential address includes an:

1494 (i) apartment; or

1495 (ii) other individual dwelling unit.

1496 (94) "Residential use" means the use in or around a home, apartment building, sleeping
1497 quarters, and similar facilities or accommodations.

1498 (95) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
1499 than:

1500 (a) resale;

1501 (b) sublease; or

1502 (c) subrent.

1503 (96) (a) "Retailer" means any person engaged in a regularly organized business in
1504 tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and
1505 who is selling to the user or consumer and not for resale.

1506 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
1507 engaged in the business of selling to users or consumers within the state.

1508 (97) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
1509 otherwise, in any manner, of tangible personal property or any other taxable transaction under
1510 Subsection 59-12-103(1), for consideration.

1511 (b) "Sale" includes:

1512 (i) installment and credit sales;

1513 (ii) any closed transaction constituting a sale;

1514 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
1515 chapter;

1516 (iv) any transaction if the possession of property is transferred but the seller retains the
1517 title as security for the payment of the price; and

1518 (v) any transaction under which right to possession, operation, or use of any article of
1519 tangible personal property is granted under a lease or contract and the transfer of possession
1520 would be taxable if an outright sale were made.

1521 (98) "Sale at retail" is as defined in Subsection (95).

1522 (99) "Sale-leaseback transaction" means a transaction by which title to tangible
1523 personal property or a product transferred electronically that is subject to a tax under this
1524 chapter is transferred:

1525 (a) by a purchaser-lessee;

1526 (b) to a lessor;

1527 (c) for consideration; and

1528 (d) if:

1529 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
1530 of the tangible personal property or product transferred electronically;

1531 (ii) the sale of the tangible personal property or product transferred electronically to the
1532 lessor is intended as a form of financing:

1533 (A) for the tangible personal property or product transferred electronically; and

1534 (B) to the purchaser-lessee; and

1535 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
1536 is required to:

1537 (A) capitalize the tangible personal property or product transferred electronically for
1538 financial reporting purposes; and

1539 (B) account for the lease payments as payments made under a financing arrangement.

1540 (100) "Sales price" is as defined in Subsection (85).

1541 (101) (a) "Sales relating to schools" means the following sales by, amounts paid to, or
1542 amounts charged by a school:

1543 (i) sales that are directly related to the school's educational functions or activities
1544 including:

1545 (A) the sale of:

1546 (I) textbooks;

- 1547 (II) textbook fees;
- 1548 (III) laboratory fees;
- 1549 (IV) laboratory supplies; or
- 1550 (V) safety equipment;
- 1551 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
- 1552 that:
- 1553 (I) a student is specifically required to wear as a condition of participation in a
- 1554 school-related event or school-related activity; and
- 1555 (II) is not readily adaptable to general or continued usage to the extent that it takes the
- 1556 place of ordinary clothing;
- 1557 (C) sales of the following if the net or gross revenues generated by the sales are
- 1558 deposited into a school district fund or school fund dedicated to school meals:
- 1559 (I) food and food ingredients; or
- 1560 (II) prepared food; or
- 1561 (D) transportation charges for official school activities; or
- 1562 (ii) amounts paid to or amounts charged by a school for admission to a school-related
- 1563 event or school-related activity.
- 1564 (b) "Sales relating to schools" does not include:
- 1565 (i) bookstore sales of items that are not educational materials or supplies;
- 1566 (ii) except as provided in Subsection (101)(a)(i)(B):
- 1567 (A) clothing;
- 1568 (B) clothing accessories or equipment;
- 1569 (C) protective equipment; or
- 1570 (D) sports or recreational equipment; or
- 1571 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 1572 event or school-related activity if the amounts paid or charged are passed through to a person:
- 1573 (A) other than a:
- 1574 (I) school;
- 1575 (II) nonprofit organization authorized by a school board or a governing body of a
- 1576 private school to organize and direct a competitive secondary school activity; or
- 1577 (III) nonprofit association authorized by a school board or a governing body of a

- 1578 private school to organize and direct a competitive secondary school activity; and
- 1579 (B) that is required to collect sales and use taxes under this chapter.
- 1580 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1581 commission may make rules defining the term "passed through."
- 1582 (102) For purposes of this section and Section 59-12-104, "school":
- 1583 (a) means:
- 1584 (i) an elementary school or a secondary school that:
- 1585 (A) is a:
- 1586 (I) public school; or
- 1587 (II) private school; and
- 1588 (B) provides instruction for one or more grades kindergarten through 12; or
- 1589 (ii) a public school district; and
- 1590 (b) includes the Electronic High School as defined in Section 53A-15-1002.
- 1591 (103) "Seller" means a person that makes a sale, lease, or rental of:
- 1592 (a) tangible personal property;
- 1593 (b) a product transferred electronically; or
- 1594 (c) a service.
- 1595 (104) (a) "Semiconductor fabricating, processing, research, or development materials"
- 1596 means tangible personal property or a product transferred electronically if the tangible personal
- 1597 property or product transferred electronically is:
- 1598 (i) used primarily in the process of:
- 1599 (A) (I) manufacturing a semiconductor;
- 1600 (II) fabricating a semiconductor; or
- 1601 (III) research or development of a:
- 1602 (Aa) semiconductor; or
- 1603 (Bb) semiconductor manufacturing process; or
- 1604 (B) maintaining an environment suitable for a semiconductor; or
- 1605 (ii) consumed primarily in the process of:
- 1606 (A) (I) manufacturing a semiconductor;
- 1607 (II) fabricating a semiconductor; or
- 1608 (III) research or development of a:

- 1609 (Aa) semiconductor; or
- 1610 (Bb) semiconductor manufacturing process; or
- 1611 (B) maintaining an environment suitable for a semiconductor.
- 1612 (b) "Semiconductor fabricating, processing, research, or development materials"
- 1613 includes:
- 1614 (i) parts used in the repairs or renovations of tangible personal property or a product
- 1615 transferred electronically described in Subsection (104)(a); or
- 1616 (ii) a chemical, catalyst, or other material used to:
- 1617 (A) produce or induce in a semiconductor a:
- 1618 (I) chemical change; or
- 1619 (II) physical change;
- 1620 (B) remove impurities from a semiconductor; or
- 1621 (C) improve the marketable condition of a semiconductor.
- 1622 (105) "Senior citizen center" means a facility having the primary purpose of providing
- 1623 services to the aged as defined in Section 62A-3-101.
- 1624 (106) "Simplified electronic return" means the electronic return:
- 1625 (a) described in Section 318(C) of the agreement; and
- 1626 (b) approved by the governing board of the agreement.
- 1627 (107) "Solar energy" means the sun used as the sole source of energy for producing
- 1628 electricity.
- 1629 (108) (a) "Sports or recreational equipment" means an item:
- 1630 (i) designed for human use; and
- 1631 (ii) that is:
- 1632 (A) worn in conjunction with:
- 1633 (I) an athletic activity; or
- 1634 (II) a recreational activity; and
- 1635 (B) not suitable for general use.
- 1636 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1637 commission shall make rules:
- 1638 (i) listing the items that constitute "sports or recreational equipment"; and
- 1639 (ii) that are consistent with the list of items that constitute "sports or recreational

1640 equipment" under the agreement.

1641 (109) "State" means the state of Utah, its departments, and agencies.

1642 (110) "Storage" means any keeping or retention of tangible personal property or any
1643 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except
1644 sale in the regular course of business.

1645 (111) (a) Except as provided in Subsection (111)(d) or (e), "tangible personal property"
1646 means personal property that:

1647 (i) may be:

1648 (A) seen;

1649 (B) weighed;

1650 (C) measured;

1651 (D) felt; or

1652 (E) touched; or

1653 (ii) is in any manner perceptible to the senses.

1654 (b) "Tangible personal property" includes:

1655 (i) electricity;

1656 (ii) water;

1657 (iii) gas;

1658 (iv) steam; or

1659 (v) prewritten computer software.

1660 (c) "Tangible personal property" includes the following regardless of whether the item
1661 is attached to real property:

1662 (i) a dishwasher;

1663 (ii) a dryer;

1664 (iii) a freezer;

1665 (iv) a microwave;

1666 (v) a refrigerator;

1667 (vi) a stove;

1668 (vii) a washer; or

1669 (viii) an item similar to Subsections (111)(c)(i) through (vii) as determined by the
1670 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative

1671 Rulemaking Act.

1672 (d) "Tangible personal property" does not include a product that is transferred
1673 electronically.

1674 (e) "Tangible personal property" does not include the following if attached to real
1675 property, regardless of whether the attachment to real property is only through a line that
1676 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
1677 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1678 Rulemaking Act:

1679 (i) a hot water heater;

1680 (ii) a water filtration system; or

1681 (iii) a water softener system.

1682 (112) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon
1683 and require further processing other than mechanical blending before becoming finished
1684 petroleum products.

1685 (113) (a) "Telecommunications enabling or facilitating equipment, machinery, or
1686 software" means an item listed in Subsection (113)(b) if that item is purchased or leased
1687 primarily to enable or facilitate one or more of the following to function:

1688 (i) telecommunications switching or routing equipment, machinery, or software; or

1689 (ii) telecommunications transmission equipment, machinery, or software.

1690 (b) The following apply to Subsection (113)(a):

1691 (i) a pole;

1692 (ii) software;

1693 (iii) a supplementary power supply;

1694 (iv) temperature or environmental equipment or machinery;

1695 (v) test equipment;

1696 (vi) a tower; or

1697 (vii) equipment, machinery, or software that functions similarly to an item listed in
1698 Subsections (113)(b)(i) through (vi) as determined by the commission by rule made in
1699 accordance with Subsection (113)(c).

1700 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1701 commission may by rule define what constitutes equipment, machinery, or software that

1702 functions similarly to an item listed in Subsections (113)(b)(i) through (vi).

1703 (114) "Telecommunications equipment, machinery, or software required for 911
1704 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.
1705 Sec. 20.18.

1706 (115) "Telecommunications maintenance or repair equipment, machinery, or software"
1707 means equipment, machinery, or software purchased or leased primarily to maintain or repair
1708 one or more of the following, regardless of whether the equipment, machinery, or software is
1709 purchased or leased as a spare part or as an upgrade or modification to one or more of the
1710 following:

- 1711 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 1712 (b) telecommunications switching or routing equipment, machinery, or software; or
- 1713 (c) telecommunications transmission equipment, machinery, or software.

1714 (116) (a) "Telecommunications service" means the electronic conveyance, routing, or
1715 transmission of audio, data, video, voice, or any other information or signal to a point, or
1716 among or between points.

1717 (b) "Telecommunications service" includes:

1718 (i) an electronic conveyance, routing, or transmission with respect to which a computer
1719 processing application is used to act:

1720 (A) on the code, form, or protocol of the content;

1721 (B) for the purpose of electronic conveyance, routing, or transmission; and

1722 (C) regardless of whether the service:

1723 (I) is referred to as voice over Internet protocol service; or

1724 (II) is classified by the Federal Communications Commission as enhanced or value
1725 added;

1726 (ii) an 800 service;

1727 (iii) a 900 service;

1728 (iv) a fixed wireless service;

1729 (v) a mobile wireless service;

1730 (vi) a postpaid calling service;

1731 (vii) a prepaid calling service;

1732 (viii) a prepaid wireless calling service; or

- 1733 (ix) a private communications service.
- 1734 (c) "Telecommunications service" does not include:
- 1735 (i) advertising, including directory advertising;
- 1736 (ii) an ancillary service;
- 1737 (iii) a billing and collection service provided to a third party;
- 1738 (iv) a data processing and information service if:
- 1739 (A) the data processing and information service allows data to be:
- 1740 (I) (Aa) acquired;
- 1741 (Bb) generated;
- 1742 (Cc) processed;
- 1743 (Dd) retrieved; or
- 1744 (Ee) stored; and
- 1745 (II) delivered by an electronic transmission to a purchaser; and
- 1746 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 1747 or information;
- 1748 (v) installation or maintenance of the following on a customer's premises:
- 1749 (A) equipment; or
- 1750 (B) wiring;
- 1751 (vi) Internet access service;
- 1752 (vii) a paging service;
- 1753 (viii) a product transferred electronically, including:
- 1754 (A) music;
- 1755 (B) reading material;
- 1756 (C) a ring tone;
- 1757 (D) software; or
- 1758 (E) video;
- 1759 (ix) a radio and television audio and video programming service:
- 1760 (A) regardless of the medium; and
- 1761 (B) including:
- 1762 (I) furnishing conveyance, routing, or transmission of a television audio and video
- 1763 programming service by a programming service provider;

- 1764 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
- 1765 (III) audio and video programming services delivered by a commercial mobile radio
- 1766 service provider as defined in 47 C.F.R. Sec. 20.3;
- 1767 (x) a value-added nonvoice data service; or
- 1768 (xi) tangible personal property.
- 1769 (117) (a) "Telecommunications service provider" means a person that:
- 1770 (i) owns, controls, operates, or manages a telecommunications service; and
- 1771 (ii) engages in an activity described in Subsection (117)(a)(i) for the shared use with or
- 1772 resale to any person of the telecommunications service.
- 1773 (b) A person described in Subsection (117)(a) is a telecommunications service provider
- 1774 whether or not the Public Service Commission of Utah regulates:
- 1775 (i) that person; or
- 1776 (ii) the telecommunications service that the person owns, controls, operates, or
- 1777 manages.
- 1778 (118) (a) "Telecommunications switching or routing equipment, machinery, or
- 1779 software" means an item listed in Subsection (118)(b) if that item is purchased or leased
- 1780 primarily for switching or routing:
- 1781 (i) an ancillary service;
- 1782 (ii) data communications;
- 1783 (iii) voice communications; or
- 1784 (iv) telecommunications service.
- 1785 (b) The following apply to Subsection (118)(a):
- 1786 (i) a bridge;
- 1787 (ii) a computer;
- 1788 (iii) a cross connect;
- 1789 (iv) a modem;
- 1790 (v) a multiplexer;
- 1791 (vi) plug in circuitry;
- 1792 (vii) a router;
- 1793 (viii) software;
- 1794 (ix) a switch; or

1795 (x) equipment, machinery, or software that functions similarly to an item listed in
1796 Subsections (118)(b)(i) through (ix) as determined by the commission by rule made in
1797 accordance with Subsection (118)(c).

1798 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1799 commission may by rule define what constitutes equipment, machinery, or software that
1800 functions similarly to an item listed in Subsections (118)(b)(i) through (ix).

1801 (119) (a) "Telecommunications transmission equipment, machinery, or software"
1802 means an item listed in Subsection (119)(b) if that item is purchased or leased primarily for
1803 sending, receiving, or transporting:

- 1804 (i) an ancillary service;
- 1805 (ii) data communications;
- 1806 (iii) voice communications; or
- 1807 (iv) telecommunications service.

1808 (b) The following apply to Subsection (119)(a):

- 1809 (i) an amplifier;
- 1810 (ii) a cable;
- 1811 (iii) a closure;
- 1812 (iv) a conduit;
- 1813 (v) a controller;
- 1814 (vi) a duplexer;
- 1815 (vii) a filter;
- 1816 (viii) an input device;
- 1817 (ix) an input/output device;
- 1818 (x) an insulator;
- 1819 (xi) microwave machinery or equipment;
- 1820 (xii) an oscillator;
- 1821 (xiii) an output device;
- 1822 (xiv) a pedestal;
- 1823 (xv) a power converter;
- 1824 (xvi) a power supply;
- 1825 (xvii) a radio channel;

1826 (xviii) a radio receiver;
1827 (xix) a radio transmitter;
1828 (xx) a repeater;
1829 (xxi) software;
1830 (xxii) a terminal;
1831 (xxiii) a timing unit;
1832 (xxiv) a transformer;
1833 (xxv) a wire; or
1834 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
1835 Subsections (119)(b)(i) through (xxv) as determined by the commission by rule made in
1836 accordance with Subsection (119)(c).

1837 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1838 commission may by rule define what constitutes equipment, machinery, or software that
1839 functions similarly to an item listed in Subsections (119)(b)(i) through (xxv).

1840 (120) "Tobacco" means:

- 1841 (a) a cigarette;
- 1842 (b) a cigar;
- 1843 (c) chewing tobacco;
- 1844 (d) pipe tobacco; or
- 1845 (e) any other item that contains tobacco.

1846 (121) "Unassisted amusement device" means an amusement device, skill device, or
1847 ride device that is started and stopped by the purchaser or renter of the right to use or operate
1848 the amusement device, skill device, or ride device.

1849 (122) (a) "Use" means the exercise of any right or power over tangible personal
1850 property, a product transferred electronically, or a service under Subsection 59-12-103(1),
1851 incident to the ownership or the leasing of that tangible personal property, product transferred
1852 electronically, or service.

1853 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal
1854 property, a product transferred electronically, or a service in the regular course of business and
1855 held for resale.

1856 (123) "Value-added nonvoice data service" means a service:

1857 (a) that otherwise meets the definition of a telecommunications service except that a
1858 computer processing application is used to act primarily for a purpose other than conveyance,
1859 routing, or transmission; and

1860 (b) with respect to which a computer processing application is used to act on data or
1861 information:

- 1862 (i) code;
- 1863 (ii) content;
- 1864 (iii) form; or
- 1865 (iv) protocol.

1866 (124) (a) Subject to Subsection (124)(b), "vehicle" means the following that are
1867 required to be titled, registered, or titled and registered:

- 1868 (i) an aircraft as defined in Section 72-10-102;
- 1869 (ii) a vehicle as defined in Section 41-1a-102;
- 1870 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1871 (iv) a vessel as defined in Section 41-1a-102.

1872 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

- 1873 (i) a vehicle described in Subsection (124)(a); or
- 1874 (ii) (A) a locomotive;
- 1875 (B) a freight car;
- 1876 (C) railroad work equipment; or
- 1877 (D) other railroad rolling stock.

1878 (125) "Vehicle dealer" means a person engaged in the business of buying, selling, or
1879 exchanging a vehicle as defined in Subsection (124).

1880 (126) (a) "Vertical service" means an ancillary service that:

- 1881 (i) is offered in connection with one or more telecommunications services; and
- 1882 (ii) offers an advanced calling feature that allows a customer to:
 - 1883 (A) identify a caller; and
 - 1884 (B) manage multiple calls and call connections.

1885 (b) "Vertical service" includes an ancillary service that allows a customer to manage a
1886 conference bridging service.

1887 (127) (a) "Voice mail service" means an ancillary service that enables a customer to

1888 receive, send, or store a recorded message.

1889 (b) "Voice mail service" does not include a vertical service that a customer is required
1890 to have in order to utilize a voice mail service.

1891 (128) (a) Except as provided in Subsection (128)(b), "waste energy facility" means a
1892 facility that generates electricity:

1893 (i) using as the primary source of energy waste materials that would be placed in a
1894 landfill or refuse pit if it were not used to generate electricity, including:

1895 (A) tires;

1896 (B) waste coal; or

1897 (C) oil shale; and

1898 (ii) in amounts greater than actually required for the operation of the facility.

1899 (b) "Waste energy facility" does not include a facility that incinerates:

1900 (i) municipal solid waste;

1901 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or

1902 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1903 (129) "Watercraft" means a vessel as defined in Section 73-18-2.

1904 (130) "Wind energy" means wind used as the sole source of energy to produce
1905 electricity.

1906 (131) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
1907 location by the United States Postal Service.

1908 Section 5. Section **59-12-103** is amended to read:

1909 **59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use**
1910 **tax revenues.**

1911 (1) A tax is imposed on the purchaser as provided in this part for amounts paid or
1912 charged for the following transactions:

1913 (a) retail sales of tangible personal property made within the state;

1914 (b) amounts paid for:

1915 (i) telecommunications service, other than mobile telecommunications service, that
1916 originates and terminates within the boundaries of this state;

1917 (ii) mobile telecommunications service that originates and terminates within the
1918 boundaries of one state only to the extent permitted by the Mobile Telecommunications

- 1919 Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or
- 1920 (iii) an ancillary service associated with a:
- 1921 (A) telecommunications service described in Subsection (1)(b)(i); or
- 1922 (B) mobile telecommunications service described in Subsection (1)(b)(ii);
- 1923 (c) sales of the following for commercial use:
- 1924 (i) gas;
- 1925 (ii) electricity;
- 1926 (iii) heat;
- 1927 (iv) coal;
- 1928 (v) fuel oil; or
- 1929 (vi) other fuels;
- 1930 (d) sales of the following for residential use:
- 1931 (i) gas;
- 1932 (ii) electricity;
- 1933 (iii) heat;
- 1934 (iv) coal;
- 1935 (v) fuel oil; or
- 1936 (vi) other fuels;
- 1937 (e) sales of prepared food;
- 1938 (f) except as provided in Section 59-12-104, amounts paid or charged as admission or
- 1939 user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,
- 1940 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,
- 1941 fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit
- 1942 television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf
- 1943 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,
- 1944 tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises,
- 1945 horseback rides, sports activities, or any other amusement, entertainment, recreation,
- 1946 exhibition, cultural, or athletic activity;
- 1947 (g) amounts paid or charged for services for repairs or renovations of tangible personal
- 1948 property, unless Section 59-12-104 provides for an exemption from sales and use tax for:
- 1949 (i) the tangible personal property; and

1950 (ii) parts used in the repairs or renovations of the tangible personal property described
1951 in Subsection (1)(g)(i), whether or not any parts are actually used in the repairs or renovations
1952 of that tangible personal property;

1953 (h) except as provided in Subsection 59-12-104(7), amounts paid or charged for
1954 assisted cleaning or washing of tangible personal property;

1955 (i) amounts paid or charged for tourist home, hotel, motel, or trailer court
1956 accommodations and services that are regularly rented for less than 30 consecutive days;

1957 (j) amounts paid or charged for laundry or dry cleaning services;

1958 (k) amounts paid or charged for leases or rentals of tangible personal property if within
1959 this state the tangible personal property is:

1960 (i) stored;

1961 (ii) used; or

1962 (iii) otherwise consumed;

1963 (l) amounts paid or charged for tangible personal property if within this state the
1964 tangible personal property is:

1965 (i) stored;

1966 (ii) used; or

1967 (iii) consumed; and

1968 (m) amounts paid or charged for a sale:

1969 (i) (A) of a product that:

1970 (I) is transferred electronically; and

1971 (II) would be subject to a tax under this chapter if the product was transferred in a
1972 manner other than electronically; or

1973 (B) of a repair or renovation of a product that:

1974 (I) is transferred electronically; and

1975 (II) would be subject to a tax under this chapter if the product was transferred in a
1976 manner other than electronically; and

1977 (ii) regardless of whether the sale provides:

1978 (A) a right of permanent use of the product; or

1979 (B) a right to use the product that is less than a permanent use, including a right:

1980 (I) for a definite or specified length of time; and

1981 (II) that terminates upon the occurrence of a condition.

1982 (2) (a) Except as provided in [~~Subsections (2)(b) through (e)~~] Subsection (2)(b) or (c),

1983 a state tax and a local tax is imposed on a transaction described in Subsection (1) equal to the

1984 sum of:

1985 (i) a state tax imposed on the transaction at a tax rate equal to the sum of:

1986 (A) [~~4.70%~~] 4.40%; and

1987 (B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales

1988 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211

1989 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional

1990 State Sales and Use Tax Act; and

1991 (II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales

1992 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211

1993 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state

1994 imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

1995 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the

1996 transaction under this chapter other than this part.

1997 (b) Except as provided in Subsection (2)[~~(d) or (e)~~](c), a state tax and a local tax is

1998 imposed on a transaction described in Subsection (1)(d) equal to the sum of:

1999 (i) a state tax imposed on the transaction at a tax rate of 2%; and

2000 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the

2001 transaction under this chapter other than this part.

2002 [~~(c) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is~~

2003 ~~imposed on amounts paid or charged for food and food ingredients equal to the sum of:]~~

2004 [~~(i) a state tax imposed on the amounts paid or charged for food and food ingredients at~~

2005 ~~a tax rate of 1.75%; and]~~

2006 [~~(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the~~

2007 ~~amounts paid or charged for food and food ingredients under this chapter other than this part.]~~

2008 [~~(d) (i) For a bundled transaction that is attributable to food and food ingredients and~~

2009 ~~tangible personal property other than food and food ingredients, a state tax and a local tax is~~

2010 ~~imposed on the entire bundled transaction equal to the sum of:]~~

2011 [~~(A) a state tax imposed on the entire bundled transaction equal to the sum of:]~~

2012 [~~(I) the tax rate described in Subsection (2)(a)(i)(A); and]~~
2013 [~~(H) (Aa) the tax rate the state imposes in accordance with Part 18, Additional State~~
2014 Sales and Use Tax Act, if the location of the transaction as determined under Sections
2015 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18,
2016 ~~Additional State Sales and Use Tax Act; and]~~
2017 [~~(Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State~~
2018 ~~Sales and Use Tax Act, if the location of the transaction as determined under Sections~~
2019 ~~59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which~~
2020 ~~the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and]~~
2021 [~~(B) a local tax imposed on the entire bundled transaction at the sum of the tax rates~~
2022 ~~described in Subsection (2)(a)(ii).]~~
2023 [~~(ii) (c) (i) Subject to Subsection (2)[~~(d)(iii)~~](c)(ii), for a bundled transaction [other~~
2024 ~~than a bundled transaction described in Subsection (2)(d)(i):~~
2025 (A) if the sales price of the bundled transaction is attributable to tangible personal
2026 property, a product, or a service that is subject to taxation under this chapter and tangible
2027 personal property, a product, or service that is not subject to taxation under this chapter, the
2028 entire bundled transaction is subject to taxation under this chapter unless:
2029 (I) the seller is able to identify by reasonable and verifiable standards the tangible
2030 personal property, product, or service that is not subject to taxation under this chapter from the
2031 books and records the seller keeps in the seller's regular course of business; or
2032 (II) state or federal law provides otherwise; or
2033 (B) if the sales price of a bundled transaction is attributable to two or more items of
2034 tangible personal property, products, or services that are subject to taxation under this chapter
2035 at different rates, the entire bundled transaction is subject to taxation under this chapter at the
2036 higher tax rate unless:
2037 (I) the seller is able to identify by reasonable and verifiable standards the tangible
2038 personal property, product, or service that is subject to taxation under this chapter at the lower
2039 tax rate from the books and records the seller keeps in the seller's regular course of business; or
2040 (II) state or federal law provides otherwise.
2041 [~~(iii) (i) For purposes of Subsection (2)[~~(d)(ii)~~](c)(i), books and records that a seller~~
2042 ~~keeps in the seller's regular course of business includes books and records the seller keeps in~~

2043 the regular course of business for nontax purposes.

2044 ~~[(e)]~~ (d) Subject to Subsections (2)~~[(f) and (g)]~~(e) and (f), a tax rate repeal or tax rate
2045 change for a tax rate imposed under the following shall take effect on the first day of a calendar
2046 quarter:

2047 (i) Subsection (2)(a)(i)(A); or

2048 (ii) Subsection (2)(b)(i)[;].

2049 ~~[(iii) Subsection (2)(c)(i); or]~~

2050 ~~[(iv) Subsection (2)(d)(i)(A)(I).]~~

2051 ~~[(f)]~~ (e) (i) A tax rate increase shall take effect on the first day of the first billing period
2052 that begins after the effective date of the tax rate increase if the billing period for the
2053 transaction begins before the effective date of a tax rate increase imposed under:

2054 (A) Subsection (2)(a)(i)(A); or

2055 (B) Subsection (2)(b)(i)[;].

2056 ~~[(C) Subsection (2)(c)(i); or]~~

2057 ~~[(D) Subsection (2)(d)(i)(A)(I).]~~

2058 (ii) The repeal of a tax or a tax rate decrease shall take effect on the first day of the last
2059 billing period that began before the effective date of the repeal of the tax or the tax rate
2060 decrease if the billing period for the transaction begins before the effective date of the repeal of
2061 the tax or the tax rate decrease imposed under:

2062 (A) Subsection (2)(a)(i)(A); or

2063 (B) Subsection (2)(b)(i)[;].

2064 ~~[(C) Subsection (2)(c)(i); or]~~

2065 ~~[(D) Subsection (2)(d)(i)(A)(I).]~~

2066 ~~[(g)]~~ (f) (i) For a tax rate described in Subsection (2)~~[(g)]~~(f)(ii), if a tax due on a
2067 catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, a
2068 tax rate repeal or change in a tax rate takes effect:

2069 (A) on the first day of a calendar quarter; and

2070 (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.

2071 (ii) Subsection (2)~~[(g)]~~(f)(i) applies to the tax rates described in the following:

2072 (A) Subsection (2)(a)(i)(A); or

2073 (B) Subsection (2)(b)(i)[;].

2074 [~~(C) Subsection (2)(c)(i); or~~]

2075 [~~(D) Subsection (2)(d)(i)(A)(F).]~~

2076 (iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
2077 the commission may by rule define the term "catalogue sale."

2078 (3) (a) The following state taxes shall be deposited into the General Fund:

2079 (i) the tax imposed by Subsection (2)(a)(i)(A); and

2080 (ii) the tax imposed by Subsection (2)(b)(i)[;].

2081 [~~(iii) the tax imposed by Subsection (2)(c)(i); or~~]

2082 [~~(iv) the tax imposed by Subsection (2)(d)(i)(A)(F).]~~

2083 (b) The following local taxes shall be distributed to a county, city, or town as provided
2084 in this chapter:

2085 (i) the tax imposed by Subsection (2)(a)(ii); and

2086 (ii) the tax imposed by Subsection (2)(b)(ii)[;].

2087 [~~(iii) the tax imposed by Subsection (2)(c)(ii); and~~]

2088 [~~(iv) the tax imposed by Subsection (2)(d)(i)(B).]~~

2089 (4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
2090 2003, the lesser of the following amounts shall be used as provided in Subsections (4)(b)
2091 through (g):

2092 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

2093 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and

2094 (B) for the fiscal year; or

2095 (ii) \$17,500,000.

2096 (b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount
2097 described in Subsection (4)(a) shall be transferred each year as dedicated credits to the
2098 Department of Natural Resources to:

2099 (A) implement the measures described in Subsections 79-2-303(3)(a) through (d) to
2100 protect sensitive plant and animal species; or

2101 (B) award grants, up to the amount authorized by the Legislature in an appropriations
2102 act, to political subdivisions of the state to implement the measures described in Subsections
2103 79-2-303(3)(a) through (d) to protect sensitive plant and animal species.

2104 (ii) Money transferred to the Department of Natural Resources under Subsection

2105 (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other
2106 person to list or attempt to have listed a species as threatened or endangered under the
2107 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

2108 (iii) At the end of each fiscal year:

2109 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
2110 Conservation and Development Fund created in Section 73-10-24;

2111 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
2112 Program Subaccount created in Section 73-10c-5; and

2113 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
2114 Program Subaccount created in Section 73-10c-5.

2115 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in
2116 Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund
2117 created in Section 4-18-6.

2118 (d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described
2119 in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water
2120 Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of
2121 water rights.

2122 (ii) At the end of each fiscal year:

2123 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
2124 Conservation and Development Fund created in Section 73-10-24;

2125 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
2126 Program Subaccount created in Section 73-10c-5; and

2127 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
2128 Program Subaccount created in Section 73-10c-5.

2129 (e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described
2130 in Subsection (4)(a) shall be deposited in the Water Resources Conservation and Development
2131 Fund created in Section 73-10-24 for use by the Division of Water Resources.

2132 (ii) In addition to the uses allowed of the Water Resources Conservation and
2133 Development Fund under Section 73-10-24, the Water Resources Conservation and
2134 Development Fund may also be used to:

2135 (A) conduct hydrologic and geotechnical investigations by the Division of Water

2136 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of
2137 quantifying surface and ground water resources and describing the hydrologic systems of an
2138 area in sufficient detail so as to enable local and state resource managers to plan for and
2139 accommodate growth in water use without jeopardizing the resource;

2140 (B) fund state required dam safety improvements; and

2141 (C) protect the state's interest in interstate water compact allocations, including the
2142 hiring of technical and legal staff.

2143 (f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
2144 in Subsection (4)(a) shall be deposited in the Utah Wastewater Loan Program Subaccount
2145 created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

2146 (g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
2147 in Subsection (4)(a) shall be deposited in the Drinking Water Loan Program Subaccount
2148 created in Section 73-10c-5 for use by the Division of Drinking Water to:

2149 (i) provide for the installation and repair of collection, treatment, storage, and
2150 distribution facilities for any public water system, as defined in Section 19-4-102;

2151 (ii) develop underground sources of water, including springs and wells; and

2152 (iii) develop surface water sources.

2153 (5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
2154 2006, the difference between the following amounts shall be expended as provided in this
2155 Subsection (5), if that difference is greater than \$1:

2156 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the
2157 fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

2158 (ii) \$17,500,000.

2159 (b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:

2160 (A) transferred each fiscal year to the Department of Natural Resources as dedicated
2161 credits; and

2162 (B) expended by the Department of Natural Resources for watershed rehabilitation or
2163 restoration.

2164 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described
2165 in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund
2166 created in Section 73-10-24.

2167 (c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the
2168 remaining difference described in Subsection (5)(a) shall be:

2169 (A) transferred each fiscal year to the Division of Water Resources as dedicated
2170 credits; and

2171 (B) expended by the Division of Water Resources for cloud-seeding projects
2172 authorized by Title 73, Chapter 15, Modification of Weather.

2173 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described
2174 in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund
2175 created in Section 73-10-24.

2176 (d) After making the transfers required by Subsections (5)(b) and (c), 94% of the
2177 remaining difference described in Subsection (5)(a) shall be deposited into the Water
2178 Resources Conservation and Development Fund created in Section 73-10-24 for use by the
2179 Division of Water Resources for:

2180 (i) preconstruction costs:

2181 (A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter
2182 26, Bear River Development Act; and

2183 (B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project
2184 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

2185 (ii) the cost of employing a civil engineer to oversee any project authorized by Title 73,
2186 Chapter 26, Bear River Development Act;

2187 (iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project
2188 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

2189 (iv) other uses authorized under Sections 73-10-24, 73-10-25.1, 73-10-30, and
2190 Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

2191 (e) Any unexpended monies described in Subsection (5)(d) that remain in the Water
2192 Resources Conservation and Development Fund at the end of the fiscal year are nonlapsing.

2193 (f) After making the transfers required by Subsections (5)(b) and (c) and subject to
2194 Subsection (5)(g), 6% of the remaining difference described in Subsection (5)(a) shall be
2195 transferred each year as dedicated credits to the Division of Water Rights to cover the costs
2196 incurred for employing additional technical staff for the administration of water rights.

2197 (g) At the end of each fiscal year, any unexpended dedicated credits described in

2198 Subsection (5)(f) over \$150,000 lapse to the Water Resources Conservation and Development
2199 Fund created in Section 73-10-24.

2200 (6) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
2201 2003, and for taxes listed under Subsection (3)(a), the amount of revenue generated by a 1/16%
2202 tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited in
2203 the Transportation Fund created by Section 72-2-102.

2204 (7) (a) Notwithstanding Subsection (3)(a) and until Subsection (7)(b) applies,
2205 beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial
2206 Highway Fund Restricted Account created in Section 72-2-118 a portion of the taxes listed
2207 under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate on the taxable
2208 transactions under Subsection (1).

2209 (b) Notwithstanding Subsection (3)(a), when the highway general obligation bonds
2210 have been paid off and the highway projects completed that are intended to be paid from
2211 revenues deposited in the Centennial Highway Fund Restricted Account as determined by the
2212 Executive Appropriations Committee under Subsection 72-2-118(6)(d), the Division of
2213 Finance shall deposit into the Transportation Investment Fund of 2005 created by Section
2214 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated
2215 by a 1/64% tax rate on the taxable transactions under Subsection (1).

2216 ~~[(8) (a) Notwithstanding Subsection (3)(a) and in addition to the amount deposited in~~
2217 ~~Subsection (7)(a), for the 2010-11 fiscal year only, the Division of Finance shall deposit into~~
2218 ~~the Centennial Highway Fund Restricted Account created by Section 72-2-118 a portion of the~~
2219 ~~taxes listed under Subsection (3)(a) equal to 1.93% of the revenues collected from the~~
2220 ~~following taxes, which represents a portion of the approximately 17% of sales and use tax~~
2221 ~~revenues generated annually by the sales and use tax on vehicles and vehicle-related products:]~~

2222 ~~[(i) the tax imposed by Subsection (2)(a)(i)(A);]~~

2223 ~~[(ii) the tax imposed by Subsection (2)(b)(i);]~~

2224 ~~[(iii) the tax imposed by Subsection (2)(c)(i); and]~~

2225 ~~[(iv) the tax imposed by Subsection (2)(d)(i)(A)(I);]~~

2226 ~~[(b)]~~ (8) (a) Notwithstanding Subsection (3)(a), in addition to the amount deposited in
2227 Subsection (7)(a), and until Subsection (8)~~[(c)]~~(b) applies, for a fiscal year beginning on or
2228 after July 1, 2011, the Division of Finance shall deposit into the Centennial Highway Fund

2229 Restricted Account created by Section 72-2-118 a portion of the taxes listed under Subsection
 2230 (3)(a) equal to ~~[8.3%]~~ 7.6% of the revenues collected from the following taxes, which
 2231 represents a portion of the approximately 17% of sales and use tax revenues generated annually
 2232 by the sales and use tax on vehicles and vehicle-related products:

2233 (i) the tax imposed by Subsection (2)(a)(i)(A); and

2234 (ii) the tax imposed by Subsection (2)(b)(i)[;].

2235 ~~[(iii) the tax imposed by Subsection (2)(c)(i); and]~~

2236 ~~[(iv) the tax imposed by Subsection (2)(d)(i)(A)(I).]~~

2237 ~~[(c)]~~ (b) Notwithstanding Subsection (3)(a) and in addition to the amounts deposited
 2238 under Subsection (7)(b), when the highway general obligation bonds have been paid off and the
 2239 highway projects completed that are intended to be paid from revenues deposited in the
 2240 Centennial Highway Fund Restricted Account as determined by the Executive Appropriations
 2241 Committee under Subsection 72-2-118(6)(d), the Division of Finance shall deposit into the
 2242 Transportation Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes
 2243 listed under Subsection (3)(a) equal to ~~[8.3%]~~ 7.6% of the revenues collected from the
 2244 following taxes, which represents a portion of the approximately 17% of sales and use tax
 2245 revenues generated annually by the sales and use tax on vehicles and vehicle-related products:

2246 (i) the tax imposed by Subsection (2)(a)(i)(A); and

2247 (ii) the tax imposed by Subsection (2)(b)(i)[;].

2248 ~~[(iii) the tax imposed by Subsection (2)(c)(i); and]~~

2249 ~~[(iv) the tax imposed by Subsection (2)(d)(i)(A)(I).]~~

2250 (9) (a) Notwithstanding Subsection (3)(a) and for the fiscal year 2008-09 only, the
 2251 Division of Finance shall deposit \$55,000,000 of the revenues generated by the taxes listed
 2252 under Subsection (3)(a) into the Critical Highway Needs Fund created by Section 72-2-125.

2253 (b) Notwithstanding Subsection (3)(a) and until Subsection (9)(c) applies, for a fiscal
 2254 year beginning on or after July 1, 2009, the Division of Finance shall annually deposit
 2255 \$90,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the
 2256 Critical Highway Needs Fund created by Section 72-2-125.

2257 (c) Notwithstanding Subsection (3)(a) and in addition to any amounts deposited under
 2258 Subsections (7) and (8), when the general obligation bonds authorized by Section 63B-16-101
 2259 have been paid off and the highway projects completed that are included in the prioritized

2260 project list under Subsection 72-2-125(4) as determined in accordance with Subsection
2261 72-2-125(6), the Division of Finance shall annually deposit \$90,000,000 of the revenues
2262 generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund
2263 of 2005 created by Section 72-2-124.

2264 (10) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year
2265 2009-10, \$533,750 shall be deposited into the Qualified Emergency Food Agencies Fund
2266 created by Section 9-4-1409 and expended as provided in Section 9-4-1409.

2267 (11) (a) [(†)] Notwithstanding Subsection (3)(a), [~~except as provided in Subsection~~
2268 ~~(11)(a)(ii), and~~] until Subsection (11)(b) applies, beginning on January 1, 2009, the Division of
2269 Finance shall deposit into the Critical Highway Needs Fund created by Section 72-2-125 the
2270 amount of tax revenue generated by a .025% tax rate on the transactions described in
2271 Subsection (1).

2272 [(ii) ~~For purposes of Subsection (11)(a)(i), the Division of Finance may not deposit~~
2273 ~~into the Critical Highway Needs Fund any tax revenue generated by amounts paid or charged~~
2274 ~~for food and food ingredients, except for tax revenue generated by a bundled transaction~~
2275 ~~attributable to food and food ingredients and tangible personal property other than food and~~
2276 ~~food ingredients described in Subsection (2)(e).]~~

2277 (b) [(†)] Notwithstanding Subsection (3)(a), [~~except as provided in Subsection~~
2278 ~~(11)(b)(ii);~~] and in addition to any amounts deposited under Subsections (7), (9), and (10),
2279 when the general obligation bonds authorized by Section 63B-16-101 have been paid off and
2280 the highway projects completed that are included in the prioritized project list under Subsection
2281 72-2-125(4) as determined in accordance with Subsection 72-2-125(6), the Division of Finance
2282 shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the
2283 amount of tax revenue generated by a .025% tax rate on the transactions described in
2284 Subsection (1).

2285 [(ii) ~~For purposes of Subsection (11)(b)(i), the Division of Finance may not deposit~~
2286 ~~into the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or~~
2287 ~~charged for food and food ingredients, except for tax revenue generated by a bundled~~
2288 ~~transaction attributable to food and food ingredients and tangible personal property other than~~
2289 ~~food and food ingredients described in Subsection (2)(e).]~~

2290 (12) [(a)] Notwithstanding Subsection (3)(a), [~~and except as provided in Subsection~~

2291 ~~(12)(b);~~] beginning on January 1, 2009, the Division of Finance shall deposit into the
 2292 Transportation Fund created by Section 72-2-102 the amount of tax revenue generated by a
 2293 .025% tax rate on the transactions described in Subsection (1) to be expended to address
 2294 chokepoints in construction management.

2295 ~~[(b) For purposes of Subsection (12)(a), the Division of Finance may not deposit into~~
 2296 ~~the Transportation Fund any tax revenue generated by amounts paid or charged for food and~~
 2297 ~~food ingredients, except for tax revenue generated by a bundled transaction attributable to food~~
 2298 ~~and food ingredients and tangible personal property other than food and food ingredients~~
 2299 ~~described in Subsection (2)(e).]~~

2300 Section 6. Section **59-12-104.2** is amended to read:

2301 **59-12-104.2. Exemption for accommodations and services taxed by the Navajo**
 2302 **Nation.**

2303 (1) As used in this section "tribal taxing area" means the geographical area that:

2304 (a) is subject to the taxing authority of the Navajo Nation; and

2305 (b) consists of:

2306 (i) notwithstanding the issuance of a patent, all land:

2307 (A) within the limits of an Indian reservation under the jurisdiction of the federal
 2308 government; and

2309 (B) including any rights-of-way running through the reservation; and

2310 (ii) all Indian allotments the Indian titles to which have not been extinguished,

2311 including any rights-of-way running through an Indian allotment.

2312 (2) (a) Beginning July 1, 2001, amounts paid by or charged to a purchaser for
 2313 accommodations and services described in Subsection 59-12-103(1)(i) are exempt from the tax
 2314 imposed by Subsection 59-12-103(2)(a)(i)(A) ~~[or (2)(d)(i)(A)(I)]~~ to the extent permitted under
 2315 Subsection (2)(b) if:

2316 (i) the accommodations and services described in Subsection 59-12-103(1)(i) are
 2317 provided within:

2318 (A) the state; and

2319 (B) a tribal taxing area;

2320 (ii) the Navajo Nation imposes and collects a tax on the amounts paid by or charged to
 2321 the purchaser for the accommodations and services described in Subsection 59-12-103(1)(i);

2322 (iii) the Navajo Nation imposes the tax described in Subsection (2)(a)(ii) without
2323 regard to whether or not the purchaser that pays or is charged for the accommodations and
2324 services is an enrolled member of the Navajo Nation; and

2325 (iv) the requirements of Subsection (4) are met.

2326 (b) If but for Subsection (2)(a) the amounts paid by or charged to a purchaser for
2327 accommodations and services described in Subsection (2)(a) are subject to a tax imposed by
2328 Subsection 59-12-103(2)(a)(i)(A) [~~or (2)(d)(i)(A)(F)~~]:

2329 (i) the seller shall collect and pay to the state the difference described in Subsection (3)
2330 if that difference is greater than \$0; and

2331 (ii) a person may not require the state to provide a refund, a credit, or similar tax relief
2332 if the difference described in Subsection (3) is equal to or less than \$0.

2333 (3) The difference described in Subsection (2)(b) is equal to the difference between:

2334 (a) the amount of tax imposed by Subsection 59-12-103(2)(a)(i)(A) [~~or (2)(d)(i)(A)(F)~~]
2335 on the amounts paid by or charged to a purchaser for accommodations and services described
2336 in Subsection 59-12-103(1)(i); less

2337 (b) the tax imposed and collected by the Navajo Nation on the amounts paid by or
2338 charged to a purchaser for the accommodations and services described in Subsection
2339 59-12-103(1)(i).

2340 (4) (a) If, on or after July 1, 2001, the Navajo Nation changes the tax rate of a tax
2341 imposed on amounts paid by or charged to a purchaser for accommodations and services
2342 described in Subsection 59-12-103(1)(i), any change in the amount of the exemption under
2343 Subsection (2) as a result of the change in the tax rate is not effective until the first day of the
2344 calendar quarter after a 90-day period beginning on the date the commission receives notice
2345 meeting the requirements of Subsection (4)(b) from the Navajo Nation.

2346 (b) The notice described in Subsection (4)(a) shall state:

2347 (i) that the Navajo Nation has changed or will change the tax rate of a tax imposed on
2348 amounts paid by or charged to a purchaser for accommodations and services described in
2349 Subsection 59-12-103(1)(i);

2350 (ii) the effective date of the rate change on the tax described in Subsection (4)(b)(i);
2351 and

2352 (iii) the new rate of the tax described in Subsection (4)(b)(i).

- 2353 (5) Beginning with the 2006 interim, the Revenue and Taxation Interim Committee:
2354 (a) shall review the exemption provided for in this section one or more times every five
2355 years;
2356 (b) shall determine on or before the November interim meeting of the year in which the
2357 Revenue and Taxation Interim Committee reviews the exemption provided for in this section
2358 whether the exemption should be:
2359 (i) continued;
2360 (ii) modified; or
2361 (iii) repealed; and
2362 (c) may review any other issue related to the exemption provided for in this section as
2363 determined by the Revenue and Taxation Interim Committee.

2364 Section 7. Section **59-12-108** is amended to read:

2365 **59-12-108. Monthly payment -- Amount of tax a seller may retain -- Penalty --**
2366 **Certain amounts allocated to local taxing jurisdictions.**

2367 (1) (a) Notwithstanding Section 59-12-107, a seller that has a tax liability under this
2368 chapter of \$50,000 or more for the previous calendar year shall:

2369 (i) file a return with the commission:

2370 (A) monthly on or before the last day of the month immediately following the month
2371 for which the seller collects a tax under this chapter; and

2372 (B) for the month for which the seller collects a tax under this chapter; and

2373 (ii) except as provided in Subsection (1)(b), remit with the return required by
2374 Subsection (1)(a)(i) the amount the person is required to remit to the commission for each tax,
2375 fee, or charge described in Subsection (1)(c):

2376 (A) if that seller's tax liability under this chapter for the previous calendar year is less
2377 than \$96,000, by any method permitted by the commission; or

2378 (B) if that seller's tax liability under this chapter for the previous calendar year is
2379 \$96,000 or more, by electronic funds transfer.

2380 (b) A seller shall remit electronically with the return required by Subsection (1)(a)(i)
2381 the amount the seller is required to remit to the commission for each tax, fee, or charge
2382 described in Subsection (1)(c) if that seller:

2383 (i) is required by Section 59-12-107 to file the return electronically; or

2384 (ii) (A) is required to collect and remit a tax under Subsection 59-12-107(1)(a); and
2385 (B) files a simplified electronic return.
2386 (c) Subsections (1)(a) and (b) apply to the following taxes, fees, or charges:
2387 (i) a tax under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
2388 (ii) a fee under Section 19-6-716;
2389 (iii) a fee under Section 19-6-805;
2390 (iv) a charge under Section 69-2-5;
2391 (v) a charge under Section 69-2-5.5;
2392 (vi) a charge under Section 69-2-5.6; or
2393 (vii) a tax under this chapter.
2394 (d) Notwithstanding Subsection (1)(a)(ii) and in accordance with Title 63G, Chapter 3,
2395 Utah Administrative Rulemaking Act, the commission shall make rules providing for a method
2396 for making same-day payments other than by electronic funds transfer if making payments by
2397 electronic funds transfer fails.
2398 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2399 commission shall establish by rule procedures and requirements for determining the amount a
2400 seller is required to remit to the commission under this Subsection (1).
2401 (2) (a) Except as provided in Subsection (3), a seller subject to Subsection (1) or a
2402 seller described in Subsection (4) may retain each month the amount allowed by this
2403 Subsection (2).
2404 (b) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain
2405 each month 1.31% of any amounts the seller is required to remit to the commission:
2406 (i) for a transaction described in Subsection 59-12-103(1) that is subject to a state tax
2407 and a local tax imposed in accordance with the following, for the month for which the seller is
2408 filing a return in accordance with Subsection (1):
2409 (A) Subsection 59-12-103(2)(a); and
2410 (B) Subsection 59-12-103(2)(b); and
2411 [~~(C) Subsection 59-12-103(2)(d); and~~]
2412 (ii) for an agreement sales and use tax.
2413 [~~(c) (i) A seller subject to Subsection (1) or a seller described in Subsection (4) may~~
2414 ~~retain each month the amount calculated under Subsection (2)(c)(ii) for a transaction described~~

2415 in Subsection 59-12-103(1) that is subject to the state tax and the local tax imposed in
 2416 accordance with Subsection 59-12-103(2)(c);]

2417 ~~[(ii) For purposes of Subsection (2)(c)(i), the amount a seller may retain is an amount~~
 2418 ~~equal to the sum of:]~~

2419 ~~[(A) 1.31% of any amounts the seller is required to remit to the commission for:]~~

2420 ~~[(f) the state tax and the local tax imposed in accordance with Subsection~~
 2421 ~~59-12-103(2)(c);]~~

2422 ~~[(H) the month for which the seller is filing a return in accordance with Subsection (1);~~
 2423 ~~and]~~

2424 ~~[(HH) an agreement sales and use tax; and]~~

2425 ~~[(B) 1.31% of the difference between:]~~

2426 ~~[(f) the amounts the seller would have been required to remit to the commission:]~~

2427 ~~[(Aa) in accordance with Subsection 59-12-103(2)(a) if the transaction had been~~
 2428 ~~subject to the state tax and the local tax imposed in accordance with Subsection~~
 2429 ~~59-12-103(2)(a);]~~

2430 ~~[(Bb) for the month for which the seller is filing a return in accordance with Subsection~~
 2431 ~~(1); and]~~

2432 ~~[(Cc) for an agreement sales and use tax; and]~~

2433 ~~[(H) the amounts the seller is required to remit to the commission for:]~~

2434 ~~[(Aa) the state tax and the local tax imposed in accordance with Subsection~~
 2435 ~~59-12-103(2)(c);]~~

2436 ~~[(Bb) the month for which the seller is filing a return in accordance with Subsection (1);~~
 2437 ~~and]~~

2438 ~~[(Cc) an agreement sales and use tax.]~~

2439 ~~[(d)]~~ (c) A seller subject to Subsection (1) or a seller described in Subsection (4) may
 2440 retain each month 1% of any amounts the seller is required to remit to the commission:

2441 (i) for the month for which the seller is filing a return in accordance with Subsection
 2442 (1); and

2443 (ii) under:

2444 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

2445 (B) Subsection 59-12-603(1)(a)(i)(A); or

2446 (C) Subsection 59-12-603(1)(a)(i)(B).

2447 (3) A state government entity that is required to remit taxes monthly in accordance
2448 with Subsection (1) may not retain any amount under Subsection (2).

2449 (4) A seller that has a tax liability under this chapter for the previous calendar year of
2450 less than \$50,000 may:

2451 (a) voluntarily meet the requirements of Subsection (1); and

2452 (b) if the seller voluntarily meets the requirements of Subsection (1), retain the
2453 amounts allowed by Subsection (2).

2454 (5) Penalties for late payment shall be as provided in Section 59-1-401.

2455 (6) (a) Except as provided in Subsection (6)(c), for any amounts required to be remitted
2456 to the commission under this part, the commission shall each month calculate an amount equal
2457 to the difference between:

2458 (i) the total amount retained for that month by all sellers had the [percentages]
2459 percentage listed under [~~Subsections~~] Subsection (2)(b) [~~and (2)(c)(ii)~~] been 1.5%; and

2460 (ii) the total amount retained for that month by all sellers at the [percentages]
2461 percentage listed under [~~Subsections~~] Subsection (2)(b) [~~and (2)(c)(ii)~~].

2462 (b) The commission shall each month allocate the amount calculated under Subsection
2463 (6)(a) to each county, city, and town on the basis of the proportion of agreement sales and use
2464 tax that the commission distributes to each county, city, and town for that month compared to
2465 the total agreement sales and use tax that the commission distributes for that month to all
2466 counties, cities, and towns.

2467 (c) The amount the commission calculates under Subsection (6)(a) may not include an
2468 amount collected from a tax that:

2469 (i) the state imposes within a county, city, or town, including the unincorporated area
2470 of a county; and

2471 (ii) is not imposed within the entire state.

2472 Section 8. Section **59-12-401** is amended to read:

2473 **59-12-401. Resort communities tax authority for cities, towns, and military**
2474 **installation development authority -- Base -- Rate -- Collection fees.**

2475 (1) (a) In addition to other sales and use taxes, a city or town in which the transient
2476 room capacity as defined in Section 59-12-405 is greater than or equal to 66% of the

2477 municipality's permanent census population may impose a sales and use tax of up to 1.1% on
2478 the transactions described in Subsection 59-12-103(1) located within the city or town.

2479 (b) Notwithstanding Subsection (1)(a), a city or town may not impose a tax under this
2480 section on:

2481 (i) the sale of:

2482 (A) a motor vehicle;

2483 (B) an aircraft;

2484 (C) a watercraft;

2485 (D) a modular home;

2486 (E) a manufactured home; or

2487 (F) a mobile home; or

2488 (ii) the sales and uses described in Section 59-12-104 to the extent the sales and uses
2489 are exempt from taxation under Section 59-12-104[; ~~and~~].

2490 [~~(iii) except as provided in Subsection (1)(d), amounts paid or charged for food and~~
2491 ~~food ingredients.~~]

2492 (c) For purposes of this Subsection (1), the location of a transaction shall be
2493 determined in accordance with Sections 59-12-211 through 59-12-215.

2494 [~~(d) A city or town imposing a tax under this section shall impose the tax on amounts~~
2495 ~~paid or charged for food and food ingredients if the food and food ingredients are sold as part~~
2496 ~~of a bundled transaction attributable to food and food ingredients and tangible personal~~
2497 ~~property other than food and food ingredients.~~]

2498 (2) (a) An amount equal to the total of any costs incurred by the state in connection
2499 with the implementation of Subsection (1) which exceed, in any year, the revenues received by
2500 the state from its collection fees received in connection with the implementation of Subsection
2501 (1) shall be paid over to the state General Fund by the cities and towns which impose the tax
2502 provided for in Subsection (1).

2503 (b) Amounts paid under Subsection (2)(a) shall be allocated proportionally among
2504 those cities and towns according to the amount of revenue the respective cities and towns
2505 generate in that year through imposition of that tax.

2506 (3) (a) Subject to 63H-1-203, the military installation development authority created in
2507 Section 63H-1-201 may impose a tax under this section on the transactions described in

2508 Subsection 59-12-103(1) located within a project area described in a project area plan adopted
2509 by the authority under Title 63H, Chapter 1, Military Installation Development Authority Act,
2510 as though the authority were a city or a town.

2511 (b) For purposes of calculating the permanent census population within a project area,
2512 the board as defined in Section 63H-1-102 shall:

2513 (i) count the population;

2514 (ii) adopt a resolution verifying the population number; and

2515 (iii) provide the commission any information required in Section 59-12-405.

2516 Section 9. Section **59-12-402** is amended to read:

2517 **59-12-402. Additional resort communities sales and use tax -- Base -- Rate --**
2518 **Collection fees -- Resolution and voter approval requirements -- Election requirements --**
2519 **Notice requirements -- Ordinance requirements -- Prohibition of military installation**
2520 **development authority.**

2521 (1) (a) Subject to Subsections (2) through (6), the governing body of a municipality in
2522 which the transient room capacity as defined in Section 59-12-405 is greater than or equal to
2523 66% of the municipality's permanent census population may, in addition to the sales tax
2524 authorized under Section 59-12-401, impose an additional resort communities sales tax in an
2525 amount that is less than or equal to .5% on the transactions described in Subsection
2526 59-12-103(1) located within the municipality.

2527 (b) Notwithstanding Subsection (1)(a), the governing body of a municipality may not
2528 impose a tax under this section on:

2529 (i) the sale of:

2530 (A) a motor vehicle;

2531 (B) an aircraft;

2532 (C) a watercraft;

2533 (D) a modular home;

2534 (E) a manufactured home; or

2535 (F) a mobile home; or

2536 (ii) the sales and uses described in Section 59-12-104 to the extent the sales and uses
2537 are exempt from taxation under Section 59-12-104[~~;~~and].

2538 [~~(iii) except as provided in Subsection (1)(d), amounts paid or charged for food and~~

2539 ~~food ingredients.]~~

2540 (c) For purposes of this Subsection (1), the location of a transaction shall be
2541 determined in accordance with Sections 59-12-211 through 59-12-215.

2542 ~~[(d) A municipality imposing a tax under this section shall impose the tax on amounts
2543 paid or charged for food and food ingredients if the food and food ingredients are sold as part
2544 of a bundled transaction attributable to food and food ingredients and tangible personal
2545 property other than food and food ingredients.]~~

2546 (2) (a) An amount equal to the total of any costs incurred by the state in connection
2547 with the implementation of Subsection (1) which exceed, in any year, the revenues received by
2548 the state from its collection fees received in connection with the implementation of Subsection
2549 (1) shall be paid over to the state General Fund by the cities and towns which impose the tax
2550 provided for in Subsection (1).

2551 (b) Amounts paid under Subsection (2)(a) shall be allocated proportionally among
2552 those cities and towns according to the amount of revenue the respective cities and towns
2553 generate in that year through imposition of that tax.

2554 (3) To impose an additional resort communities sales tax under this section, the
2555 governing body of the municipality shall:

2556 (a) pass a resolution approving the tax; and

2557 (b) except as provided in Subsection (6), obtain voter approval for the tax as provided
2558 in Subsection (4).

2559 (4) To obtain voter approval for an additional resort communities sales tax under
2560 Subsection (3)(b), a municipality shall:

2561 (a) hold the additional resort communities sales tax election during:

2562 (i) a regular general election; or

2563 (ii) a municipal general election; and

2564 (b) publish notice of the election:

2565 (i) 15 days or more before the day on which the election is held; and

2566 (ii) (A) in a newspaper of general circulation in the municipality; and

2567 (B) as required in Section 45-1-101.

2568 (5) An ordinance approving an additional resort communities sales tax under this
2569 section shall provide an effective date for the tax as provided in Section 59-12-403.

2570 (6) (a) Except as provided in Subsection (6)(b), a municipality is not subject to the
2571 voter approval requirements of Subsection (3)(b) if, on or before January 1, 1996, the
2572 municipality imposed a license fee or tax on businesses based on gross receipts pursuant to
2573 Section 10-1-203.

2574 (b) The exception from the voter approval requirements in Subsection (6)(a) does not
2575 apply to a municipality that, on or before January 1, 1996, imposed a license fee or tax on only
2576 one class of businesses based on gross receipts pursuant to Section 10-1-203.

2577 (7) A military installation development authority authorized to impose a resort
2578 communities tax under Section 59-12-401 may not impose an additional resort communities
2579 sales tax under this section.

2580 Section 10. Section **59-12-703** is amended to read:

2581 **59-12-703. Opinion question election -- Base -- Rate -- Imposition of tax -- Uses of**
2582 **tax money -- Enactment or repeal of tax -- Effective date -- Notice requirements.**

2583 (1) (a) (i) A county legislative body may submit an opinion question to the residents of
2584 that county, by majority vote of all members of the legislative body, so that each resident of the
2585 county, except residents in municipalities that have already imposed a sales and use tax under
2586 Part 14, City or Town Option Funding For Botanical, Cultural, Recreational, and Zoological
2587 Organizations or Facilities, has an opportunity to express the resident's opinion on the
2588 imposition of a local sales and use tax of .1% on the transactions described in Subsection
2589 59-12-103(1) located within the county, to fund recreational and zoological facilities, botanical,
2590 cultural, and zoological organizations, and rural radio stations, in that county.

2591 (ii) Notwithstanding Subsection (1)(a)(i), a county legislative body may not impose a
2592 tax under this section on:

2593 (A) the sales and uses described in Section 59-12-104 to the extent the sales and uses
2594 are exempt from taxation under Section 59-12-104; or

2595 (B) sales and uses within municipalities that have already imposed a sales and use tax
2596 under Part 14, City or Town Option Funding For Botanical, Cultural, Recreational, and
2597 Zoological Organizations or Facilities[~~;~~ ~~and~~].

2598 [~~(C) except as provided in Subsection (1)(c), amounts paid or charged for food and~~
2599 ~~food ingredients.~~]

2600 (b) For purposes of this Subsection (1), the location of a transaction shall be

2601 determined in accordance with Sections 59-12-211 through 59-12-215.

2602 ~~[(e) A county legislative body imposing a tax under this section shall impose the tax on~~
2603 ~~amounts paid or charged for food and food ingredients if the food and food ingredients are sold~~
2604 ~~as part of a bundled transaction attributable to food and food ingredients and tangible personal~~
2605 ~~property other than food and food ingredients.]~~

2606 ~~[(d)]~~ (c) The election shall follow the procedures outlined in Title 11, Chapter 14,
2607 Local Government Bonding Act.

2608 (2) (a) If the county legislative body determines that a majority of the county's
2609 registered voters voting on the imposition of the tax have voted in favor of the imposition of
2610 the tax as prescribed in Subsection (1)(a), the county legislative body may impose the tax by a
2611 majority vote of all members of the legislative body on the transactions:

2612 (i) described in Subsection (1); and

2613 (ii) within the county, including the cities and towns located in the county, except those
2614 cities and towns that have already imposed a sales and use tax under Part 14, City or Town
2615 Option Funding For Botanical, Cultural, Recreational, and Zoological Organizations or
2616 Facilities.

2617 (b) A county legislative body may revise county ordinances to reflect statutory changes
2618 to the distribution formula or eligible recipients of revenues generated from a tax imposed
2619 under Subsection (2)(a):

2620 (i) after the county legislative body submits an opinion question to residents of the
2621 county in accordance with Subsection (1) giving them the opportunity to express their opinion
2622 on the proposed revisions to county ordinances; and

2623 (ii) if the county legislative body determines that a majority of those voting on the
2624 opinion question have voted in favor of the revisions.

2625 (3) The money generated from any tax imposed under Subsection (2) shall be used for
2626 funding:

2627 (a) recreational and zoological facilities located within the county or a city or town
2628 located in the county, except a city or town that has already imposed a sales and use tax under
2629 Part 14, City or Town Option Funding For Botanical, Cultural, Recreational, and Zoological
2630 Organizations or Facilities; and

2631 (b) ongoing operating expenses of:

- 2632 (i) recreational facilities described in Subsection (3)(a);
- 2633 (ii) botanical, cultural, and zoological organizations within the county; and
- 2634 (iii) rural radio stations within the county.
- 2635 (4) (a) A tax authorized under this part shall be:
- 2636 (i) except as provided in Subsection (4)(b), administered, collected, and enforced in
- 2637 accordance with:
- 2638 (A) the same procedures used to administer, collect, and enforce the tax under:
- 2639 (I) Part 1, Tax Collection; or
- 2640 (II) Part 2, Local Sales and Use Tax Act; and
- 2641 (B) Chapter 1, General Taxation Policies; and
- 2642 (ii) levied for a period of 10 years and may be reauthorized at the end of the ten-year
- 2643 period in accordance with this section.
- 2644 (b) Notwithstanding Subsection (4)(a)(i), a tax under this part is not subject to
- 2645 Subsections 59-12-205(2) through (6).
- 2646 (5) (a) For purposes of this Subsection (5):
- 2647 (i) "Annexation" means an annexation to a county under Title 17, Chapter 2,
- 2648 [~~Annexation to County~~] Part 2, County Annexation.
- 2649 (ii) "Annexing area" means an area that is annexed into a county.
- 2650 (b) (i) Except as provided in Subsection (5)(c) or (d), if, on or after July 1, 2004, a
- 2651 county enacts or repeals a tax under this part, the enactment or repeal shall take effect:
- 2652 (A) on the first day of a calendar quarter; and
- 2653 (B) after a 90-day period beginning on the date the commission receives notice meeting
- 2654 the requirements of Subsection (5)(b)(ii) from the county.
- 2655 (ii) The notice described in Subsection (5)(b)(i)(B) shall state:
- 2656 (A) that the county will enact or repeal a tax under this part;
- 2657 (B) the statutory authority for the tax described in Subsection (5)(b)(ii)(A);
- 2658 (C) the effective date of the tax described in Subsection (5)(b)(ii)(A); and
- 2659 (D) if the county enacts the tax described in Subsection (5)(b)(ii)(A), the rate of the
- 2660 tax.
- 2661 (c) (i) The enactment of a tax shall take effect on the first day of the first billing period:
- 2662 (A) that begins after the effective date of the enactment of the tax; and

2663 (B) if the billing period for the transaction begins before the effective date of the
2664 enactment of the tax under this section.

2665 (ii) The repeal of a tax shall take effect on the first day of the last billing period:

2666 (A) that began before the effective date of the repeal of the tax; and

2667 (B) if the billing period for the transaction begins before the effective date of the repeal
2668 of the tax imposed under this section.

2669 (d) (i) If a tax due under this chapter on a catalogue sale is computed on the basis of
2670 sales and use tax rates published in the catalogue, an enactment or repeal of a tax described in
2671 Subsection (5)(b)(i) takes effect:

2672 (A) on the first day of a calendar quarter; and

2673 (B) beginning 60 days after the effective date of the enactment or repeal under
2674 Subsection (5)(b)(i).

2675 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2676 commission may by rule define the term "catalogue sale."

2677 (e) (i) Except as provided in Subsection (5)(f) or (g), if, for an annexation that occurs
2678 on or after July 1, 2004, the annexation will result in the enactment or repeal of a tax under this
2679 part for an annexing area, the enactment or repeal shall take effect:

2680 (A) on the first day of a calendar quarter; and

2681 (B) after a 90-day period beginning on the date the commission receives notice meeting
2682 the requirements of Subsection (5)(e)(ii) from the county that annexes the annexing area.

2683 (ii) The notice described in Subsection (5)(e)(i)(B) shall state:

2684 (A) that the annexation described in Subsection (5)(e)(i) will result in an enactment or
2685 repeal of a tax under this part for the annexing area;

2686 (B) the statutory authority for the tax described in Subsection (5)(e)(ii)(A);

2687 (C) the effective date of the tax described in Subsection (5)(e)(ii)(A); and

2688 (D) the rate of the tax described in Subsection (5)(e)(ii)(A).

2689 (f) (i) The enactment of a tax shall take effect on the first day of the first billing period:

2690 (A) that begins after the effective date of the enactment of the tax; and

2691 (B) if the billing period for the transaction begins before the effective date of the
2692 enactment of the tax under this section.

2693 (ii) The repeal of a tax shall take effect on the first day of the last billing period:

2694 (A) that began before the effective date of the repeal of the tax; and
2695 (B) if the billing period for the transaction begins before the effective date of the repeal
2696 of the tax imposed under this section.

2697 (g) (i) If a tax due under this chapter on a catalogue sale is computed on the basis of
2698 sales and use tax rates published in the catalogue, an enactment or repeal of a tax described in
2699 Subsection (5)(e)(i) takes effect:

2700 (A) on the first day of a calendar quarter; and

2701 (B) beginning 60 days after the effective date of the enactment or repeal under
2702 Subsection (5)(e)(i).

2703 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2704 commission may by rule define the term "catalogue sale."

2705 Section 11. Section **59-12-802** is amended to read:

2706 **59-12-802. Imposition of rural county health care facilities tax -- Expenditure of**
2707 **tax revenues -- Base -- Rate -- Administration, collection, and enforcement of tax.**

2708 (1) (a) A county legislative body of a county of the third, fourth, fifth, or sixth class
2709 may impose a sales and use tax of up to 1%:

2710 (i) on the transactions described in Subsection 59-12-103(1) located within the county;
2711 and

2712 (ii) subject to Subsection (3), to fund:

2713 (A) for a county of the third, fourth, or fifth class, rural county health care facilities in
2714 that county; or

2715 (B) for a county of the sixth class:

2716 (I) emergency medical services in that county;

2717 (II) federally qualified health centers in that county;

2718 (III) freestanding urgent care centers in that county;

2719 (IV) rural county health care facilities in that county;

2720 (V) rural health clinics in that county; or

2721 (VI) a combination of Subsections (1)(a)(ii)(B)(I) through (V).

2722 (b) Notwithstanding Subsection (1)(a)(i), a county legislative body may not impose a
2723 tax under this section on:

2724 (i) the sales and uses described in Section 59-12-104 to the extent the sales and uses

2725 are exempt from taxation under Section 59-12-104; or

2726 (ii) a transaction to the extent a rural city hospital tax is imposed on that transaction in
2727 a city that imposes a tax under Section 59-12-804~~[-and]~~.

2728 ~~[(iii) except as provided in Subsection (1)(d), amounts paid or charged for food and~~
2729 ~~food ingredients.]~~

2730 (c) For purposes of this Subsection (1), the location of a transaction shall be
2731 determined in accordance with Sections 59-12-211 through 59-12-215.

2732 ~~[(d) A county legislative body imposing a tax under this section shall impose the tax on~~
2733 ~~amounts paid or charged for food and food ingredients if the food and food ingredients are sold~~
2734 ~~as part of a bundled transaction attributable to food and food ingredients and tangible personal~~
2735 ~~property other than food and food ingredients.]~~

2736 (2) (a) Before imposing a tax under Subsection (1)(a), a county legislative body shall
2737 obtain approval to impose the tax from a majority of the:

2738 (i) members of the county's legislative body; and

2739 (ii) county's registered voters voting on the imposition of the tax.

2740 (b) The county legislative body shall conduct the election according to the procedures
2741 and requirements of Title 11, Chapter 14, Local Government Bonding Act.

2742 (3) (a) The money generated by a tax imposed under Subsection (1) by a county
2743 legislative body of a county of the third, fourth, or fifth class may only be used for the
2744 financing of:

2745 (i) ongoing operating expenses of a rural county health care facility within that county;

2746 (ii) the acquisition of land for a rural county health care facility within that county; or

2747 (iii) the design, construction, equipping, or furnishing of a rural county health care
2748 facility within that county.

2749 (b) The money generated by a tax imposed under Subsection (1) by a county of the
2750 sixth class may only be used for the financing of:

2751 (i) ongoing operating expenses of a center, clinic, or facility described in Subsection
2752 (1)(a)(ii)(B) within that county;

2753 (ii) the acquisition of land for a center, clinic, or facility described in Subsection
2754 (1)(a)(ii)(B) within that county;

2755 (iii) the design, construction, equipping, or furnishing of a center, clinic, or facility

2756 described in Subsection (1)(a)(ii)(B) within that county; or

2757 (iv) the provision of rural emergency medical services within that county.

2758 (4) (a) A tax under this section shall be:

2759 (i) except as provided in Subsection (4)(b), administered, collected, and enforced in
2760 accordance with:

2761 (A) the same procedures used to administer, collect, and enforce the tax under:

2762 (I) Part 1, Tax Collection; or

2763 (II) Part 2, Local Sales and Use Tax Act; and

2764 (B) Chapter 1, General Taxation Policies; and

2765 (ii) levied for a period of 10 years and may be reauthorized at the end of the [~~ten-year~~]
2766 10-year period by the county legislative body as provided in Subsection (1).

2767 (b) Notwithstanding Subsection (4)(a)(i), a tax under this section is not subject to
2768 Subsections 59-12-205(2) through (6).

2769 (5) The commission may retain an amount not to exceed 1-1/2% of the tax collected
2770 under this section for the cost of administering this tax.

2771 Section 12. Section **59-12-804** is amended to read:

2772 **59-12-804. Imposition of rural city hospital tax -- Base -- Rate -- Administration,**
2773 **collection, and enforcement of tax.**

2774 (1) (a) A city legislative body may impose a sales and use tax of up to 1%:

2775 (i) on the transactions described in Subsection 59-12-103(1) located within the city;
2776 and

2777 (ii) to fund rural city hospitals in that city.

2778 (b) Notwithstanding Subsection (1)(a)(i), a city legislative body may not impose a tax
2779 under this section on[:(~~†~~)] the sales and uses described in Section 59-12-104 to the extent the
2780 sales and uses are exempt from taxation under Section 59-12-104[; ~~and~~].

2781 [~~(ii) except as provided in Subsection (1)(d), amounts paid or charged for food and~~
2782 ~~food ingredients.~~]

2783 (c) For purposes of this Subsection (1), the location of a transaction shall be
2784 determined in accordance with Sections 59-12-211 through 59-12-215.

2785 [~~(d) A city legislative body imposing a tax under this section shall impose the tax on~~
2786 ~~amounts paid or charged for food and food ingredients if the food and food ingredients are sold~~

2787 as part of a bundled transaction attributable to food and food ingredients and tangible personal
2788 property other than food and food ingredients.]

2789 (2) (a) Before imposing a tax under Subsection (1)(a), a city legislative body shall
2790 obtain approval to impose the tax from a majority of the:

- 2791 (i) members of the city legislative body; and
- 2792 (ii) city's registered voters voting on the imposition of the tax.

2793 (b) The city legislative body shall conduct the election according to the procedures and
2794 requirements of Title 11, Chapter 14, Local Government Bonding Act.

2795 (3) The money generated by a tax imposed under Subsection (1) may only be used for
2796 the financing of:

- 2797 (a) ongoing operating expenses of a rural city hospital;
- 2798 (b) the acquisition of land for a rural city hospital; or
- 2799 (c) the design, construction, equipping, or furnishing of a rural city hospital.

2800 (4) (a) A tax under this section shall be:

2801 (i) except as provided in Subsection (4)(b), administered, collected, and enforced in
2802 accordance with:

2803 (A) the same procedures used to administer, collect, and enforce the tax under:

- 2804 (I) Part 1, Tax Collection; or
- 2805 (II) Part 2, Local Sales and Use Tax Act; and
- 2806 (B) Chapter 1, General Taxation Policies; and

2807 (ii) levied for a period of 10 years and may be reauthorized at the end of the ~~[ten]~~
2808 10-year period by the city legislative body as provided in Subsection (1).

2809 (b) Notwithstanding Subsection (4)(a)(i), a tax under this section is not subject to
2810 Subsections 59-12-205(2) through (6).

2811 (5) The commission may retain an amount not to exceed 1-1/2% of the tax collected
2812 under this section for the cost of administering the tax.

2813 Section 13. Section **59-12-1302** is amended to read:

2814 **59-12-1302. Imposition of tax -- Base -- Rate -- Enactment or repeal of tax -- Tax**
2815 **rate change -- Effective date -- Notice requirements.**

2816 (1) Beginning on or after January 1, 1998, the governing body of a town may impose a
2817 tax as provided in this part in an amount that does not exceed 1%.

2818 (2) A town may impose a tax as provided in this part if the town imposed a license fee
2819 or tax on businesses based on gross receipts under Section 10-1-203 on or before January 1,
2820 1996.

2821 (3) A town imposing a tax under this section shall:

2822 (a) except as provided in Subsection (4), impose the tax on the transactions described
2823 in Subsection 59-12-103(1) located within the town; and

2824 (b) provide an effective date for the tax as provided in Subsection (5).

2825 (4) (a) Notwithstanding Subsection (3)(a), a town may not impose a tax under this
2826 section on~~[(i)]~~ the sales and uses described in Section 59-12-104 to the extent the sales and
2827 uses are exempt from taxation under Section 59-12-104~~[, and]~~.

2828 ~~[(ii) except as provided in Subsection (4)(c), amounts paid or charged for food and
2829 food ingredients.]~~

2830 (b) For purposes of this Subsection (4), the location of a transaction shall be
2831 determined in accordance with Sections 59-12-211 through 59-12-215.

2832 ~~[(c) A town imposing a tax under this section shall impose the tax on amounts paid or
2833 charged for food and food ingredients if the food and food ingredients are sold as part of a
2834 bundled transaction attributable to food and food ingredients and tangible personal property
2835 other than food and food ingredients.]~~

2836 (5) (a) For purposes of this Subsection (5):

2837 (i) "Annexation" means an annexation to a town under Title 10, Chapter 2, Part 4,
2838 Annexation.

2839 (ii) "Annexing area" means an area that is annexed into a town.

2840 (b) (i) Except as provided in Subsection (5)(c) or (d), if, on or after July 1, 2004, a
2841 town enacts or repeals a tax or changes the rate of a tax under this part, the enactment, repeal,
2842 or change shall take effect:

2843 (A) on the first day of a calendar quarter; and

2844 (B) after a 90-day period beginning on the date the commission receives notice meeting
2845 the requirements of Subsection (5)(b)(ii) from the town.

2846 (ii) The notice described in Subsection (5)(b)(i)(B) shall state:

2847 (A) that the town will enact or repeal a tax or change the rate of a tax under this part;

2848 (B) the statutory authority for the tax described in Subsection (5)(b)(ii)(A);

2849 (C) the effective date of the tax described in Subsection (5)(b)(ii)(A); and
2850 (D) if the town enacts the tax or changes the rate of the tax described in Subsection
2851 (5)(b)(ii)(A), the rate of the tax.

2852 (c) (i) The enactment of a tax or a tax rate increase shall take effect on the first day of
2853 the first billing period:

2854 (A) that begins after the effective date of the enactment of the tax or the tax rate
2855 increase; and

2856 (B) if the billing period for the transaction begins before the effective date of the
2857 enactment of the tax or the tax rate increase imposed under Subsection (1).

2858 (ii) The repeal of a tax or a tax rate decrease shall take effect on the first day of the last
2859 billing period:

2860 (A) that began before the effective date of the repeal of the tax or the tax rate decrease;
2861 and

2862 (B) if the billing period for the transaction begins before the effective date of the repeal
2863 of the tax or the tax rate decrease imposed under Subsection (1).

2864 (d) (i) If a tax due under this chapter on a catalogue sale is computed on the basis of
2865 sales and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of
2866 a tax described in Subsection (5)(b)(i) takes effect:

2867 (A) on the first day of a calendar quarter; and
2868 (B) beginning 60 days after the effective date of the enactment, repeal, or change in the
2869 rate of the tax under Subsection (5)(b)(i).

2870 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2871 commission may by rule define the term "catalogue sale."

2872 (e) (i) Except as provided in Subsection (5)(f) or (g), if, for an annexation that occurs
2873 on or after July 1, 2004, the annexation will result in the enactment, repeal, or change in the
2874 rate of a tax under this part for an annexing area, the enactment, repeal, or change shall take
2875 effect:

2876 (A) on the first day of a calendar quarter; and
2877 (B) after a 90-day period beginning on the date the commission receives notice meeting
2878 the requirements of Subsection (5)(e)(ii) from the town that annexes the annexing area.

2879 (ii) The notice described in Subsection (5)(e)(i)(B) shall state:

2880 (A) that the annexation described in Subsection (5)(e)(i) will result in an enactment,
2881 repeal, or change in the rate of a tax under this part for the annexing area;

2882 (B) the statutory authority for the tax described in Subsection (5)(e)(ii)(A);

2883 (C) the effective date of the tax described in Subsection (5)(e)(ii)(A); and

2884 (D) if the town enacts the tax or changes the rate of the tax described in Subsection
2885 (5)(e)(ii)(A), the rate of the tax.

2886 (f) (i) The enactment of a tax or a tax rate increase shall take effect on the first day of
2887 the first billing period:

2888 (A) that begins after the effective date of the enactment of the tax or the tax rate
2889 increase; and

2890 (B) if the billing period for the transaction begins before the effective date of the
2891 enactment of the tax or the tax rate increase imposed under Subsection (1).

2892 (ii) The repeal of a tax or a tax rate decrease shall take effect on the first day of the last
2893 billing period:

2894 (A) that began before the effective date of the repeal of the tax or the tax rate decrease;
2895 and

2896 (B) if the billing period for the transaction begins before the effective date of the repeal
2897 of the tax or the tax rate decrease imposed under Subsection (1).

2898 (g) (i) If a tax due under this chapter on a catalogue sale is computed on the basis of
2899 sales and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of
2900 a tax described in Subsection (5)(e)(i) takes effect:

2901 (A) on the first day of a calendar quarter; and

2902 (B) beginning 60 days after the effective date of the enactment, repeal, or change in the
2903 rate of the tax under Subsection (5)(e)(i).

2904 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2905 commission may by rule define the term "catalogue sale."

2906 (6) The commission shall:

2907 (a) except as provided in Subsection (6)(c), distribute the revenues generated by the tax
2908 under this section to the town imposing the tax;

2909 (b) except as provided in Subsection (7), administer, collect, and enforce the tax
2910 authorized under this section in accordance with:

2911 (i) the same procedures used to administer, collect, and enforce the tax under:
 2912 (A) Part 1, Tax Collection; or
 2913 (B) Part 2, Local Sales and Use Tax Act; and
 2914 (ii) Chapter 1, General Taxation Policies; and
 2915 (c) deduct from the distribution under Subsection (6)(a) an administrative charge for
 2916 collecting the tax as provided in Section 59-12-206.

2917 (7) Notwithstanding Subsection (6)(b), a tax under this section is not subject to
 2918 Subsections 59-12-205(2) through (6).

2919 Section 14. Section **59-12-1402** is amended to read:

2920 **59-12-1402. Opinion question election -- Base -- Rate -- Imposition of tax -- Uses**
 2921 **of tax money -- Enactment or repeal of tax -- Effective date -- Notice requirements.**

2922 (1) (a) (i) Subject to Subsection (6), beginning on January 1, 2003, a city or town
 2923 legislative body subject to this part may submit an opinion question to the residents of that city
 2924 or town, by majority vote of all members of the legislative body, so that each resident of the
 2925 city or town has an opportunity to express the resident's opinion on the imposition of a local
 2926 sales and use tax of .1% on the transactions described in Subsection 59-12-103(1) located
 2927 within the city or town, to fund recreational and zoological facilities and botanical, cultural,
 2928 and zoological organizations in that city or town.

2929 (ii) Notwithstanding Subsection (1)(a)(i), a city or town legislative body may not
 2930 impose a tax under this section:

2931 (A) if the county in which the city or town is located imposes a tax under Part 7,
 2932 County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or
 2933 Facilities; or

2934 (B) on the sales and uses described in Section 59-12-104 to the extent the sales and
 2935 uses are exempt from taxation under Section 59-12-104[~~and~~].

2936 [~~(C) except as provided in Subsection (1)(c), on amounts paid or charged for food and~~
 2937 ~~food ingredients.]~~

2938 (b) For purposes of this Subsection (1), the location of a transaction shall be
 2939 determined in accordance with Sections 59-12-211 through 59-12-215.

2940 [~~(c) A city or town legislative body imposing a tax under this section shall impose the~~
 2941 ~~tax on amounts paid or charged for food and food ingredients if the food and food ingredients~~

2942 ~~are sold as part of a bundled transaction attributable to food and food ingredients and tangible~~
2943 ~~personal property other than food and food ingredients.]~~

2944 ~~[(d)]~~ (c) The election shall be held at a regular general election or a municipal general
2945 election, as those terms are defined in Section 20A-1-102, and shall follow the procedures
2946 outlined in Title 11, Chapter 14, Local Government Bonding Act, except as provided in
2947 Subsection (6).

2948 (2) If the city or town legislative body determines that a majority of the city's or town's
2949 registered voters voting on the imposition of the tax have voted in favor of the imposition of
2950 the tax as prescribed in Subsection (1)(a), the city or town legislative body may impose the tax
2951 by a majority vote of all members of the legislative body.

2952 (3) The money generated from any tax imposed under Subsection (2) shall be used for
2953 financing:

2954 (a) recreational and zoological facilities within the city or town or within the
2955 geographic area of entities that are parties to an interlocal agreement, to which the city or town
2956 is a party, providing for recreational or zoological facilities; and

2957 (b) ongoing operating expenses of botanical, cultural, and zoological organizations
2958 within the city or town or within the geographic area of entities that are parties to an interlocal
2959 agreement, to which the city or town is a party, providing for the support of botanical, cultural,
2960 or zoological organizations.

2961 (4) (a) A tax authorized under this part shall be:

2962 (i) except as provided in Subsection (4)(b), administered, collected, and enforced in
2963 accordance with:

2964 (A) the same procedures used to administer, collect, and enforce the tax under:

2965 (I) Part 1, Tax Collection; or

2966 (II) Part 2, Local Sales and Use Tax Act; and

2967 (B) Chapter 1, General Taxation Policies; and

2968 (ii) (A) levied for a period of eight years; and

2969 (B) may be reauthorized at the end of the eight-year period in accordance with this
2970 section.

2971 (b) Notwithstanding Subsection (4)(a)(i), a tax under this section is not subject to
2972 Subsections 59-12-205(2) through (6).

2973 (5) (a) For purposes of this Subsection (5):
2974 (i) "Annexation" means an annexation to a city or town under Title 10, Chapter 2, Part
2975 4, Annexation.
2976 (ii) "Annexing area" means an area that is annexed into a city or town.
2977 (b) (i) Except as provided in Subsection (5)(c) or (d), if, on or after July 1, 2004, a city
2978 or town enacts or repeals a tax under this part, the enactment or repeal shall take effect:
2979 (A) on the first day of a calendar quarter; and
2980 (B) after a 90-day period beginning on the date the commission receives notice meeting
2981 the requirements of Subsection (5)(b)(ii) from the city or town.
2982 (ii) The notice described in Subsection (5)(b)(i)(B) shall state:
2983 (A) that the city or town will enact or repeal a tax under this part;
2984 (B) the statutory authority for the tax described in Subsection (5)(b)(ii)(A);
2985 (C) the effective date of the tax described in Subsection (5)(b)(ii)(A); and
2986 (D) if the city or town enacts the tax described in Subsection (5)(b)(ii)(A), the rate of
2987 the tax.
2988 (c) (i) The enactment of a tax shall take effect on the first day of the first billing period:
2989 (A) that begins after the effective date of the enactment of the tax; and
2990 (B) if the billing period for the transaction begins before the effective date of the
2991 enactment of the tax under this section.
2992 (ii) The repeal of a tax shall take effect on the first day of the last billing period:
2993 (A) that began before the effective date of the repeal of the tax; and
2994 (B) if the billing period for the transaction begins before the effective date of the repeal
2995 of the tax imposed under this section.
2996 (d) (i) If a tax due under this chapter on a catalogue sale is computed on the basis of
2997 sales and use tax rates published in the catalogue, an enactment or repeal of a tax described in
2998 Subsection (5)(b)(i) takes effect:
2999 (A) on the first day of a calendar quarter; and
3000 (B) beginning 60 days after the effective date of the enactment or repeal under
3001 Subsection (5)(b)(i).
3002 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3003 commission may by rule define the term "catalogue sale."

3004 (e) (i) Except as provided in Subsection (5)(f) or (g), if, for an annexation that occurs
3005 on or after July 1, 2004, the annexation will result in the enactment or repeal of a tax under this
3006 part for an annexing area, the enactment or repeal shall take effect:

3007 (A) on the first day of a calendar quarter; and

3008 (B) after a 90-day period beginning on the date the commission receives notice meeting
3009 the requirements of Subsection (5)(e)(ii) from the city or town that annexes the annexing area.

3010 (ii) The notice described in Subsection (5)(e)(i)(B) shall state:

3011 (A) that the annexation described in Subsection (5)(e)(i) will result in an enactment or
3012 repeal a tax under this part for the annexing area;

3013 (B) the statutory authority for the tax described in Subsection (5)(e)(ii)(A);

3014 (C) the effective date of the tax described in Subsection (5)(e)(ii)(A); and

3015 (D) the rate of the tax described in Subsection (5)(e)(ii)(A).

3016 (f) (i) The enactment of a tax shall take effect on the first day of the first billing period:

3017 (A) that begins after the effective date of the enactment of the tax; and

3018 (B) if the billing period for the transaction begins before the effective date of the
3019 enactment of the tax under this section.

3020 (ii) The repeal of a tax shall take effect on the first day of the last billing period:

3021 (A) that began before the effective date of the repeal of the tax; and

3022 (B) if the billing period for the transaction begins before the effective date of the repeal
3023 of the tax imposed under this section.

3024 (g) (i) If a tax due under this chapter on a catalogue sale is computed on the basis of
3025 sales and use tax rates published in the catalogue, an enactment or repeal of a tax described in
3026 Subsection (5)(e)(i) takes effect:

3027 (A) on the first day of a calendar quarter; and

3028 (B) beginning 60 days after the effective date of the enactment or repeal under
3029 Subsection (5)(e)(i).

3030 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3031 commission may by rule define the term "catalogue sale."

3032 (6) (a) Before a city or town legislative body submits an opinion question to the
3033 residents of the city or town under Subsection (1)(a)(i), the city or town legislative body shall:

3034 (i) submit to the county legislative body in which the city or town is located a written

3035 notice of the intent to submit the opinion question to the residents of the city or town; and

3036 (ii) receive from the county legislative body:

3037 (A) a written resolution passed by the county legislative body stating that the county
3038 legislative body is not seeking to impose a tax under Part 7, County Option Funding for
3039 Botanical, Cultural, Recreational, and Zoological Organizations or Facilities; or

3040 (B) a written statement that in accordance with Subsection (6)(b) the results of a county
3041 opinion question submitted to the residents of the county under Part 7, County Option Funding
3042 for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities, permit the city
3043 or town legislative body to submit the opinion question to the residents of the city or town in
3044 accordance with this part.

3045 (b) (i) Within 60 days after the day the county legislative body receives from a city or
3046 town legislative body described in Subsection (6)(a) the notice of the intent to submit an
3047 opinion question to the residents of the city or town, the county legislative body shall provide
3048 the city or town legislative body:

3049 (A) the written resolution described in Subsection (6)(a)(ii)(A); or

3050 (B) written notice that the county legislative body will submit an opinion question to
3051 the residents of the county under Part 7, County Option Funding for Botanical, Cultural,
3052 Recreational, and Zoological Organizations or Facilities, for the county to impose a tax under
3053 that part.

3054 (ii) If the county legislative body provides the city or town legislative body the written
3055 notice that the county legislative body will submit an opinion question as provided in
3056 Subsection (6)(b)(i)(B), the county legislative body shall submit the opinion question by no
3057 later than, from the date the county legislative body sends the written notice, the later of:

3058 (A) a 12-month period;

3059 (B) the next regular primary election; or

3060 (C) the next regular general election.

3061 (iii) Within 30 days of the date of the canvass of the election at which the opinion
3062 question under Subsection (6)(b)(ii) is voted on, the county legislative body shall provide the
3063 city or town legislative body described in Subsection (6)(a) written results of the opinion
3064 question submitted by the county legislative body under Part 7, County Option Funding for
3065 Botanical, Cultural, Recreational, and Zoological Organizations or Facilities, indicating that:

3066 (A) (I) the city or town legislative body may not impose a tax under this part because a
3067 majority of the county's registered voters voted in favor of the county imposing the tax and the
3068 county legislative body by a majority vote approved the imposition of the tax; or

3069 (II) for at least 12 months from the date the written results are submitted to the city or
3070 town legislative body, the city or town legislative body may not submit to the county legislative
3071 body a written notice of the intent to submit an opinion question under this part because a
3072 majority of the county's registered voters voted against the county imposing the tax and the
3073 majority of the registered voters who are residents of the city or town described in Subsection
3074 (6)(a) voted against the imposition of the county tax; or

3075 (B) the city or town legislative body may submit the opinion question to the residents
3076 of the city or town in accordance with this part because although a majority of the county's
3077 registered voters voted against the county imposing the tax, the majority of the registered voters
3078 who are residents of the city or town voted for the imposition of the county tax.

3079 (c) Notwithstanding Subsection (6)(b), at any time a county legislative body may
3080 provide a city or town legislative body described in Subsection (6)(a) a written resolution
3081 passed by the county legislative body stating that the county legislative body is not seeking to
3082 impose a tax under Part 7, County Option Funding for Botanical, Cultural, Recreational, and
3083 Zoological Organizations or Facilities, which permits the city or town legislative body to
3084 submit under Subsection (1)(a)(i) an opinion question to the city's or town's residents.

3085 Section 15. Section **59-12-2003** is amended to read:

3086 **59-12-2003. Imposition -- Base -- Rate -- Revenues distributed to certain public**
3087 **transit districts.**

3088 (1) Subject to the other provisions of this section and except as provided in Subsection
3089 (2) or (4), beginning on July 1, 2008, the state shall impose a tax under this part on the
3090 transactions described in Subsection 59-12-103(1) within a city, town, or the unincorporated
3091 area of a county of the first or second class if, on January 1, 2008, there is a public transit
3092 district within any portion of that county of the first or second class.

3093 (2) The state may not impose a tax under this part within a county of the first or second
3094 class if within all of the cities, towns, and the unincorporated area of the county of the first or
3095 second class there is imposed a sales and use tax of:

3096 (a) .30% under Section 59-12-2213;

3097 (b) .30% under Section 59-12-2215; or
3098 (c) .30% under Section 59-12-2216.
3099 (3) (a) Subject to Subsection (3)(b), if the state imposes a tax under this part, the tax
3100 rate imposed within a city, town, or the unincorporated area of a county of the first or second
3101 class is a percentage equal to the difference between:
3102 (i) .30%; and
3103 (ii) (A) for a city within the county of the first or second class, the highest tax rate
3104 imposed within that city under:
3105 (I) Section 59-12-2213;
3106 (II) Section 59-12-2215; or
3107 (III) Section 59-12-2216;
3108 (B) for a town within the county of the first or second class, the highest tax rate
3109 imposed within that town under:
3110 (I) Section 59-12-2213;
3111 (II) Section 59-12-2215; or
3112 (III) Section 59-12-2216; or
3113 (C) for the unincorporated area of the county of the first or second class, the highest tax
3114 rate imposed within that unincorporated area under:
3115 (I) Section 59-12-2213;
3116 (II) Section 59-12-2215; or
3117 (III) Section 59-12-2216.
3118 (b) For purposes of Subsection (3)(a), if for a city, town, or the unincorporated area of
3119 a county of the first or second class, the highest tax rate imposed under Section 59-12-2213,
3120 59-12-2215, or 59-12-2216 within that city, town, or unincorporated area of the county of the
3121 first or second class is .30%, the state may not impose a tax under this part within that city,
3122 town, or unincorporated area.
3123 (4) ~~(a)~~ The state may not impose a tax under this part on ~~(i)~~ the sales and uses
3124 described in Section 59-12-104 to the extent the sales and uses are exempt from taxation under
3125 Section 59-12-104 ~~;~~ ~~or~~.
3126 ~~[(ii) except as provided in Subsection (4)(b), amounts paid or charged for food and~~
3127 ~~food ingredients.]~~

3128 ~~[(b) The state shall impose a tax under this part on amounts paid or charged for food~~
 3129 ~~and food ingredients if the food and food ingredients are sold as part of a bundled transaction~~
 3130 ~~attributable to food and ingredients and tangible personal property other than food and food~~
 3131 ~~ingredients.]~~

3132 (5) For purposes of Subsection (1), the location of a transaction shall be determined in
 3133 accordance with Sections 59-12-211 through 59-12-215.

3134 (6) The commission shall distribute the revenues the state collects from the sales and
 3135 use tax under this part, after subtracting amounts a seller retains in accordance with Section
 3136 59-12-108, to the public transit districts within the cities, towns, and unincorporated areas:

3137 (a) within which the state imposes a tax under this part; and

3138 (b) in proportion to the revenues collected from the sales and use tax under this part
 3139 within each city, town, and unincorporated area within which the state imposes a tax under this
 3140 part.

3141 Section 16. Section **59-12-2103** is amended to read:

3142 **59-12-2103. Imposition of tax -- Base -- Rate -- Expenditure of revenues collected**
 3143 **from the tax -- Administration, collection, and enforcement of tax by commission --**
 3144 **Administrative fee -- Enactment or repeal of tax -- Annexation -- Notice.**

3145 (1) (a) Subject to the other provisions of this section and except as provided in
 3146 Subsection (2), beginning on January 1, 2009, and ending on June 30, 2016, if a city or town
 3147 receives a distribution for the 12 consecutive months of fiscal year 2005-06 because the city or
 3148 town would have received a tax revenue distribution of less than .75% of the taxable sales
 3149 within the boundaries of the city or town but for Subsection 59-12-205(3)(a), the city or town
 3150 legislative body may impose a sales and use tax of up to .20% on the transactions:

3151 (i) described in Subsection 59-12-103(1); and

3152 (ii) within the city or town.

3153 (b) A city or town legislative body that imposes a tax under Subsection (1)(a) shall
 3154 expend the revenues collected from the tax for the same purposes for which the city or town
 3155 may expend the city's or town's general fund revenues.

3156 (c) For purposes of this Subsection (1), the location of a transaction shall be
 3157 determined in accordance with Sections 59-12-211 through 59-12-215.

3158 (2) ~~(a)~~ A city or town legislative body may not impose a tax under this section on[:

3159 (i)] the sales and uses described in Section 59-12-104 to the extent the sales and uses are
3160 exempt from taxation under Section 59-12-104[; and].

3161 [~~(ii) except as provided in Subsection (2)(b), amounts paid or charged for food and~~
3162 ~~food ingredients.]~~

3163 [~~(b) A city or town legislative body imposing a tax under this section shall impose the~~
3164 ~~tax on amounts paid or charged for food and food ingredients if the food and food ingredients~~
3165 ~~are sold as part of a bundled transaction attributable to food and food ingredients and tangible~~
3166 ~~personal property other than food and food ingredients.]~~

3167 (3) To impose a tax under this part, a city or town legislative body shall obtain
3168 approval from a majority of the members of the city or town legislative body.

3169 (4) The commission shall transmit revenues collected within a city or town from a tax
3170 under this part:

- 3171 (a) to the city or town legislative body;
3172 (b) monthly; and
3173 (c) by electronic funds transfer.

3174 (5) (a) Except as provided in Subsection (5)(b), the commission shall administer,
3175 collect, and enforce a tax under this part in accordance with:

3176 (i) the same procedures used to administer, collect, and enforce the tax under:

- 3177 (A) Part 1, Tax Collection; or
3178 (B) Part 2, Local Sales and Use Tax Act; and

3179 (ii) Chapter 1, General Taxation Policies.

3180 (b) A tax under this part is not subject to Subsections 59-12-205(2) through (6).

3181 (6) (a) The commission may retain an amount of tax collected under this part of not to
3182 exceed the lesser of:

3183 (i) 1.5%; or

3184 (ii) an amount equal to the cost to the commission of administering this part.

3185 (b) Any amount the commission retains under Subsection (6)(a) shall be:

3186 (i) deposited into the Sales and Use Tax Administrative Fees Account; and

3187 (ii) used as provided in Subsection 59-12-206(2).

3188 (7) (a) (i) Except as provided in Subsection (7)(b) or (c), if, on or after January 1, 2009,
3189 a city or town enacts or repeals a tax or changes the rate of a tax under this part, the enactment,

3190 repeal, or change shall take effect:

3191 (A) on the first day of a calendar quarter; and

3192 (B) after a 90-day period beginning on the date the commission receives notice meeting
3193 the requirements of Subsection (7)(a)(~~i~~)(ii) from the city or town.

3194 (ii) The notice described in Subsection (7)(a)(i)(B) shall state:

3195 (A) that the city or town will enact or repeal a tax or change the rate of the tax under
3196 this part;

3197 (B) the statutory authority for the tax described in Subsection (7)(a)(ii)(A);

3198 (C) the effective date of the tax described in Subsection (7)(a)(ii)(A); and

3199 (D) if the city or town enacts the tax or changes the rate of the tax described in
3200 Subsection (7)(a)(ii)(A), the rate of the tax.

3201 (b) (i) If the billing period for a transaction begins before the enactment of the tax or
3202 the tax rate increase under Subsection (1), the enactment of a tax or a tax rate increase shall
3203 take effect on the first day of the first billing period that begins after the effective date of the
3204 enactment of the tax or the tax rate increase.

3205 (ii) If the billing period for a transaction begins before the effective date of the repeal
3206 of the tax or the tax rate decrease imposed under Subsection (1), the repeal of a tax or a tax rate
3207 decrease shall take effect on the first day of the last billing period that began before the
3208 effective date of the repeal of the tax or the tax rate decrease.

3209 (c) (i) If a tax due under this part on a catalogue sale is computed on the basis of sales
3210 and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of a tax
3211 described in Subsection (7)(a)(i) takes effect:

3212 (A) on the first day of a calendar quarter; and

3213 (B) beginning 60 days after the effective date of the enactment, repeal, or change in the
3214 rate of the tax under Subsection (7)(a)(i).

3215 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3216 commission may by rule define the term "catalogue sale."

3217 (d) (i) Except as provided in Subsection (7)(e) or (f), if, for an annexation that occurs
3218 on or after January 1, 2009, the annexation will result in the enactment, repeal, or change in the
3219 rate of a tax under this part for an annexing area, the enactment, repeal, or change shall take
3220 effect:

- 3221 (A) on the first day of a calendar quarter; and
- 3222 (B) after a 90-day period beginning on the date the commission receives notice meeting
3223 the requirements of Subsection (7)(d)(ii) from the city or town that annexes the annexing area.
- 3224 (ii) The notice described in Subsection (7)(d)(i)(B) shall state:
- 3225 (A) that the annexation described in Subsection (7)(d)(i)(B) will result in the
3226 enactment, repeal, or change in the rate of a tax under this part for the annexing area;
- 3227 (B) the statutory authority for the tax described in Subsection (7)(d)(ii)(A);
- 3228 (C) the effective date of the tax described in Subsection (7)(d)(ii)(A); and
- 3229 (D) if the city or town enacts the tax or changes the rate of the tax described in
3230 Subsection (7)(d)(ii)(A), the rate of the tax.
- 3231 (e) (i) If the billing period for a transaction begins before the effective date of the
3232 enactment of the tax or a tax rate increase under Subsection (1), the enactment of a tax or a tax
3233 rate increase shall take effect on the first day of the first billing period that begins after the
3234 effective date of the enactment of the tax or the tax rate increase.
- 3235 (ii) If the billing period for a transaction begins before the effective date of the repeal
3236 of the tax or the tax rate decrease imposed under Subsection (1), the repeal of a tax or a tax rate
3237 decrease shall take effect on the first day of the last billing period that began before the
3238 effective date of the repeal of the tax or the tax rate decrease.
- 3239 (f) (i) If a tax due under this part on a catalogue sale is computed on the basis of sales
3240 and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of a tax
3241 described in Subsection (7)(d)(i) takes effect:
- 3242 (A) on the first day of a calendar quarter; and
- 3243 (B) beginning 60 days after the effective date of the enactment, repeal, or change under
3244 Subsection (7)(d)(i).
- 3245 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3246 commission may by rule define the term "catalogue sale".
- 3247 Section 17. Section **59-12-2204** is amended to read:
- 3248 **59-12-2204. Transactions that may not be subject to taxation under this part.**
- 3249 [(+) A county, city, or town may not impose a sales and use tax under this part on[:
3250 (a)] the sales and uses described in Section 59-12-104 to the extent the sales and uses are
3251 exempt from taxation under Section 59-12-104[; and].

3252 ~~[(b) except as provided in Subsection (2), amounts paid or charged for food and food~~
3253 ~~ingredients.]~~

3254 ~~[(2) A county, city, or town imposing a sales and use tax under this part shall impose~~
3255 ~~the sales and use tax on amounts paid or charged for food and food ingredients if the food and~~
3256 ~~food ingredients are sold as part of a bundled transaction attributable to food and food~~
3257 ~~ingredients and tangible personal property other than food and food ingredients.]~~

3258 Section 18. **Effective date.**

3259 This bill takes effect on July 1, 2011.

Legislative Review Note

as of **2-15-11 11:10 AM**

Office of Legislative Research and General Counsel