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REVISIONS TO TAX

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John Dougall

Senate Sponsor: John L. Valentine



LONG TITLE

General Description:

This bill changes income tax credits and enacts sales and use tax exemptions.

Highlighted Provisions:

This bill:

- ▶ modifies income tax credits related to research;
- ▶ defines terms;
- ▶ enacts a sales and use tax exemption for certain construction materials used in a life science research and development facility;
- ▶ enacts a sales and use tax exemption for certain machinery and equipment used for research purposes and repair and replacement parts for that machinery and equipment; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

This bill provides for retrospective operation.

Utah Code Sections Affected:

AMENDS:

59-7-612, as last amended by Laws of Utah 2011, Chapter 384



28 **59-10-1012**, as last amended by Laws of Utah 2011, Chapter 384
 29 **59-12-102**, as last amended by Laws of Utah 2011, Chapters 14, 285, and 314
 30 **59-12-104**, as last amended by Laws of Utah 2011, Chapters 288, 314, 370, and 391



31
32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **59-7-612** is amended to read:

34 **59-7-612. Tax credits for research activities conducted in the state -- Carry**
 35 **forward -- Commission to report modification or repeal of certain federal provisions --**
 36 **Revenue and Taxation Interim Committee study.**

37 (1) (a) A taxpayer meeting the requirements of this section may claim the following
38 nonrefundable tax credits:

39 (i) a research tax credit of 5% of the taxpayer's qualified research expenses for the
40 current taxable year that exceed the base amount provided for under Subsection (4);

41 (ii) a tax credit for a payment to a qualified organization for basic research as provided
42 in Section 41(e), Internal Revenue Code, of 5% for the current taxable year that exceed the
43 base amount provided for under Subsection (4); and

44 (iii) a tax credit equal to ~~[(A) for the taxable year beginning on or after January 1,~~
 45 ~~2008, but beginning on or before December 31, 2008, 5% of the taxpayer's qualified research~~
 46 ~~expenses for the current taxable year; (B) for the taxable year beginning on or after January 1,~~
 47 ~~2009, but beginning on or before December 31, 2009, 6.3% of the taxpayer's qualified research~~
 48 ~~expenses for the current taxable year; or (C) for taxable years beginning on or after January 1,~~
 49 ~~2010, 9.2%]~~ 7.5% of the taxpayer's qualified research expenses for the current taxable year.

50 (b) Subject to Subsection (5), a taxpayer may claim a tax credit under:

51 (i) Subsection (1)(a)(i) or (1)(a)(iii), for the taxable year for which the taxpayer incurs
52 the qualified research expenses; or

53 (ii) Subsection (1)(a)(ii), for the taxable year for which the taxpayer makes the payment
54 to the qualified organization.

55 (c) The tax credits provided for in this section do not include the alternative
56 incremental credit provided for in Section 41(c)(4), Internal Revenue Code.

57 (2) For purposes of claiming a tax credit under this section, a unitary group as defined
58 in Section 59-7-101 is considered to be one taxpayer.

- 59 (3) Except as specifically provided for in this section:
- 60 (a) the tax credits authorized under Subsection (1) shall be calculated as provided in
- 61 Section 41, Internal Revenue Code; and
- 62 (b) the definitions provided in Section 41, Internal Revenue Code, apply in calculating
- 63 the tax credits authorized under Subsection (1).
- 64 (4) For purposes of this section:
- 65 (a) the base amount shall be calculated as provided in Sections 41(c) and 41(h),
- 66 Internal Revenue Code, except that:
- 67 (i) the base amount does not include the calculation of the alternative incremental
- 68 credit provided for in Section 41(c)(4), Internal Revenue Code;
- 69 (ii) a taxpayer's gross receipts include only those gross receipts attributable to sources
- 70 within this state as provided in Part 3, Allocation and Apportionment of Income - Utah
- 71 UDITPA Provisions; and
- 72 (iii) notwithstanding Section 41(c), Internal Revenue Code, for purposes of calculating
- 73 the base amount, a taxpayer:
- 74 (A) may elect to be treated as a start-up company as provided in Section 41(c)(3)(B)
- 75 regardless of whether the taxpayer meets the requirements of Section 41(c)(3)(B)(i)(I) or (II);
- 76 and
- 77 (B) may not revoke an election to be treated as a start-up company under Subsection
- 78 (4)(a)(iii)(A);
- 79 (b) "basic research" is as defined in Section 41(e)(7), Internal Revenue Code, except
- 80 that the term includes only basic research conducted in this state;
- 81 (c) "qualified research" is as defined in Section 41(d), Internal Revenue Code, except
- 82 that the term includes only qualified research conducted in this state;
- 83 (d) "qualified research expenses" is as defined and calculated in Section 41(b), Internal
- 84 Revenue Code, except that the term includes only:
- 85 (i) in-house research expenses incurred in this state; and
- 86 (ii) contract research expenses incurred in this state; and
- 87 (e) a tax credit provided for in this section is not terminated if a credit terminates under
- 88 Section 41, Internal Revenue Code.
- 89 (5) (a) If the amount of a tax credit claimed by a taxpayer under Subsection (1)(a)(i) or

90 (ii) exceeds the taxpayer's tax liability under this chapter for a taxable year, the amount of the
91 tax credit exceeding the tax liability:

92 (i) may be carried forward for a period that does not exceed the next 14 taxable years;
93 and

94 (ii) may not be carried back to a taxable year preceding the current taxable year.

95 (b) A taxpayer may not carry forward the tax credit allowed by Subsection (1)(a)(iii).

96 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
97 commission may make rules for purposes of this section prescribing a certification process for
98 qualified organizations to ensure that amounts paid to the qualified organizations are for basic
99 research conducted in this state.

100 (7) If a provision of Section 41, Internal Revenue Code, is modified or repealed, the
101 commission shall report the modification or repeal to the Revenue and Taxation Interim
102 Committee within 60 days after the day on which the modification or repeal becomes effective.

103 (8) (a) The Revenue and Taxation Interim Committee shall review the tax credits
104 provided for in this section on or before October 1 of the year after the year in which the
105 commission reports under Subsection (7) a modification or repeal of a provision of Section 41,
106 Internal Revenue Code.

107 (b) Notwithstanding Subsection (8)(a), the Revenue and Taxation Interim Committee is
108 not required to review the tax credits provided for in this section if the only modification to a
109 provision of Section 41, Internal Revenue Code, is the extension of the termination date
110 provided for in Section 41(h), Internal Revenue Code.

111 (c) The Revenue and Taxation Interim Committee shall address in a review under this
112 section:

113 (i) the cost of the tax credits provided for in this section;

114 (ii) the purpose and effectiveness of the tax credits provided for in this section;

115 (iii) whether the tax credits provided for in this section benefit the state; and

116 (iv) whether the tax credits provided for in this section should be:

117 (A) continued;

118 (B) modified; or

119 (C) repealed.

120 (d) If the Revenue and Taxation Interim Committee reviews the tax credits provided

121 for in this section, the committee shall report its findings to the Legislative Management
122 Committee on or before the November interim meeting of the year in which the Revenue and
123 Taxation Interim Committee reviews the tax credits.

124 Section 2. Section **59-10-1012** is amended to read:

125 **59-10-1012. Tax credits for research activities conducted in the state -- Carry**
126 **forward -- Commission to report modification or repeal of certain federal provisions --**
127 **Revenue and Taxation Interim Committee study.**

128 (1) (a) A claimant, estate, or trust meeting the requirements of this section may claim
129 the following nonrefundable tax credits:

130 (i) a research tax credit of 5% of the claimant's, estate's, or trust's qualified research
131 expenses for the current taxable year that exceed the base amount provided for under
132 Subsection (3);

133 (ii) a tax credit for a payment to a qualified organization for basic research as provided
134 in Section 41(e), Internal Revenue Code of 5% for the current taxable year that exceed the base
135 amount provided for under Subsection (3); and

136 (iii) a tax credit equal to[:~~(A) for the taxable year beginning on or after January 1,~~
137 ~~2008, but beginning on or before December 31, 2008, 5% of the claimant's, estate's, or trust's~~
138 ~~qualified research expenses for the current taxable year; (B) for the taxable year beginning on~~
139 ~~or after January 1, 2009, but beginning on or before December 31, 2009, 6.3% of the~~
140 ~~claimant's, estate's, or trust's qualified research expenses for the current taxable year; or (C) for~~
141 ~~taxable years beginning on or after January 1, 2010, 9.2%~~] 7.5% of the claimant's, estate's, or
142 trust's qualified research expenses for the current taxable year.

143 (b) Subject to Subsection (4), a claimant, estate, or trust may claim a tax credit under:

144 (i) Subsection (1)(a)(i) or (1)(a)(iii), for the taxable year for which the claimant, estate,
145 or trust incurs the qualified research expenses; or

146 (ii) Subsection (1)(a)(ii), for the taxable year for which the claimant, estate, or trust
147 makes the payment to the qualified organization.

148 (c) The tax credits provided for in this section do not include the alternative
149 incremental credit provided for in Section 41(c)(4), Internal Revenue Code.

150 (2) Except as specifically provided for in this section:

151 (a) the tax credits authorized under Subsection (1) shall be calculated as provided in

152 Section 41, Internal Revenue Code; and

153 (b) the definitions provided in Section 41, Internal Revenue Code, apply in calculating
154 the tax credits authorized under Subsection (1).

155 (3) For purposes of this section:

156 (a) the base amount shall be calculated as provided in Sections 41(c) and 41(h),
157 Internal Revenue Code, except that:

158 (i) the base amount does not include the calculation of the alternative incremental
159 credit provided for in Section 41(c)(4), Internal Revenue Code;

160 (ii) a claimant's, estate's, or trust's gross receipts include only those gross receipts
161 attributable to sources within this state as provided in Section 59-10-118; and

162 (iii) notwithstanding Section 41(c), Internal Revenue Code, for purposes of calculating
163 the base amount, a claimant, estate, or trust:

164 (A) may elect to be treated as a start-up company as provided in Section 41(c)(3)(B),
165 Internal Revenue Code, regardless of whether the claimant, estate, or trust meets the
166 requirements of Section 41(c)(3)(B)(i)(I) or (II), Internal Revenue Code; and

167 (B) may not revoke an election to be treated as a start-up company under Subsection
168 (3)(a)(iii)(A);

169 (b) "basic research" is as defined in Section 41(e)(7), Internal Revenue Code, except
170 that the term includes only basic research conducted in this state;

171 (c) "qualified research" is as defined in Section 41(d), Internal Revenue Code, except
172 that the term includes only qualified research conducted in this state;

173 (d) "qualified research expenses" is as defined and calculated in Section 41(b), Internal
174 Revenue Code, except that the term includes only:

175 (i) in-house research expenses incurred in this state; and

176 (ii) contract research expenses incurred in this state; and

177 (e) a tax credit provided for in this section is not terminated if a credit terminates under
178 Section 41, Internal Revenue Code.

179 (4) (a) If the amount of a tax credit claimed by a claimant, estate, or trust under
180 Subsection (1)(a)(i) or (ii) exceeds the claimant's, estate's, or trust's tax liability under this
181 chapter for a taxable year, the amount of the tax credit exceeding the tax liability:

182 (i) may be carried forward for a period that does not exceed the next 14 taxable years;

183 and

184 (ii) may not be carried back to a taxable year preceding the current taxable year.

185 (b) A claimant, estate, or trust may not carry forward the tax credit allowed by
186 Subsection (1)(a)(iii).

187 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
188 commission may make rules for purposes of this section prescribing a certification process for
189 qualified organizations to ensure that amounts paid to the qualified organizations are for basic
190 research conducted in this state.

191 (6) If a provision of Section 41, Internal Revenue Code, is modified or repealed, the
192 commission shall report the modification or repeal to the Revenue and Taxation Interim
193 Committee within 60 days after the day on which the modification or repeal becomes effective.

194 (7) (a) The Revenue and Taxation Interim Committee shall review the tax credits
195 provided for in this section on or before October 1 of the year after the year in which the
196 commission reports under Subsection (6) a modification or repeal of a provision of Section 41,
197 Internal Revenue Code.

198 (b) Notwithstanding Subsection (7)(a), the Revenue and Taxation Interim Committee is
199 not required to review the tax credits provided for in this section if the only modification to a
200 provision of Section 41, Internal Revenue Code, is the extension of the termination date
201 provided for in Section 41(h), Internal Revenue Code.

202 (c) The Revenue and Taxation Interim Committee shall address in a review under this
203 section:

204 (i) the cost of the tax credits provided for in this section;

205 (ii) the purpose and effectiveness of the tax credits provided for in this section;

206 (iii) whether the tax credits provided for in this section benefit the state; and

207 (iv) whether the tax credits provided for in this section should be:

208 (A) continued;

209 (B) modified; or

210 (C) repealed.

211 (d) If the Revenue and Taxation Interim Committee reviews the tax credits provided
212 for in this section, the committee shall report its findings to the Legislative Management
213 Committee on or before the November interim meeting of the year in which the Revenue and

214 Taxation Interim Committee reviews the tax credits.

215 Section 3. Section **59-12-102** is amended to read:

216 **59-12-102. Definitions.**

217 As used in this chapter:

218 (1) "800 service" means a telecommunications service that:

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

220 (b) is typically marketed:

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

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

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

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

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

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

227 Federal Communications Commission.

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

229 (i) a subscriber purchases;

230 (ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to
231 the subscriber's:

232 (A) prerecorded announcement; or

233 (B) live service; and

234 (iii) is typically marketed:

235 (A) under the name 900 service; or

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

237 Communications Commission.

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

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

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

242 (A) a product; or

243 (B) a service.

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

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

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

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

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

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

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

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

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

256 (c) Subsection 59-12-103(2)(c)(i);

257 (d) Subsection 59-12-103(2)(d)(i)(A)(I);

258 (e) Section 59-12-204;

259 (f) Section 59-12-401;

260 (g) Section 59-12-402;

261 (h) Section 59-12-703;

262 (i) Section 59-12-802;

263 (j) Section 59-12-804;

264 (k) Section 59-12-1102;

265 (l) Section 59-12-1302;

266 (m) Section 59-12-1402;

267 (n) Section 59-12-1802;

268 (o) Section 59-12-2003;

269 (p) Section 59-12-2103;

270 (q) Section 59-12-2213;

271 (r) Section 59-12-2214;

272 (s) Section 59-12-2215;

273 (t) Section 59-12-2216;

274 (u) Section 59-12-2217; or

275 (v) Section 59-12-2218.

- 276 (7) "Aircraft" is as defined in Section 72-10-102.
- 277 (8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:
- 278 (a) except for an airline as defined in Section 59-2-102 or an affiliated group as defined
- 279 in Subsection 59-12-107(1)(f) of an airline; and
- 280 (b) that has the workers, expertise, and facilities to perform the following, regardless of
- 281 whether the business entity performs the following in this state:
- 282 (i) check, diagnose, overhaul, and repair:
- 283 (A) an onboard system of a fixed wing turbine powered aircraft; and
- 284 (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;
- 285 (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft
- 286 engine;
- 287 (iii) perform at least the following maintenance on a fixed wing turbine powered
- 288 aircraft:
- 289 (A) an inspection;
- 290 (B) a repair, including a structural repair or modification;
- 291 (C) changing landing gear; and
- 292 (D) addressing issues related to an aging fixed wing turbine powered aircraft;
- 293 (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and
- 294 completely apply new paint to the fixed wing turbine powered aircraft; and
- 295 (v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that
- 296 results in a change in the fixed wing turbine powered aircraft's certification requirements by the
- 297 authority that certifies the fixed wing turbine powered aircraft.
- 298 (9) "Alcoholic beverage" means a beverage that:
- 299 (a) is suitable for human consumption; and
- 300 (b) contains .5% or more alcohol by volume.
- 301 (10) (a) "Ancillary service" means a service associated with, or incidental to, the
- 302 provision of telecommunications service.
- 303 (b) "Ancillary service" includes:
- 304 (i) a conference bridging service;
- 305 (ii) a detailed communications billing service;
- 306 (iii) directory assistance;

307 (iv) a vertical service; or

308 (v) a voice mail service.

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

310 (12) "Assisted amusement device" means an amusement device, skill device, or ride

311 device that is started and stopped by an individual:

312 (a) who is not the purchaser or renter of the right to use or operate the amusement

313 device, skill device, or ride device; and

314 (b) at the direction of the seller of the right to use the amusement device, skill device,

315 or ride device.

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

317 washing of tangible personal property if the cleaning or washing labor is primarily performed

318 by an individual:

319 (a) who is not the purchaser of the cleaning or washing of the tangible personal

320 property; and

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

322 property.

323 (14) "Authorized carrier" means:

324 (a) in the case of vehicles operated over public highways, the holder of credentials

325 indicating that the vehicle is or will be operated pursuant to both the International Registration

326 Plan and the International Fuel Tax Agreement;

327 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating

328 certificate or air carrier's operating certificate; or

329 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling

330 stock, the holder of a certificate issued by the United States Surface Transportation Board.

331 (15) (a) Except as provided in Subsection (15)(b), "biomass energy" means any of the

332 following that is used as the primary source of energy to produce fuel or electricity:

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

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

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

336 (B) animal waste;

337 (C) methane produced:

- 338 (I) at landfills; or
- 339 (II) as a byproduct of the treatment of wastewater residuals;
- 340 (D) aquatic plants; and
- 341 (E) agricultural products.
- 342 (b) "Biomass energy" does not include:
- 343 (i) black liquor;
- 344 (ii) treated woods; or
- 345 (iii) biomass from municipal solid waste other than methane produced:
- 346 (A) at landfills; or
- 347 (B) as a byproduct of the treatment of wastewater residuals.
- 348 (16) (a) "Bundled transaction" means the sale of two or more items of tangible personal
- 349 property, products, or services if the tangible personal property, products, or services are:
- 350 (i) distinct and identifiable; and
- 351 (ii) sold for one nonitemized price.
- 352 (b) "Bundled transaction" does not include:
- 353 (i) the sale of tangible personal property if the sales price varies, or is negotiable, on
- 354 the basis of the selection by the purchaser of the items of tangible personal property included in
- 355 the transaction;
- 356 (ii) the sale of real property;
- 357 (iii) the sale of services to real property;
- 358 (iv) the retail sale of tangible personal property and a service if:
- 359 (A) the tangible personal property:
- 360 (I) is essential to the use of the service; and
- 361 (II) is provided exclusively in connection with the service; and
- 362 (B) the service is the true object of the transaction;
- 363 (v) the retail sale of two services if:
- 364 (A) one service is provided that is essential to the use or receipt of a second service;
- 365 (B) the first service is provided exclusively in connection with the second service; and
- 366 (C) the second service is the true object of the transaction;
- 367 (vi) a transaction that includes tangible personal property or a product subject to
- 368 taxation under this chapter and tangible personal property or a product that is not subject to

369 taxation under this chapter if the:

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

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

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

376 (A) that retail sale includes:

377 (I) food and food ingredients;

378 (II) a drug;

379 (III) durable medical equipment;

380 (IV) mobility enhancing equipment;

381 (V) an over-the-counter drug;

382 (VI) a prosthetic device; or

383 (VII) a medical supply; and

384 (B) subject to Subsection (16)(f):

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

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

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

391 (A) packaging that:

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

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

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

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

399 (ii) For purposes of Subsection (16)(c)(i)(B), an item of tangible personal property, a

400 product, or a service is provided free of charge with the purchase of another item of tangible
401 personal property, a product, or a service if the sales price of the purchased item of tangible
402 personal property, product, or service does not vary depending on the inclusion of the tangible
403 personal property, product, or service provided free of charge.

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

408 (A) a binding sales document; or

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

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

412 (A) a bill of sale;

413 (B) a contract;

414 (C) an invoice;

415 (D) a lease agreement;

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

417 (F) a price list;

418 (G) a rate card;

419 (H) a receipt; or

420 (I) a service agreement.

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

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

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

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

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

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

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

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

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

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

444 (i) on a transaction; and

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

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

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

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

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

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

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

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

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

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

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

462 (21) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
463 fuels that does not constitute industrial use under Subsection (48) or residential use under
464 Subsection [~~96~~] (98).

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

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

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

473 (23) "Component part" includes:

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

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

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

479 (d) feed, seeds, and seedlings.

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

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

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

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

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

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

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

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

489 (b) "Conference bridging service" may include providing a telephone number as part of
490 the ancillary service described in Subsection (26)(a).

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

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

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

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

498 (i) by a seller of:

499 (A) tangible personal property;

500 (B) a product transferred electronically; or

501 (C) services; and

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

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

506 (i) transportation;

507 (ii) shipping;

508 (iii) postage;

509 (iv) handling;

510 (v) crating; or

511 (vi) packing.

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

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

515 (a) is intended to supplement the diet;

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

517 (i) a vitamin;

518 (ii) a mineral;

519 (iii) an herb or other botanical;

520 (iv) an amino acid;

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

523 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient

524 described in Subsections (31)(b)(i) through (v);
525 (c) (i) except as provided in Subsection (31)(c)(ii), is intended for ingestion in:
526 (A) tablet form;
527 (B) capsule form;
528 (C) powder form;
529 (D) softgel form;
530 (E) gelcap form; or
531 (F) liquid form; or
532 (ii) notwithstanding Subsection (31)(c)(i), if the product is not intended for ingestion in
533 a form described in Subsections (31)(c)(i)(A) through (F), is not represented:
534 (A) as conventional food; and
535 (B) for use as a sole item of:
536 (I) a meal; or
537 (II) the diet; and
538 (d) is required to be labeled as a dietary supplement:
539 (i) identifiable by the "Supplemental Facts" box found on the label; and
540 (ii) as required by 21 C.F.R. Sec. 101.36.
541 (32) (a) "Direct mail" means printed material delivered or distributed by United States
542 mail or other delivery service:
543 (i) to:
544 (A) a mass audience; or
545 (B) addressees on a mailing list provided:
546 (I) by a purchaser of the mailing list; or
547 (II) at the discretion of the purchaser of the mailing list; and
548 (ii) if the cost of the printed material is not billed directly to the recipients.
549 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
550 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
551 (c) "Direct mail" does not include multiple items of printed material delivered to a
552 single address.
553 (33) "Directory assistance" means an ancillary service of providing:
554 (a) address information; or

555 (b) telephone number information.

556 (34) (a) "Disposable home medical equipment or supplies" means medical equipment
557 or supplies that:

558 (i) cannot withstand repeated use; and

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

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

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

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

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

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

565 (i) a drug;

566 (ii) durable medical equipment;

567 (iii) a hearing aid;

568 (iv) a hearing aid accessory;

569 (v) mobility enhancing equipment; or

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

571 (A) eyeglasses; or

572 (B) contact lenses.

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

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

577 (i) recognized in:

578 (A) the official United States Pharmacopoeia;

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

580 (C) the official National Formulary; or

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

582 (ii) intended for use in the:

583 (A) diagnosis of disease;

584 (B) cure of disease;

585 (C) mitigation of disease;

- 586 (D) treatment of disease; or
- 587 (E) prevention of disease; or
- 588 (iii) intended to affect:
- 589 (A) the structure of the body; or
- 590 (B) any function of the body.
- 591 (b) "Drug" does not include:
- 592 (i) food and food ingredients;
- 593 (ii) a dietary supplement;
- 594 (iii) an alcoholic beverage; or
- 595 (iv) a prosthetic device.
- 596 (36) (a) Except as provided in Subsection (36)(c), "durable medical equipment" means
- 597 equipment that:
- 598 (i) can withstand repeated use;
- 599 (ii) is primarily and customarily used to serve a medical purpose;
- 600 (iii) generally is not useful to a person in the absence of illness or injury; and
- 601 (iv) is not worn in or on the body.
- 602 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 603 equipment described in Subsection (36)(a).
- 604 (c) Notwithstanding Subsection (36)(a), "durable medical equipment" does not include
- 605 mobility enhancing equipment.
- 606 (37) "Electronic" means:
- 607 (a) relating to technology; and
- 608 (b) having:
- 609 (i) electrical capabilities;
- 610 (ii) digital capabilities;
- 611 (iii) magnetic capabilities;
- 612 (iv) wireless capabilities;
- 613 (v) optical capabilities;
- 614 (vi) electromagnetic capabilities; or
- 615 (vii) capabilities similar to Subsections (37)(b)(i) through (vi).
- 616 (38) "Employee" is as defined in Section 59-10-401.

- 617 (39) "Fixed guideway" means a public transit facility that uses and occupies:
- 618 (a) rail for the use of public transit; or
- 619 (b) a separate right-of-way for the use of public transit.
- 620 (40) "Fixed wing turbine powered aircraft" means an aircraft that:
- 621 (a) is powered by turbine engines;
- 622 (b) operates on jet fuel; and
- 623 (c) has wings that are permanently attached to the fuselage of the aircraft.
- 624 (41) "Fixed wireless service" means a telecommunications service that provides radio
- 625 communication between fixed points.
- 626 (42) (a) "Food and food ingredients" means substances:
- 627 (i) regardless of whether the substances are in:
- 628 (A) liquid form;
- 629 (B) concentrated form;
- 630 (C) solid form;
- 631 (D) frozen form;
- 632 (E) dried form; or
- 633 (F) dehydrated form; and
- 634 (ii) that are:
- 635 (A) sold for:
- 636 (I) ingestion by humans; or
- 637 (II) chewing by humans; and
- 638 (B) consumed for the substance's:
- 639 (I) taste; or
- 640 (II) nutritional value.
- 641 (b) "Food and food ingredients" includes an item described in Subsection [~~(79)~~]
- 642 (81)(b)(iii).
- 643 (c) "Food and food ingredients" does not include:
- 644 (i) an alcoholic beverage;
- 645 (ii) tobacco; or
- 646 (iii) prepared food.
- 647 (43) (a) "Fundraising sales" means sales:

648 (i) (A) made by a school; or
649 (B) made by a school student;
650 (ii) that are for the purpose of raising funds for the school to purchase equipment,
651 materials, or provide transportation; and
652 (iii) that are part of an officially sanctioned school activity.
653 (b) For purposes of Subsection (43)(a)(iii), "officially sanctioned school activity"
654 means a school activity:
655 (i) that is conducted in accordance with a formal policy adopted by the school or school
656 district governing the authorization and supervision of fundraising activities;
657 (ii) that does not directly or indirectly compensate an individual teacher or other
658 educational personnel by direct payment, commissions, or payment in kind; and
659 (iii) the net or gross revenues from which are deposited in a dedicated account
660 controlled by the school or school district.
661 (44) "Geothermal energy" means energy contained in heat that continuously flows
662 outward from the earth that is used as the sole source of energy to produce electricity.
663 (45) "Governing board of the agreement" means the governing board of the agreement
664 that is:
665 (a) authorized to administer the agreement; and
666 (b) established in accordance with the agreement.
667 (46) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:
668 (i) the executive branch of the state, including all departments, institutions, boards,
669 divisions, bureaus, offices, commissions, and committees;
670 (ii) the judicial branch of the state, including the courts, the Judicial Council, the
671 Office of the Court Administrator, and similar administrative units in the judicial branch;
672 (iii) the legislative branch of the state, including the House of Representatives, the
673 Senate, the Legislative Printing Office, the Office of Legislative Research and General
674 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal
675 Analyst;
676 (iv) the National Guard;
677 (v) an independent entity as defined in Section 63E-1-102; or
678 (vi) a political subdivision as defined in Section 17B-1-102.

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

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

682 (ii) a school;

683 (iii) the State Board of Education;

684 (iv) the State Board of Regents; or

685 (v) an institution of higher education.

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

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

690 (a) in mining or extraction of minerals;

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

693 (i) commercial greenhouses;

694 (ii) irrigation pumps;

695 (iii) farm machinery;

696 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
697 registered under Title 41, Chapter 1a, Part 2, Registration; and

698 (v) other farming activities;

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

702 (d) by a scrap recycler if:

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

706 (A) iron;

707 (B) steel;

708 (C) nonferrous metal;

709 (D) paper;

710 (E) glass;

711 (F) plastic;

712 (G) textile; or

713 (H) rubber; and

714 (ii) the new products under Subsection (48)(d)(i) would otherwise be made with

715 nonrecycled materials; or

716 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a

717 cogeneration facility as defined in Section 54-2-1.

718 (49) (a) Except as provided in Subsection (49)(b), "installation charge" means a charge

719 for installing:

720 (i) tangible personal property; or

721 (ii) a product transferred electronically.

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

723 (i) repairs or renovations of:

724 (A) tangible personal property; or

725 (B) a product transferred electronically; or

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

727 (A) to other tangible personal property; and

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

729 (50) "Institution of higher education" means an institution of higher education listed in

730 Section 53B-2-101.

731 (51) (a) "Lease" or "rental" means a transfer of possession or control of tangible

732 personal property or a product transferred electronically for:

733 (i) (A) a fixed term; or

734 (B) an indeterminate term; and

735 (ii) consideration.

736 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the

737 amount of consideration may be increased or decreased by reference to the amount realized

738 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue

739 Code.

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

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

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

746 (A) upon completion of required payments; and

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

748 (I) \$100; or

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

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

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

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

756 (ii) maintenance of tangible personal property; or

757 (iii) inspection of tangible personal property.

758 (52) "Life science establishment" means an establishment in this state that is classified
759 under the following NAICS codes of the 2007 North American Industry Classification System
760 of the federal Executive Office of the President, Office of Management and Budget:

761 (a) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;

762 (b) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus
763 Manufacturing; or

764 (c) NAICS Code 334517, Irradiation Apparatus Manufacturing.

765 (53) "Life science research and development facility" means a facility owned, leased,
766 or rented by a life science establishment if research and development is performed in 51% or
767 more of the total area of the facility.

768 [~~52~~] (54) "Load and leave" means delivery to a purchaser by use of a tangible storage
769 media if the tangible storage media is not physically transferred to the purchaser.

770 [~~53~~] (55) "Local taxing jurisdiction" means a:

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

- 772 (b) city that is authorized to impose an agreement sales and use tax; or
- 773 (c) town that is authorized to impose an agreement sales and use tax.
- 774 [~~54~~] (56) "Manufactured home" is as defined in Section 15A-1-302.
- 775 [~~55~~] (57) For purposes of Section 59-12-104, "manufacturing facility" means:
- 776 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
- 777 Industrial Classification Manual of the federal Executive Office of the President, Office of
- 778 Management and Budget;
- 779 (b) a scrap recycler if:
- 780 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 781 one or more of the following items into prepared grades of processed materials for use in new
- 782 products:
- 783 (A) iron;
- 784 (B) steel;
- 785 (C) nonferrous metal;
- 786 (D) paper;
- 787 (E) glass;
- 788 (F) plastic;
- 789 (G) textile; or
- 790 (H) rubber; and
- 791 (ii) the new products under Subsection [~~55~~] (57)(b)(i) would otherwise be made with
- 792 nonrecycled materials; or
- 793 (c) a cogeneration facility as defined in Section 54-2-1.
- 794 [~~56~~] (58) "Member of the immediate family of the producer" means a person who is
- 795 related to a producer described in Subsection 59-12-104(20)(a) as a:
- 796 (a) child or stepchild, regardless of whether the child or stepchild is:
- 797 (i) an adopted child or adopted stepchild; or
- 798 (ii) a foster child or foster stepchild;
- 799 (b) grandchild or stepgrandchild;
- 800 (c) grandparent or stepgrandparent;
- 801 (d) nephew or stepnephew;
- 802 (e) niece or stepniece;

803 (f) parent or stepparent;
804 (g) sibling or stepsibling;
805 (h) spouse;
806 (i) person who is the spouse of a person described in Subsections [~~(56)~~] (58)(a) through
807 (g); or
808 (j) person similar to a person described in Subsections [~~(56)~~] (58)(a) through (i) as
809 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
810 Administrative Rulemaking Act.
811 [~~(57)~~] (59) "Mobile home" is as defined in Section 15A-1-302.
812 [~~(58)~~] (60) "Mobile telecommunications service" is as defined in the Mobile
813 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
814 [~~(59)~~] (61) (a) "Mobile wireless service" means a telecommunications service,
815 regardless of the technology used, if:
816 (i) the origination point of the conveyance, routing, or transmission is not fixed;
817 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or
818 (iii) the origination point described in Subsection [~~(59)~~] (61)(a)(i) and the termination
819 point described in Subsection [~~(59)~~] (61)(a)(ii) are not fixed.
820 (b) "Mobile wireless service" includes a telecommunications service that is provided
821 by a commercial mobile radio service provider.
822 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
823 commission may by rule define "commercial mobile radio service provider."
824 [~~(60)~~] (62) (a) Except as provided in Subsection [~~(60)~~] (62)(c), "mobility enhancing
825 equipment" means equipment that is:
826 (i) primarily and customarily used to provide or increase the ability to move from one
827 place to another;
828 (ii) appropriate for use in a:
829 (A) home; or
830 (B) motor vehicle; and
831 (iii) not generally used by persons with normal mobility.
832 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
833 the equipment described in Subsection [~~(60)~~] (62)(a).

834 (c) Notwithstanding Subsection [~~(60)~~] (62)(a), "mobility enhancing equipment" does
835 not include:

- 836 (i) a motor vehicle;
- 837 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
838 vehicle manufacturer;
- 839 (iii) durable medical equipment; or
- 840 (iv) a prosthetic device.

841 [~~(61)~~] (63) "Model 1 seller" means a seller registered under the agreement that has
842 selected a certified service provider as the seller's agent to perform all of the seller's sales and
843 use tax functions for agreement sales and use taxes other than the seller's obligation under
844 Section 59-12-124 to remit a tax on the seller's own purchases.

845 [~~(62)~~] (64) "Model 2 seller" means a seller registered under the agreement that:

- 846 (a) except as provided in Subsection [~~(62)~~] (64)(b), has selected a certified automated
847 system to perform the seller's sales tax functions for agreement sales and use taxes; and
- 848 (b) notwithstanding Subsection [~~(62)~~] (64)(a), retains responsibility for remitting all of
849 the sales tax:

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

852 [~~(63)~~] (65) (a) Subject to Subsection [~~(63)~~] (65)(b), "model 3 seller" means a seller
853 registered under the agreement that has:

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

860 (b) For purposes of Subsection [~~(63)~~] (65)(a), "model 3 seller" includes an affiliated
861 group of sellers using the same proprietary system.

862 [~~(64)~~] (66) "Model 4 seller" means a seller that is registered under the agreement and is
863 not a model 1 seller, model 2 seller, or model 3 seller.

864 [~~(65)~~] (67) "Modular home" means a modular unit as defined in Section 15A-1-302.

865 ~~[(66)]~~ (68) "Motor vehicle" is as defined in Section 41-1a-102.

866 ~~[(67)]~~ (69) "Oil shale" means a group of fine black to dark brown shales containing
867 bituminous material that yields petroleum upon distillation.

868 ~~[(68)]~~ (70) (a) "Other fuels" means products that burn independently to produce heat or
869 energy.

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

872 ~~[(69)]~~ (71) (a) "Paging service" means a telecommunications service that provides
873 transmission of a coded radio signal for the purpose of activating a specific pager.

874 (b) For purposes of Subsection ~~[(69)]~~ (71)(a), the transmission of a coded radio signal
875 includes a transmission by message or sound.

876 ~~[(70)]~~ (72) "Pawnbroker" is as defined in Section 13-32a-102.

877 ~~[(71)]~~ (73) "Pawn transaction" is as defined in Section 13-32a-102.

878 ~~[(72)]~~ (74) (a) "Permanently attached to real property" means that for tangible personal
879 property attached to real property:

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

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

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

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

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

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

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

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

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

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

893 (ii) a temporary detachment of tangible personal property from real property for a
894 repair or renovation if the repair or renovation is performed where the tangible personal

895 property and real property are located; or

896 (iii) property attached to oil, gas, or water pipelines, except for the property listed in
897 Subsection [~~72~~] (74)(c)(iii) or (iv).

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

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

901 (A) convenience;

902 (B) stability; or

903 (C) for an obvious temporary purpose;

904 (ii) the detachment of tangible personal property from real property except for the
905 detachment described in Subsection [~~72~~] (74)(b)(ii);

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

910 (A) a computer;

911 (B) a telephone;

912 (C) a television; or

913 (D) tangible personal property similar to Subsections [~~72~~] (74)(c)(iii)(A) through (C)
914 as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
915 Administrative Rulemaking Act; or

916 (iv) an item listed in Subsection [~~113~~] (115)(c).

917 [~~73~~] (75) "Person" includes any individual, firm, partnership, joint venture,
918 association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county,
919 city, municipality, district, or other local governmental entity of the state, or any group or
920 combination acting as a unit.

921 [~~74~~] (76) "Place of primary use":

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

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

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

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

929 ~~[(75)]~~ (77) (a) "Postpaid calling service" means a telecommunications service a person
930 obtains by making a payment on a call-by-call basis:

931 (i) through the use of a:

932 (A) bank card;

933 (B) credit card;

934 (C) debit card; or

935 (D) travel card; or

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

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

941 ~~[(76)]~~ (78) "Postproduction" means an activity related to the finishing or duplication of
942 a medium described in Subsection 59-12-104(54)(a).

943 ~~[(77)]~~ (79) "Prepaid calling service" means a telecommunications service:

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

946 (b) that:

947 (i) is paid for in advance; and

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

949 (A) access number; or

950 (B) authorization code;

951 (c) that is dialed:

952 (i) manually; or

953 (ii) electronically; and

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

955 (i) by a known amount; and

956 (ii) with use.

957 ~~[(78)]~~ (80) "Prepaid wireless calling service" means a telecommunications service:

- 958 (a) that provides the right to utilize:
- 959 (i) mobile wireless service; and
- 960 (ii) other service that is not a telecommunications service, including:
- 961 (A) the download of a product transferred electronically;
- 962 (B) a content service; or
- 963 (C) an ancillary service;
- 964 (b) that:
- 965 (i) is paid for in advance; and
- 966 (ii) enables the origination of a call using an:
- 967 (A) access number; or
- 968 (B) authorization code;
- 969 (c) that is dialed:
- 970 (i) manually; or
- 971 (ii) electronically; and
- 972 (d) sold in predetermined units or dollars that decline:
- 973 (i) by a known amount; and
- 974 (ii) with use.
- 975 [~~(79)~~] (81) (a) "Prepared food" means:
- 976 (i) food:
- 977 (A) sold in a heated state; or
- 978 (B) heated by a seller;
- 979 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 980 item; or
- 981 (iii) except as provided in Subsection [~~(79)~~] (81)(c), food sold with an eating utensil
- 982 provided by the seller, including a:
- 983 (A) plate;
- 984 (B) knife;
- 985 (C) fork;
- 986 (D) spoon;
- 987 (E) glass;
- 988 (F) cup;

- 989 (G) napkin; or
- 990 (H) straw.
- 991 (b) "Prepared food" does not include:
- 992 (i) food that a seller only:
- 993 (A) cuts;
- 994 (B) repackages; or
- 995 (C) pasteurizes; or
- 996 (ii) (A) the following:
- 997 (I) raw egg;
- 998 (II) raw fish;
- 999 (III) raw meat;
- 1000 (IV) raw poultry; or
- 1001 (V) a food containing an item described in Subsections [~~(79)~~] (81)(b)(ii)(A)(I) through
- 1002 (IV); and
- 1003 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 1004 Food and Drug Administration's Food Code that a consumer cook the items described in
- 1005 Subsection [~~(79)~~] (81)(b)(ii)(A) to prevent food borne illness; or
- 1006 (iii) the following if sold without eating utensils provided by the seller:
- 1007 (A) food and food ingredients sold by a seller if the seller's proper primary
- 1008 classification under the 2002 North American Industry Classification System of the federal
- 1009 Executive Office of the President, Office of Management and Budget, is manufacturing in
- 1010 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
- 1011 Manufacturing;
- 1012 (B) food and food ingredients sold in an unheated state:
- 1013 (I) by weight or volume; and
- 1014 (II) as a single item; or
- 1015 (C) a bakery item, including:
- 1016 (I) a bagel;
- 1017 (II) a bar;
- 1018 (III) a biscuit;
- 1019 (IV) bread;

- 1020 (V) a bun;
- 1021 (VI) a cake;
- 1022 (VII) a cookie;
- 1023 (VIII) a croissant;
- 1024 (IX) a danish;
- 1025 (X) a donut;
- 1026 (XI) a muffin;
- 1027 (XII) a pastry;
- 1028 (XIII) a pie;
- 1029 (XIV) a roll;
- 1030 (XV) a tart;
- 1031 (XVI) a torte; or
- 1032 (XVII) a tortilla.
- 1033 (c) Notwithstanding Subsection [~~(79)~~] (81)(a)(iii), an eating utensil provided by the
- 1034 seller does not include the following used to transport the food:
 - 1035 (i) a container; or
 - 1036 (ii) packaging.
- 1037 [~~(80)~~] (82) "Prescription" means an order, formula, or recipe that is issued:
 - 1038 (a) (i) orally;
 - 1039 (ii) in writing;
 - 1040 (iii) electronically; or
 - 1041 (iv) by any other manner of transmission; and
 - 1042 (b) by a licensed practitioner authorized by the laws of a state.
- 1043 [~~(81)~~] (83) (a) Except as provided in Subsection [~~(81)~~] (83)(b)(ii) or (iii), "prewritten
- 1044 computer software" means computer software that is not designed and developed:
 - 1045 (i) by the author or other creator of the computer software; and
 - 1046 (ii) to the specifications of a specific purchaser.
- 1047 (b) "Prewritten computer software" includes:
 - 1048 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
 - 1049 software is not designed and developed:
 - 1050 (A) by the author or other creator of the computer software; and

1051 (B) to the specifications of a specific purchaser;

1052 (ii) notwithstanding Subsection ~~[(81)]~~ (83)(a), computer software designed and

1053 developed by the author or other creator of the computer software to the specifications of a

1054 specific purchaser if the computer software is sold to a person other than the purchaser; or

1055 (iii) notwithstanding Subsection ~~[(81)]~~ (83)(a) and except as provided in Subsection

1056 ~~[(81)]~~ (83)(c), prewritten computer software or a prewritten portion of prewritten computer

1057 software:

1058 (A) that is modified or enhanced to any degree; and

1059 (B) if the modification or enhancement described in Subsection ~~[(81)]~~ (83)(b)(iii)(A) is

1060 designed and developed to the specifications of a specific purchaser.

1061 (c) Notwithstanding Subsection ~~[(81)]~~ (83)(b)(iii), "prewritten computer software"

1062 does not include a modification or enhancement described in Subsection ~~[(81)]~~ (83)(b)(iii) if

1063 the charges for the modification or enhancement are:

1064 (i) reasonable; and

1065 (ii) separately stated on the invoice or other statement of price provided to the

1066 purchaser.

1067 ~~[(82)]~~ (84) (a) "Private communication service" means a telecommunications service:

1068 (i) that entitles a customer to exclusive or priority use of one or more communications

1069 channels between or among termination points; and

1070 (ii) regardless of the manner in which the one or more communications channels are

1071 connected.

1072 (b) "Private communications service" includes the following provided in connection

1073 with the use of one or more communications channels:

1074 (i) an extension line;

1075 (ii) a station;

1076 (iii) switching capacity; or

1077 (iv) another associated service that is provided in connection with the use of one or

1078 more communications channels as defined in Section 59-12-215.

1079 ~~[(83)]~~ (85) (a) Except as provided in Subsection ~~[(83)]~~ (85)(b), "product transferred

1080 electronically" means a product transferred electronically that would be subject to a tax under

1081 this chapter if that product was transferred in a manner other than electronically.

- 1082 (b) "Product transferred electronically" does not include:
- 1083 (i) an ancillary service;
- 1084 (ii) computer software; or
- 1085 (iii) a telecommunications service.
- 1086 [~~84~~] (86) (a) "Prosthetic device" means a device that is worn on or in the body to:
- 1087 (i) artificially replace a missing portion of the body;
- 1088 (ii) prevent or correct a physical deformity or physical malfunction; or
- 1089 (iii) support a weak or deformed portion of the body.
- 1090 (b) "Prosthetic device" includes:
- 1091 (i) parts used in the repairs or renovation of a prosthetic device;
- 1092 (ii) replacement parts for a prosthetic device;
- 1093 (iii) a dental prosthesis; or
- 1094 (iv) a hearing aid.
- 1095 (c) "Prosthetic device" does not include:
- 1096 (i) corrective eyeglasses; or
- 1097 (ii) contact lenses.
- 1098 [~~85~~] (87) (a) "Protective equipment" means an item:
- 1099 (i) for human wear; and
- 1100 (ii) that is:
- 1101 (A) designed as protection:
- 1102 (I) to the wearer against injury or disease; or
- 1103 (II) against damage or injury of other persons or property; and
- 1104 (B) not suitable for general use.
- 1105 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1106 commission shall make rules:
- 1107 (i) listing the items that constitute "protective equipment"; and
- 1108 (ii) that are consistent with the list of items that constitute "protective equipment"
- 1109 under the agreement.
- 1110 [~~86~~] (88) (a) For purposes of Subsection 59-12-104(41), "publication" means any
- 1111 written or printed matter, other than a photocopy:
- 1112 (i) regardless of:

- 1113 (A) characteristics;
- 1114 (B) copyright;
- 1115 (C) form;
- 1116 (D) format;
- 1117 (E) method of reproduction; or
- 1118 (F) source; and
- 1119 (ii) made available in printed or electronic format.
- 1120 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1121 commission may by rule define the term "photocopy."
- 1122 ~~[(87)]~~ (89) (a) "Purchase price" and "sales price" mean the total amount of
- 1123 consideration:
- 1124 (i) valued in money; and
- 1125 (ii) for which tangible personal property, a product transferred electronically, or
- 1126 services are:
- 1127 (A) sold;
- 1128 (B) leased; or
- 1129 (C) rented.
- 1130 (b) "Purchase price" and "sales price" include:
- 1131 (i) the seller's cost of the tangible personal property, a product transferred
- 1132 electronically, or services sold;
- 1133 (ii) expenses of the seller, including:
- 1134 (A) the cost of materials used;
- 1135 (B) a labor cost;
- 1136 (C) a service cost;
- 1137 (D) interest;
- 1138 (E) a loss;
- 1139 (F) the cost of transportation to the seller; or
- 1140 (G) a tax imposed on the seller;
- 1141 (iii) a charge by the seller for any service necessary to complete the sale; or
- 1142 (iv) consideration a seller receives from a person other than the purchaser if:
- 1143 (A) (I) the seller actually receives consideration from a person other than the purchaser;

1144 and

1145 (II) the consideration described in Subsection [~~(87)~~] (89)(b)(iv)(A)(I) is directly related
1146 to a price reduction or discount on the sale;

1147 (B) the seller has an obligation to pass the price reduction or discount through to the
1148 purchaser;

1149 (C) the amount of the consideration attributable to the sale is fixed and determinable by
1150 the seller at the time of the sale to the purchaser; and

1151 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the
1152 seller to claim a price reduction or discount; and

1153 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,
1154 coupon, or other documentation with the understanding that the person other than the seller
1155 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;

1156 (II) the purchaser identifies that purchaser to the seller as a member of a group or
1157 organization allowed a price reduction or discount, except that a preferred customer card that is
1158 available to any patron of a seller does not constitute membership in a group or organization
1159 allowed a price reduction or discount; or

1160 (III) the price reduction or discount is identified as a third party price reduction or
1161 discount on the:

1162 (Aa) invoice the purchaser receives; or

1163 (Bb) certificate, coupon, or other documentation the purchaser presents.

1164 (c) "Purchase price" and "sales price" do not include:

1165 (i) a discount:

1166 (A) in a form including:

1167 (I) cash;

1168 (II) term; or

1169 (III) coupon;

1170 (B) that is allowed by a seller;

1171 (C) taken by a purchaser on a sale; and

1172 (D) that is not reimbursed by a third party; or

1173 (ii) the following if separately stated on an invoice, bill of sale, or similar document
1174 provided to the purchaser:

1175 (A) the following from credit extended on the sale of tangible personal property or
1176 services:

- 1177 (I) a carrying charge;
- 1178 (II) a financing charge; or
- 1179 (III) an interest charge;
- 1180 (B) a delivery charge;
- 1181 (C) an installation charge;
- 1182 (D) a manufacturer rebate on a motor vehicle; or
- 1183 (E) a tax or fee legally imposed directly on the consumer.

1184 [~~88~~] (90) "Purchaser" means a person to whom:

- 1185 (a) a sale of tangible personal property is made;
- 1186 (b) a product is transferred electronically; or
- 1187 (c) a service is furnished.

1188 [~~89~~] (91) "Regularly rented" means:

- 1189 (a) rented to a guest for value three or more times during a calendar year; or
- 1190 (b) advertised or held out to the public as a place that is regularly rented to guests for
1191 value.

1192 [~~90~~] (92) "Renewable energy" means:

- 1193 (a) biomass energy;
- 1194 (b) hydroelectric energy;
- 1195 (c) geothermal energy;
- 1196 (d) solar energy; or
- 1197 (e) wind energy.

1198 [~~91~~] (93) (a) "Renewable energy production facility" means a facility that:

- 1199 (i) uses renewable energy to produce electricity; and
- 1200 (ii) has a production capacity of 20 kilowatts or greater.

1201 (b) A facility is a renewable energy production facility regardless of whether the
1202 facility is:

- 1203 (i) connected to an electric grid; or
- 1204 (ii) located on the premises of an electricity consumer.

1205 [~~92~~] (94) "Rental" is as defined in Subsection (51).

1206 [~~(93)~~] (95) (a) Except as provided in Subsection [~~(93)~~] (95)(b), "repairs or renovations
1207 of tangible personal property" means:

1208 (i) a repair or renovation of tangible personal property that is not permanently attached
1209 to real property; or

1210 (ii) attaching tangible personal property or a product transferred electronically to other
1211 tangible personal property if:

1212 (A) the other tangible personal property to which the tangible personal property or
1213 product transferred electronically is attached is not permanently attached to real property; and

1214 (B) the attachment of tangible personal property or a product transferred electronically
1215 to other tangible personal property is made in conjunction with a repair or replacement of
1216 tangible personal property or a product transferred electronically.

1217 (b) "Repairs or renovations of tangible personal property" does not include attaching
1218 prewritten computer software to other tangible personal property if the other tangible personal
1219 property to which the prewritten computer software is attached is not permanently attached to
1220 real property.

1221 [~~(94)~~] (96) "Research and development" means the process of inquiry or
1222 experimentation aimed at the discovery of facts, devices, technologies, or applications and the
1223 process of preparing those devices, technologies, or applications for marketing.

1224 [~~(95)~~] (97) (a) "Residential telecommunications services" means a telecommunications
1225 service or an ancillary service that is provided to an individual for personal use:

1226 (i) at a residential address; or

1227 (ii) at an institution, including a nursing home or a school, if the telecommunications
1228 service or ancillary service is provided to and paid for by the individual residing at the
1229 institution rather than the institution.

1230 (b) For purposes of Subsection [~~(95)~~] (97)(a)(i), a residential address includes an:

1231 (i) apartment; or

1232 (ii) other individual dwelling unit.

1233 [~~(96)~~] (98) "Residential use" means the use in or around a home, apartment building,
1234 sleeping quarters, and similar facilities or accommodations.

1235 [~~(97)~~] (99) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose
1236 other than:

- 1237 (a) resale;
- 1238 (b) sublease; or
- 1239 (c) subrent.
- 1240 ~~[(98)]~~ (100) (a) "Retailer" means any person engaged in a regularly organized business
- 1241 in tangible personal property or any other taxable transaction under Subsection 59-12-103(1),
- 1242 and who is selling to the user or consumer and not for resale.
- 1243 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
- 1244 engaged in the business of selling to users or consumers within the state.
- 1245 ~~[(99)]~~ (101) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
- 1246 otherwise, in any manner, of tangible personal property or any other taxable transaction under
- 1247 Subsection 59-12-103(1), for consideration.
- 1248 (b) "Sale" includes:
- 1249 (i) installment and credit sales;
- 1250 (ii) any closed transaction constituting a sale;
- 1251 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
- 1252 chapter;
- 1253 (iv) any transaction if the possession of property is transferred but the seller retains the
- 1254 title as security for the payment of the price; and
- 1255 (v) any transaction under which right to possession, operation, or use of any article of
- 1256 tangible personal property is granted under a lease or contract and the transfer of possession
- 1257 would be taxable if an outright sale were made.
- 1258 ~~[(100)]~~ (102) "Sale at retail" is as defined in Subsection ~~[(97)]~~ (99).
- 1259 ~~[(101)]~~ (103) "Sale-leaseback transaction" means a transaction by which title to
- 1260 tangible personal property or a product transferred electronically that is subject to a tax under
- 1261 this chapter is transferred:
- 1262 (a) by a purchaser-lessee;
- 1263 (b) to a lessor;
- 1264 (c) for consideration; and
- 1265 (d) if:
- 1266 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
- 1267 of the tangible personal property or product transferred electronically;

1268 (ii) the sale of the tangible personal property or product transferred electronically to the
1269 lessor is intended as a form of financing:

1270 (A) for the tangible personal property or product transferred electronically; and

1271 (B) to the purchaser-lessee; and

1272 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
1273 is required to:

1274 (A) capitalize the tangible personal property or product transferred electronically for
1275 financial reporting purposes; and

1276 (B) account for the lease payments as payments made under a financing arrangement.

1277 [~~(102)~~] (104) "Sales price" is as defined in Subsection [~~(87)~~] (89).

1278 [~~(103)~~] (105) (a) "Sales relating to schools" means the following sales by, amounts
1279 paid to, or amounts charged by a school:

1280 (i) sales that are directly related to the school's educational functions or activities
1281 including:

1282 (A) the sale of:

1283 (I) textbooks;

1284 (II) textbook fees;

1285 (III) laboratory fees;

1286 (IV) laboratory supplies; or

1287 (V) safety equipment;

1288 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
1289 that:

1290 (I) a student is specifically required to wear as a condition of participation in a
1291 school-related event or school-related activity; and

1292 (II) is not readily adaptable to general or continued usage to the extent that it takes the
1293 place of ordinary clothing;

1294 (C) sales of the following if the net or gross revenues generated by the sales are
1295 deposited into a school district fund or school fund dedicated to school meals:

1296 (I) food and food ingredients; or

1297 (II) prepared food; or

1298 (D) transportation charges for official school activities; or

- 1299 (ii) amounts paid to or amounts charged by a school for admission to a school-related
1300 event or school-related activity.
- 1301 (b) "Sales relating to schools" does not include:
- 1302 (i) bookstore sales of items that are not educational materials or supplies;
- 1303 (ii) except as provided in Subsection [~~(103)~~] (105)(a)(i)(B):
- 1304 (A) clothing;
- 1305 (B) clothing accessories or equipment;
- 1306 (C) protective equipment; or
- 1307 (D) sports or recreational equipment; or
- 1308 (iii) amounts paid to or amounts charged by a school for admission to a school-related
1309 event or school-related activity if the amounts paid or charged are passed through to a person:
- 1310 (A) other than a:
- 1311 (I) school;
- 1312 (II) nonprofit organization authorized by a school board or a governing body of a
1313 private school to organize and direct a competitive secondary school activity; or
- 1314 (III) nonprofit association authorized by a school board or a governing body of a
1315 private school to organize and direct a competitive secondary school activity; and
- 1316 (B) that is required to collect sales and use taxes under this chapter.
- 1317 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1318 commission may make rules defining the term "passed through."
- 1319 [~~(104)~~] (106) For purposes of this section and Section 59-12-104, "school":
- 1320 (a) means:
- 1321 (i) an elementary school or a secondary school that:
- 1322 (A) is a:
- 1323 (I) public school; or
- 1324 (II) private school; and
- 1325 (B) provides instruction for one or more grades kindergarten through 12; or
- 1326 (ii) a public school district; and
- 1327 (b) includes the Electronic High School as defined in Section 53A-15-1002.
- 1328 [~~(105)~~] (107) "Seller" means a person that makes a sale, lease, or rental of:
- 1329 (a) tangible personal property;

1330 (b) a product transferred electronically; or
1331 (c) a service.
1332 [~~(106)~~] (108) (a) "Semiconductor fabricating, processing, research, or development
1333 materials" means tangible personal property or a product transferred electronically if the
1334 tangible personal property or product transferred electronically is:
1335 (i) used primarily in the process of:
1336 (A) (I) manufacturing a semiconductor;
1337 (II) fabricating a semiconductor; or
1338 (III) research or development of a:
1339 (Aa) semiconductor; or
1340 (Bb) semiconductor manufacturing process; or
1341 (B) maintaining an environment suitable for a semiconductor; or
1342 (ii) consumed primarily in the process of:
1343 (A) (I) manufacturing a semiconductor;
1344 (II) fabricating a semiconductor; or
1345 (III) research or development of a:
1346 (Aa) semiconductor; or
1347 (Bb) semiconductor manufacturing process; or
1348 (B) maintaining an environment suitable for a semiconductor.
1349 (b) "Semiconductor fabricating, processing, research, or development materials"
1350 includes:
1351 (i) parts used in the repairs or renovations of tangible personal property or a product
1352 transferred electronically described in Subsection [~~(106)~~] (108)(a); or
1353 (ii) a chemical, catalyst, or other material used to:
1354 (A) produce or induce in a semiconductor a:
1355 (I) chemical change; or
1356 (II) physical change;
1357 (B) remove impurities from a semiconductor; or
1358 (C) improve the marketable condition of a semiconductor.
1359 [~~(107)~~] (109) "Senior citizen center" means a facility having the primary purpose of
1360 providing services to the aged as defined in Section 62A-3-101.

- 1361 [~~(108)~~] (110) "Simplified electronic return" means the electronic return:
- 1362 (a) described in Section 318(C) of the agreement; and
- 1363 (b) approved by the governing board of the agreement.
- 1364 [~~(109)~~] (111) "Solar energy" means the sun used as the sole source of energy for
- 1365 producing electricity.
- 1366 [~~(110)~~] (112) (a) "Sports or recreational equipment" means an item:
- 1367 (i) designed for human use; and
- 1368 (ii) that is:
- 1369 (A) worn in conjunction with:
- 1370 (I) an athletic activity; or
- 1371 (II) a recreational activity; and
- 1372 (B) not suitable for general use.
- 1373 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1374 commission shall make rules:
- 1375 (i) listing the items that constitute "sports or recreational equipment"; and
- 1376 (ii) that are consistent with the list of items that constitute "sports or recreational
- 1377 equipment" under the agreement.
- 1378 [~~(111)~~] (113) "State" means the state of Utah, its departments, and agencies.
- 1379 [~~(112)~~] (114) "Storage" means any keeping or retention of tangible personal property or
- 1380 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose
- 1381 except sale in the regular course of business.
- 1382 [~~(113)~~] (115) (a) Except as provided in Subsection [~~(113)~~] (115)(d) or (e), "tangible
- 1383 personal property" means personal property that:
- 1384 (i) may be:
- 1385 (A) seen;
- 1386 (B) weighed;
- 1387 (C) measured;
- 1388 (D) felt; or
- 1389 (E) touched; or
- 1390 (ii) is in any manner perceptible to the senses.
- 1391 (b) "Tangible personal property" includes:

1392 (i) electricity;
1393 (ii) water;
1394 (iii) gas;
1395 (iv) steam; or
1396 (v) prewritten computer software, regardless of the manner in which the prewritten
1397 computer software is transferred.

1398 (c) "Tangible personal property" includes the following regardless of whether the item
1399 is attached to real property:

1400 (i) a dishwasher;
1401 (ii) a dryer;
1402 (iii) a freezer;
1403 (iv) a microwave;
1404 (v) a refrigerator;
1405 (vi) a stove;
1406 (vii) a washer; or
1407 (viii) an item similar to Subsections [~~(113)~~] (115)(c)(i) through (vii) as determined by
1408 the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1409 Rulemaking Act.

1410 (d) "Tangible personal property" does not include a product that is transferred
1411 electronically.

1412 (e) "Tangible personal property" does not include the following if attached to real
1413 property, regardless of whether the attachment to real property is only through a line that
1414 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
1415 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1416 Rulemaking Act:

1417 (i) a hot water heater;
1418 (ii) a water filtration system; or
1419 (iii) a water softener system.

1420 [~~(114)~~] (116) "Tar sands" means impregnated sands that yield mixtures of liquid
1421 hydrocarbon and require further processing other than mechanical blending before becoming
1422 finished petroleum products.

1423 [~~(115)~~] (117) (a) "Telecommunications enabling or facilitating equipment, machinery,
1424 or software" means an item listed in Subsection [~~(115)~~] (117)(b) if that item is purchased or
1425 leased primarily to enable or facilitate one or more of the following to function:

1426 (i) telecommunications switching or routing equipment, machinery, or software; or

1427 (ii) telecommunications transmission equipment, machinery, or software.

1428 (b) The following apply to Subsection [~~(115)~~] (117)(a):

1429 (i) a pole;

1430 (ii) software;

1431 (iii) a supplementary power supply;

1432 (iv) temperature or environmental equipment or machinery;

1433 (v) test equipment;

1434 (vi) a tower; or

1435 (vii) equipment, machinery, or software that functions similarly to an item listed in
1436 Subsections [~~(115)~~] (117)(b)(i) through (vi) as determined by the commission by rule made in
1437 accordance with Subsection [~~(115)~~] (117)(c).

1438 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1439 commission may by rule define what constitutes equipment, machinery, or software that
1440 functions similarly to an item listed in Subsections [~~(115)~~] (117)(b)(i) through (vi).

1441 [~~(116)~~] (118) "Telecommunications equipment, machinery, or software required for
1442 911 service" means equipment, machinery, or software that is required to comply with 47
1443 C.F.R. Sec. 20.18.

1444 [~~(117)~~] (119) "Telecommunications maintenance or repair equipment, machinery, or
1445 software" means equipment, machinery, or software purchased or leased primarily to maintain
1446 or repair one or more of the following, regardless of whether the equipment, machinery, or
1447 software is purchased or leased as a spare part or as an upgrade or modification to one or more
1448 of the following:

1449 (a) telecommunications enabling or facilitating equipment, machinery, or software;

1450 (b) telecommunications switching or routing equipment, machinery, or software; or

1451 (c) telecommunications transmission equipment, machinery, or software.

1452 [~~(118)~~] (120) (a) "Telecommunications service" means the electronic conveyance,
1453 routing, or transmission of audio, data, video, voice, or any other information or signal to a

1454 point, or among or between points.

1455 (b) "Telecommunications service" includes:

1456 (i) an electronic conveyance, routing, or transmission with respect to which a computer

1457 processing application is used to act:

1458 (A) on the code, form, or protocol of the content;

1459 (B) for the purpose of electronic conveyance, routing, or transmission; and

1460 (C) regardless of whether the service:

1461 (I) is referred to as voice over Internet protocol service; or

1462 (II) is classified by the Federal Communications Commission as enhanced or value

1463 added;

1464 (ii) an 800 service;

1465 (iii) a 900 service;

1466 (iv) a fixed wireless service;

1467 (v) a mobile wireless service;

1468 (vi) a postpaid calling service;

1469 (vii) a prepaid calling service;

1470 (viii) a prepaid wireless calling service; or

1471 (ix) a private communications service.

1472 (c) "Telecommunications service" does not include:

1473 (i) advertising, including directory advertising;

1474 (ii) an ancillary service;

1475 (iii) a billing and collection service provided to a third party;

1476 (iv) a data processing and information service if:

1477 (A) the data processing and information service allows data to be:

1478 (I) (Aa) acquired;

1479 (Bb) generated;

1480 (Cc) processed;

1481 (Dd) retrieved; or

1482 (Ee) stored; and

1483 (II) delivered by an electronic transmission to a purchaser; and

1484 (B) the purchaser's primary purpose for the underlying transaction is the processed data

1485 or information;

1486 (v) installation or maintenance of the following on a customer's premises:

1487 (A) equipment; or

1488 (B) wiring;

1489 (vi) Internet access service;

1490 (vii) a paging service;

1491 (viii) a product transferred electronically, including:

1492 (A) music;

1493 (B) reading material;

1494 (C) a ring tone;

1495 (D) software; or

1496 (E) video;

1497 (ix) a radio and television audio and video programming service:

1498 (A) regardless of the medium; and

1499 (B) including:

1500 (I) furnishing conveyance, routing, or transmission of a television audio and video

1501 programming service by a programming service provider;

1502 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or

1503 (III) audio and video programming services delivered by a commercial mobile radio

1504 service provider as defined in 47 C.F.R. Sec. 20.3;

1505 (x) a value-added nonvoice data service; or

1506 (xi) tangible personal property.

1507 ~~[(119)]~~ (121) (a) "Telecommunications service provider" means a person that:

1508 (i) owns, controls, operates, or manages a telecommunications service; and

1509 (ii) engages in an activity described in Subsection ~~[(119)]~~ (121)(a)(i) for the shared use

1510 with or resale to any person of the telecommunications service.

1511 (b) A person described in Subsection ~~[(119)]~~ (121)(a) is a telecommunications service

1512 provider whether or not the Public Service Commission of Utah regulates:

1513 (i) that person; or

1514 (ii) the telecommunications service that the person owns, controls, operates, or

1515 manages.

1516 [~~(120)~~] (122) (a) "Telecommunications switching or routing equipment, machinery, or
1517 software" means an item listed in Subsection [~~(120)~~] (122)(b) if that item is purchased or
1518 leased primarily for switching or routing:

- 1519 (i) an ancillary service;
- 1520 (ii) data communications;
- 1521 (iii) voice communications; or
- 1522 (iv) telecommunications service.

1523 (b) The following apply to Subsection [~~(120)~~] (122)(a):

- 1524 (i) a bridge;
- 1525 (ii) a computer;
- 1526 (iii) a cross connect;
- 1527 (iv) a modem;
- 1528 (v) a multiplexer;
- 1529 (vi) plug in circuitry;
- 1530 (vii) a router;
- 1531 (viii) software;
- 1532 (ix) a switch; or
- 1533 (x) equipment, machinery, or software that functions similarly to an item listed in

1534 Subsections [~~(120)~~] (122)(b)(i) through (ix) as determined by the commission by rule made in
1535 accordance with Subsection [~~(120)~~] (122)(c).

1536 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1537 commission may by rule define what constitutes equipment, machinery, or software that
1538 functions similarly to an item listed in Subsections [~~(120)~~] (122)(b)(i) through (ix).

1539 [~~(121)~~] (123) (a) "Telecommunications transmission equipment, machinery, or
1540 software" means an item listed in Subsection [~~(121)~~] (123)(b) if that item is purchased or
1541 leased primarily for sending, receiving, or transporting:

- 1542 (i) an ancillary service;
- 1543 (ii) data communications;
- 1544 (iii) voice communications; or
- 1545 (iv) telecommunications service.

1546 (b) The following apply to Subsection [~~(121)~~] (123)(a):

- 1547 (i) an amplifier;
- 1548 (ii) a cable;
- 1549 (iii) a closure;
- 1550 (iv) a conduit;
- 1551 (v) a controller;
- 1552 (vi) a duplexer;
- 1553 (vii) a filter;
- 1554 (viii) an input device;
- 1555 (ix) an input/output device;
- 1556 (x) an insulator;
- 1557 (xi) microwave machinery or equipment;
- 1558 (xii) an oscillator;
- 1559 (xiii) an output device;
- 1560 (xiv) a pedestal;
- 1561 (xv) a power converter;
- 1562 (xvi) a power supply;
- 1563 (xvii) a radio channel;
- 1564 (xviii) a radio receiver;
- 1565 (xix) a radio transmitter;
- 1566 (xx) a repeater;
- 1567 (xxi) software;
- 1568 (xxii) a terminal;
- 1569 (xxiii) a timing unit;
- 1570 (xxiv) a transformer;
- 1571 (xxv) a wire; or
- 1572 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
- 1573 Subsections [~~(121)~~] (123)(b)(i) through (xxv) as determined by the commission by rule made in
- 1574 accordance with Subsection [~~(121)~~] (123)(c).
- 1575 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1576 commission may by rule define what constitutes equipment, machinery, or software that
- 1577 functions similarly to an item listed in Subsections [~~(121)~~] (123)(b)(i) through (xxv).

1578 [~~(122)~~] (124) (a) "Textbook for a higher education course" means a textbook or other
1579 printed material that is required for a course:

- 1580 (i) offered by an institution of higher education; and
- 1581 (ii) that the purchaser of the textbook or other printed material attends or will attend.
- 1582 (b) "Textbook for a higher education course" includes a textbook in electronic format.

1583 [~~(123)~~] (125) "Tobacco" means:

- 1584 (a) a cigarette;
- 1585 (b) a cigar;
- 1586 (c) chewing tobacco;
- 1587 (d) pipe tobacco; or
- 1588 (e) any other item that contains tobacco.

1589 [~~(124)~~] (126) "Unassisted amusement device" means an amusement device, skill
1590 device, or ride device that is started and stopped by the purchaser or renter of the right to use or
1591 operate the amusement device, skill device, or ride device.

1592 [~~(125)~~] (127) (a) "Use" means the exercise of any right or power over tangible personal
1593 property, a product transferred electronically, or a service under Subsection 59-12-103(1),
1594 incident to the ownership or the leasing of that tangible personal property, product transferred
1595 electronically, or service.

1596 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal
1597 property, a product transferred electronically, or a service in the regular course of business and
1598 held for resale.

1599 [~~(126)~~] (128) "Value-added nonvoice data service" means a service:

1600 (a) that otherwise meets the definition of a telecommunications service except that a
1601 computer processing application is used to act primarily for a purpose other than conveyance,
1602 routing, or transmission; and

1603 (b) with respect to which a computer processing application is used to act on data or
1604 information:

- 1605 (i) code;
- 1606 (ii) content;
- 1607 (iii) form; or
- 1608 (iv) protocol.

1609 [~~(127)~~] (129) (a) Subject to Subsection [~~(127)~~] (129)(b), "vehicle" means the following
1610 that are required to be titled, registered, or titled and registered:

- 1611 (i) an aircraft as defined in Section 72-10-102;
1612 (ii) a vehicle as defined in Section 41-1a-102;
1613 (iii) an off-highway vehicle as defined in Section 41-22-2; or
1614 (iv) a vessel as defined in Section 41-1a-102.

1615 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

- 1616 (i) a vehicle described in Subsection [~~(127)~~] (129)(a); or
1617 (ii) (A) a locomotive;
1618 (B) a freight car;
1619 (C) railroad work equipment; or
1620 (D) other railroad rolling stock.

1621 [~~(128)~~] (130) "Vehicle dealer" means a person engaged in the business of buying,
1622 selling, or exchanging a vehicle as defined in Subsection [~~(127)~~] (129).

1623 [~~(129)~~] (131) (a) "Vertical service" means an ancillary service that:

- 1624 (i) is offered in connection with one or more telecommunications services; and
1625 (ii) offers an advanced calling feature that allows a customer to:
1626 (A) identify a caller; and
1627 (B) manage multiple calls and call connections.

1628 (b) "Vertical service" includes an ancillary service that allows a customer to manage a
1629 conference bridging service.

1630 [~~(130)~~] (132) (a) "Voice mail service" means an ancillary service that enables a
1631 customer to receive, send, or store a recorded message.

1632 (b) "Voice mail service" does not include a vertical service that a customer is required
1633 to have in order to utilize a voice mail service.

1634 [~~(131)~~] (133) (a) Except as provided in Subsection [~~(131)~~] (133)(b), "waste energy
1635 facility" means a facility that generates electricity:

- 1636 (i) using as the primary source of energy waste materials that would be placed in a
1637 landfill or refuse pit if it were not used to generate electricity, including:
1638 (A) tires;
1639 (B) waste coal; or

- 1640 (C) oil shale; and
- 1641 (ii) in amounts greater than actually required for the operation of the facility.
- 1642 (b) "Waste energy facility" does not include a facility that incinerates:
- 1643 (i) municipal solid waste;
- 1644 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or
- 1645 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.
- 1646 [~~(132)~~] (134) "Watercraft" means a vessel as defined in Section 73-18-2.
- 1647 [~~(133)~~] (135) "Wind energy" means wind used as the sole source of energy to produce
- 1648 electricity.
- 1649 [~~(134)~~] (136) "ZIP Code" means a Zoning Improvement Plan Code assigned to a
- 1650 geographic location by the United States Postal Service.
- 1651 Section 4. Section **59-12-104** is amended to read:
- 1652 **59-12-104. Exemptions.**
- 1653 The following sales and uses are exempt from the taxes imposed by this chapter:
- 1654 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
- 1655 under Chapter 13, Motor and Special Fuel Tax Act;
- 1656 (2) subject to Section 59-12-104.6, sales to the state, its institutions, and its political
- 1657 subdivisions; however, this exemption does not apply to sales of:
- 1658 (a) construction materials except:
- 1659 (i) construction materials purchased by or on behalf of institutions of the public
- 1660 education system as defined in Utah Constitution Article X, Section 2, provided the
- 1661 construction materials are clearly identified and segregated and installed or converted to real
- 1662 property which is owned by institutions of the public education system; and
- 1663 (ii) construction materials purchased by the state, its institutions, or its political
- 1664 subdivisions which are installed or converted to real property by employees of the state, its
- 1665 institutions, or its political subdivisions; or
- 1666 (b) tangible personal property in connection with the construction, operation,
- 1667 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities
- 1668 providing additional project capacity, as defined in Section 11-13-103;
- 1669 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:
- 1670 (i) the proceeds of each sale do not exceed \$1; and

1671 (ii) the seller or operator of the vending machine reports an amount equal to 150% of
1672 the cost of the item described in Subsection (3)(b) as goods consumed; and

1673 (b) Subsection (3)(a) applies to:

1674 (i) food and food ingredients; or

1675 (ii) prepared food;

1676 (4) (a) sales of the following to a commercial airline carrier for in-flight consumption:

1677 (i) alcoholic beverages;

1678 (ii) food and food ingredients; or

1679 (iii) prepared food;

1680 (b) sales of tangible personal property or a product transferred electronically:

1681 (i) to a passenger;

1682 (ii) by a commercial airline carrier; and

1683 (iii) during a flight for in-flight consumption or in-flight use by the passenger; or

1684 (c) services related to Subsection (4)(a) or (b);

1685 (5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts
1686 and equipment:

1687 (A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002
1688 North American Industry Classification System of the federal Executive Office of the
1689 President, Office of Management and Budget; and

1690 (II) for:

1691 (Aa) installation in an aircraft, including services relating to the installation of parts or
1692 equipment in the aircraft;

1693 (Bb) renovation of an aircraft; or

1694 (Cc) repair of an aircraft; or

1695 (B) for installation in an aircraft operated by a common carrier in interstate or foreign
1696 commerce; or

1697 (ii) beginning on October 1, 2008, sales of parts and equipment for installation in an
1698 aircraft operated by a common carrier in interstate or foreign commerce; and

1699 (b) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,
1700 a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a
1701 refund:

- 1702 (i) if the sale is made on or after July 1, 2008, but on or before September 30, 2008;
- 1703 (ii) as if Subsection (5)(a)(i)(B) were in effect on the day on which the sale is made;
- 1704 (iii) if the person did not claim the exemption allowed by Subsection (5)(a)(i)(B) for
- 1705 the sale prior to filing for the refund;
- 1706 (iv) for sales and use taxes paid under this chapter on the sale;
- 1707 (v) in accordance with Section 59-1-1410; and
- 1708 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if
- 1709 the person files for the refund on or before September 30, 2011;
- 1710 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
- 1711 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
- 1712 exhibitor, distributor, or commercial television or radio broadcaster;
- 1713 (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal
- 1714 property if the cleaning or washing of the tangible personal property is not assisted cleaning or
- 1715 washing of tangible personal property;
- 1716 (b) if a seller that sells at the same business location assisted cleaning or washing of
- 1717 tangible personal property and cleaning or washing of tangible personal property that is not
- 1718 assisted cleaning or washing of tangible personal property, the exemption described in
- 1719 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning
- 1720 or washing of the tangible personal property; and
- 1721 (c) for purposes of Subsection (7)(b) and in accordance with Title 63G, Chapter 3,
- 1722 Utah Administrative Rulemaking Act, the commission may make rules:
- 1723 (i) governing the circumstances under which sales are at the same business location;
- 1724 and
- 1725 (ii) establishing the procedures and requirements for a seller to separately account for
- 1726 sales of assisted cleaning or washing of tangible personal property;
- 1727 (8) sales made to or by religious or charitable institutions in the conduct of their regular
- 1728 religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are
- 1729 fulfilled;
- 1730 (9) sales of a vehicle of a type required to be registered under the motor vehicle laws of
- 1731 this state if the vehicle is:
- 1732 (a) not registered in this state; and

1733 (b) (i) not used in this state; or
1734 (ii) used in this state:
1735 (A) if the vehicle is not used to conduct business, for a time period that does not
1736 exceed the longer of:
1737 (I) 30 days in any calendar year; or
1738 (II) the time period necessary to transport the vehicle to the borders of this state; or
1739 (B) if the vehicle is used to conduct business, for the time period necessary to transport
1740 the vehicle to the borders of this state;
1741 (10) (a) amounts paid for an item described in Subsection (10)(b) if:
1742 (i) the item is intended for human use; and
1743 (ii) (A) a prescription was issued for the item; or
1744 (B) the item was purchased by a hospital or other medical facility; and
1745 (b) (i) Subsection (10)(a) applies to:
1746 (A) a drug;
1747 (B) a syringe; or
1748 (C) a stoma supply; and
1749 (ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1750 commission may by rule define the terms:
1751 (A) "syringe"; or
1752 (B) "stoma supply";
1753 (11) sales or use of property, materials, or services used in the construction of or
1754 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;
1755 (12) (a) sales of an item described in Subsection (12)(c) served by:
1756 (i) the following if the item described in Subsection (12)(c) is not available to the
1757 general public:
1758 (A) a church; or
1759 (B) a charitable institution;
1760 (ii) an institution of higher education if:
1761 (A) the item described in Subsection (12)(c) is not available to the general public; or
1762 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
1763 offered by the institution of higher education; or

- 1764 (b) sales of an item described in Subsection (12)(c) provided for a patient by:
- 1765 (i) a medical facility; or
- 1766 (ii) a nursing facility; and
- 1767 (c) Subsections (12)(a) and (b) apply to:
- 1768 (i) food and food ingredients;
- 1769 (ii) prepared food; or
- 1770 (iii) alcoholic beverages;
- 1771 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property
- 1772 or a product transferred electronically by a person:
- 1773 (i) regardless of the number of transactions involving the sale of that tangible personal
- 1774 property or product transferred electronically by that person; and
- 1775 (ii) not regularly engaged in the business of selling that type of tangible personal
- 1776 property or product transferred electronically;
- 1777 (b) this Subsection (13) does not apply if:
- 1778 (i) the sale is one of a series of sales of a character to indicate that the person is
- 1779 regularly engaged in the business of selling that type of tangible personal property or product
- 1780 transferred electronically;
- 1781 (ii) the person holds that person out as regularly engaged in the business of selling that
- 1782 type of tangible personal property or product transferred electronically;
- 1783 (iii) the person sells an item of tangible personal property or product transferred
- 1784 electronically that the person purchased as a sale that is exempt under Subsection (25); or
- 1785 (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of
- 1786 this state in which case the tax is based upon:
- 1787 (A) the bill of sale or other written evidence of value of the vehicle or vessel being
- 1788 sold; or
- 1789 (B) in the absence of a bill of sale or other written evidence of value, the fair market
- 1790 value of the vehicle or vessel being sold at the time of the sale as determined by the
- 1791 commission; and
- 1792 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1793 commission shall make rules establishing the circumstances under which:
- 1794 (i) a person is regularly engaged in the business of selling a type of tangible personal

1795 property or product transferred electronically;

1796 (ii) a sale of tangible personal property or a product transferred electronically is one of
1797 a series of sales of a character to indicate that a person is regularly engaged in the business of
1798 selling that type of tangible personal property or product transferred electronically; or

1799 (iii) a person holds that person out as regularly engaged in the business of selling a type
1800 of tangible personal property or product transferred electronically;

1801 (14) (a) except as provided in Subsection (14)(b), amounts paid or charged on or after
1802 July 1, 2006, for a purchase or lease by a manufacturing facility except for a cogeneration
1803 facility, of the following:

1804 (i) machinery and equipment that:

1805 (A) are used:

1806 (I) for a manufacturing facility except for a manufacturing facility that is a scrap
1807 recycler described in Subsection 59-12-102~~(55)~~(57)(b):

1808 (Aa) in the manufacturing process;

1809 (Bb) to manufacture an item sold as tangible personal property; and

1810 (Cc) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
1811 (14)(a)(i)(A)(I) in the state; or

1812 (II) for a manufacturing facility that is a scrap recycler described in Subsection
1813 59-12-102~~(55)~~(57)(b):

1814 (Aa) to process an item sold as tangible personal property; and

1815 (Bb) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
1816 (14)(a)(i)(A)(II) in the state; and

1817 (B) have an economic life of three or more years; and

1818 (ii) normal operating repair or replacement parts that:

1819 (A) have an economic life of three or more years; and

1820 (B) are used:

1821 (I) for a manufacturing facility except for a manufacturing facility that is a scrap
1822 recycler described in Subsection 59-12-102~~(55)~~(57)(b):

1823 (Aa) in the manufacturing process; and

1824 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(I) in the
1825 state; or

1826 (II) for a manufacturing facility that is a scrap recycler described in Subsection
1827 59-12-102[(55)](57)(b):

1828 (Aa) to process an item sold as tangible personal property; and
1829 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(II) in the
1830 state;

1831 (b) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a
1832 manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006,
1833 of the following:

1834 (i) machinery and equipment that:
1835 (A) are used:
1836 (I) in the manufacturing process;
1837 (II) to manufacture an item sold as tangible personal property; and
1838 (III) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
1839 (14)(b) in the state; and

1840 (B) have an economic life of three or more years; and
1841 (ii) normal operating repair or replacement parts that:
1842 (A) are used:
1843 (I) in the manufacturing process; and
1844 (II) in a manufacturing facility described in this Subsection (14)(b) in the state; and
1845 (B) have an economic life of three or more years;

1846 (c) amounts paid or charged for a purchase or lease made on or after January 1, 2008,
1847 by an establishment described in NAICS Subsector 212, Mining (except Oil and Gas), or
1848 NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for
1849 Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining,
1850 of the 2002 North American Industry Classification System of the federal Executive Office of
1851 the President, Office of Management and Budget, of the following:

1852 (i) machinery and equipment that:
1853 (A) are used:
1854 (I) (Aa) in the production process, other than the production of real property; or
1855 (Bb) in research and development; and
1856 (II) beginning on July 1, 2009, in an establishment described in this Subsection (14)(c)

1857 in the state; and

1858 (B) have an economic life of three or more years; and

1859 (ii) normal operating repair or replacement parts that:

1860 (A) have an economic life of three or more years; and

1861 (B) are used in:

1862 (I) (Aa) the production process, except for the production of real property; and

1863 (Bb) an establishment described in this Subsection (14)(c) in the state; or

1864 (II) (Aa) research and development; and

1865 (Bb) in an establishment described in this Subsection (14)(c) in the state;

1866 (d) (i) amounts paid or charged for a purchase or lease made on or after July 1, 2010,

1867 but on or before June 30, 2014, by an establishment described in NAICS Code 518112, Web

1868 Search Portals, of the 2002 North American Industry Classification System of the federal

1869 Executive Office of the President, Office of Management and Budget, of the following:

1870 (A) machinery and equipment that:

1871 (I) are used in the operation of the web search portal;

1872 (II) have an economic life of three or more years; and

1873 (III) are used in a new or expanding establishment described in this Subsection (14)(d)

1874 in the state; and

1875 (B) normal operating repair or replacement parts that:

1876 (I) are used in the operation of the web search portal;

1877 (II) have an economic life of three or more years; and

1878 (III) are used in a new or expanding establishment described in this Subsection (14)(d)

1879 in the state; or

1880 (ii) amounts paid or charged for a purchase or lease made on or after July 1, 2014, by

1881 an establishment described in NAICS Code 518112, Web Search Portals, of the 2002 North

1882 American Industry Classification System of the federal Executive Office of the President,

1883 Office of Management and Budget, of the following:

1884 (A) machinery and equipment that:

1885 (I) are used in the operation of the web search portal; and

1886 (II) have an economic life of three or more years; and

1887 (B) normal operating repair or replacement parts that:

1888 (I) are used in the operation of the web search portal; and
1889 (II) have an economic life of three or more years;
1890 (e) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter 3,
1891 Utah Administrative Rulemaking Act, the commission:
1892 (i) shall by rule define the term "establishment"; and
1893 (ii) may by rule define what constitutes:
1894 (A) processing an item sold as tangible personal property;
1895 (B) the production process, except for the production of real property;
1896 (C) research and development; or
1897 (D) a new or expanding establishment described in Subsection (14)(d) in the state; and
1898 (f) on or before October 1, 2011, and every five years after October 1, 2011, the
1899 commission shall:
1900 (i) review the exemptions described in this Subsection (14) and make
1901 recommendations to the Revenue and Taxation Interim Committee concerning whether the
1902 exemptions should be continued, modified, or repealed; and
1903 (ii) include in its report:
1904 (A) an estimate of the cost of the exemptions;
1905 (B) the purpose and effectiveness of the exemptions; and
1906 (C) the benefits of the exemptions to the state;
1907 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:
1908 (i) tooling;
1909 (ii) special tooling;
1910 (iii) support equipment;
1911 (iv) special test equipment; or
1912 (v) parts used in the repairs or renovations of tooling or equipment described in
1913 Subsections (15)(a)(i) through (iv); and
1914 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:
1915 (i) the tooling, equipment, or parts are used or consumed exclusively in the
1916 performance of any aerospace or electronics industry contract with the United States
1917 government or any subcontract under that contract; and
1918 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),

1919 title to the tooling, equipment, or parts is vested in the United States government as evidenced
1920 by:

1921 (A) a government identification tag placed on the tooling, equipment, or parts; or

1922 (B) listing on a government-approved property record if placing a government

1923 identification tag on the tooling, equipment, or parts is impractical;

1924 (16) sales of newspapers or newspaper subscriptions;

1925 (17) (a) except as provided in Subsection (17)(b), tangible personal property or a

1926 product transferred electronically traded in as full or part payment of the purchase price, except

1927 that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer,

1928 trade-ins are limited to other vehicles only, and the tax is based upon:

1929 (i) the bill of sale or other written evidence of value of the vehicle being sold and the
1930 vehicle being traded in; or

1931 (ii) in the absence of a bill of sale or other written evidence of value, the then existing
1932 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
1933 commission; and

1934 (b) notwithstanding Subsection (17)(a), Subsection (17)(a) does not apply to the
1935 following items of tangible personal property or products transferred electronically traded in as
1936 full or part payment of the purchase price:

1937 (i) money;

1938 (ii) electricity;

1939 (iii) water;

1940 (iv) gas; or

1941 (v) steam;

1942 (18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property
1943 or a product transferred electronically used or consumed primarily and directly in farming
1944 operations, regardless of whether the tangible personal property or product transferred
1945 electronically:

1946 (A) becomes part of real estate; or

1947 (B) is installed by a:

1948 (I) farmer;

1949 (II) contractor; or

1950 (III) subcontractor; or
1951 (ii) sales of parts used in the repairs or renovations of tangible personal property or a
1952 product transferred electronically if the tangible personal property or product transferred
1953 electronically is exempt under Subsection (18)(a)(i); and
1954 (b) notwithstanding Subsection (18)(a), amounts paid or charged for the following are
1955 subject to the taxes imposed by this chapter:
1956 (i) (A) subject to Subsection (18)(b)(i)(B), the following if used in a manner that is
1957 incidental to farming:
1958 (I) machinery;
1959 (II) equipment;
1960 (III) materials; or
1961 (IV) supplies; and
1962 (B) tangible personal property that is considered to be used in a manner that is
1963 incidental to farming includes:
1964 (I) hand tools; or
1965 (II) maintenance and janitorial equipment and supplies;
1966 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product
1967 transferred electronically if the tangible personal property or product transferred electronically
1968 is used in an activity other than farming; and
1969 (B) tangible personal property or a product transferred electronically that is considered
1970 to be used in an activity other than farming includes:
1971 (I) office equipment and supplies; or
1972 (II) equipment and supplies used in:
1973 (Aa) the sale or distribution of farm products;
1974 (Bb) research; or
1975 (Cc) transportation; or
1976 (iii) a vehicle required to be registered by the laws of this state during the period
1977 ending two years after the date of the vehicle's purchase;
1978 (19) sales of hay;
1979 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or
1980 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or

- 1981 garden, farm, or other agricultural produce is sold by:
- 1982 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other
1983 agricultural produce;
- 1984 (b) an employee of the producer described in Subsection (20)(a); or
- 1985 (c) a member of the immediate family of the producer described in Subsection (20)(a);
- 1986 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
1987 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;
- 1988 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
1989 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
1990 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
1991 manufacturer, processor, wholesaler, or retailer;
- 1992 (23) a product stored in the state for resale;
- 1993 (24) (a) purchases of a product if:
- 1994 (i) the product is:
- 1995 (A) purchased outside of this state;
- 1996 (B) brought into this state:
- 1997 (I) at any time after the purchase described in Subsection (24)(a)(i)(A); and
- 1998 (II) by a nonresident person who is not living or working in this state at the time of the
1999 purchase;
- 2000 (C) used for the personal use or enjoyment of the nonresident person described in
2001 Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and
- 2002 (D) not used in conducting business in this state; and
- 2003 (ii) for:
- 2004 (A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of
2005 the product for a purpose for which the product is designed occurs outside of this state;
- 2006 (B) a boat, the boat is registered outside of this state; or
- 2007 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
2008 outside of this state;
- 2009 (b) the exemption provided for in Subsection (24)(a) does not apply to:
- 2010 (i) a lease or rental of a product; or
- 2011 (ii) a sale of a vehicle exempt under Subsection (33); and

2012 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
2013 purposes of Subsection (24)(a), the commission may by rule define what constitutes the
2014 following:

2015 (i) conducting business in this state if that phrase has the same meaning in this
2016 Subsection (24) as in Subsection (63);

2017 (ii) the first use of a product if that phrase has the same meaning in this Subsection (24)
2018 as in Subsection (63); or

2019 (iii) a purpose for which a product is designed if that phrase has the same meaning in
2020 this Subsection (24) as in Subsection (63);

2021 (25) a product purchased for resale in this state, in the regular course of business, either
2022 in its original form or as an ingredient or component part of a manufactured or compounded
2023 product;

2024 (26) a product upon which a sales or use tax was paid to some other state, or one of its
2025 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
2026 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if
2027 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax
2028 Act;

2029 (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a
2030 person for use in compounding a service taxable under the subsections;

2031 (28) purchases made in accordance with the special supplemental nutrition program for
2032 women, infants, and children established in 42 U.S.C. Sec. 1786;

2033 (29) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers,
2034 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens
2035 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification
2036 Manual of the federal Executive Office of the President, Office of Management and Budget;

2037 (30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State
2038 Boating Act, a boat trailer, or an outboard motor if the boat, boat trailer, or outboard motor is:

2039 (a) not registered in this state; and

2040 (b) (i) not used in this state; or

2041 (ii) used in this state:

2042 (A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a

2043 time period that does not exceed the longer of:
2044 (I) 30 days in any calendar year; or
2045 (II) the time period necessary to transport the boat, boat trailer, or outboard motor to
2046 the borders of this state; or
2047 (B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time
2048 period necessary to transport the boat, boat trailer, or outboard motor to the borders of this
2049 state;
2050 (31) sales of aircraft manufactured in Utah;
2051 (32) amounts paid for the purchase of telecommunications service for purposes of
2052 providing telecommunications service;
2053 (33) sales, leases, or uses of the following:
2054 (a) a vehicle by an authorized carrier; or
2055 (b) tangible personal property that is installed on a vehicle:
2056 (i) sold or leased to or used by an authorized carrier; and
2057 (ii) before the vehicle is placed in service for the first time;
2058 (34) (a) 45% of the sales price of any new manufactured home; and
2059 (b) 100% of the sales price of any used manufactured home;
2060 (35) sales relating to schools and fundraising sales;
2061 (36) sales or rentals of durable medical equipment if:
2062 (a) a person presents a prescription for the durable medical equipment; and
2063 (b) the durable medical equipment is used for home use only;
2064 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
2065 Section 72-11-102; and
2066 (b) the commission shall by rule determine the method for calculating sales exempt
2067 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;
2068 (38) sales to a ski resort of:
2069 (a) snowmaking equipment;
2070 (b) ski slope grooming equipment;
2071 (c) passenger ropeways as defined in Section 72-11-102; or
2072 (d) parts used in the repairs or renovations of equipment or passenger ropeways
2073 described in Subsections (38)(a) through (c);

2074 (39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

2075 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for
2076 amusement, entertainment, or recreation an unassisted amusement device as defined in Section
2077 59-12-102;

2078 (b) if a seller that sells or rents at the same business location the right to use or operate
2079 for amusement, entertainment, or recreation one or more unassisted amusement devices and
2080 one or more assisted amusement devices, the exemption described in Subsection (40)(a)
2081 applies if the seller separately accounts for the sales or rentals of the right to use or operate for
2082 amusement, entertainment, or recreation for the assisted amusement devices; and

2083 (c) for purposes of Subsection (40)(b) and in accordance with Title 63G, Chapter 3,
2084 Utah Administrative Rulemaking Act, the commission may make rules:

2085 (i) governing the circumstances under which sales are at the same business location;
2086 and

2087 (ii) establishing the procedures and requirements for a seller to separately account for
2088 the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for
2089 assisted amusement devices;

2090 (41) (a) sales of photocopies by:

2091 (i) a governmental entity; or

2092 (ii) an entity within the state system of public education, including:

2093 (A) a school; or

2094 (B) the State Board of Education; or

2095 (b) sales of publications by a governmental entity;

2096 (42) amounts paid for admission to an athletic event at an institution of higher
2097 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
2098 20 U.S.C. Sec. 1681 et seq.;

2099 (43) (a) sales made to or by:

2100 (i) an area agency on aging; or

2101 (ii) a senior citizen center owned by a county, city, or town; or

2102 (b) sales made by a senior citizen center that contracts with an area agency on aging;

2103 (44) sales or leases of semiconductor fabricating, processing, research, or development
2104 materials regardless of whether the semiconductor fabricating, processing, research, or

2105 development materials:

2106 (a) actually come into contact with a semiconductor; or

2107 (b) ultimately become incorporated into real property;

2108 (45) an amount paid by or charged to a purchaser for accommodations and services

2109 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section

2110 59-12-104.2;

2111 (46) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary

2112 sports event registration certificate in accordance with Section 41-3-306 for the event period

2113 specified on the temporary sports event registration certificate;

2114 (47) sales or uses of electricity, if the sales or uses are:

2115 (a) made under a tariff adopted by the Public Service Commission of Utah only for

2116 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy

2117 source, as designated in the tariff by the Public Service Commission of Utah; and

2118 (b) for an amount of electricity that is:

2119 (i) unrelated to the amount of electricity used by the person purchasing the electricity

2120 under the tariff described in Subsection (47)(a); and

2121 (ii) equivalent to the number of kilowatthours specified in the tariff described in

2122 Subsection (47)(a) that may be purchased under the tariff described in Subsection (47)(a);

2123 (48) sales or rentals of mobility enhancing equipment if a person presents a

2124 prescription for the mobility enhancing equipment;

2125 (49) sales of water in a:

2126 (a) pipe;

2127 (b) conduit;

2128 (c) ditch; or

2129 (d) reservoir;

2130 (50) sales of currency or coinage that constitute legal tender of the United States or of a

2131 foreign nation;

2132 (51) (a) sales of an item described in Subsection (51)(b) if the item:

2133 (i) does not constitute legal tender of any nation; and

2134 (ii) has a gold, silver, or platinum content of 80% or more; and

2135 (b) Subsection (51)(a) applies to a gold, silver, or platinum:

- 2136 (i) ingot;
- 2137 (ii) bar;
- 2138 (iii) medallion; or
- 2139 (iv) decorative coin;
- 2140 (52) amounts paid on a sale-leaseback transaction;
- 2141 (53) sales of a prosthetic device:
- 2142 (a) for use on or in a human; and
- 2143 (b) (i) for which a prescription is required; or
- 2144 (ii) if the prosthetic device is purchased by a hospital or other medical facility;
- 2145 (54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of
- 2146 machinery or equipment by an establishment described in Subsection (54)(c) if the machinery
- 2147 or equipment is primarily used in the production or postproduction of the following media for
- 2148 commercial distribution:
- 2149 (i) a motion picture;
- 2150 (ii) a television program;
- 2151 (iii) a movie made for television;
- 2152 (iv) a music video;
- 2153 (v) a commercial;
- 2154 (vi) a documentary; or
- 2155 (vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the
- 2156 commission by administrative rule made in accordance with Subsection (54)(d); or
- 2157 (b) notwithstanding Subsection (54)(a), purchases, leases, or rentals of machinery or
- 2158 equipment by an establishment described in Subsection (54)(c) that is used for the production
- 2159 or postproduction of the following are subject to the taxes imposed by this chapter:
- 2160 (i) a live musical performance;
- 2161 (ii) a live news program; or
- 2162 (iii) a live sporting event;
- 2163 (c) the following establishments listed in the 1997 North American Industry
- 2164 Classification System of the federal Executive Office of the President, Office of Management
- 2165 and Budget, apply to Subsections (54)(a) and (b):
- 2166 (i) NAICS Code 512110; or

- 2167 (ii) NAICS Code 51219; and
- 2168 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 2169 commission may by rule:
 - 2170 (i) prescribe what constitutes a medium similar to Subsections (54)(a)(i) through (vi);
 - 2171 or
 - 2172 (ii) define:
 - 2173 (A) "commercial distribution";
 - 2174 (B) "live musical performance";
 - 2175 (C) "live news program"; or
 - 2176 (D) "live sporting event";
 - 2177 (55) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
 - 2178 on or before June 30, 2019, of machinery or equipment that:
 - 2179 (i) is leased or purchased for or by a facility that:
 - 2180 (A) is a renewable energy production facility;
 - 2181 (B) is located in the state; and
 - 2182 (C) (I) becomes operational on or after July 1, 2004; or
 - 2183 (II) has its generation capacity increased by one or more megawatts on or after July 1,
 - 2184 2004, as a result of the use of the machinery or equipment;
 - 2185 (ii) has an economic life of five or more years; and
 - 2186 (iii) is used to make the facility or the increase in capacity of the facility described in
 - 2187 Subsection (55)(a)(i) operational up to the point of interconnection with an existing
 - 2188 transmission grid including:
 - 2189 (A) a wind turbine;
 - 2190 (B) generating equipment;
 - 2191 (C) a control and monitoring system;
 - 2192 (D) a power line;
 - 2193 (E) substation equipment;
 - 2194 (F) lighting;
 - 2195 (G) fencing;
 - 2196 (H) pipes; or
 - 2197 (I) other equipment used for locating a power line or pole; and

2198 (b) this Subsection (55) does not apply to:
2199 (i) machinery or equipment used in construction of:
2200 (A) a new renewable energy production facility; or
2201 (B) the increase in the capacity of a renewable energy production facility;
2202 (ii) contracted services required for construction and routine maintenance activities;
2203 and
2204 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
2205 of the facility described in Subsection (55)(a)(i)(C)(II), machinery or equipment used or
2206 acquired after:
2207 (A) the renewable energy production facility described in Subsection (55)(a)(i) is
2208 operational as described in Subsection (55)(a)(iii); or
2209 (B) the increased capacity described in Subsection (55)(a)(i) is operational as described
2210 in Subsection (55)(a)(iii);
2211 (56) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
2212 on or before June 30, 2019, of machinery or equipment that:
2213 (i) is leased or purchased for or by a facility that:
2214 (A) is a waste energy production facility;
2215 (B) is located in the state; and
2216 (C) (I) becomes operational on or after July 1, 2004; or
2217 (II) has its generation capacity increased by one or more megawatts on or after July 1,
2218 2004, as a result of the use of the machinery or equipment;
2219 (ii) has an economic life of five or more years; and
2220 (iii) is used to make the facility or the increase in capacity of the facility described in
2221 Subsection (56)(a)(i) operational up to the point of interconnection with an existing
2222 transmission grid including:
2223 (A) generating equipment;
2224 (B) a control and monitoring system;
2225 (C) a power line;
2226 (D) substation equipment;
2227 (E) lighting;
2228 (F) fencing;

- 2229 (G) pipes; or
- 2230 (H) other equipment used for locating a power line or pole; and
- 2231 (b) this Subsection (56) does not apply to:
 - 2232 (i) machinery or equipment used in construction of:
 - 2233 (A) a new waste energy facility; or
 - 2234 (B) the increase in the capacity of a waste energy facility;
 - 2235 (ii) contracted services required for construction and routine maintenance activities;
 - 2236 and
 - 2237 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
 - 2238 described in Subsection (56)(a)(i)(C)(II), machinery or equipment used or acquired after:
 - 2239 (A) the waste energy facility described in Subsection (56)(a)(i) is operational as
 - 2240 described in Subsection (56)(a)(iii); or
 - 2241 (B) the increased capacity described in Subsection (56)(a)(i) is operational as described
 - 2242 in Subsection (56)(a)(iii);
 - 2243 (57) (a) leases of five or more years or purchases made on or after July 1, 2004 but on
 - 2244 or before June 30, 2019, of machinery or equipment that:
 - 2245 (i) is leased or purchased for or by a facility that:
 - 2246 (A) is located in the state;
 - 2247 (B) produces fuel from biomass energy including:
 - 2248 (I) methanol; or
 - 2249 (II) ethanol; and
 - 2250 (C) (I) becomes operational on or after July 1, 2004; or
 - 2251 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004, as
 - 2252 a result of the installation of the machinery or equipment;
 - 2253 (ii) has an economic life of five or more years; and
 - 2254 (iii) is installed on the facility described in Subsection (57)(a)(i);
 - 2255 (b) this Subsection (57) does not apply to:
 - 2256 (i) machinery or equipment used in construction of:
 - 2257 (A) a new facility described in Subsection (57)(a)(i); or
 - 2258 (B) the increase in capacity of the facility described in Subsection (57)(a)(i); or
 - 2259 (ii) contracted services required for construction and routine maintenance activities;

2260 and

2261 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
2262 described in Subsection (57)(a)(i)(C)(II), machinery or equipment used or acquired after:

2263 (A) the facility described in Subsection (57)(a)(i) is operational; or

2264 (B) the increased capacity described in Subsection (57)(a)(i) is operational;

2265 (58) (a) subject to Subsection (58)(b) or (c), sales of tangible personal property or a
2266 product transferred electronically to a person within this state if that tangible personal property
2267 or product transferred electronically is subsequently shipped outside the state and incorporated
2268 pursuant to contract into and becomes a part of real property located outside of this state;

2269 (b) the exemption under Subsection (58)(a) is not allowed to the extent that the other
2270 state or political entity to which the tangible personal property is shipped imposes a sales, use,
2271 gross receipts, or other similar transaction excise tax on the transaction against which the other
2272 state or political entity allows a credit for sales and use taxes imposed by this chapter; and

2273 (c) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,
2274 a person may claim the exemption allowed by this Subsection (58) for a sale by filing for a
2275 refund:

2276 (i) if the sale is made on or after July 1, 2004, but on or before June 30, 2008;

2277 (ii) as if this Subsection (58) as in effect on July 1, 2008, were in effect on the day on
2278 which the sale is made;

2279 (iii) if the person did not claim the exemption allowed by this Subsection (58) for the
2280 sale prior to filing for the refund;

2281 (iv) for sales and use taxes paid under this chapter on the sale;

2282 (v) in accordance with Section 59-1-1410; and

2283 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if
2284 the person files for the refund on or before June 30, 2011;

2285 (59) purchases:

2286 (a) of one or more of the following items in printed or electronic format:

2287 (i) a list containing information that includes one or more:

2288 (A) names; or

2289 (B) addresses; or

2290 (ii) a database containing information that includes one or more:

2291 (A) names; or
2292 (B) addresses; and
2293 (b) used to send direct mail;
2294 (60) redemptions or repurchases of a product by a person if that product was:
2295 (a) delivered to a pawnbroker as part of a pawn transaction; and
2296 (b) redeemed or repurchased within the time period established in a written agreement
2297 between the person and the pawnbroker for redeeming or repurchasing the product;
2298 (61) (a) purchases or leases of an item described in Subsection (61)(b) if the item:
2299 (i) is purchased or leased by, or on behalf of, a telecommunications service provider;
2300 and
2301 (ii) has a useful economic life of one or more years; and
2302 (b) the following apply to Subsection (61)(a):
2303 (i) telecommunications enabling or facilitating equipment, machinery, or software;
2304 (ii) telecommunications equipment, machinery, or software required for 911 service;
2305 (iii) telecommunications maintenance or repair equipment, machinery, or software;
2306 (iv) telecommunications switching or routing equipment, machinery, or software; or
2307 (v) telecommunications transmission equipment, machinery, or software;
2308 (62) (a) beginning on July 1, 2006, and ending on June 30, 2016, purchases of tangible
2309 personal property or a product transferred electronically that are used in the research and
2310 development of coal-to-liquids, oil shale, or tar sands technology; and
2311 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2312 commission may, for purposes of Subsection (62)(a), make rules defining what constitutes
2313 purchases of tangible personal property or a product transferred electronically that are used in
2314 the research and development of coal-to-liquids, oil shale, and tar sands technology;
2315 (63) (a) purchases of tangible personal property or a product transferred electronically
2316 if:
2317 (i) the tangible personal property or product transferred electronically is:
2318 (A) purchased outside of this state;
2319 (B) brought into this state at any time after the purchase described in Subsection
2320 (63)(a)(i)(A); and
2321 (C) used in conducting business in this state; and

2322 (ii) for:
2323 (A) tangible personal property or a product transferred electronically other than the
2324 tangible personal property described in Subsection (63)(a)(ii)(B), the first use of the property
2325 for a purpose for which the property is designed occurs outside of this state; or
2326 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
2327 outside of this state;
2328 (b) the exemption provided for in Subsection (63)(a) does not apply to:
2329 (i) a lease or rental of tangible personal property or a product transferred electronically;
2330 or
2331 (ii) a sale of a vehicle exempt under Subsection (33); and
2332 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
2333 purposes of Subsection (63)(a), the commission may by rule define what constitutes the
2334 following:
2335 (i) conducting business in this state if that phrase has the same meaning in this
2336 Subsection (63) as in Subsection (24);
2337 (ii) the first use of tangible personal property or a product transferred electronically if
2338 that phrase has the same meaning in this Subsection (63) as in Subsection (24); or
2339 (iii) a purpose for which tangible personal property or a product transferred
2340 electronically is designed if that phrase has the same meaning in this Subsection (63) as in
2341 Subsection (24);
2342 (64) sales of disposable home medical equipment or supplies if:
2343 (a) a person presents a prescription for the disposable home medical equipment or
2344 supplies;
2345 (b) the disposable home medical equipment or supplies are used exclusively by the
2346 person to whom the prescription described in Subsection (64)(a) is issued; and
2347 (c) the disposable home medical equipment and supplies are listed as eligible for
2348 payment under:
2349 (i) Title XVIII, federal Social Security Act; or
2350 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;
2351 (65) sales:
2352 (a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit

2353 District Act; or
2354 (b) of tangible personal property to a subcontractor of a public transit district, if the
2355 tangible personal property is:
2356 (i) clearly identified; and
2357 (ii) installed or converted to real property owned by the public transit district;
2358 (66) sales of construction materials:
2359 (a) purchased on or after July 1, 2010;
2360 (b) purchased by, on behalf of, or for the benefit of an international airport:
2361 (i) located within a county of the first class; and
2362 (ii) that has a United States customs office on its premises; and
2363 (c) if the construction materials are:
2364 (i) clearly identified;
2365 (ii) segregated; and
2366 (iii) installed or converted to real property:
2367 (A) owned or operated by the international airport described in Subsection (66)(b); and
2368 (B) located at the international airport described in Subsection (66)(b);
2369 (67) sales of construction materials:
2370 (a) purchased on or after July 1, 2008;
2371 (b) purchased by, on behalf of, or for the benefit of a new airport:
2372 (i) located within a county of the second class; and
2373 (ii) that is owned or operated by a city in which an airline as defined in Section
2374 59-2-102 is headquartered; and
2375 (c) if the construction materials are:
2376 (i) clearly identified;
2377 (ii) segregated; and
2378 (iii) installed or converted to real property:
2379 (A) owned or operated by the new airport described in Subsection (67)(b);
2380 (B) located at the new airport described in Subsection (67)(b); and
2381 (C) as part of the construction of the new airport described in Subsection (67)(b);
2382 (68) sales of fuel to a common carrier that is a railroad for use in a locomotive engine;
2383 (69) purchases and sales described in Section 63H-4-111;

2384 (70) (a) sales of tangible personal property to an aircraft maintenance, repair, and
 2385 overhaul provider for use in the maintenance, repair, overhaul, or refurbishment in this state of
 2386 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
 2387 lists a state or country other than this state as the location of registry of the fixed wing turbine
 2388 powered aircraft; or

2389 (b) sales of tangible personal property by an aircraft maintenance, repair, and overhaul
 2390 provider in connection with the maintenance, repair, overhaul, or refurbishment in this state of
 2391 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
 2392 lists a state or country other than this state as the location of registry of the fixed wing turbine
 2393 powered aircraft;

2394 (71) subject to Section 59-12-104.4, sales of a textbook for a higher education course:

2395 (a) to a person admitted to an institution of higher education; and

2396 (b) by a seller, other than a bookstore owned by an institution of higher education, if
 2397 51% or more of that seller's sales revenue for the previous calendar quarter are sales of a
 2398 textbook for a higher education course; [~~and~~]

2399 (72) a license fee or tax a municipality imposes in accordance with Subsection
 2400 10-1-203(5) on a purchaser from a business for which the municipality provides an enhanced
 2401 level of municipal services[-];

2402 (73) amounts paid or charged for construction materials used in the construction of a
 2403 new or expanding life science research and development facility in the state ~~H→~~ **, if the**
 2403a **construction materials are:**

2403b **(a) clearly identified;**

2403c **(b) segregated; and**

2403d **(c) installed or converted to real property** ~~←H~~ **; and**

2404 (74) amounts paid or charged for:

2405 (a) a purchase or lease of machinery and equipment that:

2406 (i) are used in performing qualified research:

2407 (A) as defined in Section 59-7-612;

2408 (B) in the state; and

2409 (C) with respect to which the purchaser pays or incurs a qualified research expense as
 2410 defined in Section 59-7-612; and

2411 (ii) have an economic life of three or more years; and

2412 (b) normal operating repair or replacement parts:

2413 (i) for the machinery and equipment described in Subsection (74)(a); and

2414 (ii) that have an economic life of three or more years.

2415 Section 5. **Effective date -- Retrospective operation.**

2416 (1) Except as provided in Subsection (2), this bill has retrospective operation for a
2417 taxable year beginning on or after January 1, 2012.

2418 (2) The amendments to Sections 59-12-102 and 59-12-104 take effect on July 1, 2012.

Legislative Review Note
as of 2-15-12 12:05 PM

Office of Legislative Research and General Counsel