

Representative Brad J. Galvez proposes the following substitute bill:

1 **CURRENCY AMENDMENTS**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Brad J. Galvez**

5 Senate Sponsor: John L. Valentine

6

LONG TITLE

7 **General Description:**

8 This bill amends provisions related to currency.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ exempts specie legal tender from the Pawnshop and Secondhand Merchandise

12 Transaction Information Act;

- 13 ▶ addresses provisions related to specie legal tender, including:

- 14 • renaming the Legal Tender Act to the Specie Legal Tender Act;

- 15 • defining "specie legal tender" to mean gold or silver coin issued by the United

16 States or certain other gold or silver coin if authorized by a court of competent

17 jurisdiction or congress;

- 18 • providing that specie legal tender is legal tender in the state;

- 19 • providing that a person may not compel another person to tender or accept

20 specie legal tender except as expressly provided by contract;

- 21 • repealing obsolete language;

- 22 • requiring the attorney general to enforce the Specie Legal Tender Act; and

- 23 • providing a severability clause;

- 24 ▶ addresses an income tax credit for certain capital gains on a transaction involving



26 legal tender;

27 ▶ addresses a sales and use tax exemption for certain currency or coins;

28 ▶ addresses the remittance of sales and use taxes on certain transactions involving

29 specie legal tender; ~~H→ and~~

30 [~~→ addresses the construction of a statute involving legal tender; and~~] ~~←H~~

31 ▶ makes technical and conforming changes.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 This bill provides an effective date.

36 This bill provides for retrospective operation.

37 **Utah Code Sections Affected:**

38 **AMENDS:**

39 **13-32a-103.5**, as enacted by Laws of Utah 2009, Chapter 272

40 **59-1-1501**, as enacted by Laws of Utah 2011, Chapter 302

41 **59-1-1502**, as enacted by Laws of Utah 2011, Chapter 302

42 **59-1-1503**, as enacted by Laws of Utah 2011, Chapter 302

43 **59-10-1028**, as enacted by Laws of Utah 2011, Chapter 302

44 **59-12-104**, as last amended by Laws of Utah 2011, Chapters 288, 314, 370, and 391

45 **59-12-107**, as last amended by Laws of Utah 2009, Chapter 212

46 **ENACTS:**

47 **59-1-1501.1**, Utah Code Annotated 1953

48 **59-1-1505**, Utah Code Annotated 1953

49 **59-1-1506**, Utah Code Annotated 1953

50 ~~H→ [68-3-15, Utah Code Annotated 1953] ←H~~

51 **REPEALS:**

52 **59-1-1504**, as enacted by Laws of Utah 2011, Chapter 302

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

55 Section 1. Section **13-32a-103.5** is amended to read:

56 **13-32a-103.5. Applicability to coin dealers -- Specie legal tender exempt from**

57 chapter.

58 (1) This chapter applies to coin dealers, except:

59 (a) where provisions otherwise specifically address coin dealers[-]; or

60 (b) as provided in Subsection (2).

61 (2) Specie legal tender as defined in Section 59-1-1501.1 that is used as legal tender is
62 exempt from this chapter.

63 Section 2. Section **59-1-1501** is amended to read:

64 **Part 15. Specie Legal Tender Act**

65 **59-1-1501. Title.**

66 This part is known as the "Specie Legal Tender Act."

67 Section 3. Section **59-1-1501.1** is enacted to read:

68 **59-1-1501.1. Definitions.**

69 Subject to Subsection 59-1-1502(3), as used in this part, "specie legal tender" means
70 gold or silver coin that is issued by the United States.

71 Section 4. Section **59-1-1502** is amended to read:

72 **59-1-1502. Specie legal tender is legal tender in the state -- Person may not**
73 **compel another person to tender or accept specie legal tender -- Court or congressional**
74 **action to authorize gold or silver coin or bullion as legal tender.**

75 (1) [Gold and silver coin issued by the federal government] Specie legal tender is legal
76 tender in the state.

77 (2) [~~A~~] Except as expressly provided by contract, a person may not compel any other
78 person to tender or accept [~~gold and silver coin that is issued by the federal government~~] specie
79 legal tender.

80 (3) Gold or silver coin or bullion, other than gold or silver coin that is issued by the
81 United States, is considered to be specie legal tender and is legal tender in the state if:

82 (a) a court of competent jurisdiction issues a final, unappealable judgment or order
83 determining that the state may recognize the gold or silver coin or bullion, other than gold or
84 silver coin that is issued by the United States, as legal tender in the state; or

85 (b) congress enacts legislation that:

86 (i) expressly provides that the gold or silver coin or bullion, other than gold or silver
87 coin that is issued by the United States, is legal tender in the state; or

88 (ii) expressly allows the state to recognize the gold or silver coin or bullion, other than
89 gold or silver coin that is issued by the United States, as legal tender in the state.

90 Section 5. Section **59-1-1503** is amended to read:

91 **59-1-1503. Nonrefundable credit -- Sales and use tax exemption -- Sales and use**
92 **tax remittance.**

93 [(1) There is a nonrefundable credit established for any capital gains incurred from the
94 exchange of gold and silver coin issued by the federal government for another form of legal
95 tender as provided in Section 59-10-1028.]

96 (1) A nonrefundable individual income tax credit is allowed as provided in Section
97 59-10-1028 related to a capital gain on a transaction involving the exchange of one form of
98 legal tender for another form of legal tender.

99 (2) [The exchange of gold and silver coin issued by the federal government for another
100 form of legal tender is] Sales of currency or coin are exempt from sales and use taxes as
101 provided in Subsection 59-12-104(50).

102 (3) The remittance of a sales and use tax on a transaction involving specie legal tender
103 is as provided in Section 59-12-107.

104 Section 6. Section **59-1-1505** is enacted to read:

105 **59-1-1505. Attorney general to enforce part.**

106 The attorney general shall enforce this part.

107 Section 7. Section **59-1-1506** is enacted to read:

108 **59-1-1506. Severability clause.**

109 If any provision of this part or the application of any provision to any person or
110 circumstance is held invalid by a final decision of a court of competent jurisdiction, the
111 remainder of this part shall be given effect without the invalid provision or application. The
112 provisions of this part are severable.

113 Section 8. Section **59-10-1028** is amended to read:

114 **59-10-1028. Nonrefundable tax credit for capital gain transactions on the**
115 **exchange of one form of legal tender for another form of legal tender.**

116 (1) As used in this section:

117 (a) "Capital gain transaction" means a transaction that results in a:

118 (i) short-term capital gain; or

119 (ii) long-term capital gain.

120 (b) "Long-term capital gain" is as defined in Section 1222, Internal Revenue Code.

121 (c) "Long-term capital loss" is as defined in Section 1222, Internal Revenue Code.

122 (d) "Net capital gain" means the amount by which the sum of long-term capital gains

123 and short-term capital gains on a claimant's, estate's, or trust's transactions from exchanges

124 made for a taxable year of one form of legal tender for another form of legal tender exceeds the

125 sum of long-term capital losses and short-term capital losses on those transactions for that

126 taxable year.

127 (e) "Short-term capital loss" is as defined in Section 1222, Internal Revenue Code.

128 [~~(e)~~] (f) "Short-term capital gain" is as defined in Section 1222, Internal Revenue Code.

129 (2) Except as provided in Section 59-10-1002.2, for taxable years beginning on or after

130 January 1, 2012, a claimant, estate, or trust may claim a nonrefundable tax credit equal to the

131 product of:

132 (a) [~~to the extent a capital gain is not offset by a capital loss under Chapter 1,~~

133 ~~Subchapter P, Capital Gains and Losses, Internal Revenue Code, the total]~~ to the extent a net

134 capital gain is included in taxable income, the amount of the claimant's, estate's, or trust's

135 [short-term capital gain or long-term] net capital gain on [a] capital gain [transaction]

136 transactions from [an exchange] exchanges made on or after January 1, 2012, [of gold or silver

137 coin issued by the federal government] for a taxable year, of one form of legal tender for

138 another form of legal tender; and

139 (b) 5%.

140 (3) A claimant, estate, or trust may not carry forward or carry back a tax credit under

141 this section.

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

143 commission may make rules to implement this section.

144 Section 9. Section **59-12-104** is amended to read:

145 **59-12-104. Exemptions.**

146 The following sales and uses are exempt from the taxes imposed by this chapter:

147 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax

148 under Chapter 13, Motor and Special Fuel Tax Act;

149 (2) subject to Section 59-12-104.6, sales to the state, its institutions, and its political

150 subdivisions; however, this exemption does not apply to sales of:

151 (a) construction materials except:

152 (i) construction materials purchased by or on behalf of institutions of the public

153 education system as defined in Utah Constitution Article X, Section 2, provided the

154 construction materials are clearly identified and segregated and installed or converted to real

155 property which is owned by institutions of the public education system; and

156 (ii) construction materials purchased by the state, its institutions, or its political

157 subdivisions which are installed or converted to real property by employees of the state, its

158 institutions, or its political subdivisions; or

159 (b) tangible personal property in connection with the construction, operation,

160 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities

161 providing additional project capacity, as defined in Section 11-13-103;

162 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:

163 (i) the proceeds of each sale do not exceed \$1; and

164 (ii) the seller or operator of the vending machine reports an amount equal to 150% of

165 the cost of the item described in Subsection (3)(b) as goods consumed; and

166 (b) Subsection (3)(a) applies to:

167 (i) food and food ingredients; or

168 (ii) prepared food;

169 (4) (a) sales of the following to a commercial airline carrier for in-flight consumption:

170 (i) alcoholic beverages;

171 (ii) food and food ingredients; or

172 (iii) prepared food;

173 (b) sales of tangible personal property or a product transferred electronically:

174 (i) to a passenger;

175 (ii) by a commercial airline carrier; and

176 (iii) during a flight for in-flight consumption or in-flight use by the passenger; or

177 (c) services related to Subsection (4)(a) or (b);

178 (5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts

179 and equipment:

180 (A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002

181 North American Industry Classification System of the federal Executive Office of the
182 President, Office of Management and Budget; and
183 (II) for:
184 (Aa) installation in an aircraft, including services relating to the installation of parts or
185 equipment in the aircraft;
186 (Bb) renovation of an aircraft; or
187 (Cc) repair of an aircraft; or
188 (B) for installation in an aircraft operated by a common carrier in interstate or foreign
189 commerce; or
190 (ii) beginning on October 1, 2008, sales of parts and equipment for installation in an
191 aircraft operated by a common carrier in interstate or foreign commerce; and
192 (b) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,
193 a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a
194 refund:
195 (i) if the sale is made on or after July 1, 2008, but on or before September 30, 2008;
196 (ii) as if Subsection (5)(a)(i)(B) were in effect on the day on which the sale is made;
197 (iii) if the person did not claim the exemption allowed by Subsection (5)(a)(i)(B) for
198 the sale prior to filing for the refund;
199 (iv) for sales and use taxes paid under this chapter on the sale;
200 (v) in accordance with Section 59-1-1410; and
201 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if
202 the person files for the refund on or before September 30, 2011;
203 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
204 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
205 exhibitor, distributor, or commercial television or radio broadcaster;
206 (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal
207 property if the cleaning or washing of the tangible personal property is not assisted cleaning or
208 washing of tangible personal property;
209 (b) if a seller that sells at the same business location assisted cleaning or washing of
210 tangible personal property and cleaning or washing of tangible personal property that is not
211 assisted cleaning or washing of tangible personal property, the exemption described in

212 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning
213 or washing of the tangible personal property; and

214 (c) for purposes of Subsection (7)(b) and in accordance with Title 63G, Chapter 3,

215 Utah Administrative Rulemaking Act, the commission may make rules:

216 (i) governing the circumstances under which sales are at the same business location;
217 and

218 (ii) establishing the procedures and requirements for a seller to separately account for
219 sales of assisted cleaning or washing of tangible personal property;

220 (8) sales made to or by religious or charitable institutions in the conduct of their regular
221 religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are
222 fulfilled;

223 (9) sales of a vehicle of a type required to be registered under the motor vehicle laws of
224 this state if the vehicle is:

225 (a) not registered in this state; and

226 (b) (i) not used in this state; or

227 (ii) used in this state:

228 (A) if the vehicle is not used to conduct business, for a time period that does not
229 exceed the longer of:

230 (I) 30 days in any calendar year; or

231 (II) the time period necessary to transport the vehicle to the borders of this state; or

232 (B) if the vehicle is used to conduct business, for the time period necessary to transport
233 the vehicle to the borders of this state;

234 (10) (a) amounts paid for an item described in Subsection (10)(b) if:

235 (i) the item is intended for human use; and

236 (ii) (A) a prescription was issued for the item; or

237 (B) the item was purchased by a hospital or other medical facility; and

238 (b) (i) Subsection (10)(a) applies to:

239 (A) a drug;

240 (B) a syringe; or

241 (C) a stoma supply; and

242 (ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

243 commission may by rule define the terms:

244 (A) "syringe"; or

245 (B) "stoma supply";

246 (11) sales or use of property, materials, or services used in the construction of or

247 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

248 (12) (a) sales of an item described in Subsection (12)(c) served by:

249 (i) the following if the item described in Subsection (12)(c) is not available to the

250 general public:

251 (A) a church; or

252 (B) a charitable institution;

253 (ii) an institution of higher education if:

254 (A) the item described in Subsection (12)(c) is not available to the general public; or

255 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan

256 offered by the institution of higher education; or

257 (b) sales of an item described in Subsection (12)(c) provided for a patient by:

258 (i) a medical facility; or

259 (ii) a nursing facility; and

260 (c) Subsections (12)(a) and (b) apply to:

261 (i) food and food ingredients;

262 (ii) prepared food; or

263 (iii) alcoholic beverages;

264 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property

265 or a product transferred electronically by a person:

266 (i) regardless of the number of transactions involving the sale of that tangible personal
267 property or product transferred electronically by that person; and

268 (ii) not regularly engaged in the business of selling that type of tangible personal
269 property or product transferred electronically;

270 (b) this Subsection (13) does not apply if:

271 (i) the sale is one of a series of sales of a character to indicate that the person is
272 regularly engaged in the business of selling that type of tangible personal property or product
273 transferred electronically;

274 (ii) the person holds that person out as regularly engaged in the business of selling that
275 type of tangible personal property or product transferred electronically;

276 (iii) the person sells an item of tangible personal property or product transferred
277 electronically that the person purchased as a sale that is exempt under Subsection (25); or

278 (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of
279 this state in which case the tax is based upon:

280 (A) the bill of sale or other written evidence of value of the vehicle or vessel being
281 sold; or

282 (B) in the absence of a bill of sale or other written evidence of value, the fair market
283 value of the vehicle or vessel being sold at the time of the sale as determined by the
284 commission; and

285 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
286 commission shall make rules establishing the circumstances under which:

287 (i) a person is regularly engaged in the business of selling a type of tangible personal
288 property or product transferred electronically;

289 (ii) a sale of tangible personal property or a product transferred electronically is one of
290 a series of sales of a character to indicate that a person is regularly engaged in the business of
291 selling that type of tangible personal property or product transferred electronically; or

292 (iii) a person holds that person out as regularly engaged in the business of selling a type
293 of tangible personal property or product transferred electronically;

294 (14) (a) except as provided in Subsection (14)(b), amounts paid or charged on or after
295 July 1, 2006, for a purchase or lease by a manufacturing facility except for a cogeneration
296 facility, of the following:

297 (i) machinery and equipment that:

298 (A) are used:

299 (I) for a manufacturing facility except for a manufacturing facility that is a scrap
300 recycler described in Subsection 59-12-102(55)(b):

301 (Aa) in the manufacturing process;

302 (Bb) to manufacture an item sold as tangible personal property; and

303 (Cc) beginning on July 1, 2009, in a manufacturing facility described in this Subsection

304 (14)(a)(i)(A)(I) in the state; or

305 (II) for a manufacturing facility that is a scrap recycler described in Subsection
306 59-12-102(55)(b):
307 (Aa) to process an item sold as tangible personal property; and
308 (Bb) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
309 (14)(a)(i)(A)(II) in the state; and
310 (B) have an economic life of three or more years; and
311 (ii) normal operating repair or replacement parts that:
312 (A) have an economic life of three or more years; and
313 (B) are used:
314 (I) for a manufacturing facility except for a manufacturing facility that is a scrap
315 recycler described in Subsection 59-12-102(55)(b):
316 (Aa) in the manufacturing process; and
317 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(I) in the
318 state; or
319 (II) for a manufacturing facility that is a scrap recycler described in Subsection
320 59-12-102(55)(b):
321 (Aa) to process an item sold as tangible personal property; and
322 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(II) in the
323 state;
324 (b) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a
325 manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006,
326 of the following:
327 (i) machinery and equipment that:
328 (A) are used:
329 (I) in the manufacturing process;
330 (II) to manufacture an item sold as tangible personal property; and
331 (III) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
332 (14)(b) in the state; and
333 (B) have an economic life of three or more years; and
334 (ii) normal operating repair or replacement parts that:
335 (A) are used:

336 (I) in the manufacturing process; and
337 (II) in a manufacturing facility described in this Subsection (14)(b) in the state; and
338 (B) have an economic life of three or more years;
339 (c) amounts paid or charged for a purchase or lease made on or after January 1, 2008,
340 by an establishment described in NAICS Subsector 212, Mining (except Oil and Gas), or
341 NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for
342 Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining,
343 of the 2002 North American Industry Classification System of the federal Executive Office of
344 the President, Office of Management and Budget, of the following:
345 (i) machinery and equipment that:
346 (A) are used:
347 (I) (Aa) in the production process, other than the production of real property; or
348 (Bb) in research and development; and
349 (II) beginning on July 1, 2009, in an establishment described in this Subsection (14)(c)
350 in the state; and
351 (B) have an economic life of three or more years; and
352 (ii) normal operating repair or replacement parts that:
353 (A) have an economic life of three or more years; and
354 (B) are used in:
355 (I) (Aa) the production process, except for the production of real property; and
356 (Bb) an establishment described in this Subsection (14)(c) in the state; or
357 (II) (Aa) research and development; and
358 (Bb) in an establishment described in this Subsection (14)(c) in the state;
359 (d) (i) amounts paid or charged for a purchase or lease made on or after July 1, 2010,
360 but on or before June 30, 2014, by an establishment described in NAICS Code 518112, Web
361 Search Portals, of the 2002 North American Industry Classification System of the federal
362 Executive Office of the President, Office of Management and Budget, of the following:
363 (A) machinery and equipment that:
364 (I) are used in the operation of the web search portal;
365 (II) have an economic life of three or more years; and
366 (III) are used in a new or expanding establishment described in this Subsection (14)(d)

367 in the state; and

368 (B) normal operating repair or replacement parts that:

369 (I) are used in the operation of the web search portal;

370 (II) have an economic life of three or more years; and

371 (III) are used in a new or expanding establishment described in this Subsection (14)(d)

372 in the state; or

373 (ii) amounts paid or charged for a purchase or lease made on or after July 1, 2014, by

374 an establishment described in NAICS Code 518112, Web Search Portals, of the 2002 North

375 American Industry Classification System of the federal Executive Office of the President,

376 Office of Management and Budget, of the following:

377 (A) machinery and equipment that:

378 (I) are used in the operation of the web search portal; and

379 (II) have an economic life of three or more years; and

380 (B) normal operating repair or replacement parts that:

381 (I) are used in the operation of the web search portal; and

382 (II) have an economic life of three or more years;

383 (e) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter 3,

384 Utah Administrative Rulemaking Act, the commission:

385 (i) shall by rule define the term "establishment"; and

386 (ii) may by rule define what constitutes:

387 (A) processing an item sold as tangible personal property;

388 (B) the production process, except for the production of real property;

389 (C) research and development; or

390 (D) a new or expanding establishment described in Subsection (14)(d) in the state; and

391 (f) on or before October 1, 2011, and every five years after October 1, 2011, the

392 commission shall:

393 (i) review the exemptions described in this Subsection (14) and make

394 recommendations to the Revenue and Taxation Interim Committee concerning whether the

395 exemptions should be continued, modified, or repealed; and

396 (ii) include in its report:

397 (A) an estimate of the cost of the exemptions;

398 (B) the purpose and effectiveness of the exemptions; and
399 (C) the benefits of the exemptions to the state;
400 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:
401 (i) tooling;
402 (ii) special tooling;
403 (iii) support equipment;
404 (iv) special test equipment; or
405 (v) parts used in the repairs or renovations of tooling or equipment described in
406 Subsections (15)(a)(i) through (iv); and
407 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:
408 (i) the tooling, equipment, or parts are used or consumed exclusively in the
409 performance of any aerospace or electronics industry contract with the United States
410 government or any subcontract under that contract; and
411 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),
412 title to the tooling, equipment, or parts is vested in the United States government as evidenced
413 by:
414 (A) a government identification tag placed on the tooling, equipment, or parts; or
415 (B) listing on a government-approved property record if placing a government
416 identification tag on the tooling, equipment, or parts is impractical;
417 (16) sales of newspapers or newspaper subscriptions;
418 (17) (a) except as provided in Subsection (17)(b), tangible personal property or a
419 product transferred electronically traded in as full or part payment of the purchase price, except
420 that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer,
421 trade-ins are limited to other vehicles only, and the tax is based upon:
422 (i) the bill of sale or other written evidence of value of the vehicle being sold and the
423 vehicle being traded in; or
424 (ii) in the absence of a bill of sale or other written evidence of value, the then existing
425 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
426 commission; and
427 (b) notwithstanding Subsection (17)(a), Subsection (17)(a) does not apply to the
428 following items of tangible personal property or products transferred electronically traded in as

429 full or part payment of the purchase price:

430 (i) money;

431 (ii) electricity;

432 (iii) water;

433 (iv) gas; or

434 (v) steam;

435 (18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property

436 or a product transferred electronically used or consumed primarily and directly in farming

437 operations, regardless of whether the tangible personal property or product transferred

438 electronically:

439 (A) becomes part of real estate; or

440 (B) is installed by a:

441 (I) farmer;

442 (II) contractor; or

443 (III) subcontractor; or

444 (ii) sales of parts used in the repairs or renovations of tangible personal property or a

445 product transferred electronically if the tangible personal property or product transferred

446 electronically is exempt under Subsection (18)(a)(i); and

447 (b) notwithstanding Subsection (18)(a), amounts paid or charged for the following are

448 subject to the taxes imposed by this chapter:

449 (i) (A) subject to Subsection (18)(b)(i)(B), the following if used in a manner that is

450 incidental to farming:

451 (I) machinery;

452 (II) equipment;

453 (III) materials; or

454 (IV) supplies; and

455 (B) tangible personal property that is considered to be used in a manner that is

456 incidental to farming includes:

457 (I) hand tools; or

458 (II) maintenance and janitorial equipment and supplies;

459 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product

460 transferred electronically if the tangible personal property or product transferred electronically
461 is used in an activity other than farming; and

462 (B) tangible personal property or a product transferred electronically that is considered
463 to be used in an activity other than farming includes:

464 (I) office equipment and supplies; or

465 (II) equipment and supplies used in:

466 (Aa) the sale or distribution of farm products;

467 (Bb) research; or

468 (Cc) transportation; or

469 (iii) a vehicle required to be registered by the laws of this state during the period
470 ending two years after the date of the vehicle's purchase;

471 (19) sales of hay;

472 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or
473 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or
474 garden, farm, or other agricultural produce is sold by:

475 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other
476 agricultural produce;

477 (b) an employee of the producer described in Subsection (20)(a); or

478 (c) a member of the immediate family of the producer described in Subsection (20)(a);

479 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
480 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

481 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
482 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
483 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
484 manufacturer, processor, wholesaler, or retailer;

485 (23) a product stored in the state for resale;

486 (24) (a) purchases of a product if:

487 (i) the product is:

488 (A) purchased outside of this state;

489 (B) brought into this state:

490 (I) at any time after the purchase described in Subsection (24)(a)(i)(A); and

491 (II) by a nonresident person who is not living or working in this state at the time of the
492 purchase;

493 (C) used for the personal use or enjoyment of the nonresident person described in
494 Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and

495 (D) not used in conducting business in this state; and

496 (ii) for:

497 (A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of
498 the product for a purpose for which the product is designed occurs outside of this state;

499 (B) a boat, the boat is registered outside of this state; or

500 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
501 outside of this state;

502 (b) the exemption provided for in Subsection (24)(a) does not apply to:

503 (i) a lease or rental of a product; or

504 (ii) a sale of a vehicle exempt under Subsection (33); and

505 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
506 purposes of Subsection (24)(a), the commission may by rule define what constitutes the
507 following:

508 (i) conducting business in this state if that phrase has the same meaning in this
509 Subsection (24) as in Subsection (63);

510 (ii) the first use of a product if that phrase has the same meaning in this Subsection (24)
511 as in Subsection (63); or

512 (iii) a purpose for which a product is designed if that phrase has the same meaning in
513 this Subsection (24) as in Subsection (63);

514 (25) a product purchased for resale in this state, in the regular course of business, either
515 in its original form or as an ingredient or component part of a manufactured or compounded
516 product;

517 (26) a product upon which a sales or use tax was paid to some other state, or one of its
518 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
519 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if
520 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax
521 Act;

- 522 (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a
523 person for use in compounding a service taxable under the subsections;
- 524 (28) purchases made in accordance with the special supplemental nutrition program for
525 women, infants, and children established in 42 U.S.C. Sec. 1786;
- 526 (29) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers,
527 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens
528 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification
529 Manual of the federal Executive Office of the President, Office of Management and Budget;
- 530 (30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State
531 Boating Act, a boat trailer, or an outboard motor if the boat, boat trailer, or outboard motor is:
- 532 (a) not registered in this state; and
- 533 (b) (i) not used in this state; or
- 534 (ii) used in this state:
535 (A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a
536 time period that does not exceed the longer of:
537 (I) 30 days in any calendar year; or
538 (II) the time period necessary to transport the boat, boat trailer, or outboard motor to
539 the borders of this state; or
540 (B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time
541 period necessary to transport the boat, boat trailer, or outboard motor to the borders of this
542 state;
- 543 (31) sales of aircraft manufactured in Utah;
- 544 (32) amounts paid for the purchase of telecommunications service for purposes of
545 providing telecommunications service;
- 546 (33) sales, leases, or uses of the following:
547 (a) a vehicle by an authorized carrier; or
548 (b) tangible personal property that is installed on a vehicle:
549 (i) sold or leased to or used by an authorized carrier; and
550 (ii) before the vehicle is placed in service for the first time;
551 (34) (a) 45% of the sales price of any new manufactured home; and
552 (b) 100% of the sales price of any used manufactured home;

553 (35) sales relating to schools and fundraising sales;

554 (36) sales or rentals of durable medical equipment if:

555 (a) a person presents a prescription for the durable medical equipment; and

556 (b) the durable medical equipment is used for home use only;

557 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in

558 Section 72-11-102; and

559 (b) the commission shall by rule determine the method for calculating sales exempt

560 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;

561 (38) sales to a ski resort of:

562 (a) snowmaking equipment;

563 (b) ski slope grooming equipment;

564 (c) passenger ropeways as defined in Section 72-11-102; or

565 (d) parts used in the repairs or renovations of equipment or passenger ropeways

566 described in Subsections (38)(a) through (c);

567 (39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

568 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for

569 amusement, entertainment, or recreation an unassisted amusement device as defined in Section

570 59-12-102;

571 (b) if a seller that sells or rents at the same business location the right to use or operate

572 for amusement, entertainment, or recreation one or more unassisted amusement devices and

573 one or more assisted amusement devices, the exemption described in Subsection (40)(a)

574 applies if the seller separately accounts for the sales or rentals of the right to use or operate for

575 amusement, entertainment, or recreation for the assisted amusement devices; and

576 (c) for purposes of Subsection (40)(b) and in accordance with Title 63G, Chapter 3,

577 Utah Administrative Rulemaking Act, the commission may make rules:

578 (i) governing the circumstances under which sales are at the same business location;

579 and

580 (ii) establishing the procedures and requirements for a seller to separately account for

581 the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for

582 assisted amusement devices;

583 (41) (a) sales of photocopies by:

584 (i) a governmental entity; or
585 (ii) an entity within the state system of public education, including:
586 (A) a school; or
587 (B) the State Board of Education; or
588 (b) sales of publications by a governmental entity;
589 (42) amounts paid for admission to an athletic event at an institution of higher
590 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
591 20 U.S.C. Sec. 1681 et seq.;
592 (43) (a) sales made to or by:
593 (i) an area agency on aging; or
594 (ii) a senior citizen center owned by a county, city, or town; or
595 (b) sales made by a senior citizen center that contracts with an area agency on aging;
596 (44) sales or leases of semiconductor fabricating, processing, research, or development
597 materials regardless of whether the semiconductor fabricating, processing, research, or
598 development materials:
599 (a) actually come into contact with a semiconductor; or
600 (b) ultimately become incorporated into real property;
601 (45) an amount paid by or charged to a purchaser for accommodations and services
602 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
603 59-12-104.2;
604 (46) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary
605 sports event registration certificate in accordance with Section 41-3-306 for the event period
606 specified on the temporary sports event registration certificate;
607 (47) sales or uses of electricity, if the sales or uses are:
608 (a) made under a tariff adopted by the Public Service Commission of Utah only for
609 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy
610 source, as designated in the tariff by the Public Service Commission of Utah; and
611 (b) for an amount of electricity that is:
612 (i) unrelated to the amount of electricity used by the person purchasing the electricity
613 under the tariff described in Subsection (47)(a); and
614 (ii) equivalent to the number of kilowatthours specified in the tariff described in

615 Subsection (47)(a) that may be purchased under the tariff described in Subsection (47)(a);
616 (48) sales or rentals of mobility enhancing equipment if a person presents a
617 prescription for the mobility enhancing equipment;
618 (49) sales of water in a:
619 (a) pipe;
620 (b) conduit;
621 (c) ditch; or
622 (d) reservoir;
623 (50) sales of currency or [coinage] coins that constitute legal tender of a state, the
624 United States, or [or] a foreign nation;
625 (51) (a) sales of an item described in Subsection (51)(b) if the item:
626 (i) does not constitute legal tender of [any nation] a state, the United States, or a
627 foreign nation; and
628 (ii) has a gold, silver, or platinum content of [80%] 50% or more; and
629 (b) Subsection (51)(a) applies to a gold, silver, or platinum:
630 (i) ingot;
631 (ii) bar;
632 (iii) medallion; or
633 (iv) decorative coin;
634 (52) amounts paid on a sale-leaseback transaction;
635 (53) sales of a prosthetic device:
636 (a) for use on or in a human; and
637 (b) (i) for which a prescription is required; or
638 (ii) if the prosthetic device is purchased by a hospital or other medical facility;
639 (54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of
640 machinery or equipment by an establishment described in Subsection (54)(c) if the machinery
641 or equipment is primarily used in the production or postproduction of the following media for
642 commercial distribution:
643 (i) a motion picture;
644 (ii) a television program;
645 (iii) a movie made for television;

(iv) a music video;

(v) a commercial;

(vi) a documentary; or

(vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the commission by administrative rule made in accordance with Subsection (54)(d); or

(b) notwithstanding Subsection (54)(a), purchases, leases, or rentals of machinery or equipment by an establishment described in Subsection (54)(c) that is used for the production or postproduction of the following are subject to the taxes imposed by this chapter:

(i) a live musical performance;

(ii) a live news program; or

(iii) a live sporting event;

(c) the following establishments listed in the 1997 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, apply to Subsections (54)(a) and (b):

(i) NAICS Code 512110; or

(ii) NAICS Code 51219; and

(d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule:

(i) prescribe what constitutes a medium similar to Subsections (54)(a)(i) through (vi); or

(ii) define:

(A) "commercial distribution";

(B) "live musical performance";

(C) "live news program"; or

(D) "live sporting event";

(55) (a) leases of seven or more years or purchases made on or after July 1, 2004, but on or before June 30, 2019, of machinery or equipment that:

(i) is leased or purchased for or by a facility that:

(A) is a renewable energy production facility;

(B) is located in the state; and

(C) (I) becomes operational on or after July 1, 2004; or

677 (II) has its generation capacity increased by one or more megawatts on or after July 1,
678 2004, as a result of the use of the machinery or equipment;

679 (ii) has an economic life of five or more years; and

680 (iii) is used to make the facility or the increase in capacity of the facility described in
681 Subsection (55)(a)(i) operational up to the point of interconnection with an existing
682 transmission grid including:

683 (A) a wind turbine;

684 (B) generating equipment;

685 (C) a control and monitoring system;

686 (D) a power line;

687 (E) substation equipment;

688 (F) lighting;

689 (G) fencing;

690 (H) pipes; or

691 (I) other equipment used for locating a power line or pole; and

692 (b) this Subsection (55) does not apply to:

693 (i) machinery or equipment used in construction of:

694 (A) a new renewable energy production facility; or

695 (B) the increase in the capacity of a renewable energy production facility;

696 (ii) contracted services required for construction and routine maintenance activities;

697 and

698 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
699 of the facility described in Subsection (55)(a)(i)(C)(II), machinery or equipment used or
700 acquired after:

701 (A) the renewable energy production facility described in Subsection (55)(a)(i) is
702 operational as described in Subsection (55)(a)(iii); or

703 (B) the increased capacity described in Subsection (55)(a)(i) is operational as described
704 in Subsection (55)(a)(iii);

705 (56) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
706 on or before June 30, 2019, of machinery or equipment that:

707 (i) is leased or purchased for or by a facility that:

708 (A) is a waste energy production facility;
709 (B) is located in the state; and
710 (C) (I) becomes operational on or after July 1, 2004; or
711 (II) has its generation capacity increased by one or more megawatts on or after July 1,
712 2004, as a result of the use of the machinery or equipment;
713 (ii) has an economic life of five or more years; and
714 (iii) is used to make the facility or the increase in capacity of the facility described in
715 Subsection (56)(a)(i) operational up to the point of interconnection with an existing
716 transmission grid including:
717 (A) generating equipment;
718 (B) a control and monitoring system;
719 (C) a power line;
720 (D) substation equipment;
721 (E) lighting;
722 (F) fencing;
723 (G) pipes; or
724 (H) other equipment used for locating a power line or pole; and
725 (b) this Subsection (56) does not apply to:
726 (i) machinery or equipment used in construction of:
727 (A) a new waste energy facility; or
728 (B) the increase in the capacity of a waste energy facility;
729 (ii) contracted services required for construction and routine maintenance activities;
730 and
731 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
732 described in Subsection (56)(a)(i)(C)(II), machinery or equipment used or acquired after:
733 (A) the waste energy facility described in Subsection (56)(a)(i) is operational as
734 described in Subsection (56)(a)(iii); or
735 (B) the increased capacity described in Subsection (56)(a)(i) is operational as described
736 in Subsection (56)(a)(iii);
737 (57) (a) leases of five or more years or purchases made on or after July 1, 2004 but on
738 or before June 30, 2019, of machinery or equipment that:

739 (i) is leased or purchased for or by a facility that:
740 (A) is located in the state;
741 (B) produces fuel from biomass energy including:
742 (I) methanol; or
743 (II) ethanol; and
744 (C) (I) becomes operational on or after July 1, 2004; or
745 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004, as
746 a result of the installation of the machinery or equipment;
747 (ii) has an economic life of five or more years; and
748 (iii) is installed on the facility described in Subsection (57)(a)(i);
749 (b) this Subsection (57) does not apply to:
750 (i) machinery or equipment used in construction of:
751 (A) a new facility described in Subsection (57)(a)(i); or
752 (B) the increase in capacity of the facility described in Subsection (57)(a)(i); or
753 (ii) contracted services required for construction and routine maintenance activities;
754 and
755 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
756 described in Subsection (57)(a)(i)(C)(II), machinery or equipment used or acquired after:
757 (A) the facility described in Subsection (57)(a)(i) is operational; or
758 (B) the increased capacity described in Subsection (57)(a)(i) is operational;
759 (58) (a) subject to Subsection (58)(b) or (c), sales of tangible personal property or a
760 product transferred electronically to a person within this state if that tangible personal property
761 or product transferred electronically is subsequently shipped outside the state and incorporated
762 pursuant to contract into and becomes a part of real property located outside of this state;
763 (b) the exemption under Subsection (58)(a) is not allowed to the extent that the other
764 state or political entity to which the tangible personal property is shipped imposes a sales, use,
765 gross receipts, or other similar transaction excise tax on the transaction against which the other
766 state or political entity allows a credit for sales and use taxes imposed by this chapter; and
767 (c) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,
768 a person may claim the exemption allowed by this Subsection (58) for a sale by filing for a
769 refund:

(i) if the sale is made on or after July 1, 2004, but on or before June 30, 2008;

(ii) as if this Subsection (58) as in effect on July 1, 2008, were in effect on the day on which the sale is made;

(iii) if the person did not claim the exemption allowed by this Subsection (58) for the sale prior to filing for the refund;

(iv) for sales and use taxes paid under this chapter on the sale;

(v) in accordance with Section 59-1-1410; and

(vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if the person files for the refund on or before June 30, 2011;

(59) purchases:

(a) of one or more of the following items in printed or electronic format:

(i) a list containing information that includes one or more:

(A) names; or

(B) addresses; or

(ii) a database containing information that includes one or more:

(A) names; or

(B) addresses; and

(b) used to send direct mail;

(60) redemptions or repurchases of a product by a person if that product was:

(a) delivered to a pawnbroker as part of a pawn transaction; and

(b) redeemed or repurchased within the time period established in a written agreement between the person and the pawnbroker for redeeming or repurchasing the product;

(61) (a) purchases or leases of an item described in Subsection (61)(b) if the item:

(i) is purchased or leased by, or on behalf of, a telecommunications service provider;

and

(ii) has a useful economic life of one or more years; and

(b) the following apply to Subsection (61)(a):

(i) telecommunications enabling or facilitating equipment, machinery, or software;

(ii) telecommunications equipment, machinery, or software required for 911 service;

(iii) telecommunications maintenance or repair equipment, machinery, or software;

(iv) telecommunications switching or routing equipment, machinery, or software; or

801 (v) telecommunications transmission equipment, machinery, or software;

802 (62) (a) beginning on July 1, 2006, and ending on June 30, 2016, purchases of tangible
803 personal property or a product transferred electronically that are used in the research and
804 development of coal-to-liquids, oil shale, or tar sands technology; and

805 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
806 commission may, for purposes of Subsection (62)(a), make rules defining what constitutes
807 purchases of tangible personal property or a product transferred electronically that are used in
808 the research and development of coal-to-liquids, oil shale, and tar sands technology;

809 (63) (a) purchases of tangible personal property or a product transferred electronically
810 if:

811 (i) the tangible personal property or product transferred electronically is:
812 (A) purchased outside of this state;
813 (B) brought into this state at any time after the purchase described in Subsection
814 (63)(a)(i)(A); and
815 (C) used in conducting business in this state; and
816 (ii) for:
817 (A) tangible personal property or a product transferred electronically other than the
818 tangible personal property described in Subsection (63)(a)(ii)(B), the first use of the property
819 for a purpose for which the property is designed occurs outside of this state; or
820 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
821 outside of this state;

822 (b) the exemption provided for in Subsection (63)(a) does not apply to:
823 (i) a lease or rental of tangible personal property or a product transferred electronically;
824 or
825 (ii) a sale of a vehicle exempt under Subsection (33); and
826 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
827 purposes of Subsection (63)(a), the commission may by rule define what constitutes the
828 following:
829 (i) conducting business in this state if that phrase has the same meaning in this
830 Subsection (63) as in Subsection (24);
831 (ii) the first use of tangible personal property or a product transferred electronically if

832 that phrase has the same meaning in this Subsection (63) as in Subsection (24); or
833 (iii) a purpose for which tangible personal property or a product transferred
834 electronically is designed if that phrase has the same meaning in this Subsection (63) as in
835 Subsection (24);
836 (64) sales of disposable home medical equipment or supplies if:
837 (a) a person presents a prescription for the disposable home medical equipment or
838 supplies;
839 (b) the disposable home medical equipment or supplies are used exclusively by the
840 person to whom the prescription described in Subsection (64)(a) is issued; and
841 (c) the disposable home medical equipment and supplies are listed as eligible for
842 payment under:
843 (i) Title XVIII, federal Social Security Act; or
844 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;
845 (65) sales:
846 (a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit
847 District Act; or
848 (b) of tangible personal property to a subcontractor of a public transit district, if the
849 tangible personal property is:
850 (i) clearly identified; and
851 (ii) installed or converted to real property owned by the public transit district;
852 (66) sales of construction materials:
853 (a) purchased on or after July 1, 2010;
854 (b) purchased by, on behalf of, or for the benefit of an international airport:
855 (i) located within a county of the first class; and
856 (ii) that has a United States customs office on its premises; and
857 (c) if the construction materials are:
858 (i) clearly identified;
859 (ii) segregated; and
860 (iii) installed or converted to real property:
861 (A) owned or operated by the international airport described in Subsection (66)(b); and
862 (B) located at the international airport described in Subsection (66)(b);

863 (67) sales of construction materials:
864 (a) purchased on or after July 1, 2008;
865 (b) purchased by, on behalf of, or for the benefit of a new airport:
866 (i) located within a county of the second class; and
867 (ii) that is owned or operated by a city in which an airline as defined in Section
868 59-2-102 is headquartered; and
869 (c) if the construction materials are:
870 (i) clearly identified;
871 (ii) segregated; and
872 (iii) installed or converted to real property:
873 (A) owned or operated by the new airport described in Subsection (67)(b);
874 (B) located at the new airport described in Subsection (67)(b); and
875 (C) as part of the construction of the new airport described in Subsection (67)(b);
876 (68) sales of fuel to a common carrier that is a railroad for use in a locomotive engine;
877 (69) purchases and sales described in Section 63H-4-111;
878 (70) (a) sales of tangible personal property to an aircraft maintenance, repair, and
879 overhaul provider for use in the maintenance, repair, overhaul, or refurbishment in this state of
880 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
881 lists a state or country other than this state as the location of registry of the fixed wing turbine
882 powered aircraft; or
883 (b) sales of tangible personal property by an aircraft maintenance, repair, and overhaul
884 provider in connection with the maintenance, repair, overhaul, or refurbishment in this state of
885 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
886 lists a state or country other than this state as the location of registry of the fixed wing turbine
887 powered aircraft;
888 (71) subject to Section 59-12-104.4, sales of a textbook for a higher education course:
889 (a) to a person admitted to an institution of higher education; and
890 (b) by a seller, other than a bookstore owned by an institution of higher education, if
891 51% or more of that seller's sales revenue for the previous calendar quarter are sales of a
892 textbook for a higher education course; and
893 (72) a license fee or tax a municipality imposes in accordance with Subsection

894 10-1-203(5) on a purchaser from a business for which the municipality provides an enhanced
895 level of municipal services.

896 Section 10. Section **59-12-107** is amended to read:

897 **59-12-107. Collection, remittance, and payment of tax by sellers or other persons**
898 **-- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other liability for**
899 **collection -- Rulemaking authority -- Credits -- Treatment of bad debt -- Penalties.**

900 (1) (a) Except as provided in Subsection (1)(d) or Section 59-12-107.1 or 59-12-123
901 and subject to Subsection (1)(e), each seller shall pay or collect and remit the sales and use
902 taxes imposed by this chapter if within this state the seller:

- 903 (i) has or utilizes:
 - 904 (A) an office;
 - 905 (B) a distribution house;
 - 906 (C) a sales house;
 - 907 (D) a warehouse;
 - 908 (E) a service enterprise; or
 - 909 (F) a place of business similar to Subsections (1)(a)(i)(A) through (E);
- 910 (ii) maintains a stock of goods;
- 911 (iii) regularly solicits orders, regardless of whether or not the orders are accepted in the
912 state, unless the seller's only activity in the state is:
 - 913 (A) advertising; or
 - 914 (B) solicitation by:
 - 915 (I) direct mail;
 - 916 (II) electronic mail;
 - 917 (III) the Internet;
 - 918 (IV) telecommunications service; or
 - 919 (V) a means similar to Subsection (1)(a)(iii)(A) or (B);
 - 920 (iv) regularly engages in the delivery of property in the state other than by:
 - 921 (A) common carrier; or
 - 922 (B) United States mail; or
 - 923 (v) regularly engages in an activity directly related to the leasing or servicing of
924 property located within the state.

(b) A seller that does not meet one or more of the criteria provided for in Subsection (1)(a):

- (i) except as provided in Subsection (1)(b)(ii), may voluntarily:
 - (A) collect a tax on a transaction described in Subsection 59-12-103(1); and
 - (B) remit the tax to the commission as provided in this part; or
- (ii) notwithstanding Subsection (1)(b)(i), shall collect a tax on a transaction described in Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to collect the tax.

(c) The collection and remittance of a tax under this chapter by a seller that is registered under the agreement may not be used as a factor in determining whether that seller is required by Subsection (1)(a) to:

- (i) pay a tax, fee, or charge under:
 - (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
 - (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
 - (C) Section 19-6-714;
 - (D) Section 19-6-805;
 - (E) Section 69-2-5;
 - (F) Section 69-2-5.5;
 - (G) Section 69-2-5.6; or
 - (H) this title; or
- (ii) collect and remit a tax, fee, or charge under:
 - (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
 - (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
 - (C) Section 19-6-714;
 - (D) Section 19-6-805;
 - (E) Section 69-2-5;
 - (F) Section 69-2-5.5;
 - (G) Section 69-2-5.6; or
 - (H) this title.

(d) A person shall pay a use tax imposed by this chapter on a transaction described in Subsection 59-12-103(1) if:

- (i) the seller did not collect a tax imposed by this chapter on the transaction; and

- 956 (ii) the person:
- 957 (A) stores the tangible personal property or product transferred electronically in the
958 state;
- 959 (B) uses the tangible personal property or product transferred electronically in the state;
960 or
961 (C) consumes the tangible personal property or product transferred electronically in the
962 state.
- 963 (e) The ownership of property that is located at the premises of a printer's facility with
964 which the retailer has contracted for printing and that consists of the final printed product,
965 property that becomes a part of the final printed product, or copy from which the printed
966 product is produced, shall not result in the retailer being considered to have or maintain an
967 office, distribution house, sales house, warehouse, service enterprise, or other place of
968 business, or to maintain a stock of goods, within this state.
- 969 (f) (i) As used in this Subsection (1)(f):
- 970 (A) "Affiliated group" is as defined in Section 59-7-101, except that "affiliated group"
971 includes a corporation that is qualified to do business but is not otherwise doing business in
972 this state.
- 973 (B) "Common ownership" is as defined in Section 59-7-101.
- 974 (C) "Related seller" means a seller that:
- 975 (I) is not required to pay or collect and remit sales and use taxes under Subsection
976 (1)(a) or Section 59-12-103.1;
- 977 (II) is:
978 (Aa) related to a seller that is required to pay or collect and remit sales and use taxes
979 under Subsection (1)(a) as part of an affiliated group or because of common ownership; or
980 (Bb) a limited liability company owned by the parent corporation of an affiliated group
981 if that parent corporation of the affiliated group is required to pay or collect and remit sales and
982 use taxes under Subsection (1)(a); and
983 (III) does not voluntarily collect and remit a tax under Subsection (1)(b)(i).
- 984 (ii) A seller is not required to pay or collect and remit sales and use taxes under
985 Subsection (1)(a):
986 (A) if the seller is a related seller;

- 987 (B) if the seller to which the related seller is related does not engage in any of the
988 following activities on behalf of the related seller:
989 (I) advertising;
990 (II) marketing;
991 (III) sales; or
992 (IV) other services; and
993 (C) if the seller to which the related seller is related accepts the return of an item sold
994 by the related seller, the seller to which the related seller is related accepts the return of that
995 item:
996 (I) sold by a seller that is not a related seller; and
997 (II) on the same terms as the return of an item sold by that seller to which the related
998 seller is related.
999 (2) (a) Except as provided in Section 59-12-107.1, a tax under this chapter shall be
1000 collected from a purchaser.
1001 (b) A seller may not collect as tax an amount, without regard to fractional parts of one
1002 cent, in excess of the tax computed at the rates prescribed by this chapter.
1003 (c) (i) Each seller shall:
1004 (A) give the purchaser a receipt for the tax collected; or
1005 (B) bill the tax as a separate item and declare the name of this state and the seller's
1006 sales and use tax license number on the invoice for the sale.
1007 (ii) The receipt or invoice is *prima facie* evidence that the seller has collected the tax
1008 and relieves the purchaser of the liability for reporting the tax to the commission as a
1009 consumer.
1010 (d) A seller is not required to maintain a separate account for the tax collected, but is
1011 considered to be a person charged with receipt, safekeeping, and transfer of public money.
1012 (e) Taxes collected by a seller pursuant to this chapter shall be held in trust for the
1013 benefit of the state and for payment to the commission in the manner and at the time provided
1014 for in this chapter.
1015 (f) If any seller, during any reporting period, collects as a tax an amount in excess of
1016 the lawful state and local percentage of total taxable sales allowed under this chapter, the seller
1017 shall remit to the commission the full amount of the tax imposed under this chapter, plus any

1018 excess.

1019 (g) If the accounting methods regularly employed by the seller in the transaction of the
1020 seller's business are such that reports of sales made during a calendar month or quarterly period
1021 will impose unnecessary hardships, the commission may accept reports at intervals that will, in
1022 the commission's opinion, better suit the convenience of the taxpayer or seller and will not
1023 jeopardize collection of the tax.

1024 (h) (i) For a purchase paid with specie legal tender as defined in Section 59-1-1501.1,
1025 and until such time as the commission accepts specie legal tender for the payment of a tax
1026 under this chapter, if the commission requires a seller to remit a tax under this chapter in legal
1027 tender other than specie legal tender, the seller shall state on the seller's books and records and
1028 on an invoice, bill of sale, or similar document provided to the purchaser:

1029 (A) the purchase price in specie legal tender and in the legal tender the seller is
1030 required to remit to the commission;

1031 (B) subject to Subsection (2)(h)(ii), the amount of tax due under this chapter in specie
1032 legal tender and in the legal tender the seller is required to remit to the commission;

1033 (C) the tax rate under this chapter applicable to the purchase; and

1034 (D) the date of the purchase.

1035 (ii) (A) Subject to Subsection (2)(h)(ii)(B), for purposes of determining the amount of
1036 tax due under Subsection (2)(h)(i), a seller shall use the most recent London fixing price for the
1037 specie legal tender the purchaser paid.

1038 (B) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1039 commission may make rules for determining the amount of tax due under Subsection (2)(h)(i)
1040 if the London fixing price is not available for a particular day.

1041 (3) (a) Except as provided in Subsections (4) through (6) and Section 59-12-108, the
1042 sales or use tax imposed by this chapter is due and payable to the commission quarterly on or
1043 before the last day of the month next succeeding each calendar quarterly period.

1044 (b) (i) Each seller shall, on or before the last day of the month next succeeding each
1045 calendar quarterly period, file with the commission a return for the preceding quarterly period.

1046 (ii) The seller shall remit with the return under Subsection (3)(b)(i) the amount of the
1047 tax required under this chapter to be collected or paid for the period covered by the return.

1048 (c) Except as provided in Subsection (4)(c), a return shall contain information and be in

1049 a form the commission prescribes by rule.

1050 (d) The sales tax as computed in the return shall be based upon the total nonexempt
1051 sales made during the period, including both cash and charge sales.

1052 (e) The use tax as computed in the return shall be based upon the total amount of
1053 purchases for storage, use, or other consumption in this state made during the period, including
1054 both by cash and by charge.

1055 (f) (i) Subject to Subsection (3)(f)(ii) and in accordance with Title 63G, Chapter 3,
1056 Utah Administrative Rulemaking Act, the commission may by rule extend the time for making
1057 returns and paying the taxes.

1058 (ii) An extension under Subsection (3)(f)(i) may not be for more than 90 days.

1059 (g) The commission may require returns and payment of the tax to be made for other
1060 than quarterly periods if the commission considers it necessary in order to ensure the payment
1061 of the tax imposed by this chapter.

1062 (h) (i) The commission may require a seller that files a simplified electronic return with
1063 the commission to file an additional electronic report with the commission.

1064 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1065 commission may make rules providing:

1066 (A) the information required to be included in the additional electronic report described
1067 in Subsection (3)(h)(i); and

1068 (B) one or more due dates for filing the additional electronic report described in
1069 Subsection (3)(h)(i).

1070 (4) (a) As used in this Subsection (4) and Subsection (5)(b), "remote seller" means a
1071 seller that is:

1072 (i) registered under the agreement;

1073 (ii) described in Subsection (1)(b); and

1074 (iii) not a:

1075 (A) model 1 seller;

1076 (B) model 2 seller; or

1077 (C) model 3 seller.

1078 (b) (i) Except as provided in Subsection (4)(b)(ii), a tax a remote seller collects in
1079 accordance with Subsection (1)(b) is due and payable:

1080 (A) to the commission;
1081 (B) annually; and
1082 (C) on or before the last day of the month immediately following the last day of each
1083 calendar year.
1084 (ii) The commission may require that a tax a remote seller collects in accordance with
1085 Subsection (1)(b) be due and payable:
1086 (A) to the commission; and
1087 (B) on the last day of the month immediately following any month in which the seller
1088 accumulates a total of at least \$1,000 in agreement sales and use tax.
1089 (c) (i) If a remote seller remits a tax to the commission in accordance with Subsection
1090 (4)(b), the remote seller shall file a return:
1091 (A) with the commission;
1092 (B) with respect to the tax;
1093 (C) containing information prescribed by the commission; and
1094 (D) on a form prescribed by the commission.
1095 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1096 commission shall make rules prescribing:
1097 (A) the information required to be contained in a return described in Subsection
1098 (4)(a)(i); and
1099 (B) the form described in Subsection (4)(c)(i)(D).
1100 (d) A tax a remote seller collects in accordance with this Subsection (4) shall be
1101 calculated on the basis of the total amount of taxable transactions under Subsection
1102 59-12-103(1) the remote seller completes, including:
1103 (i) a cash transaction; and
1104 (ii) a charge transaction.
1105 (5) (a) Except as provided in Subsection (5)(b), a tax a seller that files a simplified
1106 electronic return collects in accordance with this chapter is due and payable:
1107 (i) monthly on or before the last day of the month immediately following the month for
1108 which the seller collects a tax under this chapter; and
1109 (ii) for the month for which the seller collects a tax under this chapter.
1110 (b) A tax a remote seller that files a simplified electronic return collects in accordance

1111 with this chapter is due and payable as provided in Subsection (4).

1112 (6) (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the
1113 purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to
1114 titling or registration under the laws of this state.

1115 (b) The commission shall collect the tax described in Subsection (6)(a) when the
1116 vehicle is titled or registered.

1117 (7) If any sale of tangible personal property or any other taxable transaction under
1118 Subsection 59-12-103(1), is made by a wholesaler to a retailer, the wholesaler is not
1119 responsible for the collection or payment of the tax imposed on the sale and the retailer is
1120 responsible for the collection or payment of the tax imposed on the sale if:

1121 (a) the retailer represents that the personal property is purchased by the retailer for
1122 resale; and

1123 (b) the personal property is not subsequently resold.

1124 (8) If any sale of property or service subject to the tax is made to a person prepaying
1125 sales or use tax in accordance with Title 63M, Chapter 5, Resource Development Act, or to a
1126 contractor or subcontractor of that person, the person to whom such payment or consideration
1127 is payable is not responsible for the collection or payment of the sales or use tax and the person
1128 prepaying the sales or use tax is responsible for the collection or payment of the sales or use tax
1129 if the person prepaying the sales or use tax represents that the amount prepaid as sales or use
1130 tax has not been fully credited against sales or use tax due and payable under the rules
1131 promulgated by the commission.

1132 (9) (a) For purposes of this Subsection (9):

1133 (i) Except as provided in Subsection (9)(a)(ii), "bad debt" is as defined in Section 166,
1134 Internal Revenue Code.

1135 (ii) Notwithstanding Subsection (9)(a)(i), "bad debt" does not include:

1136 (A) an amount included in the purchase price of tangible personal property, a product
1137 transferred electronically, or a service that is:

1138 (I) not a transaction described in Subsection 59-12-103(1); or

1139 (II) exempt under Section 59-12-104;

1140 (B) a financing charge;

1141 (C) interest;

- 1142 (D) a tax imposed under this chapter on the purchase price of tangible personal
1143 property, a product transferred electronically, or a service;
- 1144 (E) an uncollectible amount on tangible personal property or a product transferred
1145 electronically that:
- 1146 (I) is subject to a tax under this chapter; and
- 1147 (II) remains in the possession of a seller until the full purchase price is paid;
- 1148 (F) an expense incurred in attempting to collect any debt; or
- 1149 (G) an amount that a seller does not collect on repossessed property.
- 1150 (b) A seller may deduct bad debt from the total amount from which a tax under this
1151 chapter is calculated on a return.
- 1152 (c) A seller may file a refund claim with the commission if:
- 1153 (i) the amount of bad debt for the time period described in Subsection (9)(e) exceeds
1154 the amount of the seller's sales that are subject to a tax under this chapter for that same time
1155 period; and
- 1156 (ii) as provided in Section 59-1-1410.
- 1157 (d) A bad debt deduction under this section may not include interest.
- 1158 (e) A bad debt may be deducted under this Subsection (9) on a return for the time
1159 period during which the bad debt:
- 1160 (i) is written off as uncollectible in the seller's books and records; and
- 1161 (ii) would be eligible for a bad debt deduction:
- 1162 (A) for federal income tax purposes; and
- 1163 (B) if the seller were required to file a federal income tax return.
- 1164 (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or
1165 claims a refund under this Subsection (9), the seller shall report and remit a tax under this
1166 chapter:
- 1167 (i) on the portion of the bad debt the seller recovers; and
- 1168 (ii) on a return filed for the time period for which the portion of the bad debt is
1169 recovered.
- 1170 (g) For purposes of reporting a recovery of a portion of bad debt under Subsection
1171 (9)(f), a seller shall apply amounts received on the bad debt in the following order:
- 1172 (i) in a proportional amount:

1173 (A) to the purchase price of the tangible personal property, product transferred
1174 electronically, or service; and

1175 (B) to the tax due under this chapter on the tangible personal property, product
1176 transferred electronically, or service; and

1177 (ii) to:

1178 (A) interest charges;

1179 (B) service charges; and

1180 (C) other charges.

1181 (h) A seller's certified service provider may make a deduction or claim a refund for bad
1182 debt on behalf of the seller:

1183 (i) in accordance with this Subsection (9); and

1184 (ii) if the certified service provider credits or refunds the entire amount of the bad debt
1185 deduction or refund to the seller.

1186 (i) A seller may allocate bad debt among the states that are members of the agreement
1187 if the seller's books and records support that allocation.

1188 (10) (a) A seller may not, with intent to evade any tax, fail to timely remit the full
1189 amount of tax required by this chapter.

1190 (b) A violation of this section is punishable as provided in Section 59-1-401.

1191 (c) Each person who fails to pay any tax to the state or any amount of tax required to be
1192 paid to the state, except amounts determined to be due by the commission under Chapter 1,
1193 Part 14, Assessment, Collections, and Refunds Act, or Section 59-12-111, within the time
1194 required by this chapter, or who fails to file any return as required by this chapter, shall pay, in
1195 addition to the tax, penalties and interest as provided in Section 59-1-401.

1196 (d) For purposes of prosecution under this section, each quarterly tax period in which a
1197 seller, with intent to evade any tax, collects a tax and fails to timely remit the full amount of the
1198 tax required to be remitted, constitutes a separate offense.

1199 H→ [Section 11. Section 68-3-15 is enacted to read:
1200 68-3-15. Construction of certain statutes related to legal tender.
1201 A statute may not be construed so as to create a significant impediment to the use of
1202 one form of legal tender over another form of legal tender in a private transaction.] ←H
1203 Section H→ [12] 11 ←H . Repeater.

1204 This bill repeals:

1205 Section **59-1-1504, Revenue and Taxation Interim Committee study.**

1206 Section ~~H→[+3]~~ **12 ←H . Effective date -- Retrospective operation.**

1207 (1) Except as provided in Subsections (2) and (3), this bill takes effect on May 8, 2012.

1208 (2) The amendments to Sections 59-12-104 and 59-12-107 take effect on July 1, 2012.

1209 (3) The amendments to Section 59-10-1028 have retrospective operation for a taxable

1210 year beginning on or after January 1, 2012.